ALBANY, NEW YORK

February 7, 1995

3:01 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY, President

STEPHEN F. SLOAN, Secretary

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.

Messages -- reports of standing committees.

The Secretary will read.

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

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

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

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

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

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

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

rental agreements.

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

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

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

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

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

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

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

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

Law and the Penal Law.

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

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

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

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

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

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

All bills reported directly for third reading.

THE PRESIDENT: Without objection, all bills directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Velella.

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

THE PRESIDENT: Amendments received without objection.

SENATOR VELELLA: Thank you.

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

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno, are you ready for the calendar?

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

THE PRESIDENT: The Secretary will read, please.

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

SENATOR BRUNO: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

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

THE PRESIDENT: Lay it aside, please.

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

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is passed.

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

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

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

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

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

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

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

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

THE PRESIDENT: The Secretary will read.

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

THE PRESIDENT: Explanation requested.

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

Senator Dollinger?

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

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

THE PRESIDENT: Senator Dollinger.

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

SENATOR LEVY: Yes, certainly.

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

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

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

THE PRESIDENT: Senator Dollinger.

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

SENATOR LEVY: Yes, certainly.

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

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

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

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

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

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

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

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

THE PRESIDENT: Senator Dollinger.

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

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

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

Senator Abate.

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

SENATOR LEVY: Certainly.

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

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

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

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

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

SENATOR ABATE: Thank you.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Senator DeFran...

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

THE PRESIDENT: The bill is passed.

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

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

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

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

negative.

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

Senator Bruno.

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

THE PRESIDENT: Yes.

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

THE PRESIDENT: The Secretary will read.

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

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

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

and shall continue throughout the year:

To consist of 26 Senators:

Finance.

To consist of 18 Senators:

Codes, Judiciary and Rules.

To consist of 16 Senators: Banks and Education.

To consist of 15 Senators:

Transportation.

To consist of 14 Senators: Crime Victims, Crime and Correction, and also the Committee on Insurance.

To consist of 13 Senators:

Environmental Conservation, Health, Housing and Community Development.

To consist of 12 Senators:

Committees on Aging, Alcoholism and Drug Abuse, Civil Service and Pensions, Commerce, Economic Development and Small Business, Consumer Protection, Elections, Energy, Higher Education, Labor, Mental Health and Develop... and Development Disabilities, Investigations, Taxation and Government Operations, Tourism,

Recreation and Sports Development and Veterans.

To consist of ten Senators:

Agriculture, Children and Families and Cities.

To consist of nine Senators:

Corporations, Authorities and Commissions and Local Government.

To consist of eight Senators:

Ethics and social services.

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

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I move that we now adopt the resolutions.

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

(Response of "Aye".)

Those opposed, nay.

(There was no response.)

The ayes have it.

Senator Bruno -- the resolution is adopted.

Senator Bruno.

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

THE PRESIDENT: The Secretary will read.

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

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

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

Committee on Rules: Add Senator Farley.

Time changes in relation to committee meetings:

(a) Tourism from Wednesday at

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

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

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

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

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

SENATOR BRUNO: No objection, Madam President.

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

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

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

Senator Volker.

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

THE PRESIDENT: The bill will be committed without objection.

SENATOR VOLKER: Thank you.

THE PRESIDENT: Senator Bruno.

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

THE PRESIDENT: Without objection, the Senate stands adjourned.

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