NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 22, 2003

11:47 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 each bow our heads in a moment of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, January 21, the Senate met pursuant to adjournment. The Journal of Sunday, January 19, 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.

The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following nomination:

As Associate Judge of the Court of Appeals, Susan Phillips Read, of West Sand Lake.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I rise to move the nomination of Judge Susan Phillips Read to become an associate judge of the Court of Appeals, the highest court of this state.

We had a Judiciary Committee hearing this morning; we received information from the New York State Bar Association that indicated that she was well qualified, its highest rating. All speakers who spoke on her qualifications gave her glowing recommendations and glowing review. And the Judiciary Committee of the State Senate unanimously passed her nomination over to the full Senate.

And I think it's very clear that she's well qualified in view of the breadth of her experience: from a chief judge of the Court of Claims, trial judge of the Court of Claims, a private attorney in litigation, very serious cases like toxic torts, an individual who has worked for the Governor's office and knows municipal law, someone who is so well rounded that there's no question of her qualifications and there's certainly no question of her character.

I would like to recognize Senator Bruno -- the judge is from his district -- to make the formal -- move formally for her acceptance and her confirmation.

THE PRESIDENT: Thank you, Senator DeFrancisco.

Senator Bruno.

SENATOR BRUNO: Madam President, Senator DeFrancisco, thank you for your report, your fine work.

And we're also grateful to the Governor for having forwarded such a qualified individual to serve on the highest court here in New York State, and also congratulate the

Governor on his vision and his wisdom in that she and her husband, Howard, reside in that great county of Rensselaer.

So I am very, very proud to stand and ask that you all support Susan Read, Judge Read. She has vast experience, as the chair noted, in the private sector, having served in a high-level position in the private sector, having a statewide responsibility for a major corporation, having been intimate counsel to the Governor for a number of years, and having been there as he governs this great Empire State and being part of all that goes on. And, most recently, as the presiding judge of the Court of Claims throughout this entire state.

So she's as qualified as she can be to serve as an associate on the Court of Appeals. I'm proud to ask for her endorsement and support, and welcome her here to the chamber with her husband, Howard.

Thank you, Madam President.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

It's a pleasure for me to stand and speak on behalf of Susan Read, who's been a friend for over 25 years, who previously lived in Albany County before moving to Rensselaer County.

And as Senator Bruno and Senator DeFrancisco have so properly indicated, her vast experience, from the State University of New York at Albany, to GE, to Bond Schoeneck & King, to the Court of Claims, she just has the perfectly well-rounded background to become a Court of Appeals judge. But more than that, she has the intelligence and the integrity. And she will serve this state well.

And it speaks well of Governor Pataki, who has selected, I think, probably one of the finest judicial minds to become the next judge of the Court of Appeals.

And I commend Susan and her husband, Howard, and look forward to her serving for many years on the bench.

Thank you, Madam President.

THE PRESIDENT: The question is on the confirmation of Susan Phillips Read as associate judge of the Court of Appeals of the

State of New York. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Susan Phillips Read is hereby confirmed as associate judge of the Court of Appeals of the State of New York.

(Extended applause.)

THE PRESIDENT: Susan Phillips Read, Judge Read, is here accompanied by her husband, Howard Read.

And as President of the Senate and as a lifelong resident of Rensselaer County, I want to congratulate you on this occurrence.

And to add to the remarks that have been said, I can only emphasize that my knowledge of Judge Read and my background as a former judge of the State Supreme Court only indicates that the Governor has made an outstanding choice that the people of New York will continue to benefit from in the Court of Appeals.

Best wishes to you, Judge Read.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Padavan, I wish to call up Senate Print Number 492, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 30, by Senator Padavan, Senate Print 492, an act to amend the Education Law.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, I now move to reconsider the vote by which the bill was passed and ask that the bill be restored to the order of third reading.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, I now move to discharge, from the Committee on Education, Assembly Print Number 1028 and substitute it for the identical bill.

THE PRESIDENT: The substitution is ordered, Senator.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time adopt the Resolution Calendar.

THE PRESIDENT: First we need to go to Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

With respect to the previous Senate motion, the Senate bill on the first passage was voted unanimously. I now move that the substituted Assembly bill have its third reading at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

30, by the Assembly Committee on Rules, Assembly Print Number 1028, an act to amend the Education Law, in relation to extending.

THE PRESIDENT: 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, 52.

THE PRESIDENT: The bill is passed.

All in favor of adopting the Resolution Calendar please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, could we ask for 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 Bruno.

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

THE PRESIDENT: Yes, there are, Senator.

SENATOR BRUNO: Can we make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 5, Senator Volker moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 437 and substitute it for the identical Senate Bill Number 235, Third Reading Calendar 31.

And on page 6, Senator Spano moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 432A and substitute it for the identical Senate Bill Number 614, Third Reading Calendar 33.

