NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 19, 1999

3:00 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. I'll ask everyone present to please rise and repeat with me the Pledge of Allegiance?

(Whereupon the assemblage recited the pledge of allegiance to the Flag.)

THE PRESIDENT: In the absence of clergy, may we please bow our heads in a moment of silence?

Reading of the Journal?

THE SECRETARY: In Senate, Saturday, January 16, the Senate met pursuant to adjournment. The Journal of Friday, January 15 was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection the Journal stands approved as read. Presentation of the petition.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Volker from the Committee on Codes reports the

following bills:

Senate Print 12, with amendments, by Senator Skelos, an act to amend the Penal Law;

88, by Senator Alesi, an act to amend the Penal Law;

100, by Senator Volker, an act to amend the Penal Law;

103, by Senator Volker, an act to amend the Penal Law;

110, by Senator Volker, an act to amend the Penal Law;

130, by Senator Skelos, an act to amend the Criminal Procedure Law;

145, by Senator Volker, an act to amend the Criminal Procedure Law;

256, by Senator Holland, an act to amend the Penal Law;

393, by Senator Volker, an act to amend the Penal Law;

537, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

539, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

636 by Senator Nozzolio, action to

Penal Law;

650, by Senator Maziarz, an act to amend the Criminal Procedure Law;

652 by Senator Maziarz, an act to amend the Criminal Procedure Law;

Senate Print 181, by Senator Alesi, an act to amend the Penal Law;

538, by Senator DeFrancisco, an act to amend the Penal Law;

548, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

728, by Senator Volker, an act to amend the Criminal Procedure Law;

729, by Senator Volker, an act to amend the Penal Law;

757, by Senator Johnson, an act to amend the Penal Law;

789, by Senator Goodman, an act to amend the Penal Law;

809 by Senator Volker, and act to amend the Penal Law.

822, by Senator Marcellino, an act to amend the Criminal Procedure Law;

824, by Senator Marcellino, an act to amend the Penal Law and.

857, by Senator Balboni, an act amend the Penal Law.

Senator Rath from the Committee on Local Government reports:

173, by Senator Larkin, an act to amend the Real Property Tax Law;

630, by Senator Skelos, an act to amend the Town Law;

675, by Senator Rath, an act to amend the General Municipal Law and.

Senate Print 962, by Senator Marcellino, an act to amend Chapter 581 of the Laws of 1998.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state offices.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up the

non-controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 2, by Senator Rath, Senate Print 122, an act to amend the Education Law, in relation to displaying the flag of the State of New York.

SENATOR PATERSON: Laid aside.

THE PRESIDENT: The bill will be laid aside.

THE SECRETARY: Calendar Number 3, by Senator Holland, Senate Print 258, an act to authorize the Salvation Army Eastern Territory School.

SENATOR PATERSON: Laid aside.

THE PRESIDENT: The bill will be laid aside.

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

SENATOR BRUNO: Madam President, can we then go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

2, by Senator Rath, Senate Print 122, an act to amend the Education Law.

THE PRESIDENT: Senator Rath, an explanation is asked for.

SENATOR RATH: Madam President, the bill before you today was one that passed this house last year.

It was brought to my attention by a student who felt that it was remiss in the campus or on the campus where the student was going to school, one of the state university campuses, that the American flag was flying, but no State flag was flying, and the SUNY campuses, the students felt, and I happen to agree, are certainly a place where a symbol of the State of New York inasmuch as the taxpayers of the State of New York are helpful partners in the education of the young folks that we're anxious to help, that it would be totally appropriate to have that flag flying at each of the SUNY campuses, and I agree with that, and so the bill is before you.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: I was wondering if a request had been made to the regions or

to the SUNY campuses that they display the flag rather than legislating the flying of the State flag?

SENATOR RATH: I would have to say that I don't know if a request has been made. I was anticipating a question as who's going to pay for the flag, are we going to buy flags for all the campuses, it was what I was sure your question was going to be but, no, we haven't requested it particularly.

THE PRESIDENT: Senator Duane, would you please address the Chair? Do you wish to be recognized again?

SENATOR DUANE: May I be recognized again?

THE PRESIDENT: Yes, Senator Duane.

