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ALBANY, NEW YORK

February 7, 1995

3:01 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY, President

STEPHEN F. SLOAN, Secretary

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P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone present please rise for the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

And now may we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, February 6th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Friday, February 3rd, was read and approved. On motion, the Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

1 Messages -- reports of standing
2 committees.

3 The Secretary will read.

4 THE SECRETARY: Senator Cook,
5 from the Committee on Education, reports the
6 following bills directly for third reading:

7 Senate Bill Number 449, by
8 Senators Maltese and others, an act to amend the
9 Education Law, in relation to instruction in the
10 display, use and proper respect of the Flag.

11 568, by Senator Farley, Education
12 Law, in relation to efficiency study grants.

13 626, by Senator Stafford, state
14 aid to the North Warren Central School District.

15 1301, by Senator Cook, authorize
16 payment of transportation to Roscoe Central
17 School District.

18 Senator Levy, from the Committee
19 on Transportation, reports the following bills
20 directly for third reading:

21 Senate Bill Number 390, by
22 Senator Levy, General Business Law, in relation
23 to disclosure of insurance coverage in aircraft

1 rental agreements.

2 1075, by Senator Skelos and
3 others, Vehicle and Traffic Law, in relation to
4 the enforcement of handicapped parking
5 regulations.

6 1474, by Senator Volker, Vehicle
7 and Traffic Law, in relation to suspensions for
8 failure to answer.

9 1491, by Senators LaValle and
10 Cook, Vehicle and Traffic Law, in relation to
11 traffic control signal indicators.

12 Senator Volker, from the
13 Committee on Codes, reports the following bills
14 directly for third reading:

15 Senate Bill Number 16, by Senator
16 Nozzolio and others, an act to amend the Penal
17 Law and the Correction Law.

18 187, by Senator Tully and others,
19 an act to amend the Penal Law.

20 208, by Senators Rath and others,
21 Criminal Procedure Law.

22 500, by Senator DiCarlo and
23 others, an act to amend the Criminal Procedure

1 Law and the Penal Law.

2 503, by Senators Present and
3 Kuhl, Penal Law, in relation to lawful
4 possession of weapons.

5 561, by Senator Cook and others,
6 Criminal Procedure Law, in relation to denial of
7 recognizance.

8 575, by Senators Johnson and
9 others, an act to amend the Penal Law, in
10 relation to the administrative provisions
11 relating to the issuance of firearms licenses.

12 655, by Senator Volker, an act to
13 amend the Penal Law and the General Business
14 Law.

15 768, by Senators Present and
16 DiCarlo, Criminal Procedure Law, in relation to
17 eligibility for youthful offender status.

18 And 773, by Senator Levy and
19 Maltese, Penal Law, in relation to including the
20 theft of dogs and cats within the crime of grand
21 larceny.

22 All bills reported directly for
23 third reading.

1 THE PRESIDENT: Without
2 objection, all bills directly to third reading.
3 Reports of select committees.
4 Communications and reports from
5 state officers.

6 Motions and resolutions.
7 Senator Velella.

8 SENATOR VELELLA: Madam
9 President, on page 4, I offer the following
10 amendments to Calendar Number 31, Senate Print
11 Number 19 and ask that said bill retain its
12 place on the Third Reading Calendar.

13 THE PRESIDENT: Amendments
14 received without objection.

15 SENATOR VELELLA: Thank you.

16 THE PRESIDENT: Senator Bruno,
17 are you ready for the Resolution Calendar?

18 SENATOR BRUNO: Madam President,
19 may we please adopt the Resolution Calendar?

20 THE PRESIDENT: All in favor of
21 adopting the Resolution Calendar, signify by
22 saying aye.

23 (Response of "Aye".)

1 Opposed, nay.

2 (There was no response.)

3 The Resolution Calendar is
4 adopted.

5 Senator Bruno, are you ready for
6 the calendar?

7 SENATOR BRUNO: Madam President,
8 can we now take up the non-controversial
9 calendar?

10 THE PRESIDENT: The Secretary
11 will read, please.

12 THE SECRETARY: Calendar Number
13 33, by Senator Levy, Senate Bill Number 356, an
14 act to amend the Vehicle and Traffic Law.

15 SENATOR BRUNO: Lay it aside,
16 please.

17 THE PRESIDENT: Lay it aside,
18 please.

19 THE SECRETARY: Calendar Number
20 34, by Senator Levy, Senate Bill Number 357, an
21 act to amend the Vehicle and Traffic Law.

