NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 28, 2003

3:35 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 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, Sunday, April 27, the Senate met pursuant to adjournment. The Journal of Saturday, April 26, 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 resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator McGee, on page number 26 I offer the following amendments to Calendar Number 388, Senate Print Number 2963, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Madam President, on behalf of Senator Marcellino, on page number 26 I offer the following amendments to Calendar Number 390, Senate Print Number 769, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bill will retain its

place on the Third Reading Calendar.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Kuhl, on page number 28 I offer the following amendments to Calendar Number 415, Senate Print 2974, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: Those amendments are also received, and the bill will retain its place on the Third Reading Calendar.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On page number 23, I offer the following amendments to Calendar Number 337, Senate Print Number 288, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Thank you, Madam President.

Madam President, on behalf of

Senator Balboni, on page number 25 I offer the following amendments to Calendar Number 372, Senate Print Number 2498A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

On behalf of Senator Hassell-Thompson, I would request that Senate Bill Number 3854 be discharged from committee and be recommitted with instructions to strike the enacting clause.

THE PRESIDENT: So ordered, Senator.

SENATOR SCHNEIDERMAN: Thank you.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Madam President. I'd like to announce an immediate meeting of the Senate Finance Committee in the Majority Conference Room.

THE PRESIDENT: There will be an

immediate meeting of the Senate Finance Committee in the Majority Conference Room.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. I believe there's a privileged resolution, Number 1374, by Senator Leibell at the desk. I'd ask that the title of that be read and move for immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 1374 commending Thomas T. Keasbey upon the occasion of his designation for special honor by the Patterson Historical Society on April 26, 2003.

THE PRESIDENT: All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Madam

President. I believe also there's a privileged resolution by Senator Schneiderman at the desk. I'd ask that the title be read and move for immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Schneiderman, Legislative Resolution Number 1375 mourning the untimely death of Sergeant Riayan A. Tejeda, and paying tribute to his courageous actions as a member of the United States Marine Corps.

THE PRESIDENT: All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we now have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 150, by Senator Marcellino, Senate Print 788, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first 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 155, by Senator Skelos, Senate Print 1735A, an act to amend the Highway Law, in relation to ratifying and confirming.

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 191, by Senator Larkin, Senate Print 1189, an act to amend the Vehicle and Traffic Law, in relation to authorizing the City of Newburgh.

THE PRESIDENT: There is a home-rule message at the desk.

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 300, by Senator DeFrancisco, Senate Print 2289, an act to amend the General Obligations Law, in relation to the statutory short form power of attorney.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This

act shall take effect on the first of January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Libous, Senate Print 2182, an act to amend the Mental Hygiene Law, in relation to directing the State Commission on Quality of Care.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 380, by Senator Volker, Senate Print 3239, an act to amend the Criminal Procedure Law, in relation to when a police officer may arrest a person.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first 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 394, by Senator Rath, Senate Print 878, an act to amend the County Law and others, in relation to providing financial assistance.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 23. 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 397, by Senator Fuschillo, Senate Print 1781,

an act to establish the Baldwin-Grand Canal repair and maintenance district.

THE PRESIDENT: There is a home-rule message at the desk.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 398, by Senator Fuschillo, Senate Print 1782, an act to establish the Baldwin-West End Canal repair and maintenance district.

THE PRESIDENT: There is a home-rule message at the desk.

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, 52.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 410, by Senator Morahan, Senate Print 1766, an act to amend the Military Law, in relation to extending certain benefits.

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 437, by Senator Saland, Senate Print 1573, an act to authorize the Church of Jesus Christ Incorporated, City of Poughkeepsie, County of Dutchess.

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 Kuhl, that completes the noncontroversial reading of the calendar.

SENATOR KUHL: Yes, Madam President. Would you recognize Senator DeFrancisco, please.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I would like to ask for unanimous consent to be voted in the negative on Calendar 339, Senate Print 2182.

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

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. We went through that part of the calendar very quickly, so -- we're awaiting the report of the Finance Committee. So could we stand at ease for just a couple of minutes awaiting that report.

THE PRESIDENT: The Senate stands

at ease.

(Whereupon, the Senate stood at ease at 3:45 p.m.)

(Whereupon, the Senate reconvened at 4:00 p.m.)

THE PRESIDENT: We will return to reports of standing committees.

Senator Kuhl.

SENATOR KUHL: Madam President, I understand there's a report from the Finance Committee at the desk.

THE PRESIDENT: The Secretary will read.

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

Senate Print 4866, by the Senate Committee on Rules, an act making appropriations for the support of government;

And Senate Print 4867, by the Senate Committee on Rules, an act to amend Chapter 21 of the Laws of 2003.

Both bills ordered direct to third reading.

THE PRESIDENT: Without

objection, both bills ordered direct to third reading.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Could you call up now Calendar Number 508, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 508, by the Senate Committee on Rules, Senate Print 4866, an act making appropriations for the support of government.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Is there a message of necessity and appropriation at the desk, Madam President?

THE PRESIDENT: Yes, there is, Senator Kuhl.

SENATOR KUHL: Move we accept the message.

THE PRESIDENT: All in favor of accepting the message of necessity and appropriation please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

SENATOR KUHL: Could you lay that bill aside.

THE PRESIDENT: The bill is laid aside, Senator.

