NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 15, 2004

11:02 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 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, Wednesday, April 14, the Senate met pursuant to adjournment. The Journal of Tuesday, April 13, 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 Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On page number 36 I offer the following amendments to Calendar Number 648, Senate Print Number 6119, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MARCELLINO: Thank you, Madam President.

THE PRESIDENT: You're welcome, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar at this time.

THE PRESIDENT: 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 Skelos.

SENATOR SKELOS: Madam President, Resolution 4218, by Senator Alesi, the Minority has requested if all members could go on the resolution.

So if you do not wish to sponsor the resolution, you should notify the desk.

THE PRESIDENT: Any member who does not wish to sponsor the latter resolution please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a resolution at the desk by Senator Leibell. Could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 4436, honoring Donald J. McGrath upon the occasion of his retirement as Philipstown Town Clerk in 2003, after 15 years of distinguished service.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could adopt the resolution.

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 Skelos.

SENATOR SKELOS: Madam President, there's a resolution at the desk by Senator LaValle. Could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator LaValle, Legislative Resolution Number 4411, urging Governor George E. Pataki to oppose

newly proposed federal quotas on New York fishermen relating to fluke and porgies.

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 Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 285, by Senator Maziarz, Senate Print 5857A,

an act to amend the Alcoholic Beverage Control Law, in relation to the definition of a motion picture theater.

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, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 404, by Senator Libous, Senate Print 3403, an act to amend the Mental Hygiene Law, in relation to electronic submission.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 420, by Senator Spano, Senate Print 1057B, an act in relation to allowing Mitchell A. Tutoni to be reclassified.

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

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, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 539, by Senator LaValle, Senate Print 6348, an act to amend the Education Law, in relation to transcripts of meetings.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 561, by Senator Volker, Senate Print 6321A, an act to amend the Highway Law, in relation to the designation of the Police Officer Robert McLellan Memorial Overpass.

THE PRESIDENT: 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: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 568, by Senator Little, Senate Print 55 --

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

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

THE SECRETARY: Calendar Number 596, by Senator Maltese, Senate Print 6374, an act to amend the Retirement and Social

Security Law and Chapter 511 of the Laws of 1988.

THE PRESIDENT: 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: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 616, by Member of the Assembly Tocci, Assembly Print Number 9778, an act to amend Chapter 266 of the Laws of 1981.

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, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

621, by Senator Marcellino, Senate Print 805, an act to amend the Penal Law, in relation to criminally negligent homicide.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 625, by Senator Meier, Senate Print 1264, an act to amend the Penal Law, in relation to permitting a court to impose a sentence.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 630, by Senator Golden, Senate Print 5107, an act to amend the Penal Law, in relation to authorizing a two-year period.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 632, by Senator Skelos, Senate Print 5564, an act to amend Chapter 549 of the Laws of 2000 amending the Civil Rights Law.

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, 38.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 644, by Senator Volker, Senate Print 5828, an act to amend the Local Finance Law, in relation to the sale of municipal obligations.

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, 38.

THE PRESIDENT: The bill is passed.

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

SENATOR MARCELLINO: Madam President, can we return now to the reports of standing committees and hear the report of the Rules Committee.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 5717B, by Senator Little, an act to amend the Tax Law.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Move to accept the Rules Committee report.

THE PRESIDENT: All in favor of accepting the Rules Committee report please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we now take up Calendar Number 684.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 684, by Senator Little, Senate Print 5717B, an act to amend the Tax Law, in relation to

authorizing the County of Clinton.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR LITTLE: Thank you.

The bill before us today would increase the local share of the sales tax in Clinton County by 3/4 of a percent.

There are home-rule messages from Clinton County, and they believe that there is a need for this in order to be able to continue and not to increase property taxes.

THE PRESIDENT: There is a local fiscal impact note at the desk.

Senator Krueger.

SENATOR LIZ KRUEGER: Madam President, to speak on the bill.

THE PRESIDENT: You may proceed.

SENATOR LIZ KRUEGER: Thank you.

Well, it's now April 13th -- excuse me, April 14th, and we -- no, it's April 15th. It's Tax Day, excuse me. It's April 15th. We've still not passed a budget in New York State.