22 THE PRESIDENT: Lay it aside,
23 please.

1 THE SECRETARY: Calendar Number
2 36, by Senator Skelos, Senate Bill Number 744,
3 an act to amend the Vehicle and Traffic Law.

4 THE PRESIDENT: Read the last
5 section, please.

6 THE SECRETARY: Section 2. This
7 act shall take effect on the 1st day of
8 November.

9 THE PRESIDENT: Call the roll,
10 please.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 44.

13 THE PRESIDENT: The bill is
14 passed.

15 THE SECRETARY: Calendar Number
16 37, by Senator Cook, Senate Bill Number 221, an
17 act to amend the General Business Law, in
18 relation to establishing uniform procedures for
19 the incorporation of a city.

20 THE PRESIDENT: Read the last
21 section, please.

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

1 THE PRESIDENT: Call the roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 46.

4 THE PRESIDENT: The bill is
5 passed.

6 THE SECRETARY: Calendar Number
7 38, by Senator Stafford, Senate Bill Number 617,
8 an act to amend the Real Property Law.

9 THE PRESIDENT: Read the last
10 section, please.

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

13 THE PRESIDENT: Call the roll,
14 please.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 46.

17 THE PRESIDENT: The bill is
18 passed.

19 THE SECRETARY: Calendar Number
20 42, by Senator Nozzolio, Senate Bill Number 580,
21 an act to amend the Public Authorities Law, in
22 relation to creating the Cayuga County Water and
23 Sewer Authority.

1 THE PRESIDENT: Read the last
2 section, please.

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

5 THE PRESIDENT: Call the roll,
6 please.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 46.

9 THE PRESIDENT: The bill is
10 passed.

11 Senator Bruno, that completes the
12 non-controversial reading of the calendar.

13 SENATOR BRUNO: Madam President,
14 can we now take up the controversial calendar?

15 THE PRESIDENT: The Secretary
16 will read.

17 THE SECRETARY: Calendar Number
18 33, by Senator Levy, Senate Bill Number 356, an
19 act to amend the Vehicle and Traffic Law.

20 THE PRESIDENT: Explanation
21 requested.

22 SENATOR LEVY: Yes, Madam
23 President. Who asked for the explanation,

1 Senator Dollinger?

2 Senator Dollinger, as you may
3 know, we have passed this bill going back from
4 -- from 19... back to 1986, and though we've
5 made progress in the state of New York with -
6 better dealing with driving while intoxicated,
7 driving while impaired, we haven't made enough
8 progress and almost 500 people died in the last
9 reportable year from alcohol-related accidents,
10 and almost 12000 people were injured.

11 What this bill does is to say
12 that, if you're charged with DWI or DWAI, there
13 cannot be an adjournment in contemplation of
14 dismissal, ACOD, where, after a probationary
15 period, those charges are dismissed.

16 THE PRESIDENT: Senator
17 Dollinger.

18 SENATOR DOLLINGER: Would the
19 sponsor yield to a question, Madam President?

20 SENATOR LEVY: Yes, certainly.

21 SENATOR DOLLINGER: Do you know
22 how extensive the use of the adjournment in
23 contemplation of dismissal has been in New York

1 State up to this point? My understanding is
2 that there were a number of ACDs granted for
3 DWI-related offenses, DWAI and remainder, a
4 decade ago and it was perhaps a common practice
5 as long as a decade ago, but that under the new
6 approach to this, these have been extremely
7 common, rare and probably only in the interest
8 of justice.

9 SENATOR LEVY: Senator, we don't
10 have any statistics, but if you do it given 500
11 -- almost 500 deaths and 12,000 injuries, if
12 ACOD is used one time, it is one time too many.

13 THE PRESIDENT: Senator
14 Dollinger.

15 SENATOR DOLLINGER: Again, will
16 the sponsor yield just to one question again,
17 Madam President?

18 SENATOR LEVY: Yes, certainly.

19 SENATOR DOLLINGER: Is there
20 anything in the bill that says that it can be
21 granted in the interest of justice?

22 SENATOR LEVY: No, Senator. The
23 options that would be open to the district

1 attorney would to -- be to try the case -- to
2 try the case or the district attorney obviously
3 could, depending upon what the charge was -- and
4 if it was driving while intoxicated, they could
5 reduce the charge to a non-alcohol-related
6 offense, but they would have to have the consent
7 of the Court and they would have to put the
8 explanation for the action on the record.

9 SENATOR DOLLINGER: Again through
10 you, Madam President, just one final question.

11 So if you have a DWI or DWAI any
12 time in your career, you would carry that -- if
13 you were charged with it, you would always carry
14 that with you no matter what you did in your
15 later professional life, whether you applied for
16 a license as a lawyer, applied for a job in
17 government, applied for an appointment in
18 government, all of those times that would go
19 with you, is that correct?

