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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 25, 2010

3:12 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

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

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

4 I ask all to rise and recite the
5 Pledge of Allegiance.

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

8 ACTING PRESIDENT BRESLIN: In the
9 absence of clergy, may we bow our heads for a
10 moment of silence.

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

13 ACTING PRESIDENT BRESLIN: The
14 reading of the Journal.

15 The Secretary will read.

16 THE SECRETARY: In Senate,
17 Sunday, January 24, the Senate met pursuant to
18 adjournment. The Journal of Saturday,
19 January 23, was read and approved. On motion,
20 Senate adjourned.

21 ACTING PRESIDENT BRESLIN:
22 Without objection, the Journal stands approved
23 as read.

24 Presentation of petitions.

1 Messages from the Assembly.
2 Messages from the Governor.
3 Reports of standing committees.
4 Reports of select committees.
5 Communications and reports from
6 state officers.

7 Motions and resolutions.

8 Senator Klein.

9 SENATOR KLEIN: Mr. President,
10 there will be an immediate meeting of the
11 Rules Committee in Room 332.

12 Pending the return of the Rules
13 Committee, may we please stand at ease.

14 ACTING PRESIDENT BRESLIN: There
15 will be an immediate meeting of the Senate
16 Rules Committee in Room 332.

17 Pending the return of the Rules
18 Committee, the Senate will stand at ease.

19 (Whereupon, the Senate stood at
20 ease at 3:13 p.m.)

21 (Whereupon, the Senate reconvened
22 at 3:41 p.m.)

23 ACTING PRESIDENT BRESLIN:
24 Senator Klein.

1 SENATOR KLEIN: Mr. President, I
2 believe there's a report of the Rules
3 Committee at the desk. I move to adopt the
4 report of the Rules Committee at this time.

5 ACTING PRESIDENT BRESLIN: The
6 Secretary will read.

7 THE SECRETARY: Senator Smith,
8 from the Committee on Rules, reports the
9 following bill direct to third reading:
10 Senate Print 4480C, by Senator Dilan, an act
11 to amend Chapter 549 of the Laws of 1994,
12 amending the Public Authorities Law.

13 ACTING PRESIDENT BRESLIN: All
14 those in favor of accepting the Rules
15 Committee report please signify by saying aye.

16 (Response of "Aye.")

17 ACTING PRESIDENT BRESLIN:
18 Opposed, nay.

19 (No response.)

20 ACTING PRESIDENT BRESLIN: The
21 report of the Rules Committee is adopted.

22 Senator Klein.

23 SENATOR KLEIN: Mr. President, at
24 this time can we please move to a reading of

1 the calendar.

2 ACTING PRESIDENT BRESLIN: The
3 Secretary will read.

4 THE SECRETARY: Calendar Number
5 11, by Senator Hassell-Thompson, Senate Print
6 4018, an act to amend the Penal Law, in
7 relation to assault.

8 ACTING PRESIDENT BRESLIN: Read
9 the last section.

10 THE SECRETARY: Section 3. This
11 act shall take effect on the first of
12 November.

13 ACTING PRESIDENT BRESLIN:
14 Senator DeFrancisco, to explain his vote.

15 SENATOR DeFRANCISCO: To explain
16 my vote.

17 I vote no --

18 ACTING PRESIDENT BRESLIN: Oh,
19 excuse me. We'll call the roll first.

20 Call the roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT BRESLIN:
23 Senator DeFrancisco, you may explain your
24 vote.

1 SENATOR DeFRANCISCO: I vote no,
2 as I do always on these bills, because if you
3 look at the number of people that this offense
4 turns out to be a felony for, the assault
5 offense, this just about covers everybody, I
6 think, except legislators and Ray in the food
7 room.

8 So I'm voting no not because nurses
9 are not worthy of getting this treatment, if
10 there's an assault on them, to get it to the
11 felony. But if we've got so many different
12 people or different occupations that are
13 included, it really should include everybody
14 and just raise the assault offense up to
15 assault that's a felony assault rather than
16 having the receptions eat up a general rule.

