NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 5, 2003

3:42 p.m.

REGULAR SESSION

SENATOR THOMAS P. MORAHAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

I ask all those present to repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT MORAHAN: There being no clergy present, I ask that we now bow our heads in silence.

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

ACTING PRESIDENT MORAHAN: Reading of the Journal.

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

ACTING PRESIDENT MORAHAN: Hearing no objection, the Journal stands approved as read.

The order of business will be 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 Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Volker, please remove the sponsor's star from Calendar 325.

ACTING PRESIDENT MORAHAN: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

SENATOR SKELOS: And then if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 52, by Senator Marcellino, Senate Print 885, an act to repeal Title 17 of Article 23.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 108, by Senator Larkin, Senate Print 1225, an act to amend the Civil Practice Law and Rules, in relation to authorizing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 202, by Senator Farley, Senate Print 2262, an act to amend the Banking Law, in relation to the regulation of licensed transmitters of money.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 268, by Senator Leibell, Senate Print 1653, an act to amend the Penal Law, in relation to unlawful defilement of a water supply.

ACTING PRESIDENT MORAHAN: Read the last section.

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

November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 305, by Senator DeFrancisco, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 327, by Senator Little, Senate Print 2629, an act authorizing the payment of ordinary disability retirement benefits.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 412, by Senator Nozzolio, Senate Print 3027, an act to amend the Real Property Tax Law, in relation to the veterans' alternative exemption.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 463, by Senator Hoffmann, Senate Print 3599,

an act to amend the Agriculture and Markets Law, in relation to including certain lands.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

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

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 583, by Senator Little, Senate Print 4239, an act to amend the General Municipal Law, in relation to creating supplemental volunteer firefighter and ambulance worker service award programs.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 587, by Senator Morahan, Senate Print 4051, an act to amend the Election Law, in relation to military voting.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

589, by Member of the Assembly Wright, Assembly Print Number 7229, an act to amend Chapter 92 of the Laws of 2001 amending the Election Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 590, by Senator LaValle, Senate Print 301, an act to amend the Education Law, in relation to the terms of community college trustees.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 52, by Senator Marcellino, Senate Print 885, an act to repeal Title 17 of Article 23 of the Environmental Conservation Law.

ACTING PRESIDENT MORAHAN: Senator Lachman.

SENATOR LACHMAN: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Lachman, on the bill.

SENATOR LACHMAN: Liquefied natural and petroleum gas is a highly

flammable, extremely volatile, dangerous substance which, if released into the air, is capable of causing severe damage even in areas distant from the point of release. Today it might be my district, tomorrow it could be any member of this chamber's district.

The repeal of the Liquefied Natural and Petroleum Gas Act places citizens at serious risk of injury by exposing them to the hazards of liquified natural and petroleum gas storage and transportation.

The sponsor of this bill alleges that the bill is necessary to repeal the moratorium on constructing new liquefied natural and petroleum gas facilities. This bill would completely repeal the entire act.

Such broad and sweeping changes in the law, in my opinion, is completely unwarranted and unnecessary under the circumstances that exist today. The only reason for such an extreme proposal would be to give liquefied and natural gas producers and suppliers the ability to put their dangerous facilities anywhere they wanted without public accountability or liability.

Endangering the public in such a way, especially my constituents in Staten Island, is completely unacceptable and should be rejected outright by the Legislature. As you gather, my colleagues, I strongly oppose the bill.

ACTING PRESIDENT MORAHAN: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

New York State is the only state in the nation with a moratorium on liquefied natural gas at this point in time.

I take exception to my colleague's statement that I would do anything that would endanger anybody, his constituents or my constituents or any other person in the State of New York, by any legislation or any piece of legislation that I or my staff would draw up.

On the contrary, the legislation that we are enacting would repeal duplicative legislation. It is already a federal law -- there are already federal laws that control shipping and transit. There are already local

laws that would contribute and handle the siting of liquefied natural gas facilities.

None of these will be repealed. None of these will be affected. What we are taking out is duplicative laws that are no longer necessary to be on the books.

There are still many checks, many safeguards that would exist. The DEC would still have the ability to get involved, the Department of State, the DOT, agency after agency after agency.

