ALBANY, NEW YORK

March 9, 1995

10:02 a.m.

REGULAR SESSION

SENATOR ROBERT J. DiCARLO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT DiCARLO: Senate will come to order. I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Those present joined in the Pledge of Allegiance to the Flag.)

In the absence of clergy, may we now bow our heads in a moment of silence.

(There was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, March 8. The Senate met pursuant to adjournment. Senator Kuhl in the chair. The Journal of Tuesday, March 7, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Stafford.

SENATOR STAFFORD: An immediate meeting of the Committee on Finance in Room 332.

ACTING PRESIDENT DiCARLO: There is an immediate meeting of the Finance Committee in Room 332.

Senator Bruno, are you ready for the calendar?

SENATOR BRUNO: Mr. President. Can we now take up the noncontroversial calendar?

ACTING PRESIDENT DiCARLO: Secretary will read.

THE SECRETARY: Calendar Number 40, by Senator Stafford, Senate 634, proposing an amendment to Section 1 of Article 14 of the Constitution.

ACTING PRESIDENT DiCARLO: On the resolution, call the roll.

(The Secretary called the roll.)

SENATOR CONNOR: Lay it aside, please.

ACTING PRESIDENT DiCARLO: Withdraw the roll call, and lay it aside, please.

THE SECRETARY: Calendar Number 118, by Senator Saland, Senate 1417, an act to amend the Criminal Procedure Law and the Family Court Act.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT DiCARLO: The bill is passed.

THE SECRETARY: Calendar Number 137, by Senator Rath, Senate 207, an act to amend the Family Court Act, in relation to the

return of children who have run away from their parents.

ACTING PRESIDENT DiCARLO: Read the last section.

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

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT DiCARLO: The bill is passed.

THE SECRETARY: Calendar 139, by Senator Skelos, Senate 1741, an act to amend the Social Services Law, in relation to access to certain conviction records.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day after it shall have become a law.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT DiCARLO: The bill is passed.

THE SECRETARY: Calendar Number 140, by Senator Saland, Senate 2105, an act to amend the Social Services Law and the Public Health Law, in relation to disclosure of HIV related information.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect 90 days after it shall have become a law.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT DiCARLO: The bill is passed.

THE SECRETARY: Calendar Number 141, by Senator Saland, Senate 2108, an act to amend the Family Court Act, in relation to

judicial notification of child care.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT DiCARLO: The bill is passed.

SENATOR LEVY: Mr. President.

ACTING PRESIDENT DiCARLO: Senator Levy.

SENATOR LEVY: I would like unanimous consent to be recorded in the negative on Calendar 40.

ACTING PRESIDENT DiCARLO: Senator Bruno?

The bill was laid aside.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT DiCARLO: Senator Bruno.

SENATOR BRUNO: Can we go to the controversial calendar, and we're waiting the report from the Finance Committee with Senator Stafford, which should be returning momentarily.

ACTING PRESIDENT DiCARLO: Secretary will read.

THE SECRETARY: Calendar Number 40, by Senator Stafford.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT DiCARLO: Explanation has been asked for.

SENATOR BRUNO: Senator Stafford is chairing the Finance Committee meeting, Mr. President, but it is my understanding that this legislation that I am not totally familiar with is fairly routine, and it is something that is done periodically as an accommodation, and the Senator on behalf of his constituency and the good people of this state is doing just that.

This doesn't set any precedent that I am aware of. It is done, as I said, occasionally as an accommodation, and the Senate passed this bill last year, and I'm not sure

that there was a great deal of discussion about it.

ACTING PRESIDENT DiCARLO: Senator Connor.

SENATOR CONNOR: Mr. President. I don't think we need a great deal of discussion about this. I would note that when it passed last year, there were 13 members in opposition myself, Senator Dollinger, Senator Galiber, Senator Hoffmann, Senator Jones, Senator Leichter, Senator Markowitz, Senator Oppenheimer Senator Santiago, Senator Solomon, Senator Stachowski, and also Senator Goodman on the other side. So the members might want to be aware of that.

