

**MONDAY, APRIL 24, 2017**

**2:22 P.M.**

ACTING SPEAKER AUBRY: The House will come to order.

Reverend Elia will offer a prayer.

REVEREND DONNA ELIA: Let us pray. Good and gracious God, we thank You for the beauty of creation and for our brothers and sisters here and around the world. We thank You for the abundance of the harvest and for everything that has breath. Enliven our stewardship of the earth, our home. Help us to preserve it for our children, grandchildren, and for their grandchildren. Help us to care for our environment. Bless this Assembly in its deliberating and decision-making. Give to each person wisdom and courage to work for the well-being of all constituents. Give to them clarity and endurance, especially when the task seems arduous. And thank You

for the willingness of each legislator to take on the mantle of public service, and for the staff who do likewise. Encourage any who feel discouraged, strengthen the weary, give healing mercy to any who feel ill, and may joy and enthusiasm belong to everyone. Hasten the day when our world will know peace. In Your holy name we pray.

Amen.

ACTING SPEAKER AUBRY: 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 Friday, April 21st.

Mr. Morelle.

MR. MORELLE: Mr. Speaker, I move to dispense with the further reading of the Journal of Friday, April 21st, and ask that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mr. Morelle.

MR. MORELLE: Yes, sir. Mr. Speaker, colleagues, good afternoon. Welcome back. I'm glad to see everyone here. In just a moment I'll give our schedule for the day, but I do want to note that on this day in 1898, Spain declared war on the United States after rejecting America's ultimatum to withdraw from Cuba. The United States issued its own declaration on the 25th of April, making it

retroactive to April 21st. Thus, we declared war before they did after the fact. This began the Spanish-American War, which resulted in the end to Spanish colonial rule in the Americas.

And did you know that the world-famous Steinway Pianos are manufactured in the Astoria neighborhood of Queens? And that is located in the 36th Assembly District, represented ably by Ms. Simotas. Steinway produces only 3,400 instruments a year, making them a prized commodity for concert pianists the world over. And we'll do some, I'm sure, great concert work this afternoon together. That was hard to find a segue to that, Mr. Speaker. Sorry.

Members do have on their desks a main Calendar. After any introductions, we will begin our work today on consent from the main Calendar, beginning on page 18 with Calendar No. 167, and we will take up a number of bills associated with our Earth Day package. Members of the following committees should be aware we will be calling these committees off the floor in the next several minutes, including Judiciary, Ways and Means and Rules. Those meetings will produce an A-Calendar, which we will be working from today as well.

So, with that as a general outline, Mr. Speaker, I note there are some introductions. This would be the appropriate time to take them up.

ACTING SPEAKER AUBRY: Certainly.

Mr. Quart for an introduction.

MR. QUART: Good afternoon. Thank you, Mr.

Speaker, for allowing me to interrupt the proceedings for the purposes of an introduction. In the back is a New York City firefighter, Jimmy Lee. If Mr. Lee could stand up. Jimmy Lee has been a firefighter for 13 years, but when we met he wanted me -- and I think it's important at least to note the tragedy that happened in Queens Village yesterday, as well as William Tolley, another New York City firefighter who died in the line of duty a week ago, the sacrifice by Firefighter Tolley. Jimmy Lee is an extraordinary individual. On October 27, 2016, he was involved in one of the most difficult and daring rescues that the NYFD participates in. It is a rope rescue, where a rope is tied to the top of the building and the firefighter, in this case Jimmy Lee, rescues someone off a dangling rope that is actually engulfed in flame. That was the incident that late -- late night or early morning of October 27, 2016. Just to get a sense of who Jimmy Lee is, he's in a rescue company which, to the NYFD, is almost like the Army Rangers or Navy Seals of the NYFD. Tremendous training, courage and heroism. Mr. Lee rescued an 81-year-old gentleman who was pressed against a window on the fifth floor, off a dangling rope. Literally seconds before, that rope was eviscerated by fire and would have probably claimed his and another, Jim Duffy's, life. It was -- and it's all available on YouTube, for anyone who wants to see this incredible activity from the early morning hours of October 27th of last year. And under the NYFD guidelines, this is, of course, the last resort. But it was pulled off incredibly by Mr. Lee that early morning of October 27th. And to get a sense of who Jimmy Lee is, several hours after he

performed this rescue, he then, of course, went to his daughter's public school to deliver cupcakes for her birthday. So, it's a man, truly, who understands his priorities. As Jimmy -- as Mr. Lee, himself, the rescue was a total team effort. And as he was quoted in the newspaper, he was just happy to be the guy on the rope. I speak for all New Yorkers, New York City residents, who -- we are thankful that he was the guy on the rope. And I think it's important the NYFD wanted me to note that Mr. Lee was awarded a Class 1 citation for Extreme Personal Risk. He was awarded the Ray Downey Courage and Valor Award, a nationally-awarded valor award, for his activities that morning. And Mr. Lee was insistent that I mention briefly all the other firefighters who assisted him in that rescue that morning that saved lives. That was Jimmy Lee, Andy Hawkins, Joseph Moore, Francis Rush, Stephen Janicki, Walter Gilroy, William McGarry and Peter McMahan.

Mr. Speaker, please extend the cordialities of the House to this extraordinary New Yorker, a courageous, a true American hero, Jimmy Lee.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Quart, 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. You have our gratitude for the work that you do, the courageousness that you display in saving lives and protecting our property. We would like to always let you know that this is a place you are always welcome, and we always hold both the firemen and

yourself in high regard. Thank you so very much.

(Applause)

Mrs. Barrett for the purposes of an introduction.

MRS. BARRETT: Thank you, Mr. Speaker and colleagues. It's my great privilege to introduce two dear friends and very special members of my community, Susan Hendrickson and Tandra Dillon. Susan is the Board Chair of the Hudson Hall at the -- at the -- it was like getting the names -- the names are changing, the name's Hudson Hall at the Hudson Opera House, Historic Hudson Opera House. And Tammy is the Co-Director. And this past weekend, the Hudson Hall at the historic Hudson Opera House reopened after an extraordinary renovation that New York State was very instrumental in making sure happened. This facility is the longest-surviving theater in New York State, and had played there -- playing there has been the likes of Susan B. Anthony, and I think Teddy Roosevelt, and a number of incredible luminaries over the years. And this restoration, which we celebrated this weekend, will give this facility, the whole Hudson community and the whole Hudson Valley, a new opportunity to showcase this building that was first built in 19 -- in 1855 as a City Hall and a place for everything that cities in that era engaged in, from auctions, to performances, to -- and on the occasional opera performance, but many other civic and -- and entertainment activities.

So, I'm really thrilled to commemorate this reopening by having Susan -- whose son happens to work for Brian Kavanagh

here -- and Tammy here to celebrate with us. I hope that you will extend the cordialities of the floor to these wonderful constituents.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mrs. Barrett, the Speaker and all the members, we welcome you here to the New York State Assembly. We proclaim this to be the People's House. You are always welcome here, and we commend you on that great work that you're doing in preserving the Arts in your community. We know how very important that is for all of us in this State. Thank you so very much.

(Applause)

Ms. Pheffer Amato for the purposes of an introduction.

MS. PHEFFER AMATO: Thank you, Mr. Speaker, for allowing me to -- to interrupt interrupt the proceedings. We have a very special group of students here today. They're my first group of students as Member of Assembly. These students are from Channel View Middle School, located in Rockaway Park. These students, seventh grade and a part of the student government, these students were all in school during Superstorm Sandy, and like my own kid, all of the students in this community, they had to be completely relocated to other schools, while many were forced out of their own homes and had to make other incredible, grown-up life adjustments. Since then, many have participated in community reconstruction, and all of them are rebuilding our community into something new, stronger and better than ever it was before. I know you would be very impressed, as I

was, by the motivation, caring and bravery of these amazing young people. I couldn't be prouder to represent the students, faculty and parents of Channel View Middle School. I hope that this day is yet another step in preparing them for life of engagement in their community and beyond. We need more students like these, more parents like these parents, and more schools like Channel View that prepare our students for leadership both in and beyond the classroom.

Mr. Speaker, I respectfully ask that we extend them our welcome, the cordialities of the House and the privileges of the Chamber.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Pheffer Amato, the Speaker and all the members, we welcome you here to the People's House, the New York State Assembly. We extend to you the privileges of the floor. We commend you on the work that you're doing to rebuild your community, and we hope that the experiences that you have been through, difficult as they may be, will lead you to a better life and for a better life for both that community and the whole State of New York. Thank you so very much for joining us today.

(Applause)

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I would like to ask members of the Judiciary Committee to join Ms. Weinstein in the Speaker's Conference Room. Members of Judiciary.