Do we want alternative-fuel vehicles or not? That is the question. If you want liquefied natural gas to supply you with certain fuels, this is something we should have. We need to site the facilities.

You cite the incidents in Staten Island. Liquefied natural gas was not the cause of that disaster. If you would read the NYSERDA report -- which, by the way, is the agency that has asked us to do this legislation. This did not come out of a hat. This was produced on a report produced by NYSERDA called the "Report on Issues Regarding the Existing New York Liquefied Natural Gas

Moratorium." They have stated to us that it is as safe, if not safer, than other forms of fuel that are already being sited throughout our area. We have these forms.

Liquefied natural gas, as I said, was not responsible for the disaster. It was an empty tank under repair where a spark set off some substances in the tank which had to do with the lining and insulation of the tank. Those substances are no longer permitted to be used. So we cannot have a duplication of that incident in that way.

There are many new forms of vehicles used to transport this material. We are not giving anything to any group or any agency or any interest group, if you will. I resent that implication as well, Senator. It's uncalled for.

You can oppose something, but be on the facts. The facts are this is a safe mechanism. NYSERDA, responsible to investigate and check on fuel sources and supplies, has stated that this is no longer necessary. These regulations on a state level are no longer necessary, and we need the

alternative fuel.

And you can't have it both ways. You can't ask for getting away from fossil fuels but we don't want to site anything. You can't ask for natural gas but we don't want a pipeline. You've got to have some means of supplying the mechanism. If you're going to talk about problems, bring up real ones, not those from the past that no longer can occur.

Ladies and gentlemen, there is nothing in this legislation that would harm or inflict pain or danger on anyone. On anyone. I urge a yes vote. It's time we got out of the past and into the present.

ACTING PRESIDENT MORAHAN: Thank you, Senator Marcellino.

Any other legislator wishing to be -- Senator Marchi.

SENATOR MARCHI: Yes, Mr. President.

I certainly subscribe to the statement made by the Senator that there was no intent to do any of the things that might flow from an accident with this very dangerous substance. And I believe him.

However, we did have this incident on Staten Island in which there was heavy loss of life. Over 40 people were killed.

I would submit that at this point it would make a great deal of -- I think it would be very reassuring, and if each and every -- you have brought the bill along respecting every test that it could be submitted to, right up until the bill was called for consideration.

But I would suggest, because of the extraordinary nature of what is involved here, that this be set aside for one week, to give us greater scope and opportunity to make assurance doubly sure, which should be very -- should be acceptable to you and actually would increase or dismiss any naysaying at this point.

But I'm telling you that in Staten Island, those who were in the near approximate definition, there was expert opinion adduced at that time that given the wrong circumstances, it would have killed people all the way up to midtown Manhattan, not to mention Brooklyn and Queens and other areas.

Now, I know that the Senator has made a very earnest inspection and considered this. And perhaps I should apologize for not bringing it to his attention earlier. But I would also submit that there would be nothing lost by postponing final consideration until next week, so that we can either rise in a crescendo of unanimous support and at the same time feel that we have exhausted every possibility.

Because if there is even a shred, even a shred of possibility that this dangerous substance in its introduction to the host community and into the possibility that we might have a serious incident.

So I ask you, Senator, if you would seriously consider a week's adjournment. And I will not ask for more. But I certainly will defer to any system where we can at least set aside this possibility, which is horrendous. Horrendous.

ACTING PRESIDENT MORAHAN: Thank you, Senator Marchi.

Senator Marcellino.

SENATOR MARCELLINO: Mr.

President, far be it from me to resist a request from my colleague, whom I respect greatly.

On Senator Marchi's request, I would ask that this bill be laid aside for one week so that the Senator can review what he has to review. And we would happily then wait and then bring the bill back for a vote at that time.

ACTING PRESIDENT MORAHAN: Thank you, Senator Marcellino.

The bill is laid aside.

The Secretary will read.

THE SECRETARY: Calendar Number 305, by Senator DeFrancisco, Senate Print 2976, an act to amend the Estates, Powers and Trusts Law, in relation to disqualification.

ACTING PRESIDENT MORAHAN: Senator Velella.

SENATOR VELELLA: If we can lay this bill aside temporarily until there's a committee meeting that's finished. Just stand at ease for a minute or two.