SENATOR KUHL: May we call up Calendar Number 509, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 509, by the Senate Committee on Rules, Senate Print 4867, an act to amend Chapter 21 of the Laws of 2003.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Is there a message of necessity at the desk on Calendar Number 509?

THE PRESIDENT: Yes, there is, Senator.

SENATOR KUHL: Move we accept the message.

THE PRESIDENT: All in favor of accepting the message of necessity please

signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

Senator Kuhl.

SENATOR KUHL: Please lay that bill aside for a moment.

THE PRESIDENT: The bill is laid aside.

SENATOR KUHL: Madam President.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Could we now take up Calendar Number 508.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 508, by the Senate Committee on Rules, Senate Print 4866, an act making appropriations for the support of government.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR JOHNSON: Madam President, this bill appropriates $1.5 billion to various state departments to meet the scheduled state payments due April 28th to May 4th.

THE PRESIDENT: Read the last section.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Briefly on the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR SCHNEIDERMAN: These two bills are further budget extenders. I plan to vote no for the same reason we have voted against the other extensions offered to this house thus far this year.

We are not giving the programs that our constituents rely on the resources they need to continue. We're going through this process where the Governor picks and chooses what programs he wishes to fund. And I will repeat what we said two weeks ago: Real people are being hurt by the failure to fund programs. This is no way to run a state

budget.

We have an obligation, if the Governor is not going to come to the table and work with us, to proceed as a Legislature and be prepared to deal with this matter on our own. These extenders are causing real damage.

I'm going to vote no. I hope that we can move forward this week to actually confront these issues and pass a real budget.

Thank you, Madam President.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would yield for a question.

THE PRESIDENT: Senator Johnson, will you yield for a question?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Through you, Madam President.

I understand the arguments for extender bills when we fail to do our jobs and get the budget done. But could you explain to

me why week after week we're asked to pass extender bills that provide no money for school aid?

We are now up to $4.5 billion that we have not paid but owe to school districts, $2 billion for my own City of New York. If we are trapped into extender bills, which I believe might be one of your arguments, because we've had this each week, why do the extender bills continue to not fund anything for school aid?

SENATOR JOHNSON: Senator, it's against the law to write a rubber check. There's not enough money in the budget right now to pay those school payments, not enough money available to pay those payments. And so that's why we've put it off.

We are hopeful we'll have a budget this week. Certainly the Republican Majority desires to have a budget this week. We're going to try to do that. And those things will be resolved subsequent to that.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would yield to one more question.

THE PRESIDENT: Senator Johnson, will you yield for a question?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: If in fact, Senator, it's not okay to write rubber checks -- which I would agree, the State of New York should not write rubber checks -- why did we decide to do an extender bill for other items but not for education?

How did we prioritize not investing in education with our limited funds but investing in any number of other programs over the course of I guess this would be the fourth extender bill this year?

SENATOR JOHNSON: All I can tell you is that we are paying the bills which are urgent to be paid now -- payroll, Social Security, HIV/AIDS programs, nutritional services, and so on and so on. But we don't have $1.6 billion available to pay the school aid right now.

And as you know, we all desire to

give the schools the money as soon as possible. And I'm sure when the money is available, we will do so.

SENATOR LIZ KRUEGER: Madam President, quickly on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Just to highlight what we've said here every week I believe that we've been asked to pass extender bills, I'll also not be voting for this. I urge my colleagues not to.

We must get a budget done. And we must be constantly reminded of the real price that real people are paying in the state of New York for our failure to get the budget done.

And again, just continuing on the theme of our failure to provide school aid, the localities of the state are now paying approximately half a million dollars a day in interest to borrow the money to continue the operation of our schools because we have not done our jobs here in Albany.

Thank you, Madam President.

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

Then the debate is closed.

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: Those recorded in the negative on Calendar Number 508 are Senators Andrews, Breslin, Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 44. Nays, 16.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 509.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 509, by the Senate Committee on Rules, Senate Print 4867, an act to amend Chapter 21 of the

Laws of 2003 amending the Executive Law.

THE PRESIDENT: Senator Schneiderman.

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

I'm voting no on this for the same reason; this is the language bill that accompanies the appropriation. It's time for us to do a budget, time for us to fund the schools, not time for us to play around with these inadequate, repetitive, temporary extenders.

Thank you.

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

Then the debate is closed.

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: Those recorded in the negative on Calendar Number 509 are Senators Andrews, Breslin, Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman,

Montgomery, Onorato, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 44. Nays, 16.

THE PRESIDENT: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. With unanimous consent, I'd like to be recorded in the negative on Calendar Number 380 and Calendar Number 415, please.

THE PRESIDENT: Hearing no objection, you will be recorded as voting in the negative on 380.

But 415 was not passed, it was amended. So we'll just deal with the first one.

Senator Parker.

SENATOR PARKER: Yes, Madam President. I'd like to request unanimous consent to be recorded in the negative on Calendar Number 380.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would like unanimous consent to be recorded in the negative on Calendar 380.

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

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. I too would like to be recorded in the negative on Calendar 380.

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

Senator Skelos.

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

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

SENATOR SKELOS: There being no further business, I move the Senate stands adjourned until Tuesday, April 29th, at 3:00 p.m.

THE PRESIDENT: On motion, the

Senate stands adjourned until tomorrow, Tuesday, April 29th, at 3:00 p.m.

(Whereupon, at 4:13 p.m., the Senate adjourned.)