ACTING SPEAKER AUBRY: Judiciary Committee,



Speaker's Conference Room.

Mr. Morelle.

MR. MORELLE: Yes, sir. Thank you. And if we could now go to page 3 of the main Calendar, I would like to begin with Assembly Resolutions, starting with Assembly Resolution No. 296 by Mr. Cymbrowitz.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. 296, Mr. Cymbrowitz.

Legislative Resolution commemorating the observance of Holocaust Remembrance Day in the State of New York on April 24, 2017.

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

THE CLERK: Assembly No. 297, Mr. Thiele.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 24-28, 2017 as Every Kid Healthy Week 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 No. 298, Mr. Magnarelli.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 16-22, 2017 as Abusive Head Trauma/Shaken Baby Syndrome Awareness Week 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 No. 299, Mr. Thiele.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 30-May 6, 2017 as Small Business Week 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 No. 300, Mrs. Gunther.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim April 24-28, 2017 as the Week of the Young Child 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. Bronson for an introduction.

MR. BRONSON: Thank you, Mr. Speaker, for allowing me to interrupt the proceedings for an introduction. It's my pleasure to have here today a wonderful family from Rochester, a family that embodies support and love of and for each other. The members of this family are visiting the Capitol today for a special birthday surprise. Mr. Speaker and all my colleagues, I'd like you to

welcome Juliette Morelle, Majority Leader Morelle's wonderful mother; Mary Beth Morelle, his loving wife; Gail Morelle, his favorite -- okay, only -- sister; the amazing, the one and only, Lauren Morelle; Nate Stone, Joe's favorite son-in-law; Joseph, Jr., the tall Joe in the family; Nicholas Morelle, his youngest; and last, but not least, Arabella and Jonas Stone, Joe's two loving grandchildren.

Mr. Speaker, I present to you today the Morelle family. Please extend to this wonderful family the privileges and cordialities of the House.

SPEAKER HEASTIE: Well, to the Morelle clan, good to see all of you. And for a personal note from me, I want to thank you for allowing him to be here with us, sharing him with us on a lot of those times that he's here, he could be with all of you, such a beautiful family. And so, I just wanted to come out and tell you all how important he is to all of us, not only to the members, but to me, myself. I couldn't have asked for a more incredible partner in taking care of the Assembly business. So, we're so happy to see you. And we all get homesick, so when we get our family to come here to visit us in this madhouse, it's always a good thing. So, I want to again extend all the privileges of the floor, and thank you for coming and reminding us how special a guy Joe Morelle is. Thank you for being here.

(Applause)

MR. MORELLE: Thank you, Mr. Speaker and everyone. That's incredibly kind. And I'm delighted to have them all

here, although it's an unexpected treat.

With that, we might probably do some business today. How about we'll move to page 18 of the main Calendar and take up Calendar No. 167 by Mr. Kim, on consent.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. 339, Calendar No. 167, Kim, Mosley, Jaffee, Sepulveda, Crespo, Moya, Steck, Fahy, Friend, Rozic, Harris, Jean-Pierre, Niou. An act to amend the Social Services Law, in relation to enacting the New York State Reuniting Families Act.

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.)

As Mr. Morelle takes care of some pressing business, members, you're reminded this is the first vote of the day. If you're in the sound of our voice, please come to the Chamber and vote. If you are in your seats, vote now. Thank you.

Are there any other votes? The Clerk will announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. 2155, Calendar No.

168, Mayer, Abinanti, Aubry, Buchwald, Galef, Jaffee, Otis, Paulin, Lupardo, Peoples-Stokes, Skoufis, Zebrowski. An act to amend the Social Services Law, in relation to requiring local social services districts to obtain approval by the governing body of such district prior to applying to the Office of Children and Family Services to amend the Consolidated Services Plan.

ACTING SPEAKER AUBRY: The bill is laid aside.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. We have the beginning -- as I indicated, we're going to be taking up a package of bills to -- in recognition of --

ACTING SPEAKER AUBRY: One minute, Mr. Morelle. We need to hear the directions. Thank you.

MR. MORELLE: Thank you, sir. As I indicated earlier, we have a package of bills relating to Earth Day. It is our Earth Day Package. Let me give you the first three bills that we'll take up, in this order: First we will begin with Calendar No. 119, which is on page 13 of the main Calendar by Mrs. Peoples-Stokes. We will follow that with Calendar No. 137 on page 15 by Ms. Fahy, and this first group will conclude with Calendar No. 140 on page 15 of the main Calendar by Mr. Kavanagh.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. 1862, Calendar No. 119, Peoples-Stokes, Rosenthal, Colton, Sepulveda, Otis, Galef, Mosley, Hunter, Gottfried, Thiele. An act to amend the

Environmental Conservation Law, in relation to high local environmental impact communities.

ACTING SPEAKER AUBRY: An explanation is requested, Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Yes, thank you, Mr. Speaker. This bill seeks to identify areas of the State suffering from unfair environmental burdens by requiring the Department of Environmental Conservation to prepare a list of high local environmental impact zones every two years.

ACTING SPEAKER AUBRY: Mr. McKeivitt.

MR. MCKEVITT: Sure. Will the sponsor yield for a few questions, please?

ACTING SPEAKER AUBRY: Will you yield, Mrs. Peoples-Stokes?

MRS. PEOPLES-STOKES: Yes, Mr. Speaker.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. MCKEVITT: I was noticing that -- if my understanding is correct, this exact same bill was passed by both Houses in 2010, and it was vetoed by then-Governor Paterson. And some of the concerns he had was the fact that it would now require additional resources of the DEC in order to try and go and extract and manage this data. But he also had a question on how useful the data will be and what the eventual purpose of them collecting and implementing it on. So I was just wondering if you want to comment on his reasons behind vetoing it, and why you think the bill is still

relevant and should still be passed.

MRS. PEOPLES-STOKES: Well, you know I think you said it right, that the Governor, then Paterson, vetoed this bill in 2010. We're are now in 2017, and I think this bill is more relevant than ever, and I think the manner in which data is collected is easier than ever and less cost-effective. So, I don't think that the issues that Governor Paterson had then will be issues that we will experience today. As you probably know, our IT department Statewide have been upgraded to a good status, and I think the concerns that he had then should not be concerns that we have today, particularly given that we still have so many negative environmental zones throughout the State.

MR. MCKEVITT: And then once all of this data is then collected and these zones are then determined, what do they -- we then do with the data other than say, *Okay, these are areas where there are environmental issues*, but is there then some sort of a plan that we can then implement by saying we have to do either various, you know, redirection of resources or new spending with -- what would be then after this bill is done, what would then be the next step we would do then?

MRS. PEOPLES-STOKES: Well, I would think that --

ACTING SPEAKER AUBRY: One minute, Mrs. Peoples-Stokes. Before you answer, we have a lot of conversations going on, quietly. But if you put a lot of conversations together at one time, it's making noise and people are having a hard time hearing the

answers. So would I ask you to cease that for the moment until the debate is over. Thank you.

MRS. PEOPLES-STOKES: I think what we should do as a State, and I would hope that folks would agree, is that once we know where there is a hazard site at, that we should plan a strategy on how it's going to be cleaned up, whether it's going to happen through a superfund, whether or not there's going to be some requirements from the previous owners. But there should be a strategy on cleaning it up. The purpose of knowing where these things are is so that we can protect the public.

MR. MCKEVITT: Okay, thank you.

ACTING SPEAKER AUBRY: Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. I stand to indicate my support for this bill, which recognizes the importance of considering the cumulative impact of adverse decisions for citing hazardous activities. Once a community has been already victimized by a bad decision, historically, it's not been unusual to see decision-makers say, *Well, it's already a good place for additional activities that are adverse*. Assemblywoman Peoples-Stokes is basically saying that should -- that basic premise should not be policy. And this piece of legislation sets the stage for a complete reevaluation of the way that we cite environmental projects that are potentially hazardous to communities, and particularly to communities that are of low-income, people by -- individuals who are of color. That is consistent with the premise and the promise of Earth Day. And we



are now celebrating the 47th anniversary of Earth Day. I remember the first Earth Day. It was full of inspiration and hope that we would develop policies to protect the environment, to protect communities and to prevent the victimization of people simply who wanted to have a clean and healthful environment. When Senator Gaylord Nelson introduced the concept of Earth Day in 1970, it was a significant contribution by our nation to the growth of an environmental movement worldwide. Today, Earth Day is celebrated by more than 500 million people in more than 176 countries. And legislation such as the one that we are now speaking on is our salute to that tradition of believing in ourselves and believing in the possibility that we can incrementally make the environment work for us, and make sure that we don't overwork the environment or abuse it.