THE PRESIDENT: Substitutions

ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 23, by Senator Skelos, Senate Print 259, an act authorizing the assessor of the County of Nassau.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 27, by Senator Seward, Senate Print 632, an act to amend the Insurance Law, in relation to extending.

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.)

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 28, by Senator Morahan, Senate Print 208, an act to amend the Education Law, in relation to certain BOCES programs.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

29, by Senator Saland, Senate Print 216, an act to authorize the city school district of the City of Poughkeepsie.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 31, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 437, an act to amend the Tax Law, in relation to the imposition of sales and compensating use taxes by the County of Erie.

SENATOR VOLKER: Would you lay that aside temporarily, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 32, by Senator Saland, Senate Print 396, an act --

SENATOR BRUNO: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 33, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 432A, an act to amend the Tax Law, in relation to authorizing Niagara County to impose an additional rate.

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, 52.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Can we now go to the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 27, by Senator Seward, Senate Print 632, an act to amend the Insurance Law, in relation to extending.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SEWARD: Thank you, Madam President.

This legislation before us would extend until June 30, 2006, certain expired provisions relating to automobile and property casualty insurance rating.

Now, these provisions include the authorization for insurers to cancel or non-redo up to 2 percent of their auto policies per year, as well as provisions providing for flex rating of private-passenger automobile insurance. In effect, it allows the companies to increase or decrease up to 7 percent, one time annually, without prior approval of the Superintendent. And there are other provisions in the bill as well.

These provisions are nothing new.

They were on the books of the State of New York Insurance Law from 1995 until August of 2001. They were put in place to help make New York State a more attractive place to write insurance, particularly in the auto area.

And they had gone a long way, while they were in effect, to stabilizing the insurance market and premiums in New York State. And since they have expired, we have seen further hardening of the market and further disruption in the market.

I'd like to see this bill passed, I'd love to see it passed in the other house, because it's needed for the market and the consumers of New York State.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, on the bill very briefly.

We have -- we clearly have a crisis relating to auto insurance in this state. This bill would renew the law as it was two or three years ago. I personally would prefer to

see the flex rating law limited to a downward rating not requiring approval.

I do think that, overall, the renewal of these portions of the statute that have expired is a good thing. But there is really no excuse for us getting through this year's legislative session without addressing the comprehensive issue of the need to reform our auto insurance system.

And I hope that we're not going to continue the pattern of us passing a bill that the Assembly won't pass and them passing a bill that we won't pass. We will certainly do whatever we can on our side of the aisle to help.

But this is the year we really have to negotiate a comprehensive solution to the crisis of auto insurance in our state. I hope the Governor will take the lead and join with the Legislature on this. This is a problem for individuals and it's also a major problem for our economy.

So I'm sure Senator Seward and others will be involved in trying to move that rock up the hill, but this year is the year we

really should get it done.

Thank you, Madam President.

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 9. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

SENATOR McGEE: Madam President.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: If the Senate could stand at ease for a moment, waiting for the Finance Committee members to come back.

THE PRESIDENT: The Senate stands at ease.

SENATOR McGEE: Thank you.

(Whereupon, the Senate stood at ease at 12:04 p.m.)

(Whereupon, the Senate reconvened at 12:08 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to the controversial calendar and take up Calendar Number 31, by Senator Volker.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 31, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 437, an act to amend the Tax Law, in relation to the imposition of sales and compensating use taxes.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this is a bill that -- in fact, I guess we are the only county now in the state who extends the sales tax only one year instead of two years.

This is a temporary sales tax, starting back sometime in the early '80s, if I

remember right. '83, my counsel tells me. And it is essential, frankly, to the county budget. The county budget was adopted on January 1st, and the revenue in fact is already in there.

There has been a dispute for some time as to whether the county should share some of the funds with the City of Buffalo, which of course is in some financial distress.

But the county legislature passed a resolution, a home rule resolution requesting that this 1 percent sales tax be done by the Legislature. We do not enact sales taxes for localities; they request them, and then we give them the enabling legislation.

The interesting thing about this one is that there was no chairman of the legislature when this resolution passed. A Democrat by the name of Albert DeBenedetti was the chairman, but after the first of the year he was no longer chairman because they couldn't adopt -- Al DeBenedetti, by the way, is a Democrat who was running a Republican legislature. They still don't have a chairman.

And there's a little bit of a dispute going back to the old days of "Beirut by the lake," which Buffalo used to be called.

But it was adopted unanimously by the county legislature, and it would extend the sales tax until February 29th of 2004.

So that's what this is. It has already passed the Assembly. There were a number of votes against it, as some of the people in the Assembly of course vote against a lot of sales tax bills. But this bill is essential for the financial health, frankly, of the County of Erie.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Thank you, Madam President. I'd like to speak on the bill.

And first I'd just like to thank Senator Volker for his many contributions to Erie County and the City of Buffalo.

