NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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March 29, 2004

3:14 p.m.

REGULAR SESSION

SENATOR ELIZABETH O'C. LITTLE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT LITTLE: 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 LITTLE: The invocation today will be given by Rabbi Shmuel M. Butman of the Lubavitch Youth Organization, Brooklyn, New York.

RABBI BUTMAN: [In Yiddish.] Our heavenly Father, please bestow Your blessings upon all the members of the New York State Senate and their families. Bless them, Almighty G-d, with health, with prosperity, and with much happiness and fulfillment in all their endeavors.

It is nice to start this prayer after the prayer that you have offered: one nation under G-d, indivisible. And that is exactly the theme of our prayer, that we're all under G-d and we are assembled here today in the time of the birth date of the Rebbe and

we are celebrating the 102nd birthday of the Rebbe. And it was so nice of you to proclaim 102 Days of Education in honor of the Rebbe.

The Rebbe fought for education of every child, regardless of race, of religion, of color and creed. The Rebbe fought to tell every child that there is an eye that sees and an ear that hears and that the world is not a jungle. And if we teach our children when they are young, they are going to grow up to be honorable and productive citizens of our society.

You in the Senate of the great State of New York, you are the ones who legislate laws that govern society, laws of justice, laws of honesty, laws of decency. Through you, those laws have an effect over the United States of America and, through the United States of America as a superpower, through the entire world.

So you in these chambers are responsible in a very, very wonderful way, to change the way we think, to change the way we live so that our laws should be governed by the laws of G-d -- laws of honesty, laws of

decency, laws of appreciation and respect for our fellow man.

The Rebbe teaches us that this is the last generation of exile and the first generation of redemption, and we can hasten the coming of the great redemption by doing more goodness and kindness. That is exactly what you institute.

And as I'm standing here before you, I remember in 1991 when I opened, with a prayer, a smaller chamber than this, the United States Senate in Washington. The Rebbe told me to bring with me a pushkeh. A pushkeh is a charity box. This charity box has the form of Lubavitch World Headquarters on Eastern Parkway in Brooklyn.

The Rebbe said, "Take with you a pushkeh. And when you are going to offer the prayer, you should put in a dollar bill into the pushkeh, and everybody should see what you are doing and they should know what money should go for."

The Rebbe wants us to do acts of goodness and kindness. By putting anything into a pushkeh, we are doing another act of

goodness and kindness. And therefore, I would like to continue and to fulfill what the Rebbe asked me and give this bill on which it says "In G-d We Trust" into this pushkeh.

Any one of you is welcome -- don't get scared; this is not a fundraising campaign -- but anyone is welcome to put in anything into the pushkeh and to do an act of goodness and kindness.

I also want to tell you that every week on the Sabbath in our synagogues we offer a special prayer for each and every single one of you. And we say the [in Yiddish]: All those who serve the public faithfully as you do, Almighty G-d should give them their reward.

This is our prayer then on the Sabbath, and this is the prayer we're offering today, that Almighty G-d should reward you for all the good things and the wonderful things that you do, with a lot of happiness and fulfillment in your personal life as well as in your communal life.

And before I end, I would like to give you all a blessing that you should pass

the budget successfully before April 1st.

Thank you.

ACTING PRESIDENT LITTLE: Thank you, Rabbi Butman, for your kind invocation and good wishes.

Reading of the Journal.

THE SECRETARY: In Senate, Saturday, March 27, the Senate met pursuant to adjournment. The Journal of Friday, March 26, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: On motion of Senator Bruno, the rules were suspended and said bill ordered to a third reading: Calendar Number 594, by the Assembly Committee on Rules, Assembly Print Number 10176, an act to amend the Vehicle and Traffic Law, in relation to making technical amendments.

ACTING PRESIDENT LITTLE: Without

objection, direct to third reading.

Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT LITTLE: The bill is passed.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Spano, I wish to call up Calendar Number 317, Assembly Print Number 8752.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Calendar Number

317, by the Assembly Committee on Rules, Assembly Print Number 8752, an act to amend the Civil Rights Law.

SENATOR MEIER: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Spano's bill, Senate Print Number 5136, on March 9th.

ACTING PRESIDENT LITTLE: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

SENATOR MEIER: I now move that Assembly Bill Number 8752 be recommitted to the Committee on Investigations and Government Operations and that the Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT LITTLE: So ordered.

SENATOR MEIER: Madam President, I now offer the following amendments.