17 Thank you.

18 ACTING PRESIDENT BRESLIN:
19 Senator DeFrancisco will be recorded in the
20 negative.

21 Senator Hassell-Thompson, to
22 explain her vote.

23 SENATOR HASSELL-THOMPSON: Thank
24 you, Mr. President.

1 I rise to indicate my support of
2 this bill, not just as a person who is the
3 sponsor of the bill, but also as a former
4 nurse who has done emergency room medical
5 services.

6 And just for the record, I'd just
7 like to add something to the record. The fact
8 that RNs and LPNs have the highest proportion
9 of injuries to healthcare workers, according
10 to the U.S. Department of Justice, nearly a
11 half million nurses per year of victims of
12 violent crimes in the workplace.

13 The other thing that I'd like to
14 just indicate for the record also is that
15 historically nurses, which is a
16 female-dominated profession, has not been
17 considered as dangerous as traditionally
18 male-dominated professions, such as law
19 enforcement --

20 ACTING PRESIDENT BRESLIN: Excuse
21 me, Senator Hassell-Thompson.

22 May we have some quiet. Thank you.

23 SENATOR HASSELL-THOMPSON: --
24 such as law enforcement officers, as well as

1 our firefighters.

2 I think that this bill is important
3 because the risk of violent attack is a big
4 factor in the shortage of nurses that is
5 facing the State of New York as well as
6 nationally.

7 Thank you, Mr. President. I vote
8 aye.

9 ACTING PRESIDENT BRESLIN: Thank
10 you, Senator Hassell-Thompson.

11 Senator Hassell-Thompson will be
12 recorded in the affirmative.

13 Announce the results.

14 THE SECRETARY: Ayes, 57. Nays,
15 1. Senator DeFrancisco recorded in the
16 negative.

17 ACTING PRESIDENT BRESLIN: The
18 bill is passed.

19 The Secretary will continue to
20 read.

21 THE SECRETARY: Calendar Number
22 12, by Senator Stachowski, Senate Print 4550,
23 an act to amend the Criminal Procedure Law, in
24 relation to expanding.

1 ACTING PRESIDENT BRESLIN: Read
2 the last section.

3 THE SECRETARY: Section 3. This
4 act shall take effect on the first day of the
5 calendar month next succeeding.

6 ACTING PRESIDENT BRESLIN: Call
7 the roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT BRESLIN:
10 Announce the results.

11 THE SECRETARY: Ayes, 58.

12 ACTING PRESIDENT BRESLIN: The
13 bill is passed.

14 The Secretary will continue to
15 read.

16 THE SECRETARY: Calendar Number
17 13, by Senator Schneiderman, Senate Print
18 4667 --

19 SENATOR KLEIN: Mr. President,
20 can we lay the bill aside for the day.

21 ACTING PRESIDENT BRESLIN: The
22 bill is laid aside for the day.

23 The Secretary will continue to
24 read.

1 THE SECRETARY: Calendar Number
2 14, by Senator Montgomery, Senate Print 2969,
3 an act to amend the Public Health Law, in
4 relation to death certificates.

5 ACTING PRESIDENT BRESLIN: Read
6 the last section.

7 THE SECRETARY: Section 2. This
8 act shall take effect on the 180th day.

9 ACTING PRESIDENT BRESLIN: Call
10 the roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT BRESLIN:
13 Senator Diaz, to explain his vote.

14 SENATOR DIAZ: Thank you,
15 Mr. President.

16 This is one piece of legislation
17 that I have to vote against just because I
18 don't believe that -- even though,
19 Mr. President, even though I do believe that
20 nurse practitioners, they do a great job. But
21 to equalize them to a doctor and to take the
22 doctor's authority away to be given to a nurse
23 practitioner I don't think is right.

24 I think that nurse practitioners

1 should keep doing what they're doing. And
2 doctors, they went to college and they
3 graduated and they have a license to do this.
4 And that's why I'm voting against the bill.

5 ACTING PRESIDENT BRESLIN: Thank
6 you, Senator Diaz.

7 Senator Diaz will be recorded in
8 the negative.

9 Senator Montgomery, to explain her
10 vote.

11 SENATOR MONTGOMERY: Yes,
12 Mr. President. I am voting for this. As a
13 matter of fact, I'm the sponsor of this, along
14 with a number of my colleagues: Senator
15 Duane, Senator Hassell-Thompson, Senator Liz
16 Krueger, Senator Onorato, Senator Oppenheimer,
17 Senator Parker, Senator Perkins, Senator
18 Stewart-Cousins, and Senator Thompson.

