NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 13, 2002

11:12 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 please 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 bow our heads in a moment of silence, please.

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 12, the Senate met pursuant to adjournment. The Journal of Monday, March 11, was read and approved. On motion, Senate adjourned.

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

Senator Marcellino.

SENATOR MARCELLINO: Madam

President, good morning.

THE PRESIDENT: Good morning.

SENATOR MARCELLINO: And may we have an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Maltese, from the Committee on Elections, reports the following bills:

Senate Print 195, by Senator Maltese, an act to amend the Election Law;

1683, by Senator Trunzo, an act to amend the Election Law and the Education Law;

And Senate Print 2006, by Senator Farley, an act to amend the Election Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On page 25, I offer the following amendments to my bill, which is Calendar Number 347, Senate Print 2307, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bill will retain its place on the Third Reading Calendar, Senator Farley.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, are there any substitutions at the desk?

THE PRESIDENT: Yes, there are, Senator.

SENATOR MARCELLINO: Can we have them made, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 22, Senator Rath moves to discharge, from the Committee on Local Government, Assembly Bill Number 2130A and substitute it for the identical Senate Bill Number 1455A, Third Reading Calendar 309.

THE PRESIDENT: Substitutions ordered.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we now have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 18, by Senator Seward, Senate Print 5584A, an act to amend the Insurance Law, in relation to increasing the amount.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 53, by Senator Skelos, Senate Print 391, an act to amend the Vehicle and Traffic Law, in relation to increasing the period of time.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 54, by Senator McGee, Senate Print 869, an act to amend the Vehicle and Traffic Law, in relation to requiring the revocation.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 3. 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 58, by Senator Wright, Senate Print 5709B, an act to amend Chapter 519 of the Laws of 1999 amending the Alcoholic Beverage Control Law.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 180, by Senator Morahan, Senate Print 6061, an

act to amend Chapter 256 of the Laws of 2001.

THE PRESIDENT: Senator Morahan.

SENATOR MORAHAN: I'd just like to explain my vote for the edification of a special guest that I have here today, Thomas Fox, who's deputy chief of the New York City Fire Department, who is here helping the Senate Executive Committee on Terrorism.

And I just wanted to let him know that I'm passing a bill that I wanted to get his name on the record.

Thank you very much.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as Chapter 256 of the Laws of 2001.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 195, by Senator Velella, Senate Print 4722, an act to amend the Penal Law, in relation to the

crime of criminal mischief in the third degree.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 204, by Senator Hoffmann, Senate Print 4142, an act to amend the Agriculture and Markets Law, in relation to the New York State Cattle Health Assurance Program.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 217, by Senator LaValle, Senate Print 3267, an act to amend the Town Law, in relation to exemption.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 245, by Senator Saland, Senate Print 5131, an act to amend the Family Court Act and the Domestic Relations Law, in relation to the provision.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 262, by Senator Rath, Senate Print 6050, an act to amend the Education Law and the General Municipal Law, in relation to deleting the requirement.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please, Madam President.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 288, by Senator Lack, Senate Print 3073, an act to authorize the State University of New York.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

Senator Marcellino, that completes the reading of the noncontroversial calendar.

SENATOR MARCELLINO: Thank you, Madam President. Can we move to the reading of the controversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 262, by Senator Rath, Senate Print 6050, an act to amend the Education Law and the General Municipal Law, in relation to deleting the requirement.

SENATOR PATERSON: Explanation, please.

SENATOR MARCELLINO: Madam President, can we have a moment's indulgence.

Madam President.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: While we're waiting, could we -- I believe there's a report of the Rules Committee that has just been delivered to the desk. May we have that read.

THE PRESIDENT: Yes, there is,

Senator.

Calendar Number 262 will be laid aside, and we'll return to reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 6460, by the Senate Committee on Rules, an act to amend Chapter 2 of the Laws of 1999.

SENATOR MARCELLINO: Move to accept the report of the Rules Committee.

THE PRESIDENT: The motion is to accept the report of the Rules Committee. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, could we take up Senate 6460 at this time.

THE PRESIDENT: The Secretary will read Senate 6460.

THE SECRETARY: Calendar Number 350, by the Senate Committee on Rules, Senate Print 6460, an act to amend Chapter 2 of the Laws of 1999.

SENATOR MARCELLINO: Is there a message of necessity at the desk, Madam President?

THE PRESIDENT: Yes, there is, Senator.

SENATOR MARCELLINO: Move to accept.

THE PRESIDENT: The motion is to accept the message of necessity. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

Senator Marcellino.

SENATOR MARCELLINO: May we take up that bill, please.

THE PRESIDENT: Read the last

section.

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

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Balboni, an explanation has been requested.

SENATOR BALBONI: Thank you, Madam President.

This bill would amend Chapter 2 of the Laws of 1999 amending the legislative law relating to the enacting of the Lobbying Act; specifically, the Advisory Council on Municipal Lobbying.

The Lobbying Act originally called for this municipal lobbying reporting to commence on January 1, 2001. The Municipal Lobbying Advisory Council was supposed to report its findings by June 30, 2000.

The Legislature and the Governor agreed to extend the time for this advisory council to report until September 30, 2001, and delayed implementation of the local lobbying reporting requirements until April 4, 2002.

The advisory council appointments

were slow to materialize, and hearings that were canceled -- that were held -- strike that -- hearings that were supposed to take place did not take place, as a result of the terror attacks in New York City. The advisory council did in fact produce a report, but it lacked substance.

This bill will reconstitute the advisory council and give the council sufficient to time to issue a substantive report.