ACTING PRESIDENT LITTLE: The amendments are received.

SENATOR MEIER: Madam President,

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Bills 160, 162, 163, 164, 208, 388, 389, 390, 393, 394.

ACTING PRESIDENT LITTLE: So ordered.

Senator McGee.

SENATOR McGEE: Thank you, Madam President.

I move to recommit Senate Print Number 207, Calendar Number 146 on the order of third reading to the Committee on Children and Families, with instructions to the said committee to strike out the enacting clause, on behalf of Senator Morahan.

ACTING PRESIDENT LITTLE: So ordered.

SENATOR McGEE: Thank you.

ACTING PRESIDENT LITTLE: Senator McGee.

SENATOR McGEE: Madam President, I'd like to offer the following amendments to the following Third Reading Calendar bills:

Sponsored by Senator Spano, page

number 7, Calendar Number 122, Senate Print 5236;

By Senator Marcellino, page number 24, Calendar Number 431, Senate Print 761;

By Senator Marcellino, page number 29, Calendar Number 512, Senate Print 4524A;

By Senator Larkin, page number 31, Calendar Number 535, Senate Print 1222A;

By Senator Skelos, page 35, Calendar Number 582, Senate Print 6179;

By Senator Saland, page 28, Calendar Number 485, Senate Print 5940;

By Senator Saland, page number 35, Calendar Number 580, Senate Print 6144A.

Madam President, I now move that these bills retain their place on the order of Third Reading Calendar.

ACTING PRESIDENT LITTLE: The amendments are received, and the bills will retain their place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Senator Skelos.

SENATOR SKELOS: Madam President, is there a substitution at the desk?

ACTING PRESIDENT LITTLE: Yes.

SENATOR SKELOS: If we could make it at this time.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: On page 13, Senator Balboni moves to discharge, from the Committee on Veterans, Homeland Security and Military Affairs, Assembly Bill Number 8130A and substitute it for the identical Senate Bill Number 5159, Third Reading Calendar 281.

And on page 18, Senator Velella moves to discharge, from the Committee on Labor, Assembly Bill Number 8018 and substitute it for the identical Senate Bill Number 108, Third Reading Calendar 343.

ACTING PRESIDENT LITTLE: Substitutions ordered.

SENATOR SKELOS: Madam President, I believe there's a privileged resolution at the desk by Senator Stachowski. I ask that the title be read and move for its immediate

adoption.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: By Senator Stachowski, Legislative Resolution Number 4100, honoring Loretta Kaminsky of Lou-retta's Custom Chocolates upon the occasion of her induction into the Small Business Hall of Fame on March 30, 2004.

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

(Response of "Aye.")

ACTING PRESIDENT LITTLE: Opposed, nay.

(No response.)

ACTING PRESIDENT LITTLE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we can go to the noncontroversial reading of the calendar.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Calendar Number

210, by Senator Marcellino, Senate Print 769A, an act to amend the Navigation Law, in relation to providing an exemption.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 216, by Senator Balboni, Senate Print 514, an act to amend the Civil Practice Law and Rules, in relation to prohibiting civil actions against victims of crime.

ACTING PRESIDENT LITTLE: Read the last section.

SENATOR ADA SMITH: Lay it aside.

ACTING PRESIDENT LITTLE: The bill is laid aside.

THE SECRETARY: Calendar Number 267, by Senator Skelos, Senate Print 5156B, an

act to amend the Public Health Law, in relation to prohibiting tongue-splitting except by physicians and dentists.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 281, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8130A, an act to amend the Executive Law, in relation to disaster contingencies.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 546, by Senator Padavan, Senate Print 1054, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York, in relation to the conversion of abandoned vehicles by local authorities.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 550, by Senator Hoffmann, Senate Print 3596, an act to amend the Vehicle and Traffic Law, in relation to authorizing the operation of farm motor vehicles.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 558, by Senator McGee, Senate Print 6136, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The

bill is passed.

THE SECRETARY: Calendar Number 563, by Senator Little, Senate Print 6336, an act to amend the Highway Law, in relation to designating a portion of the state highway system in the city of Glens Falls.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 565, by Senator Morahan, Senate Print 3118A, an act to amend the General Business Law, in relation to the donation of articles of clothing by certain dry-cleaning institutions.