19 And we have introduced this bill
20 and are very pleased that it's being
21 considered today because --

22 ACTING PRESIDENT BRESLIN: Excuse
23 me, Senator Montgomery.

24 Can we please have some quiet.

1 SENATOR MONTGOMERY: Because as
2 we know, nurse practitioners are an extremely
3 important and central, pivotal member of the
4 health delivery system in our state. And
5 fortunately they have been really the backbone
6 in many areas, especially with health to
7 children, school-based health clinics, they
8 run them. And they care for the elderly a lot
9 and are in attendance, very often, when people
10 pass away.

11 This is the health professional
12 that's there on-site. And what we're doing
13 today is making sure that at the end of life,
14 this particular health professional, nurse
15 practitioners, who are adequately trained --
16 they diagnose, they treat -- they can also
17 now, with this legislation, be able to
18 actually sign the death certificate.

19 So thank you, Mr. President. And
20 certainly I support the legislation.

21 ACTING PRESIDENT BRESLIN: Thank
22 you, Senator Montgomery.

23 Senator Montgomery will be recorded
24 in the affirmative.

1 Senator Perkins, to explain his
2 vote.

3 SENATOR PERKINS: Thank you,
4 Mr. President.

5 I just wanted to echo the remarks
6 of my colleague and fellow sponsor Senator
7 Montgomery with respect to this bill.

8 You know, we have here some of the
9 unsung heroes and sheroes of the medical
10 profession who are, to say the least, worthy
11 of this kind of recognition by virtue of their
12 practices, by virtue of their skills.

13 And frankly, for those who have any
14 reservations, clearly where there needs to be
15 a challenge there are ways in which any
16 mistakes that may have been made or any
17 considerations for a second opinion can be
18 done.

19 So I don't see any reason why we
20 should not be passing this legislation to
21 allow them to have the authority that this
22 bill offers. And I would daresay as many
23 cases as with respect to regular
24 practitioners, regular doctors, they would be

1 accurate.

2 And so I want to again join my
3 colleague in support of this legislation, and
4 I want to say I vote aye.

5 ACTING PRESIDENT BRESLIN: Thank
6 you, Senator Perkins.

7 Senator Perkins will be recorded in
8 the affirmative.

9 Senator Oppenheimer, to explain her
10 vote.

11 SENATOR OPPENHEIMER: Thank you,
12 Mr. President.

13 I just wanted to straighten
14 something that was said earlier by Senator
15 Diaz.

16 Right now, Senator Diaz said that
17 it was only doctors that could sign these
18 death certificates. As it happens to be, the
19 mortician or the undertaker can also sign
20 them. And they do not have the medical
21 background that doctors and nurse
22 practitioners have.

23 I think we should note that in five
24 states, nurse practitioners do sign these

1 death certificates. And indeed they are the
2 states around us, in Connecticut, in
3 New Jersey, as well as other states.

4 And the fact is that in some of our
5 rural areas, and indeed in some of our inner
6 cities, it is not so easy to find a doctor
7 readily available. And nurse practitioners
8 are usually more available, more on the spot,
9 and more with the patient and, in this case,
10 the deceased patient.

11 So I firmly believe that this will
12 be a big improvement. And I hope we will pass
13 it, and I vote aye.

14 ACTING PRESIDENT BRESLIN: Thank
15 you, Senator Oppenheimer.

16 Senator Oppenheimer will be in the
17 affirmative.

18 Senator Farley, to explain his
19 vote.

20 SENATOR FARLEY: Thank you.

21 I rise in support of this bill, as
22 somebody that has four counties, some of which
23 are very rural. I used to have Hamilton
24 County in my Senate district, in the last

1 reapportionment.

2 Let me just say in many of those
3 counties up in the Adirondacks, they don't
4 have a doctor, they only have nurse
5 practitioners providing all the medical care.
6 And for a doctor to go hundreds of miles to
7 sign a death certificate is a little bit
8 ridiculous.

