NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 25, 2003

12:05 p.m.

REGULAR SESSION

SENATOR JOSEPH E. ROBACH, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT ROBACH: 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.)

ACTING PRESIDENT ROBACH: In the absence of clergy, could we please bow our heads for a moment of silence.

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

ACTING PRESIDENT ROBACH: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 24, the Senate met pursuant to adjournment. The Journal of Sunday, February 23, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT ROBACH: 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 McGee, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 42, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

335, by Senator LaValle, an act to amend the Vehicle and Traffic Law;

729, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

731, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

And Senate Print 1262, by Senator McGee, an act to amend the Vehicle and Traffic Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 1034, by Senator Morahan, an act to amend the Penal Law and the Criminal Procedure Law;

1055, by Senator Skelos, an act to amend the Penal Law;

1109, by Senator Volker, an act to

amend the Criminal Procedure Law;

1143, by Senator DeFrancisco, an act to amend the Penal Law;

1157, by Senator Volker, an act to amend the Criminal Procedure Law and others;

1202, by Senator Robach, an act to amend the Penal Law;

1225, by Senator Larkin, an act to amend the Civil Practice Law and Rules;

1235, by Senator Larkin, an act to amend the Penal Law;

1264, by Senator Meier, an act to amend the Penal Law;

1340, by Senator Volker, an act to amend the Civil Practice Law and Rules;

1384, by Senator Volker, an act to amend the Criminal Procedure Law;

1433, by Senator Volker, an act to amend the Penal Law;

1436, by Senator Volker, an act to amend the Penal Law;

And Senate Print 1437, by Senator Volker, an act to amend the Penal Law.

Senator Velella, from the Committee on Labor, reports:

Senate Print 108, by Senator Velella, an act to amend the Labor Law;

And Senate Print 850, by Senator Balboni, an act to amend the Labor Law.

All bills ordered direct to third reading.

ACTING PRESIDENT ROBACH: All bills reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, before we go to motions and resolutions, there will be an immediate meeting of the Commerce, Economic Development and Small Business Committee in the Majority Conference Room.

ACTING PRESIDENT ROBACH: Immediate meeting of the Committee on Commerce, Economic Development, and Small Business in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: On motions and resolutions, if we could adopt the Resolution

Calendar, with the exception of Resolution 425.

ACTING PRESIDENT ROBACH: All in favor of adopting the Resolution Calendar, with the exception of Resolution Number 425, please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The Resolution Calendar is adopted.

SENATOR SKELOS: Mr. President, at this time if we could have the title read on Resolution Number 425, by Senator Golden.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: By Senators Golden and Diaz, Legislative Resolution Number 425, memorializing Governor George E. Pataki to proclaim May 2003 as Older Americans Month in the State of New York.

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

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Senator Golden has consented to put all the members on the resolution. If anybody does not wish to sponsor the resolution, they should notify the desk.

ACTING PRESIDENT ROBACH: The resolution is open for cosponsorship. If you do not wish to be a cosponsor, please notify the desk.

SENATOR SKELOS: Mr. President, if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 78, by Senator Marcellino, Senate Print 763, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 81, by Senator Balboni, Senate Print 851, an act to amend the Penal Law, in relation to criminal street gang activity on school grounds.

SENATOR SCHNEIDERMAN: Lay it aside, please.

ACTING PRESIDENT ROBACH: The bill is laid aside.

THE SECRETARY: Calendar Number 84, by Senator Trunzo, Senate Print 995, an act to amend the Criminal Procedure Law, in relation to service of summons.

ACTING PRESIDENT ROBACH: Read

the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 92, by Senator Farley, Senate Print 975, an act to amend the General Construction Law, in relation to daylight savings time.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 93, by Senator Leibell, Senate Print 1332, an

act to amend the Eminent Domain Procedure Law, in relation to requiring.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go to the controversial calendar, I believe we have one bill, Senator Balboni's bill, that is considered controversial.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 81, by Senator Balboni --

SENATOR SCHNEIDERMAN: Explanation. Short explanation.

THE SECRETARY: -- Senate Print 851, an act to amend the Penal Law, in

relation to criminal street gang activity.

ACTING PRESIDENT ROBACH: Senator Balboni.

SENATOR BALBONI: Thank you, Mr. President.

This bill is a piece of legislation that was developed and crafted over many years in discussions with many groups, including district attorneys' offices and community groups. And essentially what it does is it establishes the crime of criminal street gang recruitment on school grounds.

This bill represents two elements that I believe are very important. The first is it recognizes criminal gang activity as a crime that has changed the face of law enforcement.

Time was when a gang was associated with organized crime. They would be, you know, famous -- the Mafia, the Westies. These gangs would have a central operational base, they would go and do racketeering or prostitution or truck hijacking, and then they would have set guidelines for how you became a member and what you did as a member.