And the implementation date for local lobbying reporting is not changed by the provisions of this bill, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: I do, Madam President. Thank you.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: To begin -

and in anticipation of my question, Senator, I have absolutely no problem with the delay. The last time we talked about this bill, after the Governor and others decided to extend the report to September 30, 2001, I think I complained about why the reports weren't on time.

But since we did agree to extend them, the fact that it would be further extended to April 4, 2002, is perfectly understandable -- given, as you pointed out, the terror attacks that even six months later we're still feeling in this particular situation.

However, one of the problems I had with this the last time is that there are no appointments to the advisory council from either of the Minorities of the two chambers.

And I just thought and just wondered what your point of view was that it might be a -- that there would be some kind of explanation for why, if we're really going to try to take a serious, substantive look at lobbying and the find some workable, sensible, achievable ways to make sure that there isn't

an undue influence on the process, that we wouldn't include as many people involved in the process in the decision-making capacity.

SENATOR BALBONI: Madam President, through you.

Senator Paterson, I find it unfortunate that there are not Minority legislators involved in the particular process. However, the reason for that finds its origin in 1999.

You will recall that at the end of that session, this chamber moved to ban gifts entirely for State Senators. And as you know, we did that as a part of this house's effort to make things a little bit more up and up.

And that was not received very well by the other house, that being the Assembly. As a matter of fact, the Assembly has still refused to go along with those particular provisions.

But instead of doing that, they came out with this Municipal Lobbying Advisory Council. And what will probably come to you as a shock was that that provision was done rather rapidly and those negotiations as to

who would constitute the appointment authority in that particular bill was done between the Governor and the Speaker.

So your objections, that are well taken, should be taken up with the Speaker.

SENATOR PATERSON: Madam President, on the bill.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I know that Senator Balboni would like to come with me when I come to talk to the Governor and the Speaker, because he should know that it was actually on December 20, 1999, that it was the Senate Minority that first suggested that the Senators not take gifts.

And we were happy to see that our colleagues on the other side of the aisle took this suggestion into consideration and actually then issued their own voluntary decision not to take gifts.

So since the Senate, both sides of the aisle, have a real, seasonable understanding of this particular issue, I know that it would be important that perhaps we might be in the process so that we can make

Senator Balboni and others more aware of some of our suggestions.

Because a lot of our suggestions around here seem to be listened to, and it's a good thing. They don't always bear the names of those whose origin it was to make those suggestions, but this is why we would like to be in the process, because we think we have something to offer when we come here every day.

THE PRESIDENT: Does any other Senator wish to be heard on this bill?

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 350 are Senators Breslin, Connor, Duane, Hassell-Thompson, Hevesi, L. Krueger, Montgomery, Onorato, Paterson, Schneiderman,

and Senator A. Smith. Also Senator Stavisky.

Ayes, 45. Nays, 12.

THE PRESIDENT: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. Can we now return to Calendar Number 262, Senate Print Number 6050. Senator Rath is with us.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 262, by Senator Rath, Senate Print 6050, an act to amend the Education Law and the General Municipal Law.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Rath, an explanation has been requested.

SENATOR RATH: Madam President, this is a very simple bill. It was one of a -- an item that was in a large grouping that was sent over several years ago by the Comptroller. And what's it's doing is attempting to lift a mandate and streamline accounting principles in local governments.

And what originally had happened with the mandate was to keep many of these items that were taken care of -- reserve funds, career, educational, instructional equipment, property loss, dollars relating to property loss, et cetera -- keep them all in separate bank accounts.

Well, accounting principles being what they are now, and tracking on the computer, it was recommended to us that among many little nitty-gritty things that were aggravating local governments that this could be wiped out. This would a great help to them streamlining their accounting principles and their banking needs.

And so that's the simplicity of what it is.

THE PRESIDENT: Senator Duane.

Senator Paterson first.

SENATOR PATERSON: Madam President, I'll yield to Senator Duane.

THE PRESIDENT: Pardon me, Senator? You'll defer to Senator Duane?

Senator Duane, you have the floor.

SENATOR DUANE: Thank you, Madam

President.

I'm wondering if the sponsor would yield, please.

SENATOR RATH: Certainly.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I don't have any memos in support of this, and I'm wondering who brought this bill to the Senate's attention.

SENATOR RATH: The Comptroller.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR RATH: Surely.

THE PRESIDENT: You may proceed.

SENATOR DUANE: If accounting principles make it easier to lump reserve funds into one account and keep a separate accounting, doesn't the same principle apply for keeping them in separate accounts? Isn't it just as easy these days to keep the separate accounts?

SENATOR RATH: The point being here if they wanted to, they can keep them in separate accounts if they prefer.

But we wanted to lift the mandate that said that they had to. That was the Comptroller's opinion.

And it was buried in the midst of a whole laundry list of things that were small aggravations that had been identified through the years.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Does any other Senator wish to be heard?

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Stachowski.

SENATOR STACHOWSKI: Madam

President, may I have unanimous consent to be recorded in the negative on Calendar 350.

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

SENATOR STACHOWSKI: Thank you.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Madam President, could we lay aside Calendar Number 288 for the day, please.

THE PRESIDENT: The bill is laid aside for the day, Senator.

SENATOR MARCELLINO: Is there any housekeeping at the desk, Madam President?

THE PRESIDENT: No, there isn't, Senator.

SENATOR MARCELLINO: There being no further business before this house, I move we adjourn until Monday, March 18th, at 3:00 p.m., intervening days being legislative days.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson, before we adjourn.

SENATOR PATERSON: Madam President, with your indulgence, I'd like to call a conference of the Minority in Room 314, the Minority Conference Room, immediately following adjournment.

THE PRESIDENT: There will be a conference of the Minority in the Minority Conference Room, Room 314.

On motion, the Senate stands adjourned until Monday, March 18th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:35 a.m., the Senate adjourned.)