9 I understand that the Medical
10 Society might consider this some sort of a
11 turf situation. But this is really a
12 practical piece of legislation, particularly
13 for the rural areas, as was mentioned. And I
14 rise in support of it.

15 ACTING PRESIDENT BRESLIN: Thank
16 you, Senator Farley.

17 Senator Farley will be recorded in
18 the affirmative.

19 Senator Duane, to explain his vote.

20 SENATOR DUANE: Thank you very
21 much, Mr. President.

22 This is an excellent bill. As I
23 think many of us know, currently nurse
24 practitioners, they do everything but sign the

1 death certificate. They pronounce that
2 someone has died, they mark the time, they in
3 many cases determine the cause of death. And
4 this really is a change in the law whose time
5 is long overdue.

6 And, you know, as we continue to
7 transform our healthcare system, we're doing
8 it when there is unfortunately a lack of
9 healthcare personnel in many parts of the
10 state, interestingly in rural and in urban
11 areas. So it's a similar problem. And
12 allowing nurse practitioners to sign the death
13 certificate just makes sense.

14 And so because this bill is so long
15 overdue, I'm very pleased that Senator
16 Montgomery worked to get this bill to the
17 floor. And I am in total agreement and very
18 pleased to vote in the affirmative.

19 Thank you, Mr. President.

20 ACTING PRESIDENT BRESLIN: Thank
21 you, Senator Duane.

22 Senator Duane will be recorded in
23 the affirmative.

24 Senator Hassell-Thompson, to

1 explain her vote.

2 SENATOR HASSELL-THOMPSON: Thank
3 you again, Mr. President.

4 I think that one of the concerns
5 that we need to put to rest is whether or not
6 nurse practitioners have the training that's
7 necessary to be able to do the job that this
8 bill is asking of them to do.

9 This is not your standard nurse on
10 bedside nursing duty, but these are nurses who
11 have had additional training and are very
12 close to almost having their doctorate in
13 medicine. Some of them are just shy of having
14 at least the educational training, and
15 certainly many of them have had more
16 experience.

17 I think the thing that becomes
18 important for us to remember is that if we're
19 talking about New York City, we have the
20 advantage of having coroners and a large staff
21 that is capable of providing this service.
22 But in rural areas, there are not as many
23 doctors available.

24 And the death certificate is not

1 something that you would do on a strange death
2 or a sudden death. These death certificates
3 are based upon chronic illnesses, where there
4 is an awareness that death is imminent.

5 So I think that we need not confuse
6 what the reality is here, that these are
7 well-trained people who have as much -- as in
8 many cases they have more experience than some
9 of the doctors even have in terms of the
10 patients that they see, even if they don't
11 have the M.D. credentials.

12 So I think that we really need in
13 these chambers to become a little bit more
14 updated about the sophistication that has
15 occurred in the nursing profession, and then
16 we would be more enlightened when these bills
17 come before our desks.

18 Thank you, Mr. President. I will
19 be voting in the affirmative.

20 ACTING PRESIDENT BRESLIN: Thank
21 you, Senator Hassell-Thompson.

22 Senator Hassell-Thompson will be
23 recorded in the affirmative.

24 Announce the results.

1 THE SECRETARY: Those recorded in
2 the negative on Calendar Number 14 are
3 Senators Diaz, Golden and Lanza.

4 Ayes, 56. Nays, 3.

5 ACTING PRESIDENT BRESLIN: The
6 bill is passed.

7 Senator Klein, that completes the
8 reading of the noncontroversial calendar.

9 SENATOR KLEIN: Mr. President, at
10 this time can we have a reading of the
11 supplemental calendar.

12 ACTING PRESIDENT BRESLIN: The
13 Secretary will read.

14 THE SECRETARY: Calendar Number
15 15, by Senator Dilan, Senate Print 44 --

16 SENATOR KLEIN: Lay it aside for
17 the day, please.

18 ACTING PRESIDENT BRESLIN: The
19 bill is laid aside for the day.

20 Senator Klein, that completes the
21 reading of the supplemental calendar.

22 SENATOR KLEIN: Mr. President, at
23 this time can we return to the order of
24 motions and resolutions.

1 I believe Senator Sampson has three
2 resolutions at the desk. I ask that the title
3 of the resolutions be read and move for their
4 immediate adoption.