Well, as our law enforcement capabilities became better and better at tracking and tracing these groups, we began to break down the organizational structure of these gangs.

Well, that's not the case anymore. What has happened now is that many gangs, particularly gangs that have developed from other nations, other countries -- refugees, immigration has driven a lot of groups to develop an ethnic basis for the association.

And they've gotten very smart. What they do is they don't set up an organizational hierarchy and they don't have any set examples of how you are part of the gang. What they do is they establish other things, like colors. If you wear a jacket and there's a certain brand on it, you have a certain color associated with the clothing you wear, you have hand signals, you have certain ways, certain code words that you use. And this obviously is designed to avoid detection by police.

So what this bill does is for the first time it takes that type of activity and

puts it into statute. Why? Because the district attorneys tell us that it is difficult to achieve prosecution if you use the prior standards, the prior law that's been out there that related to the older-style gangs.

Secondly, what it does is it recognizes the right that I know every member of this chamber agrees with, that every child in this state has the right to a safe learning environment. And gangs recruit, they get their lifeblood from school grounds. That is the most heinous example of an exploitation of our system.

This bill creates a C felony and a D felony based upon multiple acts, multiple commissions of this crime.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Balboni.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On the bill.

Senator Balboni, there are very rare times in these chambers when you and I

have agreed on increased penalties for teens. But just this week, about a week ago, coming home from an appointment, I passed a middle school. And there was a fight that ensued. And it appeared to just be two young men fighting among themselves.

But in the process, the police came. And the fight was in the efforts of being broken up by some of the older boys. A police officer grabbed one of the youngsters who just wanted to continue the fight, took him off, threw him against the car, and was a little bit abusive.

I was a little bit concerned, because I have had repeated complaints brought to me about excessive force used by our police department. So I stayed until backup cars came, spoke with the sergeant, and had a discussion and registered not a complaint but a concern about perhaps the use of excessive force, but wanted to be kept informed as to the outcome.

Well, the outcome was that the young man who was doing all this resisting was a part of a gang. And the fight that ensued

was in an attempt to be made.

And every day on the campuses of our middle schools and our high schools, we are being overrun by gang activity. I become concerned that we begin to talk about immigrant populations. I become very concerned. But I do recognize that it is a behavior that we must start, from the top, and put a stop to.

And so therefore, on one of those very rare occasions, you and I have the same mind-set in terms of saying that we must do something in a very positive and proactive way to send the message to our young people that school grounds and no grounds can become the battlegrounds in our communities.

And part of our effort to take back our community says that each of us must take our part. So it is my role as a legislator to do my part here in this Senate. Even though I may be concerned about some of the language and some of the intent, in this case it is an activity that I must participate and be supportive of, because gang activity is becoming one of the highest risks in our

neighborhoods today.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, thank you.

And I beg the indulgence of my colleagues for an interruption, but there will be an immediate meeting of the Environmental Conservation Committee in Room 332.

ACTING PRESIDENT ROBACH: There will be an immediate meeting of the Environmental Conservation Committee in Room 332.

Is there any other Senator that wants to be heard on this bill? If not, then debate is closed.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT ROBACH: The bill is passed.

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

SENATOR MEIER: Mr. President, for the benefit of informing members, we're waiting for the reports of two standing committees. There's the possibility that the Senate will entertain other legislation. And so while we're waiting for those committees, we would ask that the Senate stand at ease.

ACTING PRESIDENT ROBACH: The Senate stands at ease.

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

(Whereupon, the Senate reconvened at 12:32 p.m.)

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I believe there are two reports at the desk to

be read at this time.

ACTING PRESIDENT ROBACH: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 893, by Senator Marcellino, an act to amend the Environmental Conservation Law;

897, by Senator Marcellino, an act to amend the Environmental Conservation Law;

1068, by Senator Wright, an act to amend the Environmental Conservation Law;

And Senate Print 1414, by Senator Little, an act to amend the Environmental Conservation Law.

Senator Alesi, from the Committee on Commerce, Economic Development and Small Business, reports:

Senate Print 52, by Senator Padavan, an act to amend the State Administrative Procedure Act;

And Senate Print 1566, by Senator Seward, an act to amend the Alcoholic Beverage

Control Law.

All bills ordered direct to third reading.

ACTING PRESIDENT ROBACH: Without objection, all bills ordered direct to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could stand at ease.

ACTING PRESIDENT ROBACH: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 12:35 p.m.)

(Whereupon, the Senate reconvened at 12:36 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT ROBACH: There is not.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until

Monday, March 3rd, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT ROBACH: On motion, the Senate stands adjourned until Monday, March 3rd, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:37 p.m., the Senate adjourned.)