NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 5, 1999

11:05 a.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 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 all bow our heads in a moment of silence, please.

(Whereupon a moment of silence was observed.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 4th, the Senate met pursuant to adjournment. The Journal of Monday, May 3rd was read and approved. On motion, Senate adjourned.

THE PRESIDENT: 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 resolution.

Senator Skelos.

SENATOR SKELOS: I believe there are some substitutions at the desk, if we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 6, Senator Rath moves to discharge from the Committee on Commerce, Economic Development and Small Business, Assembly Bill Number 1474, and substitute it for the identical First Report Calendar 860.

On page 7, Senator Velella moves to discharge from the Committee on Judiciary, Assembly Bill Number 1400, and substitute it for the identical First Report Calendar 864.

On page 14, Senator Kuhl moves to discharge from the Committee on Health, Assembly Bill Number 5310 and substitute it for the identical First Report Calendar 942.

And on page 20, Senator Volker moves to discharge from the Committee on Codes, Assembly Bill Number 7158 and substitute it for the identical First Report Calendar 993.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Madam President, there is a privileged resolution at the desk by Senator Meier. I ask that the tile be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Meier, Legislative Resolution Number 1279, congratulating Elizabeth Jane Roberts Hinman,

upon the occasion of her one hundredth birthday on May 9th, 1999.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: At this time may we please take up the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 149, by Member of the Assembly Nolan, Assembly Print Number 3517, an act to amend the Workers' Compensation Law and the Executive Law, in relation to establishing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE SECRETARY: Ayes 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 370, by Senator Spano, Senate Print 3909, an act to amend the Labor Law and the Civil Service Law, in relation to prohibiting.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 490, by Member of the Assembly Cohen, Assembly Print Number 7642, an act to amend the Private Housing Finance Law, in relation to loans to owner occupants.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 554, by Senator Volker, Senate Print 3106, an act to amend the Penal Law, the Criminal Procedure Law and the Family Court Act, in relation to enhanced penalties for gang related activities.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 20. The act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 560, by Senator Bonacic, Senate Print 3715-A,

an act to amend the Penal Law, in relation to the crime of aggravated harassment of an employee.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37, nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 620, by Senator Alesi, Senate Print 4367, an act to amend the State Administrative Procedure Act, in relation to job impact statements.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37, nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 641, by Senator Trunzo, Senate Print 4208, an act to amend the Transportation Law, in relation to regulation of the transportation of property.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 18. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 672, by Senator LaValle, Senate Print 807, an act to amend the Education Law, in relation to community service opportunities at public universities.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 699, by Senator DeFrancisco, Senate Print 706, an act to amend the General Obligations Law, in relation to enacting the drug dealer liability act.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR DeFRANCISCO: I would like to explain my vote.

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Thank you. I think it is just perfect timing that this bill

is passing unanimously today with students from my district who are very involved in the war against drugs. This bill that we have just passed basically gives another tool against drug dealers. We know drug dealers can be arrested and prosecuted under criminal law. This gives those effected adversely by drug dealers, if they have physical damages, monetary damages as a result of a drug dealer's activity, they can sue that drug dealer, and depending upon the level of sale, the area in which that drug dealer can be sued is much broader.

So I thank the body for passing this bill and I hope that the Assembly will do the same.

THE PRESIDENT: Thank you, Senator. You will be recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes 41.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

703, by Senator Maltese, Senate Print 4602, an act to amend the Real Property Law, in relation to the definition of qualified lease holds condominiums.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE SECRETARY: Ayes 41.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 708, by Senator Balboni, Senate Print 157, an act authorizing the assessor of the County of Nassau to accept an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I rise to explain my vote. I am

going to be voting in the negative on this bill.

THE PRESIDENT: Senator, we have to call the roll first.

SENATOR DOLLINGER: Excuse me, Madam President.

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Thank you, Madam President.