ACTING PRESIDENT LITTLE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 578, by Senator Trunzo, Senate Print 6109A, an act to authorize the Bayview Baptist Church, Incorporated, hamlet of Mastic Beach.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 579, by Senator Marcellino, Senate Print 6116, an act to authorize the incorporated village of Muttontown to discontinue the use of

certain lands as parklands.

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

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 583, by Senator McGee, Senate Print 6183, an act to amend the General Municipal Law, in relation to authorizing municipalities to contract with the state.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 584, by Senator Little, Senate Print 6258, an act to change the name of the town of Altamont in the county of Franklin.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 585, by Senator Wright --

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

ACTING PRESIDENT LITTLE: The bill is laid aside for the day.

Senator Skelos, that concludes the noncontroversial reading of the calendar.

SENATOR SKELOS: If we could go

to the controversial reading of the calendar.

ACTING PRESIDENT LITTLE: The Secretary will read.

ACTING PRESIDENT LITTLE:

THE SECRETARY: Calendar Number 216, by Senator Balboni, Senate Print 514, an act to amend the Civil Practice Law and Rules, in relation to prohibiting civil actions.

ACTING PRESIDENT LITTLE: Senator Skelos.

SENATOR SKELOS: Will you please lay that aside for the day.

ACTING PRESIDENT LITTLE: The bill is laid aside for the day.

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

SENATOR SKELOS: Madam President, would you please recognize Senator Lachman for a short statement.

ACTING PRESIDENT LITTLE: Thank you.

Senator Lachman.

SENATOR LACHMAN: Usually after the Rabbi gives his invocation, Senator Marchi and I say a few words -- unfortunately, we

were both late today -- regarding the Lubavitcher movement, which began in Eastern Europe over a hundred years ago and brought joy to the lives of many Jews who had suffered oppression. It then moved to the United States in the 20th century and is now one of the fastest-growing movements within Judaism.

Under the late Rebbe Menachem Schneerson, of blessed memory, the movement grew so large that it went into many universities and colleges in America, offering kosher food and prayer services to those who would not have it in small-town American life. This is one of their major achievements.

Another one of their major achievements, which very few people realize, is they have recently, over the last decade, gone into Eastern Europe, once under the dictatorship of communist countries, and have reactivated Jewish living and Jewish learning and scholarship. What they are doing in the field of education, as well as a vibrant living Judaism, is remarkable and should be commended.

Thank you.

ACTING PRESIDENT LITTLE: Thank you.

Senator Marchi.

SENATOR MARCHI: Well, I don't believe I've attended an official function unless we had the presence today that we have. It's all meaningless. I go back over the years, and I agree with my distinguished colleague of many years that this is the binding that we were looking for, approvingly, of our meeting here today, and he reflects, in the activities that he pursues, over a thousand years of -- it's even longer than that, isn't it? -- of serving so loyally and so well, spiritually, morally and in every way that I can possibly think of.

So it's so good to have you here, because otherwise we wouldn't be able to have this function. It would be an empty gesture without your presence. So we take heart by the fact that you are here and with us and celebrate this day for what it is. It has a very rich spiritual significance, one that we have to take to heart. And we do so with enthusiasm, because I -- you know, it's almost

60 years since I've been -- no, 50 years, I should say, that I've been doing this. But I do it with so much elation and so much joy. And your presence really makes it so. It wouldn't be the same without it.

So again, God bless you for being with us, and we exult in the circumstances that give us an opportunity to participate in this event.

RABBI BUTMAN: Thank you very, very much.

ACTING PRESIDENT LITTLE: Senator Skelos.

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

ACTING PRESIDENT LITTLE: No, Senator, there is no housekeeping at the desk.

SENATOR SKELOS: Please recognize Senator Krueger.

ACTING PRESIDENT LITTLE: Thank you.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President.

I believe I have a motion at the

desk. I'd like to have it called at this time.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: By Senator Krueger, Senate Bill Number 384, an act to amend the Environmental Conservation Law and the State Finance Law.

ACTING PRESIDENT LITTLE: Senator Krueger.

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

Well, today I am attempting to have this house take up a bill that I think is critical and timely and all of us, when recognizing this issue, should be agreeing that it is time to update and improve the New York State Bottle Bill and redemption system.

I have a bill, S384, that I hope my colleagues will consider, and I will describe it. But in fact it is one of several pieces of legislation that have been proposed in both houses that would work to expand and improve the successful New York State Bottle Bill,

which is now over twenty years old.