ACTING PRESIDENT MORAHAN: The bill is laid aside temporarily.

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

(Whereupon, the Senate reconvened at 4:10 p.m.)

ACTING PRESIDENT MORAHAN: Senator Velella.

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

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

SENATOR VELELLA: At this time, Mr. President, can we take up Calendar 305, by Senator DeFrancisco.

ACTING PRESIDENT MORAHAN: Please take the conversations outside. We want order in the house.

Senator Velella.

SENATOR VELELLA: May we proceed to Calendar 305.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number

305, by Senator DeFrancisco, Senate Print 2976, an act to amend the Estates, Powers and Trusts Law, in relation to disqualification.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT MORAHAN: Senator DeFrancisco, an explanation has been asked for by Senator Krueger.

SENATOR DeFRANCISCO: Yes. This is a bill recommended by the Surrogate's Court Advisory Committee and presented at the request of the Office of Court Administration.

Very simple concept. If you kill somebody, if you kill your spouse, you can't inherit that spouse's share of your property. Very logical concept, undisputable.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would yield to a question.

ACTING PRESIDENT MORAHAN: Senator, will you yield for a question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MORAHAN: The

Senator yields for a question.

SENATOR LIZ KRUEGER: Well, there might be one or two. So one at a time.

So when I first read the bill, I said, well, this seems logical. If somebody has murdered their spouse, then why should they profit in some way from it, even if it's keeping control of their home?

But then when I read through the details, and it includes manslaughter first and second degree, my immediate thought was that there are manslaughter charges and manslaughter penalties that are relatively short in nature in prison because of the recognition by the courts that not all deaths or all murders are equal in some way.

So I did some homework, particularly around assisted suicide, which is considered manslaughter in the second degree. And my concern is a scenario that we found quite a few cases of, where an elderly spouse has ended up killing an invalided spouse of theirs who were in enormous pain.

And I'm not saying we should be arguing on this floor today whether we

recognize assisted suicide. We don't in this state. It is second-degree manslaughter. But under your bill, a scenario where an 89-year-old man who killed his invalid wife with a shotgun blast, then shot himself in the side, was convicted of second-degree manslaughter but ended up only having 34 days in jail, would find himself homeless.

And I can't imagine it's in the best interests of the state to be leaving invalided, elderly people on the streets even if they are guilty under our laws of manslaughter.

Another case where another 89-year-old who cared for his beloved wheelchair-bound wife until he could no longer handle what he thought was the pain that was too much, and he ended up also participating in her assisted suicide, pleaded guilty to second-degree manslaughter. The charge carried a sentence of 5 to 15 years, but they agreed to a much lesser term.

There's a series of these. And so I think I've made my point just raising a couple of them. And again, I would be much

more comfortable with this law if it didn't go so far as manslaughter in the second degree, and conceivably in recklessness as well, as assisted suicide.

Is it really in the state's best interest to leave what is likely to be disabled and elderly and in many cases, frankly, far from functional themselves people in a situation where they've lost their homes?

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Assisted suicide is murder. The fact that the individual got a plea bargain so he didn't have to go to jail does not -- does not in any way alter the fact that the crime that occurred was a murder initially. And he got a break, the individual got a break.

As long as assisted suicide -- whether you call it assisted suicide or intentionally taking someone's life, the charge started out as murder, and he got a break.

He would maintain whatever portion

of his property, up to one-half, that was his own separate property going into the marriage. And if he can prove that his own separate property is not benefitting from the property of the person that he or she killed, then under those circumstances he would maintain that half interest.

So, you know, I think you can plea bargain many, many cases. But the fact of the matter is as long as murder is occurring or as long as a taking someone's life is occurring, it seems logical to me that you shouldn't benefit financially, even though you might get a break as far as your sentence is concerned depending upon the mitigating circumstances.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR LIZ KRUEGER: To speak on the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: As I said before, I don't think that this bill debates whether or not we define assisted suicide as murder in this state. We do, and we penalize

people through, most likely, our manslaughter first degree and second degree categories.