SENATOR DUANE: I just need a clarification. So, that you don't believe that it has been requested of the regions or of the SUNY system in general?

SENATOR RATH: No, I do not.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Would Senator Rath yield to another question?

SENATOR RATH: Certainly.

SENATOR DUANE: Excuse me for trying to get the hang of things.

SENATOR RATH: Quite all right.

SENATOR DUANE: Thank you, Senator.

Can you tell me, because I've just recently become aware of this legislation if there is an Assembly sponsor of similar legislation?

THE PRESIDENT: Senator Rath.

SENATOR RATH: My recollection was we had an Assembly bill, and it didn't get any further than the Higher Education Committee in the Assembly.

SENATOR DUANE: Could the Senator repeat that again?

SENATOR RATH: The bill did not go past the Higher Education Committee in the Assembly.

SENATOR DUANE: Does that, therefore, mean that there is an Assembly sponsor of the legislation?

SENATOR RATH: There was, last year, through Madam President, there was last

session. I'm not sure whether we have contacted that person, whether they have submitted the bill yet this year.

SENATOR DUANE: May I ask the Senator to yield -

THE PRESIDENT: Senator Rath, do you yield?

SENATOR RATH: Surely.

SENATOR DUANE: I'm just wondering if, perhaps, it might not be a better avenue to pursue the more voluntary means of the flying of the State flag rather, than to make it a legislative issue?

Though I understand the need for flying the flag, and I am very sympathetic to that issue, that perhaps a less enormous response to the incident which was brought to your attention might actually be the preferable early avenue to pursue, rather than pursuing a legislative remedy to the problem.

SENATOR RATH: Madam President, I believe we'll approach -- make all approaches possible. I believe this one's appropriate and I believe the approach you suggest is appropriate also.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Welcome to the chamber.

THE PRESIDENT: Thank you.

SENATOR DOLLINGER: Will Senator Rath yield to just one quick question?

SENATOR RATH: Surely.

THE PRESIDENT: Senator Rath isn't this an unfunded mandate draped in the flag of the State of New York?

SENATOR RATH: I don't believe that the -- through you Madam President, I don't believe that the purchase of a flag is of such import that it would be considered an unfunded mandate.

SENATOR DOLLINGER: First of all, I want to commend my new colleague, Senator Duane, who asked all the right questions, got us down the road to the point where he said, "Why don't we just have them do this voluntarily?"

This is the section of the Education Law, the Higher Education Law, that deals with the powers we grant to SUNY. They

can run the buildings, they can care for the lawns, and they could decide by themselves to buy a flag and raise it in salute to the State of New York.

I'm always confused in this chamber, because we always hear throughout the Legislative Chamber, all these terrible unfunded mandates, all those restrictions we put on local government, all of those things that we do where we don't put any money, we don't attach any money to them, and I hear that lectured time and time again from all my colleagues, how terrible, how evil unfunded mandates are, and then, lo and behold, the very first thing we do in the 1999 session is, we take a little tiny, tiny, tiny unfunded mandate and we make it the very first piece of business we do.

Frankly, I'm confused. I'll look for guidance from all my colleagues, who I'm sure will lecture me throughout the session about unfunded mandates, and I'll go back and just remind you that the first thing we did, was do a nice unfunded mandate, a little tiny, tiny, tiny almost harmless one draped in the

colors of the New York State flag.

I'll vote in favor of it. It's a great idea. I'm not afraid to occasionally put a mandate like this in place, but I just want you to know, when you lecture me time and time again about all those mandates, I'll stand up and remind everybody,what we did as our first piece of business this year.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 3, by Senator Holland, Senate Print 258, an act to authorize the Salvation Army Eastern Territory School.

SENATOR PATERSON: Explanation.

THE PRESIDENT: An explanation has been asked for. Senator Holland.

SENATOR HOLLAND: Madam

President, this bill allows the Salvation Army Training School located in Suffern, New York, in Rockland County, to change its name to the Salvation Army Training College.

The bill has been in since 1992, passes the Senate all the time, has a problem with Ed Sullivan in the Assembly.

The Salvation Army simply wishes to be designated by the name of Salvation Army Training College for the uniformity of its name.