And in looking at this bill and the concerns of this county and their need for an increase in their sales tax, one might reasonably argue that if we had a budget in place and if we had a budget in place that was addressing the needs of our localities, this county might or might not need to come this Legislature asking for this increase in their local sales tax. Because they talk specifically in their justification in the fact that their Medicaid costs continue to go up, that their probation costs are going up because of a decrease in state reimbursement, that their nursing home costs are continuing to increase, that, frankly, they need help from the State of New York -- and the State of New York has yet to respond by passing a budget or even taking up some of the issues that need to be taken up in this year's budget to help address the needs of our localities throughout the state of New York.

And if I was talking for my own county of Manhattan or New York County and the City of New York, I can make the same arguments that Senator Little's county is

making to us, that they need the State of New York to be more responsive to the needs of the localities, and they need the state of New York not just to have a budget done on time, but the right budget done.

And so while I was optimistic when we left for our break that we had come to an agreement or at least a handshake agreement on some budgetary reforms -- and I know that the timelines for those, by definition, will be long, particularly the institutional amendments -- the agreements that were made about an outline for budget reform don't need to wait for legislative action.

We should be moving forward on the legislation that was proposed and agreed upon by both houses as we left town 12 days ago.

We should be moving forward with budget conferences right now -- we don't need legislation for that -- so that we can sit down and hammer out the details of a budget that is critically needed by the State of New York.

We should be having ongoing discussions around the education finance

funding issues, about health care funding issues, about a host of important issues before us here in the Legislature and that the State of New York and the people of the State of New York are waiting for.

So while I will vote for this bill, because I understand and empathize with the need of this county to move forward in its own financially responsible way for itself and its voters and residents, I am disturbed that we are about to leave session again until next week, not having made any progress this week on the budget on education funding formulas, on health care funding, on some of the other issues that this one county, and I would assume probably every county in the state of New York, is waiting for us to address.

So I sort of leave us with this reminder that we have very serious work to do, and we are late.

Thank you, Madam President.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Madam President.

I also will support this bill. But I think it is, as Senator Krueger indicated, an example of bad fiscal policy all across the state.

Senator Little's constituents shouldn't have to pay more sales tax. We shouldn't be raising regressive taxes all around the state. It's another manifestation of the crisis of fiscal policy in the State of New York.

And as we sit here today, it is the midpoint of the 2004 legislative session. The calendar calls for 60 working days. This is the 30th day. And I respectfully submit that given what we've been doing this year, we may have to have a new definition of "working" added to the dictionary. Because as of today, we've only passed 20 bills that have been signed into law.

Five of them are local sales tax and revenue bills, such as the one we're doing today; five chapter amendments to 2003 chapters; one chapter amendment to a 2002 chapter; two bills authorizing specific BOCES

programs to enter into leases; and five budget-related bills, including our deficiency budget.

We've passed 276 one-house bills. The Assembly has outdone us, as they always do, and has passed 521 one-house bills. But we're not here to pass one-house bills. We're here to pass a good budget and get New York's fiscal house in order so the people who are going to be paying this increased sales tax can have regressive taxes reduced so we can stop the continued plunge deeper and deeper into debt for the State of New York and for our public authorities and for the City of New York.

We had a budget reform package that was presented, announced two weeks ago, and we were told the staffs were going to work over the break. Not in print, haven't seen anything, haven't heard anything about it.

This is the state that pioneered virtually every important piece of social legislation in the first half of the 20th century. And it is astonishing that this is what we've come to. If our goal this year is

to pass 40 bills that become law, we have completed our work in the first half of the session. If our goal is actually to get some real work done on the problems facing the State of New York, particularly the budget problems, we have a long way to go.

So I would respectfully submit that it is with regret that we should all be voting for this bill today. It's unfortunate that the County of Clinton is forced to raise sales taxes. It is unfortunate -- indeed, bordering on tragic -- that the City of New York is cutting back on education programs and had to raise sales and property taxes while continuing to subsidize other parts of the state of New York by over $3 billion a year.

Our house is not in order. This house is too sleepy, given the disorder in the state. And I hope we will get to work at a more vigorous pace in the second half of the session.

THE PRESIDENT: There is a local fiscal impact statement at the desk.

Read the last section.

THE SECRETARY: Section 7. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

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 to come before the Senate at this time, I move we stand adjourned until Monday, April 19th, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate now stands adjourned until Monday, April 19th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:20 a.m., the Senate adjourned.)