I cast this vote in the negative on behalf of my former colleague and friend, Charlie Cook. If you can remember, Senator Cook and I voted against all of these late file applications for property tax abatements or exemptions, all of them filed by worthy, not for profit agencies who would be entitled to tax exempt status under our law, except for some reason they failed to file the proper paperwork to get it, or the property was transferred during the middle of the tax year and in the subsequent tax year they never filed and asked for the exemption.

I continue to believe, as I think Senator Cook did, that the way to do this, even though as Senator Balboni has instructed me, the problem is largely concentrated in Nassau County because of the county wide assessing district, but nonetheless, what we ought to have is a bill, if we are really going to do this, that would allow the local assessors, under carefully crafted guidelines set by the State Legislature, to grant the partial tax abatement for these types of charitable facilities.

It is the right thing to do but it is the wrong way to do it, to constantly bring it back here. And then we run into that problem that certain interests, because of where they are located in the state, would get the benefit of this late file partial exemption, and frankly those who charitable organizations happen to reside in a Democratic Senator's district or Republican Assemblyman's district may not enjoy the same benefit.

We ought to take a wholesale approach to revising this and do it right. Lets give the local assessors who are

responsible to the taxing authority the ability to grant partial exemptions when they are justified. Under those circumstances when that bill comes here I will vote for it and I hope all my colleagues will as well. But as we do it this piece-meal basis, I think as a matter of protest, one that Senator Cook joined me in throughout the last three or four years, I have voted in the negative and will continue to do so, Madam President.

THE PRESIDENT: Senator Dollinger, you will be so recorded as voting in the negative.

Senator Hannon.

SENATOR HANNON: Madam President, on the bill, some of what Senator Dollinger said is true and some of it is incorrect. I think there is a general principal that -

THE PRESIDENT: Senator Paterson, why do you rise?

SENATOR PATERSON: Madam President, we are on the vote.

SENATOR HANNON: I am explaining my vote.

SENATOR PATERSON: Okay, very

good.

SENATOR HANNON: I didn't know he was a parliamentarian.

THE PRESIDENT: Senator Hannon, please proceed.

SENATOR HANNON: As I was saying before, for the benefit of the stenographer, some of what Senator Dollinger said is true and some of it I disagree with. I am voting for these bills because I think the part that is true, that if you are simply providing an exception to the general statute, that people who have filed timely but have to suffer some taxation until the next tax status date, then that is not a proper exception.

On the other hand, some of these bills, and I can see that Senator Fuschillo's so recites, provide for retroactivity where people through a mistake did not apply and therefore it is not an exception to the general rule, and that would be appropriate. I think until we establish some type of procedure I would be voting in favor of them but I think the general direction would be to try to address this through a general statute

that is fair to all and gives equity to everybody.

Thank you.

THE PRESIDENT: Senator Hannon, you will be so recorded pursuant to your explanation of your vote as voting in the affirmative on this bill.

The Secretary will announce the results.

THE SECRETARY: Aye 46, nays 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 711, by Senator Fuschillo, Senate Print 1089, an act to authorize the Church of God in Christ Good Samaritan Ministries Incorporated, to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE SECRETARY: Ayes 47, nays 1.

Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 713, by Senator Johnson, Senate Print 1133, an act to authorize the Church of God in Lindenhurst to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE SECRETARY: Ayes 47, nays 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 715, by Senator Marchi, Senate Print 1437, an act to authorize the Brighton Heights Reformed Church to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE SECRETARY: Ayes 47, nays 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 717, by Senator McGee, Senate Print 3061, an act to legalize, validate, ratify and confirm the establishment of an extended water district.

THE PRESIDENT: There is a home rule message at the desk. Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll).

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 746, by Senator Volker, Senate Print 3508, an act to amend the Civil Practice Law and Rules in relation to requiring.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 60 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47, nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 752, by Senator Johnson, Senate Print 4163, an act to amend the Penal Law, in relation to including court officer and senior court officer.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 761, by Senator Johnson, Senate Print 1837, an act to amend the Military Law, in relation to authorizing the Governor.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: No, no.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I was caught in that position yesterday, Madam President.

