NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 12, 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, Tuesday, May 11, the Senate met pursuant to adjournment. The Journal of Monday, May 10, was read 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 Farley.

SENATOR FARLEY: Good morning, Madam President.

THE PRESIDENT: Good morning.

SENATOR FARLEY: On page 29, I offer the following amendments to Calendar Number 463, Senate Print Number 2603A. And that's on behalf of Senator Maziarz.

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

SENATOR FARLEY: On behalf of Senator Rath, Madam President, on page 42 I offer the following amendments to Calendar 767, Senate Print 6742B, and I ask that that 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 FARLEY: On behalf of Senator DeFrancisco, Madam President, on page 46 I offer the following amendments to Calendar Number 823, Senate Print 6983, and I ask that that bill retain its place.

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

SENATOR FARLEY: Madam President, on behalf of Senator Hoffmann, on page 56 I offer the following amendments to Calendar 945, Senate Print 3598A, and I ask that that retain its place.

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

SENATOR FARLEY: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk, if we could make them at this time.

THE PRESIDENT: Yes, there are, Senator.

The Secretary will read.

THE SECRETARY: On page 5, Senator Padavan moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 7137B and substitute it for the identical Senate Bill Number 3314B, First Report Calendar 1079.

On page 5, Senator Fuschillo moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 8372 and substitute it for the identical Senate Bill Number 5012, First Report Calendar 1081.

On page 5, Senator Fuschillo moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 5084A and substitute it for the identical Senate Bill Number 6803, First Report Calendar 1084.

On page 5, Senator DeFrancisco moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7883 and substitute it for the identical Senate Bill Number 2948, First Report Calendar 1089.

On page 6, Senator DeFrancisco moves to discharge, from the Committee on Judiciary, Assembly Bill Number 145B and substitute it for the identical Senate Bill

Number 5255, First Report Calendar 1091.

On page 6, Senator DeFrancisco moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7518 and substitute it for the identical Senate Bill Number 7247, First Report Calendar 1095.

On page 6, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 7938A and substitute it for the identical Senate Bill Number 2250B, First Report Calendar 1099.

On page 7, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 527 and substitute it for the identical Senate Bill Number 3777, First Report Calendar 1101.

On page 7, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 7854 and substitute it for the identical Senate Bill Number 5014, First Report Calendar 1102.

On page 7, Senator Little moves to discharge, from the Committee on Health, Assembly Bill Number 10920 and substitute it for the identical Senate Bill Number 7169,

First Report Calendar 1103.

On page 9, Senator Balboni moves to discharge, from the Committee on Codes, Assembly Bill Number 6820 and substitute it for the identical Senate Bill Number 5298, First Report Calendar 1123.

On page 9, Senator Balboni moves to discharge, from the Committee on Codes, Assembly Bill Number 9159 and substitute it for the identical Senate Bill Number 5308A, First Report Calendar 1124.

On page 9, Senator Saland moves to discharge, from the Committee on Codes, Assembly Bill Number 10103 and substitute it for the identical Senate Bill Number 5522A, First Report Calendar 1125.

On page 10, Senator Flanagan moves to discharge, from the Committee on Codes, Assembly Bill Number 10974 and substitute it for the identical Senate Bill Number 7176, First Report Calendar 1136.

And on page 10, Senator Alesi moves to discharge, from the Committee on Crime Victims, Crime and Correction, Assembly Bill Number 9779 and substitute it for the

identical Senate Bill Number 6154, First Report Calendar 1143.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 595, by Senator Robach, Senate Print 6370, an act to amend the Retirement and Social Security Law, in relation to reemployment.

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 710, by Senator Velella, Senate Print 6761, an

act to amend Part E2 of Chapter 62 of the Laws of 2003.

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: Excuse me. Ayes, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 752, by Senator Kuhl, Senate Print 4948, an act to amend the Public Authorities Law, in relation to New York State Thruway Authority fees.

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 835, by Senator Fuschillo, Senate Print 6159B, an act to amend the Not-for-Profit Corporation Law, in relation to burial plots.

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. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 843, by Senator DeFrancisco, Senate --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

846, by Senator Volker, Senate Print 1157, an act to amend the Criminal Procedure Law, the Public Health Law, and the Family Court Act, in relation to authorized destruction.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 848, by Senator Maziarz, Senate Print 1512, an act to amend the Criminal Procedure Law, in relation to permitting a social worker.

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, 37. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 873, by Senator Spano, Senate Print 4858A, an act to amend the Retirement and Social Security Law, in relation to eligibility.

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.

THE SECRETARY: Calendar Number 876, by Senator Robach, Senate Print 6768, an act to amend the Retirement and Social Security Law and the General Municipal Law, in relation to extending.

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, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 893, by Senator McGee, Senate Print 2782, an act to amend the General Municipal Law, in relation to municipal annexation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 900, by Senator Little, Senate Print 6606, an act to amend the General Municipal Law and others, in relation to the appointment of

alternate members.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 906, by Senator Stachowski, Senate Print 6732A, an act authorizing the creation of the Lake Shore Volunteer Fire Company Exempts.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 924, by Senator LaValle, Senate Print 1560A,

an act to amend the Education Law, in relation to requirements for a license.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 952, by Member of the Assembly Nolan, Assembly Print Number 9580, an act to amend the Executive Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1007, by Senator Balboni, Senate Print 4156C --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1037, by Senator Morahan, Senate --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1043, by Senator Kuhl, Senate Print 6329, an act to amend the Town Law and the Public Officers Law, in relation to providing.