So, I am very pleased to support this important initiative by Crystal Peoples-Stokes and, indeed, the package that the Speaker has brought forward today is our salute to and contribution, as an institution, to the promise and premise of Earth Day as an important part of our national experience and our State's experience. The package of bills that we will be seeing here today, like this one, is an important contribution and I look forward to supporting them. I'll be speaking on several of these measures, and I encourage my colleagues to vote for the entire package because, taken together, they are, like the opening prayer today, a prayer that we believe that the environment is something that is part of us and that we are part of it.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

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.)

Mrs. Peoples-Stokes to explain her vote.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker, for the opportunity to explain my vote. I want to join Member Englebright in commending this opportunity as a State and as a country, as a society, to celebrate Earth Day and just really wishing that we could celebrate Earth every day. God gave it to us in perfect condition. We should make sure we take care of it so that we leave it in perfection condition to our future.

So I certainly do encourage and thank my colleagues for supporting this legislation, and I vote in the affirmative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, ma'am.

Are there any other votes? The Clerk will announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I understand that the Judiciary Committee has completed its work. I

would like to ask members of the Ways and Means Committee to make their way to the Speaker's Conference Room. Mr. Farrell awaits members of the Ways and Means Committee.

ACTING SPEAKER AUBRY: Ways and Means Committee, Speaker's Conference Room.

The Clerk will read.

THE CLERK: Assembly No. 1773, Calendar No. 137, Fahy, Steck, Ortiz, Galef, Brindisi, Mosley, Barrett, Gottfried, Skoufis, Stirpe, Lopez, Rosenthal, Otis, Dinowitz, Thiele, Kavanagh, Hunter, Harris, Colton, Sepulveda. An act to amend the Navigation Law, in relation to financial responsibility for the liability of a major facility or vessel.

ACTING SPEAKER AUBRY: An explanation is requested, Ms. Fahy.

Again, ladies and gentlemen, we are on debate. It's hard to hear the debaters if you're talking.

MS. FAHY: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: We can wait, Ms. Fahy, obviously.

(Pause)

Proceed, ma'am.

MS. FAHY: Thank you. This bill, Mr. Speaker, is to require that owner/operators of a major facility show evidence of a financial responsibility such as an insurance policy or a surety bond in the -- in the case that any type of spill or disaster might happen with

the -- with petroleum products, particularly those such as crude oil, and the transfer of those products with -- from -- with major facilities, vessels or railroads. The legislation is -- quite frankly, it was an outgrowth after the horrific disasters -- a few horrific disasters occurred, but the most famous -- or infamous, if you will -- was the one in Canada, the Lac-Megantic, where there -- because the railroad company was not insured, and as you know, there were 45 lives that were lost when the train derailed and hit the Town of Lac-Megantic, and it left the taxpayers, local and Federal taxpayers, on the hook for billions of dollars. So while this does not affect transporting the crude oil, because that, as you know, is regulated by Federal law, this would just simply require that should an accident happen, or any type of spill, that the public or the taxpayer is not burdened, and that the facility would be responsible. Mr. Speaker, could you get order, please, again?

ACTING SPEAKER VANEL: Quiet in the Chamber.

MS. FAHY: Thank you.

ACTING SPEAKER VANEL: Mr. McKeVitt.

MR. MCKEVITT: Yes. Will the sponsor yield for a few questions, please?

MS. FAHY: Of course, thank you.

ACTING SPEAKER VANEL: The sponsor yields.

MR. MCKEVITT: The one point I just did want to bring up, which I think you mentioned in your explanation, is the fact

that some have risen the issue of the fact that the Federal railroads are already Federally-regulated, and there are Federal statutes which pretty much give, you know, Federal agencies the entire field on how they're operated. So the question comes, isn't this bill actually already preempted by Federal law? Because you will say this is just a way of making sure the taxpayers are making sure they're protected in case there's some sort of spill, but it could be argued otherwise that this would be an additional requirement operating -- for these facilities to operate and, therefore -- and a lawsuit may be thrown out. I was just wondering if you would comment on that objection which has been with this bill.

MS. FAHY: Yes. Thank you. It's actually an excellent question, and it's one that actually delayed the introduction of the bill a number of years ago, because we were trying to carve out or work around the parameters that are -- are quite strictly within the purview of the Feds in terms of regulating railroad and railroad traffic. This is simply requiring that they show proper insurance coverage or a surety bond, and it -- and we did base this on other state legislation, so we are rather comfortable in knowing that this isn't encroaching upon the Federal jurisdiction. So, this was based on Washington State, and I think there's similar legislation in California. So, we think that we have worked around those parameters. This will be the fourth year in a row that this bill will be before the Assembly here, and each year we have passed it with overwhelming bipartisan support. So, we -- and we've yet to be challenged on this, and as best we know, it has not

been challenged in other states, either. It really is one -- it's just like your car. You're not allowed to drive on a -- on a road in this State without a certificate to show that you are insured and that you have met safety requirements. And it has made our roads much, much -- much, much safer since those rules were implemented. It's the same way here. We're not preventing the railroads from moving or from transporting. We're just saying, *Let's make sure that you are well-insured, should any disaster happen.* And as with any insurance policy, you would be -- you would be hard-pressed to get an insurance policy if you hadn't met all safety criteria. So, it really is a -- what we look at as a prevention policy.

MR. MCKEVITT: Okay. Thank you.

MS. FAHY: Thank you.

ACTING SPEAKER VANEL: Read the last section.

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

ACTING SPEAKER VANEL: The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Lifton to explain her vote.

MS. LIFTON: Yes, Mr. Speaker, to explain my vote. I just want to stand briefly to commend the sponsor of this important piece of legislation. I've lost track of all of the very serious train accidents that have happened across the continent - one in Canada that I believe cost something like 40 lives and many, many millions of

dollars in property damage - and many in this country as well, that have caused loss of life and property damage from the very explosive crude oil being carried in these trains. So, I just want to commend the sponsor for paying close attention to this issue and bringing it to the floor so that we all understand it better.

I vote in the affirmative on this important piece of legislation.

ACTING SPEAKER VANEL: Ms. Lifton in the affirmative.

Are there any other votes? The Clerk will announce the results.

(The Clerk announced the results.)

The bill has passed.

Mr. Morelle.

MR. MORELLE: Yes, thank you, Mr. Speaker.

Before we go on to the next bill, I'd like to ask members of the Rules Committee to make their way to the Speaker's Conference Room. Mr. Heastie is in the Speaker's Conference Room for the Committee on Rules.

ACTING SPEAKER VANEL: Rules in the Speaker's Conference Room.

The Clerk will read.

THE CLERK: Assembly No. 2875, Calendar No. 140, Kavanagh, Colton, Jaffee, Abinanti, Rosenthal, Otis, Rozic, Ortiz, Englebright, Fahy, Stirpe, Dinowitz, Skoufis, Santabarbara,

Mosley, Rodriguez, Sepulveda, Carroll, Barrett. An act to amend the Environmental Conservation Law, in relation to the reduction of mercury in mercury-added lamps.

ACTING SPEAKER VANEL: An explanation has been requested.

MR. KAVANAGH: Thank you, Mr. Speaker. This bill would set maximum standards for mercury -- the content of mercury in various kinds of common light bulbs, like compact fluorescent bulbs and also the standard long, tubular fluorescent light bulbs. And, in addition, allow DEC to set standards for other less common lighting products, again, for the maximum amount of mercury that may be contained in them.

ACTING SPEAKER VANEL: Mr. McKeVitt.

MR. MCKEVITT: Yes. Will the sponsor yield for a couple of questions, please?

ACTING SPEAKER VANEL: Will the sponsor yield?

MR. KAVANAGH: Yes, Mr. Speaker.

ACTING SPEAKER VANEL: The sponsor yields.

MR. MCKEVITT: Yeah. I noticed we've had this bill here since around 2010 and we passed it each year from 2013 to 2016.

MR. KAVANAGH: Yes.

MR. MCKEVITT: And in my perspective, I think there's a very well-intention for the bill because, certainly, you want to



make sure that there is a limit on the amount of mercury in each of these bulbs. The issue I have with it, though, is whether this bill is almost becoming more obsolete. Because particularly in the last two or three years, many in the industry are going from the CFLs to the LEDs which, number one, don't have any mercury; number two, are much more efficient from an energy standpoint; and, three, gives more flexibility as far as what light emits from it at that point. I know you just mentioned that General Electric, my understanding in the last year, is even ceasing manufacturing all of these bulbs entirely. So, even though it's -- again, I'm in favor of this bill, I'm in favor of the concept. Isn't it, at this point, really just still becoming obsolete as these bulbs are now becoming obsolete as well?