I just rise to explain my vote. I want to commend Senator Johnson for extending the Conspicuous Service Cross to those who directly participated in D-Day. But Madam President, just having read the D-Day account by Stephen Ambrose in a book called, Citizen Soldier, which is the story of the Battle of the Bulge and the American victory in France

and into Germany prior to its surrender, I would urge Senator Johnson to recognize, especially considering the age of our veterans who participated in any way in the D-Day invasion, directly or indirectly, there were thousands of people who stayed in England to fund the troops, to make sure that they had food, to make sure that they had ammunition, and I would just strongly suggest that the Conspicuous Service Cross ought to go to any service man or woman who was in any way, directly or indirectly involved in the D-Day invasion, one, of my judgment, the greatest military adventure not only of the United States in its history, but frankly of this millennium, the crossing of the English Channel to invade Europe. And I think we would do wonderful homage to these aging veterans if we extended the Conspicuous Service Cross to anyone who in any way was related to the D-Day invasion.

I would ask Senator Johnson to consider that.

Thank you, Madam President.

THE PRESIDENT: Senator, you will

be so recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 786, by Senator Skelos, Senate Print 1132-A, an act to amend the Education Law, in relation to drug testing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

THE PRESIDENT: The bill is passed. Senator Skelos, that completes the reading of the calendar.

SENATOR SKELOS: I believe there is nothing else to be debated so we will return to reports of standing committees.

Do you want to debate, Senator?

THE PRESIDENT: Senator Paterson, why do you rise?

SENATOR PATERSON: I wanted to debate Senator Dollinger on the issue as to whether or not D-Day was the greatest military event of the millennium. Lets look at the end of the Hundred Years War in 1353, Madam President, what about that? That seemed like a pretty interesting situation. But Senator Dollinger doesn't think so.

How about when 1066 when the British were defeated on their own soil by Guillome the Conqueror, but no, no, that wasn't the greatest confrontation according to Senator Dollinger.

How about January 12th, 1969 when the New York Jets upset the Baltimore Colts in Super Bowl III? There, there was a great moment, but Senator Dollinger was probably reading another book that day and probably missed that. So I won't even bother to debate it with him, Madam President, but I do have a record of speaking here every day and I had to think of some way to say something before the time runs out.

SENATOR SKELOS: Senator Paterson, we would like to adjourn, but then

if you want to you can spend the next three days with Senator Dollinger.

If we could return to reports of standing committees.

THE PRESIDENT: Senator Marchi, you wish to be recognized? Senator Marchi.

SENATOR MARCHI: I have not introduced a bill yet and I doubt if I will, but to supplement Senator Paterson, I was a veteran of the invasion of Okinawa and Guam and a few other places, but someday we'll get all these glories and put them together in one jumbo amendment, chapter amendment.

THE PRESIDENT: Senator Skelos, we will now return to reports of standing committees. I believe there is a report of the Finance Committee at the desk.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination, as an alternate, non-voting member of the Metropolitan Transportation Authority, Anthony J. Bottalico, of LaGrangeville.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move the confirmation, please.

THE PRESIDENT: The question is on the confirmation of Anthony J. Bottalico as an alternate, non-voting member of the Metropolitan Transportation Authority. All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(No response.)

THE PRESIDENT: Anthony J. Bottalico is hereby confirmed as a non-voting member of the Metropolitan Transportation Authority.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

THE PRESIDENT: Yes, there is, Senator.

Senator Velella.

SENATOR VELELLA: Madam President, on page 42, I offer the following amendments to Calendar 448, Senate Print Number 3597 and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received, Senator Velella, and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Monday, May 10th at 3:00 p.m. Intervening days being legislative days.

THE PRESIDENT: On motion, the Senate -- Senator Montgomery.

SENATOR MONTGOMERY: I am here.

THE PRESIDENT: On motion, the Senate stands adjourned until Monday, May 10th at 3:00 p.m. intervening days being legislative days.

(Whereupon, at 11:27, the Senate adjourned.)