I have to say that I feel obligated to vote against this sales tax bill for Erie County. And the reason for that is initially, when this sales tax was implemented, it was supposed to be a temporary tax to get the County of Erie out of a fiscal crisis at that

time, a fiscal crisis that was in the neighborhood of about $75 million.

For the last several years the City of Buffalo has been experiencing a fiscal crisis, and the response from the County of Erie has been to take this asset of the City of Buffalo, to take that asset of the City of Buffalo, to do whatever can be done to diminish the City of Buffalo as a sovereign municipality. And I have a major problem with that.

It's estimated that this year the County of Erie will generate $100 million on this sales tax. The county keeps 100 percent of this additional 1 percent of the sales tax. The City of Buffalo doesn't receive any money.

It's my contention that the City of Buffalo should be receiving at least 33 percent of this additional 1 percent, which would be over $30 million for the City of Buffalo, still the largest municipality in Erie County and the second-largest city in the State of New York.

It's no secret that in the upcoming fiscal year the City of Buffalo is facing a

deficit of $28 million. The Buffalo Board of Education is facing a deficit of $30 million. I don't think it's appropriate any longer for the county, year after year after year, to collect this additional 1 percent of this sales tax and not share any of that with the City of Buffalo, which is experiencing very desperate fiscal times.

I think we need to look at what happens in the City of Rochester. In the City of Rochester, the city shares a much higher percentage of the total sales tax that is collected by the county than is done in the City of Buffalo.

And I think if we want to begin to heal the second-largest city in the State of New York, then we need to say to the county, we're not going to approve this sales tax going forward unless you share it with the City of Buffalo.

Thank you, Madam President.

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 SECRETARY: Ayes, 53. Nays, 1. Senator Brown recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I'd like to have unanimous consent to be recorded in the negative on Calendar Number 27, Bill 632.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting in the negative, Senator Duane.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Finance Committee at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the

following nomination:

As a member of the Board of Trustees of the State University of New York, Ronald B. Stafford, of Plattsburgh.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Madam President, my colleagues, I would first like to commend the Governor for this nomination of Senator Stafford, one of the longest-serving members of this body, a member who we're all very familiar with. A real prince of a man, a gentleman and a role model for a lot of young senators coming along.

And, if you can believe it, including myself as a young senator. I was young when I got here. And he gave me a lot of good guidance along the way, and he was an inspiration to a lot of people.

And I must say my colleague to the right is still the dean, the longest-serving member of any. But Ron put his time in. And he certainly did a good job for the people of the State of New York, and we are all a beneficiary of a lot of his actions.

And I'd like to advance his

nomination at this time, and then turn it over to Senator LaValle.

THE PRESIDENT: Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President.

The Senate Committee on Higher Education had the pleasure of interviewing the nominee, and the committee was very, very enthusiastic about Senator Stafford's nomination.

I must say that the Governor should be congratulated in appointing Ron Stafford, because what came out in the committee yesterday as Senator Stafford talked was the historical memory that he will bring to the SUNY Board of Trustees' deliberations. He talked about being at SUNY Stony Brook and the University of Buffalo when it was nothing but a field, not a building on the proposed campus.

And so that kind of memory, along with what goes on here in the Legislature, I think will be very, very important as we move through our deliberations in this year and next year, which will be very, very difficult

years. And I know Senator Stafford will be playing a leadership role. And he certainly has shown over the years his dedication and affection for the State University of New York.

And Ron will do just an absolutely outstanding job, bringing intellect, historical memory, and the passion for the university.

Again, the Governor has made a very wise and good choice in selecting Ron Stafford.

THE PRESIDENT: Senator Wright.

SENATOR WRIGHT: Thank you, Madam President.

I too join my colleagues in supporting the Governor's nomination of Senator Stafford.

As a graduate of the state university system, I'm very pleased to have an individual of the caliber of Senator Stafford joining the Board of Trustees.

Equally important, the Senator has a long history of involvement with the state university system in his district in his

tenure here in the Senate, and he will bring that wealth of experience to the trustees and as well ensure that there's a voice for the institutions in the North Country as we go forward.

So I join my colleagues in seconding the statesman of the North Country, Ron Stafford.

THE PRESIDENT: The question is on the confirmation of the Honorable Ronald B. Stafford as a member of the Board of Trustees of the State University of New York.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Honorable Ronald B. Stafford is hereby confirmed as a member of the Board of Trustees of the State University of New York.

Senator Skelos.

SENATOR SKELOS: Madam President, is there any housekeeping at the desk?

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

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Would you recognize Senator Brown, please.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Thank you, Senator.

Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 33, Bill Number S614.

THE PRESIDENT: Without objection, Senator Brown, you will be so recorded as voting in the negative.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

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

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Monday, January 27th, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the

Senate stands adjourned until Monday, January 27th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:20 p.m., the Senate adjourned.)