5 ACTING PRESIDENT BRESLIN:
6 Senator Klein, have these three resolutions
7 been deemed privileged and submitted to the
8 office of the Temporary President?

9 SENATOR KLEIN: Yes,
10 Mr. President, they have.

11 ACTING PRESIDENT BRESLIN: Thank
12 you, Senator Klein.

13 The Secretary will read.

14 THE SECRETARY: By Senator
15 Sampson, Senate resolution establishing a plan
16 sitting forth an itemized list of grantees for
17 the New York State Economic Development
18 Assistance Program established pursuant to an
19 appropriation in the 2008-2009 state fiscal
20 year and in Part QQ of Chapter 57 of the Laws
21 of 2008.

22 ACTING PRESIDENT BRESLIN: The
23 Secretary will call the roll on the
24 resolution.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes, 59. Nays

3 0.

4 ACTING PRESIDENT BRESLIN: The
5 resolution is adopted.

6 The Secretary will continue to
7 read.

8 THE SECRETARY: By Senator
9 Sampson, Senate resolution amending a plan
10 setting forth an itemized list of grantees for
11 the New York State Economic Development
12 Assistance Program established pursuant to an
13 appropriation in the 2008-2009 state fiscal
14 year and in Part QQ of Chapter 57 of the Laws
15 of 2008.

16 ACTING PRESIDENT BRESLIN: The
17 Secretary will call the roll on the
18 resolution.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes, 59. Nays,

21 0.

22 ACTING PRESIDENT BRESLIN: The
23 resolution is adopted.

24 The Secretary will continue to

1 read.

2 THE SECRETARY: By Senator
3 Sampson, Senate resolution amending a plan
4 setting forth an itemized list of grantees for
5 the New York State Economic Development
6 Assistance Program established pursuant to an
7 appropriation in the 2008-2009 state fiscal
8 year and in Part QQ of Chapter 57 of the Laws
9 of 2008.

10 ACTING PRESIDENT BRESLIN: The
11 Secretary will call the roll on the
12 resolution.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes, 59. Nays,
15 0.

16 ACTING PRESIDENT BRESLIN: The
17 resolution is adopted.

18 Senator Klein.

19 SENATOR KLEIN: Mr. President,
20 before we proceed, would you please recognize
21 Senator Montgomery for just a brief
22 announcement.

23 ACTING PRESIDENT BRESLIN:

24 Senator Montgomery.

1 SENATOR MONTGOMERY: Yes, thank
2 you, Mr. President.

3 It gives me great pleasure and
4 pride to acknowledge one of our former
5 colleagues, some of us who served with him a
6 few years back when he was here, who is now
7 mayor of the City of Buffalo.

8 Former Senator, currently mayor of
9 Buffalo, welcome, Senator Byron Brown.

10 ACTING PRESIDENT BRESLIN: You'll
11 always be our Senator, Senator Byron Brown.

12 (Applause.)

13 ACTING PRESIDENT BRESLIN:
14 Senator Klein.

15 SENATOR KLEIN: Mr. President,
16 can you please recognize Senator Libous for
17 another brief announcement.

18 SENATOR LIBOUS: Mr. President,
19 do you recognize me?

20 (Laughter.)

21 ACTING PRESIDENT BRESLIN:
22 Senator Libous.

23 SENATOR LIBOUS: Thank you,
24 Mr. President.

1 There will be an immediate
2 Republican conference following session.

3 ACTING PRESIDENT BRESLIN:
4 Immediately following session, there will be a
5 Republican conference in the Republican
6 Conference Room.

7 Senator Klein.

8 SENATOR KLEIN: Mr. President, is
9 there any further business at the desk?

10 ACTING PRESIDENT BRESLIN:
11 Senator Klein, the desk is clear.

12 SENATOR KLEIN: There being none,
13 I move that we adjourn until Tuesday,
14 January 26th, at 3:00 p.m., intervening days
15 to be legislative days.

16 ACTING PRESIDENT BRESLIN: There
17 being no further business, on motion, the
18 Senate stands adjourned until Tuesday,
19 January 26th, at 3:00 p.m.

20 (Whereupon, at 4:00 p.m., the
21 Senate adjourned.)

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