20 SENATOR LEVY: If you -- if you
21 were convicted of driving while intoxicated but,
22 Senator, one of the problems that we have in
23 dealing with alcohol-related fatalities and

1 injuries really has to do with the recidivists
2 that are going through the system.

3 We did a study and you were a
4 part of Critical Transportation Choices, going
5 back a couple years ago where we had people who
6 had been arrested for driving while intoxicated
7 two, three, four, five, seven, nine, ten,
8 eleven, twelve times, and they had pled those
9 charges down to a lesser offense and they
10 weren't even convicted of driving while
11 intoxicated.

12 THE PRESIDENT: Senator
13 Dollinger.

14 SENATOR DOLLINGER: Again through
15 you, Madam President. I share and I think I
16 voted for this bill in the past. I'll vote for
17 it again today. I do think that, in the
18 interest of justice, we have to look at the
19 issue of whether we're going to grant in all
20 misdemeanors, whether they -- misdemeanors
21 involving traffic fatalities or traffic deaths,
22 whether we should abolish ACDs for all of those
23 because, presumably, the same kind of recidivism

1 that the sponsor is worried about with respect
2 to alcohol can also be present for other
3 reasons, and I just think that this is a
4 somewhat draconian provision. I have seen it in
5 the last couple of months, people who have
6 applied for positions, been involved in
7 positions, who had ACDs earlier on in their
8 career, and the purpose was to somehow give them
9 a second chance and, in some cases, it appears
10 as though they made a lot of their second chance
11 and didn't carry the stigma of this around with
12 them, but I voted for this bill in the past.
13 I'm going to vote for it again today. We're -
14 just recognize that we're saying "You never get
15 off. You never even get one bite at the apple."

16 THE PRESIDENT: Read the last
17 section, please -- oh, I'm sorry.

18 Senator Abate.

19 SENATOR ABATE: Yes. Would the
20 sponsor yield? I just want to clarify -

21 SENATOR LEVY: Certainly.

22 SENATOR ABATE: -- one of the
23 issues. The legislation is removing an ACD, but

1 it does not remove the authority of the judge to
2 dismiss in the interest of justice which is a
3 separate statute.

4 SENATOR LEVY: It certainly -- it
5 certainly preserves the right of a prosecutor to
6 dismiss the charges with the consent of the
7 court in the interest of justice.

8 SENATOR ABATE: Then there's a
9 separate provision, under the law, where the
10 judge could move in the interest of justice.
11 That still pertains.

12 SENATOR LEVY: This bill does not
13 affect any of those provisions of law.

14 SENATOR ABATE: Thank you.

15 THE PRESIDENT: Read the last
16 section, please.

17 THE SECRETARY: Section 2. This
18 act shall take effect on the first day of
19 November next succeeding the date on which it
20 shall have become a law.

21 THE PRESIDENT: Call the roll,
22 please.

23 (The Secretary called the roll.)

1 THE PRESIDENT: Senator DeFran...

2 THE SECRETARY: Ayes 45, nays 2,
3 Senators DeFrancisco and Kuhl recorded in the
4 negative. Excuse me, also Senator Hoblock in
5 the negative.

6 THE PRESIDENT: The bill is
7 passed.

8 THE SECRETARY: Calendar Number
9 34, by Senator Levy, Senate Bill Number 357, an
10 act to amend the Vehicle and Traffic Law, in
11 relation to limiting options for plea bargaining
12 for repeat DWI offenders.

13 THE PRESIDENT: Read the -- read
14 the last section, please.

15 THE SECRETARY: Section 2. This
16 act shall take effect on the first day of
17 November next succeeding the date on which it
18 shall have become a law.

19 THE PRESIDENT: Call the roll,
20 please.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 45, nays 2,
23 Senators DeFrancisco and Kuhl recorded in the

1 negative.

2 THE PRESIDENT: The bill is
3 passed. Is that it? That completes the
4 controversial calendar.

5 Senator Bruno.

6 SENATOR BRUNO: Madam President,
7 can we now return to motions and resolutions,
8 and we offer up resolutions that were at the
9 desk -

10 THE PRESIDENT: Yes.

11 SENATOR BRUNO: -- changing the
12 rules and ask they be read in their entirety.

13 THE PRESIDENT: The Secretary
14 will read.

15 THE SECRETARY: Senate
16 Resolution, by Senator Bruno, amending Section 1
17 of Rule VII of the Senate rules, in relation to
18 the composition of certain standing committees.