MR. KAVANAGH: It is becoming less relevant over time, and I would say that at the point where people are not selling bulbs that contain mercury in New York State, we probably wouldn't do the bill. And it's also becoming easier, as you note, to comply with. I did spend, when we first introduced this bill, spent a lot of time negotiating directly with the people at General Electric, which is the largest manufacturer of light bulbs in America, and the National Electronics Manufacturer's Association, which also recommends mercury standards limits for light bulbs. Nonetheless, there are still bulbs being sold in New York that are compact fluorescent. Also, the standards fluorescents, which we have all over this building, are not being phased out very rapidly. So, this bill still does deal with a wide range of products that are still available on the market, both for

individual consumers and also for businesses. When this House has dealt with mercury standards in other products, we -- we have taken the step of banning disposal of most mercury-containing consumer products in landfills, like thermometers and other devices, recognizing that this particular kind of bulb cannot be made without mercury, recognizing that these bulbs are much more energy-efficient than traditional incandescent bulbs. We've decided rather than banning those kind of bulbs, to simply limit the amount of mercury to protect the environment and to protect households.

MR. MCKEVITT: And, again, I agree with you. We certainly want to go and limit any type of mercury which gets either into our landfills or even into our, you know, well system and the water system. But, again, you make the point that even throughout this building, we will have many CFLs in this instance, but again, this bill would only deal prospectively to those bulbs that are sold in the future. And my point is, we are probably not even purchasing them on the State level. If they are, they are very small and probably will be going completely to LEDs in the near future, if we aren't already there.

MR. KAVANAGH: There will probably continue to be hundreds of thousands of products that are purchased that would be subject to this bill for -- at least for several years coming. It's hard to know how quickly we'll evolve. But, again, large businesses that have these fixtures now, places like warehouses, places like this building, where we've got hundreds and hundreds of fixtures that are taking

standard tubular bulbs, we are unlikely to be switching those to LEDs. It is true that compact fluorescents are being switched out for LEDs and other products more rapidly, but again, it is likely that at least for several years, we'll continue to have these kinds of bulbs sold and, as a result, it is still relevant and important that we limit the amount of mercury, which, as you know, is a very toxic substance.

MR. MCKEVITT: Okay.

ACTING SPEAKER VANEL: Colleagues, we're on debate. Quiet on the floor.

MR. MCKEVITT: Thank you.

ACTING SPEAKER VANEL: Mr. Goodell.

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

ACTING SPEAKER VANEL: Will the sponsor yield?

MR. KAVANAGH: Absolutely, Mr. Speaker.

ACTING SPEAKER VANEL: The sponsor yields.

MR. GOODELL: Thank you very much. You indicated that there are hundreds of thousands of fixtures that still use the long bulb. Are there long replacement bulbs, fluorescent bulbs, that are readily available in the market that would meet these standards?

MR. KAVANAGH: Yes. These standards -- these standards have been in place in California and Maine for several years, and also in -- throughout Europe. Although Europe, I think that

they're not directly replaceable because the fixtures are designed somewhat differently. But yes, these are standards that -- there are products on the market that concurrently comply, and this would basically result in manufacturers and retailers ensuring that they are marketing in New York bulbs with -- that meet the standard.

MR. GOODELL: What is the price differential between bulbs that comply and those that don't?

MR. KAVANAGH: There does not seem to be a meaningful price differential. It's just a question of how carefully they're manufactured. And there are -- there are manufacturing facilities that do not regulate the amount of mercury, and there are some that do. And in order to comply with this, companies that manufacture bulbs would have to be responsible. And, again, as I mentioned, the National Electronics Manufacturing Association - which is the association that represents virtually all manufacturers of these products - does recommend that their members comply with maximum mercury standards. Some of them do and some of them don't.

MR. GOODELL: Thank you very much.

MR. KAVANAGH: Thank you.

MR. GOODELL: Thank you, Mr. Speaker.

ACTING SPEAKER VANEL: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER VANEL: The Clerk will record the vote.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Are there any other votes? The Clerk will announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker.

Members have on their desks an A-Calendar. I now move to advance the A-Calendar.

ACTING SPEAKER AUBRY: On Mr. Morelle's motion, the A-Calendar is advanced.

Mr. Morelle.

MR. MORELLE: Yes. I would like to take up directly Rules Report No. 62 on page 5 of that A-Calendar by Mr. Englebright.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. 6279, Rules Report No. 62, Englebright, Gottfried, Santabarbara, Harris, Ortiz, Dinowitz, Kearns, Colton, Lifton, Glick, Fahy, Titone, Abinanti, Otis, Jean-Pierre, Lavine, Mosley, Simon, Galef, Jaffee, Cook, Rivera, D'Urso, Hunter, Hooper, Steck, Peoples-Stokes, Sepulveda, Skoufis, Williams, Bichotte. Concurrent Resolution of the Senate and Assembly proposing an amendment to Article 1 of the Constitution, in relation to the right to clean air and water and a healthful environment.

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

MR. ENGLEBRIGHT: This -- this is an elementary concept, the premise being that part of the fundamental rights of being a citizen of this great State should be that one of those rights of being a citizen is a right to have a healthful environment. And it isn't yet in the Constitution, but it should be. And, certainly, there have been recent events that have reminded us of the need for this, in places like Hoosick Falls and Newburgh, Long Island where there --

ACTING SPEAKER AUBRY: Staff, please. Staff, go to the back. Cease the conversations.

MR. ENGLEBRIGHT: -- where there have been really horrific insults to the environment and to the communities' well-being and to the health of individuals. I'm reminded that this is not a new issue. We have -- I remember back in the 1970s that Jamaica Bay would catch fire on a regular basis, parts of it. And certainly, we have had a number of nationally-significant insults to the environment in different parts of the State. But it seems appropriate on this celebration of Earth Day to memorialize the right that all of our citizens should have, to know that the environment shall be something that they can count on at some point, ultimately, to be clean and healthful, and that they should have a right to clean air and clean water. It's as simple as that.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

the sponsor yield?

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

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Englebright. As you know, we've had a number of constitutional amendments that we've passed in the last few years; one allowing casino gambling, for example, another one dealing with the forfeiture of public pensions. In each one of those cases, we passed a constitutional amendment because we were unable, as the Legislature, to change the law because of restrictions in the Constitution that limited our statutory authority. Is there anything in the Constitution today that limits our ability to pass statutory provisions relating to clean water or clean air?

MR. ENGLEBRIGHT: I'm advised by counsel that there is none.

MR. GOODELL: Is there a reason that we need a constitutional amendment in order to protect clean air and clean water if we have the full authority to enact whatever statutory provisions we want to related to that subject?

MR. ENGLEBRIGHT: I believe that the answer to that is affirmative. I think there is -- as you look at the trajectory of the interaction of our communities with the environment that there is a need to reassure the citizens that they have basic rights in the Constitution of the State that they can turn to as part of a concert of

activities to make a damaged part of the environment right. That underlying any of those activities is the premise that each person shall have the right to clean air and clean water and a healthful environment.

MR. GOODELL: Do you then envision that this constitutional amendment would give individuals an individual cause of action?

MR. ENGLEBRIGHT: No. It doesn't really change -- it doesn't add new powers or give anybody new leverage, but it is a banner of a right that is fundamental to living in this State, fundamental to raising a family, fundamental to believing that the State that we pass to our children will be clean and healthful and a -- and a good place to live. That is the essence of what this is. It is not more complicated than that.

MR. GOODELL: As you know, it was actually a couple of decades ago that we passed the State Environmental Quality Review Act, often called SEQRA. Do you envision that this constitutional amendment in any way will expand SEQRA, or would you envision that any expansion of SEQRA would require a statutory amendment?

MR. ENGLEBRIGHT: SEQRA is a sunshine law for procedures leading to a particular decision for a particular proposal. That's very different. This doesn't affect that.

MR. GOODELL: You talk about a constitutional right to clean air and water. "Clean." Can you help give us some



guidance on what you mean by "clean?" You don't mean pure, right? I mean, it's not like we requiring municipalities now to provide distilled water.

MR. ENGLEBRIGHT: Well, we're talking about what is healthful. Healthful basically means that the environment is conducive to the well-being and the normal biological activities of a human interacting with that environment is one that will allow for the well-being of our citizens, in this case, to be predictable.

MR. GOODELL: As you know, this amendment would be a part of the Bill of Rights section on our State Constitution. The other provisions on that Bill of Rights really relate to our rights as individuals, as it relates to government; whether State or local or municipal governments. Is it your thought that this provision, as it relates to clean air and clean water, could be used as a basis for challenging MTA's use of diesel-powered buses, for example?