ACTING PRESIDENT DiCARLO: Senator Oppenheimer.

SENATOR OPPENHEIMER: If I may, I had questioned what the stand was of the environmental groups because I had heard that at this junction they were changing over into a positive, so I have just hung up now with the environmental advocates which was the EPL and,

indeed, they have not changed and, indeed, this is their absolutely worst designation of "three smokestacks," which you know is terrible, terrible. So I think that the arguments that we have put forth in the last decade that I have mentioned still hold true and that there has not been an amelioration of division that existed.

So thank you for pointing up the people that were opposed.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: Mr. President. The exchange of land which is an implied contract is really an exchange of promises that the land that would be transferred is of equal value. The Sierra Club has issued a memo on this bill that demonstrates pretty straightforwardly that the last time this was done relating to the Piseco Airport in the Town of Arietta there was that exchange of land, and that, later on, an investigation demonstrated that this was not a land of equal value, that it was actually ecologically inferior.

Now, with the amount of time that this legislation has been debated in this chamber -- and it has come before us several times, and I don't have a problem with the sponsor wanting to continue to bring it forth to try to convince those of us in the chamber that this is right, but where we have a problem is why would we have to wait for enabling legislation to determine the value of the land. In a sense, we're putting the cart before the horse. What we are doing by passing this legislation is relying, possibly to our detriment, that the land that will be exchanged will be of equal value.

We are not arguing in this particular case that there was unauthorized use of the land. There is really an adverse possession that the golf course has. It's been this way since the turn of the century. But what we're saying is that the land exchange should be of equal value.

What also is a little disturbing about the legislation is that when we look just

at Article 14 of the Constitution, we are really mandating to make sure that we do still have a forest preserve and that we still have some land that demonstrates the artistic and cultural value that New York State has, particularly in the Adirondack area and in the Catskill area.

ACTING PRESIDENT DiCARLO: Excuse me, Senator Paterson.

Could we please have quiet in the house. Thank you.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President. This is an important issue to a number of people, the Environmental Protection Law has really given us their strongest admonition that we pay attention to the fact that we have granted these exchanges constitutionally ten times in the past; and to some degree, we are not sustaining the character of what the Article 14 in the Constitution

mandates for us to do. Rather than being thought of as an exception, it's really begun to become very common that we just change our constitutional mandate when we feel like it.

I would urge a no vote on this particular issue, and thank you, Mr. President.

ACTING PRESIDENT DiCARLO: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I just want to -- Senator Paterson, you alluded to the Piseco Airport situation. That was my constitutional amendment which passed statewide by a hair's breath. The New York Times supported it, many editorials around the state.

But let me just tell you how ridiculous this is and how oppressive it is for the people to try to live in the Adirondacks. That's the only airport in the Central Adirondacks. It's a little tiny airport that they use in the case of emergency to fly somebody to a hospital or many, many other

things. But the trees at the end of the runway had grown too tall so that the planes as they were taking off were going to crash into the trees and were having to dodge the trees, and they couldn't cut these trees because of the Constitution of the State of New York.

Well, I disagree that the land was not of equal value that we exchanged. In order to trim these trees, we had to amend the Constitution and had a statewide vote of the people of the State of New York so people wouldn't kill themselves as they were taking off from this airport. It's ludicrous.

The resentment that has built up -- and I don't even represent the area any more. The resentment that is built up by the people that live there because it is so difficult and the restrictions are so great that we have to have a statewide vote, amend the Constitution of the State of New York, in order for people to protect their life and liberty.

Now, here we're talking about the Lake Placid Club that is trying to exist up

there, and I am confident that this is a fair exchange, and I urge that this amendment pass in this house because I'm sure that it is responsibly drawn up.