My legislation would expand the Bottle Bill to include deposits on noncarbonated beverages, including water, ice teas and other fruit-type juices; it would increase the deposit on each container from 5 to 10 cents; and, perhaps most importantly, it would collect unclaimed deposits and dedicate them to the state's Environmental Protection Fund to fund municipal recycling and waste prevention programs and other critical environmental needs at the local level.

New York State's Returnable Container Act, better known as the Bottle Bill, requires a 5-cent refundable deposit on all beer, soda, and wine cooler containers sold in New York State. The measure was enacted in 1982 to reduce litter and increase recycling.

Since '82, the beverage market has changed drastically, with noncarbonated beverages such as bottled water, ice tea, and sports drinks comprising an increasing market share. Furthermore, curbside recycling is now mandatory throughout most of the state.

Recent polls done by environmental groups show that New Yorkers overwhelmingly support expansion of the Bottle Bill to include noncarbonated beverages -- 70 percent in a recent poll. In fact, 86 percent of those polled urge unclaimed deposits be used for environmental purposes.

Using unclaimed deposits now retained by the beverage industry could be used to benefit New York's environment, as has been done in Massachusetts and Michigan. In fact, several other states have moved forward recently. Maine, California, and Hawaii already have bottle laws that include water, juice and other noncarbonated drink containers. Massachusetts has proposed a similar measure.

Maine, Michigan, and Massachusetts have already amended their law so the states can keep their unredeemed deposits for environmental purposes. And according to recent press reports, Michigan, which has a 10-cent deposit, now has a redemption rate of 90 percent. In states without a bottle law, containers are recycled at an average rate of

only 40 percent.

The unclaimed deposits that could be transferred to the Environmental Protection Fund could again be used for recycling, waste reduction, other important programs.

This existing law has already saved taxpayers and municipalities the cost of collecting and recycling or disposing of beverage containers to the tune of nearly $300 million saved in landfill fees since 1983. Expanding our Bottle Bill to cover more bottles and to retarget funds to the Environmental Protection Fund would create new jobs in the recycling and retail industries and help New York's neediest citizens supplement their income. It would, it is estimated, reduce litter by up to 11 percent. Providing an economic incentive to redeem containers increases recycling rates, reduces litter, and minimizes stress on our landfills.

The Bottle Bill already has diverted more than 5.2 million tons from our waste stream over the past 20 years. Expanding the Bottle Bill to include the other types of bottles I described would

dramatically help us even further decrease our waste stream problems. Boosting recycling rates means fewer containers will be landfilled or incinerated, more natural resources will be conserved, energy will be saved, and greenhouse gases reduced.

Recent surveys have shown that nonredeemable containers make up nearly two-thirds of the beverage containers piling up on New York's shorelines, up to 11 percent of all litter in some communities.

Helping to remove more bottles from our waste stream will also reduce the amount of broken glass on our playgrounds and in our parks, resulting in fewer incidents of cuts and lacerations, particularly among children. Less litter and broken glass along our streets and highways will mean less property damage to farm equipment, livestock, and vehicles.

And bearing the cost of a product's waste should be the responsibility, at least partially, of the beverage producers and their consumers, not taxpayers and communities. The Bottle Bill is a model for this kind of sustainability.

The Bottle Bill to date has been an environment success story for New York, but we can make it even better. Proposals such as my own would not only provide an additional $170 million estimated new revenue each year to go into local recycling and environmental programs, but would reduce operating costs of the localities that have curbside recycling programs. So we bring additional money into the Environmental Protection Fund, and we decrease outgoing costs on local municipalities that operate recycling programs today.

Adding noncarbonated containers to the deposit system will help relieve financially strapped curbside programs of an expensive burden. Just 7 percent of the beverage market is noncarbonated beverages sold in aluminum cans, the only curbside material of real value. More than 90 percent of these noncarbonated containers are glass and plastic bottles that we should be bringing into the recycling system.

Again, I see this as a win-win for the State of New York. It's a win financially

for our stressed budget; it puts money directly into targeted programs at the local level to help clean our environment; and it decreases the environmental problems we're already facing in the state.

I hope my colleagues will join me in voting for my amendment today.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Those Senators in agreement with the petition please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Diaz, Dilán, Duane, González, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT LITTLE: The petition is lost.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before

the Senate, I move we stand adjourned until Tuesday, March 30th, at 3:00 p.m. Thank you.

ACTING PRESIDENT LITTLE: On motion, the Senate stands adjourned until Tuesday, March 30th, at 3:00 p.m.

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