MR. ENGLEBRIGHT: It's certainly not the intention of -- of this legislation to do that. What it is is a very purposeful effort to reassure the people of this State that they have an inalienable right to a clean environment, and that the environment itself deserves to have our reciprocal support to keep it healthy. All of the creatures that God bestowed upon this great State deserve our respect, and they, too, are, in a sense, indicators of the well-being potential of the environment for our species.

MR. GOODELL: Can you give me an example of where this amendment would have a tangible impact in improving the

air or water quality or the environment in New York State?

MR. ENGLEBRIGHT: Absolutely. It will begin in our schools. It will begin with the children of the State, who will be taught that it is their right to grow up in a healthful environment. And I believe that that will shape their behavior as stewards of the environment. I believe it will shape the future of not only their families and their children and their children's children, but that there will be a tradition of expectation that it is okay to be optimistic and to believe in the future and to believe that the future as it relates to the health and well-being of the people and the environment is something that we can look forward to.

MR. GOODELL: Your -- or this proposal also would make it a constitutional right for a healthful environment -- not helpful, but healthful.

MR. ENGLEBRIGHT: All of the above.

MR. GOODELL: Was it your intent that the word "healthful" would include a lot of the issues that people often complain about like noise or traffic or crime or stress?

MR. ENGLEBRIGHT: I think there will be a certain degree of extrapolation, but the reality is that this is based upon the premise that the land, the air and the water deserve to be, and the creatures that live thereon and within, deserve to be essentially in a balanced state of equilibrium, and that we, as participants in the journey taken together into the future of our State, deserve to have a balance and predictably healthful environment as well.

MR. GOODELL: As you know, other states have had similar language, including Pennsylvania.

MR. ENGLEBRIGHT: Yes.

MR. GOODELL: And I was just reading a Law Review article as it related to the Pennsylvania situation, and it said that citizens often review the strong language as creating a separate constitutional right that can be violated by activities that adversely affect air and water and the environment, but went on to say that at least in Pennsylvania, the Pennsylvania courts are extremely reluctant to recognize such claims. Do you expect New York courts to follow the lead of Pennsylvania, or do you expect them to take a more proactive approach should this be adopted?

MR. ENGLEBRIGHT: I -- I trust that our judicial leaders and the judicial system will protect our -- our citizens within the context of our State's Constitution. But I would point out that according to the National Conference of State Legislatures, who we queried regarding the six other states that have a similar constitutional provision, that we wondered and they answered our query, telling us that in their experience this amendment has not resulted in increased citizen lawsuits. At least not in the other states.

MR. GOODELL: Other states reference certainly excessive unnecessary noise, natural, scenic, his -- historic, esthetic qualities. Was it your intent that the reference to healthful environment incorporated all those other provisions?

MR. ENGLEBRIGHT: Of course. The totality of all

of these parts and pieces of our experience from our five senses is to give us a sense of well-being. And biologically, if the environment -- if we take care of the environment, the environment will take care of us.

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

On the bill.

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

MR. GOODELL: Thank you, Mr. Speaker. And thank you, Mr. Englebright. I think it's important that we all start out with recognizing that every single person in this Chamber, without exception, is in favor of clean air and clean water and a healthy environment. That's not the issue that we're talking about now. That's not a debate that we're having. The question is, how do we best effectuate our shared desire for clean air and clean water and a healthy environment? And the question is whether we should do it through a constitutional amendment or whether we should continue the practice that we have of addressing these issues by statute. And as was aptly noted in some of the questions and answers, this constitutional amendment is not needed to give more authority to us to address the environment. Nor is this constitutional amendment needed to overturn any existing constitutional or statutory provisions. And it's not envisioned that this constitutional amendment will result in new private actions. So then the question is, should we amend our State

Constitution without -- to -- to provide what might be best described as an aspiratory provision, something we all aspire to? I'm mindful of the words of Benjamin Cardozo, who was one of the leading jurists in New York State, very famous. And he talked about the difference between statutes and constitutions, and he said, *Statutes are designed to meet the fugitive exigencies of the hour. An amendment is easy as the exigencies change. In such cases, a meaning once construed tends to legitimately to stereotype itself in the form first cast.* The point that Mr. Cardozo was making is that statutes, by their nature, are much more flexible than the Constitution. And that's desirable in the environmental area, because as we have seen with previous legislation, we legislate about issues that didn't exist ten years ago. And I suspect we'll continue to do so in order to ensure that our residents have clean air and clean water. So with that as a background, you might say, *Well, what's the danger? What's the problem with a constitutional amendment?* And the problem is that this constitutional amendment has words that are completely undefined; words like "clean" air and water. What's "clean" mean? Does it mean pure? No contaminants? What's pure water? So you turn on a tap and you have fluoride that's added by the municipality. Does that mean it's no longer clean? So what happens when we pass a constitutional amendment with very, very broad terms like "clean" or "healthy"? Well, what happens is we transfer legislative authority from us - from the Senate, from the Assembly - we transfer it to the Judiciary. Because instead of us deciding what's an appropriate level

of cleanliness and healthiness, we now have the court system, empowered with judges, to decide whether or not a particular municipality is making -- making an appropriate utilization of their fluoride or their road salt or their diesel vehicles or their power generation or a whole wrath load of activities that municipalities do. And so instead of us making that determination as a Legislature, we have transferred legislative authority, en masse, to judges to make the evaluation of what's meant by "clean" or "healthy."

And while all of us in this room support clean air and clean water and a healthy environment, I respectfully suggest that all of us, collectively, working together, are more capable and adept at making those judgment calls on what level of mercury is appropriate or not appropriate, or what level of greenhouse gases are appropriate or inappropriate, or what level of diesel emissions should be allowed on an MTA bus. We are more appropriate, as a Body, to judge the costs and benefits of those environmental decisions and make the decision ourselves.

For those reasons, I recommend that we continue our environmental advocacy through statutes and not the Constitution.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Mr. Goodell.

Mr. Murray.

MR. MURRAY: Thank you, Mr. Speaker. Would the sponsor yield?

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

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. MURRAY: Thank you. Mr. Englebright, again, I -- I'm going to echo the sentiments of my colleague here, and I believe that everyone here wants clean air, clean water. My concern is over the definition of that, and I'll -- I'll kind of expand on -- on what our colleague was saying. Can you tell us who will be the determining factor? Is there -- is a -- is there a barometer for what exactly defines clean or healthful? Who will make that determination?

MR. ENGLEBRIGHT: The voters will make that determination. This will pass twice here. We will then -- the missing part of the process that we just heard about a moment ago is that the voters, in fact, will weigh in on this. There, the perception of -- the value of this constitutional -- proposed constitutional amendment will be determined.

MR. MURRAY: I don't think the value is in question at all. I agree with with you. I think this is extremely important and the value is self-evident. My concern is -- is the actual definition. For example, we have laws regarding speed limits on certain roads. Now it's easy to say someone -- is someone speeding? Well, we have a definition there. So, when you're -- when it's 55 miles per hour, if you're going faster than that, you are, in fact, speeding. In a case of

this, where do we determine what exactly defines "clean" or "healthful"? Because it seems very general in nature. And my concern is, like my colleague, that it could lead to maybe lawsuits or further steps taken when it's not defined. Is there a way to define it better?

MR. ENGLEBRIGHT: Look, the list of fundamental rights, each one in our Constitution is written in a very concise manner. One of them, for example, is freedom of speech. We could have this same debate about whether or not you can say anything, anywhere, at any time. But the reality is, you really are not supposed to yell "fire" in a crowded theater.

MR. MURRAY: On that note, Mr. Speaker --

MR. ENGLEBRIGHT: And so --

MR. MURRAY: I think people are exercising that right a little. It's a little hard to hear.

MR. ENGLEBRIGHT: And so the --

ACTING SPEAKER AUBRY: Hold on, Mr. Englebright. Mr. Murray makes a great point. Shh. I know we're happy to see each other.

MR. MURRAY: Thank you.

ACTING SPEAKER AUBRY: We've been away --

MR. ENGLEBRIGHT: Thank you.

ACTING SPEAKER AUBRY: -- but we are in school.

MR. ENGLEBRIGHT: And so, there are other laws.



And as has correctly been pointed out, we do have a responsibility, as our institution and the people who sent us here expect us to pass laws that are very specific, that quantify and -- and specify to -- in excruciating detail, in many cases. But that is not inconsistent with establishing a basic right and restating what too often has been assumed, but, in fact, when you search through the Constitution, it isn't there as a basic right. So, this is not mutually-exclusive of our other laws. It is supporting, and provides a vessel of context for all of the specificity that you so rightly point out we should be looking for.