ACTING PRESIDENT DiCARLO: Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President. I certainly want to thank our leader, Senator Bruno, and Senator Farley and all who are supporting this very sensible piece of legislation.

I can stand here on the floor today and share with you that the Adirondack Council supports the bill, and that is a group that is very concerned with the Park, and they work very hard. I would share with you and, of course, emphasize that that shows that all "environmental" organizations aren't against it.

Now, what this bill is, it's analogous to what was just pointed out concerning Piseco. Also, as Senator Bruno said, this passed last year.

Now, think for a minute, please. We have a golf course in Saranac Lake. It's called Saranac Inn. We played the golf course for years. We have had people with jobs, washing dishes, people working at Saranac Inn in every other type of activity. I did what I just pointed out, wash dishes.

Now, this is part of tourism. It is what we need. If we don't have it, we starve. I will share with you -- I will go with the surveyors now, but I will share with you there is a real difference of opinion whether the state even needs this piece of legislation; and that for years the golf course has been used and owned privately. In other words, frankly, it is a boundary dispute which is very easy to have.

We have worked it out now whereby we will exchange land and we can keep two holes on the golf course that we would lose if they took the land away.

Now, key -- I emphasize this. The exchange will have to be approved by the

Legislature, so this is just setting it in motion, and we still will have to have another approval of the Legislature before this ever takes place, and I assure you this is part of our lifeblood up there. Many of us who have lived up there for 75-80 years like myself get a bit concerned when all at once we are told that Saranac Inn Corporation does not own these two holes. I frankly differ, but, again, we agreed upon the survey, and we'll have another approval here before this all takes place.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. In the case of the Piseco Airport, just for example, we're not debating the land exchange here today. We're not even quarreling with the land exchange; and when you have a land exchange and you are comparing the values, the fact that the land may not be equal ecologically does not mean that you would not want to make the exchange. There are times when, for some public benefit, you would allow that to happen

because there is something that you are able to cure by doing it and you would probably give up a piece of land that is greater than the value you are getting back; and in this case, as Senator Farley pointed out, it would be the airport.

But what we are actually just saying is what we would consider to be standard business policy, that when you make an exchange that you have an idea of what the value is of the land that you are receiving; and for this to become an enactment of condition such that every time somebody wants to take property away from the preserves or some of the most precious land in our state, land we can never get back once we conferred upon an objective that would no longer -- that would deprive it of its natural character, this is when we would hope that we would have an idea of what the ecological value of the land is that we are receiving.

There is no reason - particularly since this legislation has existed for such a period of time, there is no reason

that we should not have an answer to that question, particularly since the golf course actually started to be used in Saranac around the turn of the century.

And so, to state that we'll find out later on what we are actually getting is to invite a surprise that perhaps we may not like down the road. That's why I cited the example. When we look at the actual situation at hand in the present case, again, this might be a decision that we would want to make in spite of what the value of the land is that we're getting. But to forfeit the opportunity to know that value and pass the legislation and wait for enabling statute that is not known is not anything that an individual would do in a case that involved your own personal decisions, and it is certainly not one that we should do on behalf of the constituents of the state especially when we are looking at what we were mandated to do in Article 14 of the New York State Constitution which is to actually preserve land.

Thank you, Mr. President.

ACTING PRESIDENT DiCARLO: Senator Stafford.

SENATOR STAFFORD: I would just say to Senator Paterson, who always is a very worthy adversary, when you are talking about the value of the ecological -- the value there ecologically, do you remember the "reasonable man" theory, or how you describe a reasonable man? That's right where we are; and when it comes to ecology and what one person thinks about this part of the park or another part of the park, I would suggest to you that one man's floor is another man's ceiling. It's really where we are when we try to explain that.

Obviously, this is in a very nice part of the park. For any of you who have not taken a canoe trip on Hole Pond, I certainly invite you, if you're ready to carry your canoe for about two hours when you want to get onto the next pond. But it is very, very valuable.