Nonetheless, it seems to me not in the best interests of the state or in the best interests of justice to end up in a situation where -- and in all the cases we looked up, you're talking about elderly, disabled people. People who are 89 and have killed their 79-year-old spouse; or 92, who have killed their 91-year-old spouse of 40 years. Eighty-nine-year-old with a 76-year-old wife. A bedridden husband killed by an elderly woman. All of these examples -- a war veteran, age 92 who killed his terminally ill wife.

In these scenarios, the assumption that if they can only keep half, quote, unquote, of the proceeds of their home, that they would be able to stay in their home, after doing whatever time in prison that our court system has determined is the correct penalty for being found guilty of manslaughter in these situations, it does not seem to me to be either in the state's interests in the name of criminal justice, because we've addressed

their responsibilities through the criminal justice system, but to leave elderly and frail people -- not arguing they were right about what they did under the law, simply elderly, frail people who have lost their spouses and who have ended up with some amount of prison time, to then come back and have lost their home because they can't afford to be obligated to the second half of the value of the home since they'd be only entitled to half of it.

I don't think that if the State of New York thought this through, they would think it was in the best interests of communities or in the best interests of criminal justice.

So I'll be voting no on this bill, and I hope my colleagues will consider a no vote. And I would ask the sponsor to consider -- because I would guess this is a bill that will come back over the years -- to reevaluate whether it should be an all of the status or just -- or excluding manslaughter.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Velella.

SENATOR VELELLA: Would the Senator yield for one short question?

ACTING PRESIDENT MORAHAN: Senator Krueger, will you yield?

SENATOR LIZ KRUEGER: Yes, I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR VELELLA: The case scenario you give troubles me somewhat.

SENATOR LIZ KRUEGER: Yes.

SENATOR VELELLA: This would be a case where the person being killed would give consent to the other party to assist in killing them?

SENATOR LIZ KRUEGER: Yes, in the example --

SENATOR VELELLA: And they would make that rational decision and prove that to the court?

SENATOR LIZ KRUEGER: Well, again, we don't recognize assisted suicide, so it's only the --

SENATOR VELELLA: I understand

that.

ACTING PRESIDENT MORAHAN: Are you asking the Senator to yield for another question?

SENATOR VELELLA: Will she yield to another question?

SENATOR LIZ KRUEGER: Yes, I will, Mr. President.

SENATOR VELELLA: Could not that same person, then, knowing what was going to happen, make some disposition and arrangements for their own property to be disposed of if they were making arrangements for their spouse to take their life?

SENATOR LIZ KRUEGER: If I might repeat the question so I think I understand it, if --

SENATOR VELELLA: If that individual was making a decision to speak to their spouse and agreeing that that spouse would help them take their life, would not they be able to make a decision to also tell that spouse that they would like to dispose of their property and how to do it before the act is committed?

SENATOR LIZ KRUEGER: Mr. President, I would think that that would, one, require an enormous understanding of the state law and real estate situations and New York State's criminal law penalties and, two, quite a bit of advanced forethought.

And I think when you look at the case files on assisted suicide, it is very often a desperation move by desperate people.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Yes. I just want to explain my vote.

You know, you can come up with a scenario in any law to make a law sound

unfair.

I think the assisted suicide situation is a substantially unusual case. Most murders are murders, intentional murders or reckless conduct or grossly negligent conduct that causes the death of another individual. And under that type of conduct, I think you've got to make sure someone doesn't benefit from it. And I think that's the intent of the law. Or the bill.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Announce the results.

THE SECRETARY: Ayes, 58. Nays, 1. Senator L. Krueger recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Velella.

SENATOR VELELLA: Can we return to reports of standing committees.

ACTING PRESIDENT MORAHAN: The Secretary will read.

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

following bill direct to third reading:

Senate Print 4968, by the Senate Committee on Rules, an act to amend the Tax Law and others.

ACTING PRESIDENT MORAHAN: Without objection, the bill is reported to third reading.

Senator Velella.

SENATOR VELELLA: Mr. President, is there any housekeeping?

ACTING PRESIDENT MORAHAN: No housekeeping at the desk, Senator.

SENATOR VELELLA: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 6th, at 3:00 p.m.

ACTING PRESIDENT MORAHAN: There being no further business, the Senate stands adjourned until Tuesday, May 6th, at 3:00 p.m.

(Whereupon, at 4:22 p.m., the Senate adjourned.)