MR. MURRAY: Thank you. I -- I -- I see where you're -- what you're saying there. Thank you, Mr. Englebright.

Mr. Speaker, on the bill.

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

MR. MURRAY: And again, I -- I can appreciate the effort in what -- what you're trying to do here and -- and laying the ground work, if you will, to extend those basic rights for clean water and clean air. My concern, again, is the devil in the details as far as who is determining exactly what is the definition of "clean" in some situations, or "healthful." I think it might be -- if what we're trying to do is -- is simply extend that and -- and express to the people of the State of New York that they do have this right, that maybe a resolution might be a better way to do that when -- and continue to do what we're doing in a legislative process of setting laws to determine what is healthful and what is clean. Because if we go down this road, then --

then I wonder, you know, if this is where we're starting when it comes to fundamental rights, are we now going to introduce an amendment telling everyone of their fundamental right to be fed? Their fundamental right to -- to not be homeless? Because I would express that that might be something we want to address first. But, yet, we still do have people going hungry. We still do have homelessness. Because these issues are extremely complicated, extremely difficult, and I think they're better handled on a case-by-case basis. I just fear that maybe doing something like this might be opening Pandora's Box. Although the intention is -- is rightful, I'm concerned about the end result, with possible lawsuits, et cetera.

So, again, I commend the sponsor on what he's trying to do here. I just wonder if this might not be -- there might be a better way to go about it. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Barron.

MR. BARRON: On the bill, Mr. Speaker. Not a bad idea. Maybe we should have constitutional rights for homelessness and a right to have food. I might come up with that bill myself. When you have constitutional amendments, there's far more strength to that. There's far more involvement with the people. And believe me, they'll be no difficulties defining what clean water is. They'll be no difficulties defining what a healthy environment is. Even through State Legislature, you have to define these things. And the same thing will happen when the people are involved. And when it's a constitutional amendment, it has more teeth, more strength, and it also

indicates to the people of the State the moral convictions of government. The people of the State will see that the government cares about these basic rights. So when you put something in as a constitutional amendment, it's really giving it more strength, more democracy, more people involved. And the definitions will evolve. Nothing is perfect. There's always going to be debates around definitions. But sometimes we get very fundamental and very basic around obvious definitions, and when these fundamental things become so complicated and convoluted and be fearful of lawsuits -- any piece of legislation can be taken to court. The courts are set up so anything that you pass can be challenged in court. That is not a basis for not having a constitutional amendment to the right to clean air, water and a healthy environment. The environments that we're living in now are being exploited for, I believe, capitalistic reasons that people are bringing in all kinds of companies. We had the Atlas Bioenergy Corporation coming in -- trying to come in to East New York to build a wood-burning incinerator that would emit, like, 50 tons of carbon monoxide and all kinds of particulate matter that would hurt the -- the condensed -- densely-populated environment of East New York, and their schools and their day care centers. We asked for monitors, air monitors so that we can monitor the air in our district to make sure that no project comes in that would violate limits of the amount of pollutants that can be put into the air.

So this, I want to commend you for this. This is a powerful piece of legislation, and other countries around the world,

when they want to guarantee human rights and basic things for the people of these countries, they put it in the constitution so that the constitution reflects that of the goodness, the good intentions of government and protecting its people. And that's what this bill does, and I commend you.

ACTING SPEAKER AUBRY: Mr. Goodell, why do you rise?

MR. GOODELL: Would Mr. Barron yield?

ACTING SPEAKER AUBRY: Mr. Barron, will you yield?

MR. BARRON: No, I'm finished.

(Laughter)

ACTING SPEAKER AUBRY: Mr. Barron does not yield.

Mr. Palmesano.

MR. PALMESANO: Mr. Speaker, will the sponsor yield for a few questions?

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

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright yields.

MR. PALMESANO: Mr. Englebright, I -- first, I know -- I know your -- your commitment and dedication to the environment. I think it's second-to-none in this Chamber. I do just

kind of want to go through a couple of points that I think some of us have tried to bring up relative to a constitutional amendment on this. But I would like to reiterate from my colleagues on this side who have spoken that I don't think there's anyone in this Chamber that doesn't believe clean air and clean water is paramount, and we should do everything we can to protect it. But I guess I kind of wanted to get to the point where I know this is kind of just an amendment and it's kind of -- it seems kind of broad and vague from some of the wording, especially for the definition of "clean", who determines what clean is. So, I know the concept of that is, from your perspective, that will be determined through the regulatory process, through the courts, through lawsuits that may or may not come. I mean, who, ultimately, is going to determine what the definition of "clean" is?

MR. ENGLEBRIGHT: Well, if -- if someone is harmed because of a chemical or a substance or a disease that is environmentally-created by virtue of a -- a -- a contamination event or an irresponsible decision, then "clean" becomes pretty clear as to what that -- what that meaning is, because somebody will have been injured. So we also can see, in some cases, a preview of what can happen to us when we have creatures of the environment - fish, birds, mammals, reptiles, amphibians - that are also injured. Sometimes they are more sensitive to contamination or encounter it first. The so-called "canary in a coal mine" analogy certainly is appropriate here.

"Pure." You know, we're not talking about distilled

water. We're talking about water that is useful for maintaining our communities, that is useful for our children and our loved ones to be able to consume without too much fuss. Sometimes we do have to treat water, but in many cases the water that we are blessed with in this State is of such a high quality that either no treatment or almost no treatment is necessary. And we should endeavor to make sure that that is understood as a great blessing, and that it is something that as a fundamental right of being a citizen of this State, that every citizen should -- should know that they have that right available to them and their families.

MR. PALMESANO: But I -- coming from the Finger Lakes area, certainly, our water is -- is precious and it must be protected on -- to the best of our ability. But I kind of want to give you some scenarios that, you know, of what we've seen. I guess I'm curious, and maybe some of us are curious on how -- how this will play into the regulatory framework we have in our country and in our State. Because, you know, the last couple of years there's been a -- you've probably heard of the Waterways of the USA, with the -- which deals with Federal EPA that was making -- they were making determination on -- on local areas, especially in rural areas, to our farmers, where they were making a determination that a stream was, you know, a pond was a -- a -- was a -- was a water source, like a dedicated water source that would really eliminate their ability to farm on their land. It was really a concern to our farming community. Will this allow even more legal jeopardy? Because I know when you

talked about clean, you talked about if there's damage or harm. But a lot of people, obviously, when they want to put environmental regulations in place, it's, you know, because there's fear something could happen. But if you put certain regulations in place, you could prevent them from happening, to try to have that balance between industry and protecting the environment. In this case, like with the Waterways of the USA that the farmers are extremely concerned about and would devastate family farms -- which I will remind everyone in this Chamber, agriculture is the number-one industry of this entire State. It puts food on the table for our families, whether you're in rural Upstate New York or in metropolitan New York City. So this was something that was going to have a detrimental, devastating effect to our agricultural community. I know it's on hold now, but by going this far, through a constitutional amendment, would someone be able to say -- go to a judge now and say, *I'm worried about this*, and then get a judge who might be sympathetic rather than dealing with the legislative and regulatory framework that we have in place now, statutory and regulatory. Could that be circum -- circum -- circumvented or go around to go to a judge who might be sympathetic to that, and then have a -- a damaging ramification to our number-one industry in the State and, you know, and across this country? Is that possible?

MR. ENGLEBRIGHT: I don't see that as -- as something you should be apprehensive about at all. The experience in the other states, which include Illinois, in the heartland of our nation,

the bread basket of our nation, there hasn't been any -- any adverse increase in litigation or any injury measurable or even that I'm aware of, being discussed to farmers. And, in fact, I think -- and I grew up on a farm, by the way, in Evansville, Indiana, so I have some personal history with the Midwest. And I certainly identify, coming from Suffolk County where we have two growing seasons and are the number-one agricultural county in the State -- yes, Suffolk County is the number-one agricultural county in the State.

MR. PALMESANO: I -- I have more wineries in the Finger Lakes, though.