You know, I always say this and I emphasize it because I represent the area -- but

it is always said and it's a valid argument that, you know, it's land and we'll never be able to get it back. But, you know, the people that live up there, it's their life and if they are pushed into poverty and don't have the opportunity for a job such as at this operation, they will never get another life, either another minute or another year, and this is important, and I only suggest that to emphasize this piece of legislation and what it does for our area.

ACTING PRESIDENT DiCARLO: On the resolution, call the roll.

(The Secretary called the roll on the resolution.)

ACTING PRESIDENT DiCARLO: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 40 are Senators Abate, Connor, Dollinger, Goodman, Leibell, Markowitz, Nanula, Oppenheimer, Paterson and Senator Stachowski, also Senator Jones. Ayes 34. Nays 11.

ACTING PRESIDENT DiCARLO: The

resolution is adopted.

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

SENATOR BRUNO: Mr. President. May we now return to reports of standing committees. I believe there is a committee report from Finance, and I would ask that it be read and adopted.

ACTING PRESIDENT DiCARLO: Without objection, reading of report of standing committees.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill:

Senate Print 2971, an act to amend Chapters 50, 52 and 53 of the Laws of 1994 and making appropriations for the support of government.

ACTING PRESIDENT DiCARLO: Without objection, direct to third reading.

Senator Bruno.

SENATOR BRUNO: Mr. President.

Can we now call up Calendar Number 173.

ACTING PRESIDENT DiCARLO: Secretary will read.

There is a substitution at the desk. Secretary will read.

THE SECRETARY: Senator Stafford moves to discharge the Committee on Finance from Assembly Bill 5494 and substitute it for its identical Senate Bill, Calendar Number 173.

ACTING PRESIDENT DiCARLO: Substitution ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President. Read the last section.

ACTING PRESIDENT DiCARLO: There is a message of necessity from the Governor at the desk. Read the title.

THE SECRETARY: Calendar Number 173, Budget Bill, Assembly Print 5494, substituted earlier, an act to amend Chapters 50, 52 and 53 of Laws of 1994, making appropriations for the support of government.

ACTING PRESIDENT DiCARLO:

Senator Bruno, do you wish to accept the message of necessity from the Governor?

SENATOR BRUNO: Without objection.

ACTING PRESIDENT DiCARLO: All in favor of accepting the message, signify by saying aye.

(Response of "Aye.")

Opposed.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT DiCARLO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I rise to explain my vote. I'm going to vote in favor of this bill. I simply point out to my colleagues that one of the

things that I know that this governor as the governor before him has proposed is that we look at the Rockefeller drug laws and the implications on our prison system, that we look at alternatives to incarceration and the impact on our prison system, because otherwise the $58 million additional prison costs which is contained in this deficiency will become the norm instead of the exception.

I'm going to vote in favor, Mr. President. I hope that we in this body will look to methods to try to reduce that overall cost which, as we all know, has been growing significantly, continues to grow, and as evidenced by this deficiency bill is growing still.

ACTING PRESIDENT DiCARLO: Results.

THE SECRETARY: Ayes 45. Nays zero.

ACTING PRESIDENT DiCARLO: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President. I would like to remind my colleagues in the Republican Conference that we will have a conference immediately following the conclusion of this session. Hopefully we can be in the conference by 20 of 12:00. 20 of 12:00 -- of 11:00, pardon me -- my glasses. Thank you.

With all the help I have around me, wouldn't you think, Mr. President, that I could be more accurate, surrounded by all this competency.

But it will be 20 of 11:00 sharp.

And there now being no further business to come before the Senate, I move we stand adjourned until 3:00 p.m. on Monday, March 13, 1995, intervening days being legislative days.

ACTING PRESIDENT DiCARLO: Without objection, the Senate stands adjourned.

(Whereupon, at 10:28 a.m., Senate adjourned.)