There are 22 schools around the world, referred to as college, two in Canada, one in Mexico, and this one, in fact, was called a college in 1920 to 1956. That's all we want to do.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. Would Senator Holland yield for a question?

THE PRESIDENT: Senator Holland, do you yield?

SENATOR HOLLAND: Yes, I will yield.

THE PRESIDENT: Go ahead,

Senator.

SENATOR PATERSON: Madam President, the Education Law, under Section 224 is pretty explicit in its definition of what a college should actually be.

Now, these particular centers, while they serve a great purpose for the public, don't meet the standards of what would be defined as a college, and my fear is that other institutions might with this precedent come under this and then be accorded the same treatment, even though they did not meet the threshold of what the standards are specifically defined for what college training would actually entail.

Therefore, my question is, why would we not restrict the word "college" from the definition, Senator?

THE PRESIDENT: Senator Holland.

SENATOR HOLLAND: -- really think this is a big change of State Law. That's what we're here for, Senator, you know that. This is a minor thing to bring it all together internationally for the Salvation Army, which does great work throughout the

world and throughout the nation, and throughout Rockland County, and I see no reason why this can't be done. We're here to change the laws as necessary. This is a very minor thing. I see no reason for not doing it.

THE PRESIDENT: Senator, do you yield?

SENATOR HOLLAND: Yes.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Can you tell me, Senator, what the reason was for the original restriction in the use of the name "college?"

SENATOR HOLLAND: I believe they were grandfathered in along with the -- let's see, the Jamestown Business College, which still exists, and the Albany Business College, which still exists, and at some point, in 1956, for some reason, I cannot tell you exactly, Senator, they went off the name of "college" and back to "training school."

SENATOR DUANE: Would the Senator yield to another -

THE PRESIDENT: Senator, would you yield again?

SENATOR HOLLAND: Yes.

THE PRESIDENT: Go ahead, Senator. Senator Duane.

SENATOR DUANE: In the context that I'm also concerned that other organizations could follow this, I'm wondering, Senator, if you have thought about whether or not this might be the beginning of a slippery slope, if we do this here, could then other groups come in and say, you did it for the Salvation Army, why can't we do it for -- what would be the response to that?

SENATOR HOLLAND: I don't think this is earth shattering, even if that did happen. I don't think it would have a great impact on your life, my life, or the State of New York and it is for the benefit of the Salvation Army. I don't think it would have a huge impact.

THE PRESIDENT: Senator Holland, would you yield for another question?

Senator Duane.

SENATOR DUANE: One final

question, Senator. Thank you. Can you tell me if there's action or a sponsor in the Assembly on this matter, or is it discussed, or -

SENATOR HOLLAND: Yes. There is. There has been and there is a sponsor in the Assembly, and it has to go through Ed Sullivan's Higher Education Committee. He's opposed to the bill, and has been, and that's where it gets stuck. It usually passes this house and gets stuck in the Assembly.

SENATOR DUANE: Thank you, Senator.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the role.

(The Secretary called the roll.)

THE PRESIDENT: The bill is passed. Senator Duane.

Senator Paterson?

SENATOR PATERSON: Madam President, I believe Senator Duane had his hand up.

SENATOR DUANE: Indicating a vote of no on the bill.

THE PRESIDENT: Results.

THE SECRETARY: Ayes 55, nays one. Senator Duane recorded in the negative.

THE PRESIDENT: Bill is passed. Senator Bruno, that concludes the calendar.

SENATOR BRUNO: Madam President, can we at this time recognize Senator Paterson for an announcement.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I'm handing up some temporary committee assignments from the Senate Minority, I believe they're at the desk and we would like them to be filed in the Journal, if you will, Madam President.

THE PRESIDENT: All right. They will be filed in the Journal, Senator.

Senator Bruno.

SENATOR BRUNO: Madam President, is there any other business at the desk?

THE PRESIDENT: No, there is not, Senator.

SENATOR BRUNO: Then, there being

no further business to come before the Senate -- Madam President, there being no further business to come before the Senate I would move we stand adjourned until tomorrow at 11 o'clock a.m.

THE PRESIDENT: On motion the Senate stands adjourned until Wednesday, January 20, 11 a.m.

(Whereupon, at 3:27 p.m. the Senate adjourned.)