(Laughter)

MR. ENGLEBRIGHT: We can -- we can have that discussion separately. But I have great regard and respect for people who work the soil and people who labor to put food into the marketplace for our families. I cannot be more emphatic about the level of respect that I have. But I also know from having walked in the shadow of my grandfather on his farm in Evansville, just outside of Evansville, that -- that the farm needed clean water, and that he sold vegetables which he was so proud were not contaminated. They were -- they were marketable and desirable in part because those vegetables -- and he was a fruit and vegetable farmer. He had his own truck, he would go and take it into the -- into the city and sell it, and he would say, *These have been raised with pure water*. Now, he didn't mean distilled water. He meant water that was healthful, that did not create any cause for alarm if you consumed the fruit or the



vegetable. And that's the context that I, as the sponsor of this, believe is inherent. Within the general -- this is a generality, and what we're trying to do here is basically, in a very general way, reinforce what should have many years ago already have been written down as part of our Constitution. It's never too late, and we're going to have a chance to do that now. And we get a chance to reinforce the premise that all of our citizens have the right to grow up and reside in this State free from contamination, free from fear that their families will be injured by water that is not pure, air that is not clean enough to breathe.

MR. PALMESANO: And, again, I just want to reiterate that there's no one in this Chamber that says we shouldn't fight and do everything we can for clean water and clean air. I just wanted to point out some concerns. And I know you mentioned growing up on a farm. Our farmers are some of the best stewards of the environment that we have. Another point I wanted to point out to you --

MR. ENGLEBRIGHT: I agree with you.

MR. PALMESANO: -- that we've seen along the way when it comes to environmental issues is with our municipalities. And I know one of the things you've pushed very hard for in the Chamber with the Water and Sewer Infrastructure Act. But a lot of our municipalities, when they're trying to update or improve their water and sewer infrastructure, they have to go through a process where the voters have to say, *We want to go forward with this* or not, and then the voters would make that determination whether we make

this type of upgrade or not. I guess in this context, if the voters make a determination that, *No, we don't think this is needed based on the information and the facts that are presented to us. We're not going to* -- and they shoot that down. Could one individual make a challenge and challenge that under this guideline now that would over -- basically override what the voters decided or override what was presented to them from working with the DEC and say now, *No, you municipality, you do have to make this overall improvement to your water and sewer, even though by the -- by the -- by the standards we have, it's okay. But by doing this, you could make it that much better and that much cleaner?* Could that overrule -- could a lawsuit by one individual overrule a vote that was taken in that municipality and then force that municipality to spend millions of dollars in infrastructure which they might not have to make -- to implement? I'm just wondering if that's something that could feasibly happen under this scenario.

MR. ENGLEBRIGHT: You're asking me to speculate. All I can do is point to the track record in six other states where that -- where very similar legislation has been adopted, is part of their states' constitutions, and we have not seen the abuses of, quite frankly, of the basic premise to a clean and -- to the right of a clean and healthful environment. We've not see that turn into something that has, in fact, been turned against the communities in a way that you, appropriately enough, are wondering about. All I can say is, I don't believe that that is part of what has happened elsewhere and,

based on that, I don't think it would happen here.

MR. PALMESANO: Another example I just want to throw out there, and I know -- I'm not necessarily trying to get you speculate, but also just trying to say these are some concerns that could come in place. I know Pennsylvania is one of these states, and they have natural gas exploration in Pennsylvania. We do not have it here in New York. I've been a supporter of that. I know a lot of people in the Chamber that also support that. The Governor does not. But let's say we get a change in administration that is more open to natural gas exploration -- albeit I know your legislation will come back here to try to prevent that. If that was -- if we were to get a new Executive and they -- based on their resources, they say we can -- we can do natural gas exploration here in New York State safely, soundly, and protect the environment. Could someone then also, after that regulatory process, rules and regulations that are in place, could someone sue under this guideline, saying that, *Because there are emissions, we know, with certain products, this could be damaging to my air, this could be damaging to my water. We should stop it and go right to a judge that could prevent it, even though the regulatory process is in place and there's no statutory process blocking that?* Isn't that a possibility of an outcome that could take place under this measure?

MR. ENGLEBRIGHT: Anything is possible. Certainly, there have been problems associated with the disposal of fracking fluid. Water, often taken from local streams and lakes,

purposefully contaminated for -- to become slickening agents, (inaudible) injected into the ground under pressure. These have not always stayed in the ground, and sometimes when they are brought back up they come back up radioactive and they are saline and they are not welcome in the local sewer treatment plant, and they are not welcomed, I should also point out, on any of our ocean outfall pipes, of which we have six on Long Island. No, the solution to pollution is not dilution, and we should be very careful about our industrial processes.

MR. PALMESANO: Absolutely.

MR. ENGLEBRIGHT: There is a separate debate, though.

MR. PALMESANO: Yes, there is.

MR. ENGLEBRIGHT: And I'm glad you raised it, because it does give a sense of just how vulnerable new technologies -- and certainly, horizontal drilling is a relatively new technology. New technologies do have the potential to be harmful to our population. We have seen this in the disposal in barrels buried in the ground where schools have been built on top of them. Maybe they thought that was a good idea in the 1950s, but we come back later and we discover that that's a problem. Certainly, it is appropriate for us to be cautious. But I would again indicate, all of our laws - and this has been rightly pointed out by our colleague - it is our responsibility, as lawmakers, to be very particular and very specific whenever possible. And we should continue to do that. That doesn't mean, however, that

we don't have a larger context that we begin from. And that larger context is what this bill is about. It doesn't pretend to add specifics. It doesn't pretend to be a cause of action. But what it does is it states very clearly that it is the right of every citizen in the State to have a clean and healthful environment to turn to and rely upon.

ACTING SPEAKER AUBRY: Mr. Palmesano, you want a second 15?

MR. PALMESANO: Yeah.

ACTING SPEAKER AUBRY: Proceed.

MR. PALMESANO: My good friend and colleague is a good explainer, so I just have -- actually, Mr. Englebright, I'm good on questions. I just wanted to finish up on the bill, but thank -- thank you for your time and your answers. I appreciate it.

MR. ENGLEBRIGHT: You are good at questions. Thank you for your questions.

MR. PALMESANO: Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. PALMESANO: Yeah, I -- I -- I don't want to come across diminishing -- I certainly applaud the sponsor in his intentions behind this constitutional amendment. I think everyone in this Chamber is supportive of clean air and clean water. If we don't have children, and we have friends, we have young people -- I have two young children, and I want them to have clean water and clean air. And I think, also, we -- we try to balance everything with, you know, jobs and industry in our district. And I -- I pointed out a few

things, and I'll just reiterate some of them real quick. You know, the ruling at the Federal level, the Waters of the USA, is on hold right now, but that's something that would be actually devastating to the agricultural community of this State, to the farmers in -- of our State. And our farmers are stewards of our land. And I'll remind everyone that they're the ones who put the food on the table. They're the ones that put the milk on the table. And -- and -- and these -- some of these policies and rulings are absolutely devastating to -- could be absolutely devastating to the agricultural community. I'll give you another one along the Southern Tier, the Chesapeake Bay Tributary strategy. If any of you heard of that. This is a ruling federalized -- the Federal, by the EPA, that said we have to do more to lower TMDL discharges, nitrogen and phosphorous, into the Chesapeake Bay. We had countless meetings back from my days when I was a staffer for the Congressman, because our Upstate areas along the Southern Tier, they were doing the work already. They were putting the investment into water and sewer infrastructure. They were making those changes. And they were not the ones polluting at the levels that you saw Downstate in Virginia and Maryland. They -- the pollution was coming more from those areas. But what they did when they made the changes -- because the EPA has so much broad power, what they did when they made these changes is they said, *Everyone has to participate*. So, it doesn't matter what you did along the way. It's almost like a 200-pound person and a 100-pound person, basically saying, *You both have to lose 50 pounds, because you have to do your*