19 RESOLVED, that Section 1 of Rule
20 VII of the Senate rules is amended to read as
21 follows:

22 Section 1. There shall be the
23 following standing committees which shall serve

1 and shall continue throughout the year:

2 To consist of 26 Senators:

3 Finance.

4 To consist of 18 Senators:

5 Codes, Judiciary and Rules.

6 To consist of 16 Senators: Banks

7 and Education.

8 To consist of 15 Senators:

9 Transportation.

10 To consist of 14 Senators: Crime

11 Victims, Crime and Correction, and also the

12 Committee on Insurance.

13 To consist of 13 Senators:

14 Environmental Conservation, Health, Housing and

15 Community Development.

16 To consist of 12 Senators:

17 Committees on Aging, Alcoholism and Drug Abuse,

18 Civil Service and Pensions, Commerce, Economic

19 Development and Small Business, Consumer

20 Protection, Elections, Energy, Higher Education,

21 Labor, Mental Health and Develop... and

22 Development Disabilities, Investigations,

23 Taxation and Government Operations, Tourism,

1 Recreation and Sports Development and Veterans.

2 To consist of ten Senators:

3 Agriculture, Children and Families and Cities.

4 To consist of nine Senators:

5 Corporations, Authorities and Commissions and

6 Local Government.

7 To consist of eight Senators:

8 Ethics and social services.

9 The Temporary President, the
10 Vice-President Pro Tempore, the Deputy Majority
11 Leader for Legislative Operations and the
12 Minority Leader and Deputy Minority Leader shall
13 be non-voting ex-officio members of all standing
14 committees of the Senate of which they are not
15 actual members.

16 THE PRESIDENT: Senator Bruno.

17 SENATOR BRUNO: Madam President,

18 I move that we now adopt the resolutions.

19 THE PRESIDENT: The question is
20 on the adoption of the resolution. All in favor
21 signify by saying aye.

22 (Response of "Aye".)

23 Those opposed, nay.

1 (There was no response.)

2 The ayes have it.

3 Senator Bruno -- the resolution
4 is adopted.

5 Senator Bruno.

6 SENATOR BRUNO: Madam President,
7 in consultation with the Minority Leader, we
8 have handed up some changes in assignments, and
9 I would ask that they be read and filed.

10 THE PRESIDENT: The Secretary
11 will read.

12 THE SECRETARY: Senator Bruno, in
13 consultation with the Minority Leader, makes the
14 following committee changes:

15 Committee on Health: Add
16 Senators Spano, Holland and Abate.

17 Committee on Elections: Delete
18 Senator Saland, add Senator Leibell.

19 Committee on Rules: Add Senator
20 Farley.

21 Time changes in relation to
22 committee meetings:

23 (a) Tourism from Wednesday at

1 11:00 a.m. to Tuesday at 1:30 p.m.

2 (b) Corporations, Authorities and
3 Commissions from Monday at 2:30 p.m. to Monday
4 at 1:30 p.m.

5 Committee on Health from Tuesday
6 at 9:30 a.m. to Tuesday at 10:30 a.m.

7 THE PRESIDENT: The assignments
8 will be filed in the Journal.

9 Senator Bruno, can we return to
10 some motions and resolutions? Senator Maltese
11 would like to be recognized.

12 SENATOR BRUNO: No objection,
13 Madam President.

14 SENATOR MALTESE: Madam
15 President, I move that the following bill be
16 discharged from its respective committee and be
17 recommitted with instructions to strike the
18 enacting clause: Senate Print Number 1086.

19 THE PRESIDENT: The bill is
20 recommitted and the enacting clause is
21 stricken.

22 Senator Bruno, we're waiting for
23 a motion to come down from the desk.

1 Senator Volker.

2 SENATOR VOLKER: Madam President,
3 I move to commit Calendar 51 reported earlier
4 today to the committee on crime -- crime
5 corrections and crime victims. It was reported
6 in error today to -- directly to third instead
7 of to the -- the other committee.

8 THE PRESIDENT: The bill will be
9 committed without objection.

10 SENATOR VOLKER: Thank you.

11 THE PRESIDENT: Senator Bruno.

12 SENATOR BRUNO: Madam President,
13 there being no further business to come before
14 the Senate at this time, I move we adjourn 'til
15 tomorrow, Wednesday, February 8th, 1995 at 11:00
16 a.m.

17 THE PRESIDENT: Without
18 objection, the Senate stands adjourned.

19 (Whereupon, at 3:23 p.m., the
20 Senate adjourned.)

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23