*share*. That's kind of how it hurt our Upstate and along the Southern Tier. Some of our poorest counties and areas, by the way, when you have too much of an environmental reach -- and I guess some concerns I had when you see -- if you could open this up to more and more lawsuits. You have to find a balance, you have to allow the statutory framework that we have in place here, checks and balances through the statutory and the regulatory process. You know, we talked about natural gas exploration with my colleague. We -- that's a whole other debate, but I know Pennsylvania is doing it. They're under this guideline, so, obviously, there might be some positivities from -- possible from that perspective. I think -- you know, I talk a lot about energy, generating power, whether it's natural gas or power, whether it's nuclear for power. There's, you know, a generating capacity that we need to have in this State. I worry about opening this up to a litigious type of framework that we have anyway, but it just could make it that much more compelling. I just think we have to be very careful. Again, each and every one of us are committed to clean water and clean air, but I just want to make sure as we move forward with this discussion and debate - I know it's got to pass two concurrent Legislatures - I hope we take these things into consideration as we move forward. Yes, let's fight for clean water, let's fight for clean air, and let's make sure we're working in the statutory framework and a regulatory framework to protect these things. But we could have challenges down the road if we're not careful on how we go on this process. If we open things up to litigious society where just because

someone says, you know, *It doesn't work for me, it might work for you*, and then that could -- that could -- they can -- one person can overtake what's kind of going on in that local community. And I talked about the local municipalities. That's a real problem. Water and sewers in some of these rural areas is a real problem. You know, again, I commend the sponsor of this legislation for his work, not just walking the walk, but backing it up with water and sewer infrastructure dollars for these communities. That's vital. I'm proud to support that. But that's just the tip of the iceberg on the need we have to improve water and sewer across this State. And if you get an area where a municipality is forced to improve something even though it's meeting the guidelines -- I'm not saying it's top of the notch, but if it's clean and the community has supported what they have, one person can come in or an outside group can come in and say, *No, I think it needs to be better*, and then that local municipality gets a multi-million-dollar bill that the local property taxpayers can't afford. Then what happens? I hope these are things we're all taking into consideration as we move forward with this constitutional amendment, and take these things and think about them: How could it impact our farmers and our agricultural community. How can it impact the local taxpayer and our -- and our -- and our property taxpayers. How can it affect our -- affect our ability to generate power and generate electricity in this State. So, you want to make sure your lights are turned on, you want to make sure you have food on the table. These are all things that we need consider as we consider any



type of thing that broadens the authority and -- and regulatory power, but anything that can also open up a litigious society for one judge to make and determine one way or another. I think we have to continue to look within our framework, our regulatory and statutory framework, and try to find those balances, because we want jobs, but we want clean water, we want clean air. We want our farmers to succeed so we can have food on the table, good food. I just hope -- I ask the sponsor of this legislation as we move forward to please take these things into consideration, because I think these are real things that bring people some concern that we've heard from.

So, on that note, I will end my comments, and I thank my colleagues for their indulgence and their time.

ACTING SPEAKER AUBRY: Thank you, sir.

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.)

Ms. Niou to explain her vote.

MS. NIOU: Thank you, Mr. Speaker. First, I want to say that I truly enjoyed all of the comments and dialogue that we had today, and I'm learning a lot from all the different perspectives, and I thank my colleagues. As someone who first realized how interconnected we are with our environment and devastation we have made to our planet through Michael Jackson's impassioned "Earth

Song," I wanted to stand up to say how important this constitutional amendment is. I know what clean water is. I know what clean air is. We all do, with every breath that we're taking, every time we turn on the tap. And we all know how often we say, *It's too late* when we talk about so many environmental issues. For example, Hoosick knows this reality. I really appreciate Chair Englebright in his work and continuing to fight for our every breath. As a New Yorker who loves our New York slice, we are so proud of our water from the Catskills. Our predecessors were forward-thinking in their preservation of this precious natural resource, and has made a huge difference to our day-to-day living today. We need to continue to take those steps, and continue to think ahead for our next generation. At the USEPA, where I used to work, the Navajo were often quoted. They often said -- and this on every single wall at the EPA -- that, *We do not inherit the Earth from our ancestors, but we borrow it from our children.* Here in this Chamber, I would rather quote Kurt Vonnegut, who is one of my first -- my favorite writers, and say that, *We could have saved the Earth, but we were too damn cheap.* He is, of course, mostly a fiction writer. Let's not make it nonfiction. This is a forward-thinking amendment, and I really appreciate all of the thought and effort put into it by our Chair.

So, thank you so much for your dedication, and thank you so much for fighting for every breath that we take. Thank you. And I vote in favor of the bill.

ACTING SPEAKER AUBRY: Ms. Niou in the

affirmative.

Mr. Lavine.

MR. LAVINE: Thank you, Mr. Speaker. There's been a bit of a suggestion that this might be overreach on our part, to have this constitutional protection available in New York. But I just want to clarify, the 10th Amendment to the United States Constitution is very straightforward: Powers not delegated to the United States in that Constitution nor prohibited to the states are reserved to the states or to their people. We are the people of the State. We have the right -- because constitutional rights come from the people, we have the right to adopt this in New York State. And New York State, which has been the bastion of social and economic rights for years - which is the reason why New York State is the language of upward mobility as opposed many of our fellow states or our sister states - we have to remember, we've got a constitutional right to education, we've got a constitutional right to -- for aid to the needy. We've got a constitutional right for public health in New York State. So, I don't fear too much of an environmental overreach here. And I am supportive of those of us who have spoken about the needs for electricity and to provide food on our tables for our families and our children. But I don't think we're going to be able to provide electricity, I don't think we're going to be able to provide food for our children if we lose our environment.

This is an important right. I am delighted to vote in its favor, and I commend the sponsor for fighting so hard for what is

right in New York State.

ACTING SPEAKER AUBRY: Mr. Lavine in the affirmative.

Ms. Hyndman.

MS. HYNDMAN: Thank you, Mr. Speaker, for allowing me to explain my vote. To Member Englebright, thank you very much for this bill. If you live in southeast Queens - or maybe a lot of members know this, but the -- if you know the former name of the JFK Airport, it was Idlewild. And Idlewild, which borders my district, is constantly faced with the fumes from the planes of JFK Airport. A lot of our -- a lot of my constituents are in the direct path of the airport, as well as constituents I know in -- in Member Aubry's area. So, I think this -- this amendment is fundamental in addressing clean air and water. We have serious issues in District 29 with water and sewer infrastructure, because the area was built without having proper sewer and infrastructure in place, so we are constantly faced with flooding and groundwater flooding. I have learned a lot more about the clay aquifer than I ever thought I would. But I think this amendment is so important to making sure we address what's coming, because as we know on the Federal level, we are faced with someone who does not believe in climate change. So I think it's really important, and I thank the member for the sponsorship of this bill and I vote in the affirmative.

Thank you.

ACTING SPEAKER AUBRY: Ms. Hyndman in the

affirmative.

Ms. Glick.

MS. GLICK: Thank you, Mr. Speaker, for giving me an opportunity to explain my vote. We are faced with a bizarre situation in which the more we advance as a society, the more complicated our lives are, the more we have, in fact, added to the degradation of our environment. And so, this would not necessarily be of concern if we had not, over the last 30, 40 or more years, added more pollutants to our waterways, allowed more air pollution to occur. And so, this is also about an economic reality. We cannot continue to have bad air and water that results in health implications that cost us in lung disease and in various types of neurological and endocrinology -- endocrinological, whatever -- issues that we are seeing happening. Children are developing earlier. We have more infertility. That is a signal from nature that there's a problem.

So, I applaud the sponsor, and I urge everyone to consider if not yourself, your children, your grandchildren and their children, because this is a growing crisis. And I want to thank the sponsor for all of his hard work on this, and I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Glick in the affirmative.

Mr. Rivera.

MR. RIVERA: Thank you, Mr. Speaker. At the beginning of time, God created a beautiful earth, and he gave us the source of life, clean air, water, in order to have and create life as we

know it today. I think what we're witnessing in this country, that's a million -- that there's a lot of people committing a sin. Now, you don't have to eat an apple to commit sin. You don't have to. But we're sinners, because here we are, debating should we protect what God gave us, the source of life, which is clean air and water. Every day you open up the newspaper, all you read is about how we are destroying this planet. Wake up. Wake up. I can no longer drink water from my neighborhood fire hydrant. It's costing me a lot of money. I have to buy bottled water. I don't know where they get the water from, but I get it -- I hope they get it from a safe place or river or whatever. But wake up. I want to congratulate the sponsor of this bill. And I hope we don't come back here next year and still debate whether we should have clean water or clean air. It's not that much of a choice. So I'm not going to put myself on the line, being on the wrong side of this issue.

I thank you, Mr. Speaker, for giving me this opportunity.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Walter.

MR. WALTER: Thank you, Mr. Speaker. I would just note that Pennsylvania, which allows hydraulic fracturing in their State, has a similar amendment in their Constitution. So, if this is the first step to allowing hydraulic fracturing in New York State, I vote in the affirmative.

Thank you.

ACTING SPEAKER AUBRY: 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. Do we have any resolutions to take up at this time?

ACTING SPEAKER AUBRY: Numerous fine resolutions, Mr. Morelle. We will take them up in one vote.

All in favor of the resolutions signify by saying aye; opposed, no. The resolutions are adopted.

(Whereupon, Assembly Resolution Nos. 301-327 were unanimously adopted.)

Mr. Morelle.

MR. MORELLE: Yes, sir. I now move that the Assembly stand adjourned until 3:00 p.m., Tuesday, April 25th. Tomorrow is a Session day.

ACTING SPEAKER AUBRY: The Assembly stands adjourned.

(Whereupon, at 4:41 p.m., the House stood adjourned until Tuesday, April 25th at 3:00 p.m., that being a Session day.)