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, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1064, by the Senate Committee on Rules, Senate Print Number 7264, an act making appropriations for the support of government.

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: Yes, there is, Senator.

SENATOR SKELOS: Move to accept.

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.

Read the last section.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

Senator Skelos, that completes the

noncontroversial reading of the calendar.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 843, by Senator DeFrancisco, Senate Print 327, an act to amend the Criminal Procedure Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR DeFRANCISCO: This bill allows for the release, upon court order and upon application to the court, with notice to the professional, for the records that were sealed in a previous criminal proceeding to be made available to an office of disciplinary proceedings with respect to the discipline of a professional.

The purpose of the bill is to allow those who regulate whether people should be practicing medicine, law, or any of the

professions, whether that organization should have full information concerning the background of the individual. And this is the purpose for it.

Under extraordinary circumstances, a court could allow for the opening of a sealed record and the information being provided to the office that is disciplining that particular profession.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. On the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: This is a piece of legislation we have seen before and discussed before, and the problems with it remain. It has been here since, I think, 1995 as a one-house bill.

And the reasons many of us vote against it and encourage its modification is that it doesn't expressly limit or restrict the scope of disclosure of the sealed records here that it would allow an administrative or

regulatory body to have access to. There's no explicit provision requiring that they maintain the secrecy after they are opened for use by that regulatory body.

Second, there is no requirement that the administrative hearings at which this -- these sealed records are discussed or are assessed or analyzed be closed.

And, finally, there's no distinction here between different types of favorable terminations. I guess favorable termination is the term of art.

So this would allow the unsealing of a criminal proceeding that resulted in a verdict of not guilty. And it really is, I believe, inconsistent with the whole purpose of sealing records.

It is something that I do think with some adjustment could result in the alleviation of the most egregious situations in which sealed records might be necessary for a particular purpose. But as drafted now, it is far too broad, it does not provide enough protections.

And again, as was pointed out, I

believe, in last year's debate, we're talking about an area of regulatory process now, of administrative proceedings in which the standards for proof, in which the procedural due process protections afforded a respondent are not really comparable to that which they receive in court.

There is no requirement in this bill that if someone is having to deal with the issues that are raised by the unsealed records of a criminal proceeding, that they have the right to counsel, that they have the right to cross-examination. So we're talking about something that really, I believe, is an attempt to fit a square peg into a round hole.

You can't just provide for opening of sealed records that were favorably terminated without providing for additional protections. They're not in this bill.

I'm going to vote no, and I would encourage others to vote no. And once again, I do suggest to the sponsor, who I think is sincerely trying to resolve an issue that from time to time does cause serious injustices, that we should amend this bill and come up

with something that actually could move the issue forward.

Thank you.

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

Then the debate is closed.

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: Those recorded in the negative on Calendar Number 843 are Senators Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, and Stachowski. Ayes, 38. Nays, 12.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1064, by the Senate Committee on Rules, Senate Print Number 7264, 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 will appropriate approximately $1.4 billion to various state departments and agencies to meet the scheduled state payments for the period May 17th to May 24th. Thank you.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. On the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: Once again, for reasons that have been stated with regard to earlier budget extender bills, I'm going to vote no on this.

It's now well into May, and I would urge my colleagues that we have to take some responsibility for the lack of progress on the state budget.

Senator Paterson made a proposal that didn't go a dollar over the Governor's

Executive Budget on March 31st that would provide enough money to deal with the Campaign for Fiscal Equity decision to provide for fair funding for high-need school districts, both in New York City and in other parts of the state.

I think that we have to do something other than constantly ladling out this legislative methadone and passing budget extenders without a peep or without any sort of effort to move forward.

I again refer to another proposal of Senator Paterson's, that we should stay here till the budget is finished. We are open to any other discussions of other techniques. But constantly voting quietly for extenders as the year passes along is not getting the job done.

I will be voting no again, Madam President.

Thank you.

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

Senator Krueger.

SENATOR LIZ KRUEGER: I again

rise to object to the fact that we continue to do extenders when there are things we could be doing.

We are clearly close on revenue projections for the State of New York, despite the differences between the two houses on where we should go on the budget. We could be having budget conference meetings to try to resolve pieces of the budget that we know we are close to an agreement on, or to establish what it is that is holding us up from completing the people's business and passing a budget.

I want to reiterate that there is pain being caused by our failure to pass a budget. While the extender provides some monies for some emergency categories, we are now at the time, being so late in the year, that many organizations, particularly not-for-profit organizations that operate under contracts with the State of New York, are finding themselves in a situation where they may be having to provide layoff notices to staff and to cease programs that we all agree are important and we want to continue in

the State of New York.

But, absent any confirmation from the State of New York that they can except to continue funds in the new fiscal year, it is past the point where they can just float hoping that we take care of business, and they're getting to the point where they are actually having to make decisions to terminate programs, terminate staffs.

And this ad hoc model of weekly extender bills where somebody goes, in the Governor's office, Oh, maybe we better throw in money here for this one this week, or money there, is clearly not in the best interest of fiscal responsibility for the State of New York.

So as the time clock ticks and we fail to get a budget done, we should remember that we are now actually harming real New Yorkers, real organizations who are doing programs that the State of New York wants to have continue. And of course, need I say that we have established a precedent now where school districts all over the State of New York are in total flux about what they do

with their own education funding for the coming year.

I too will be voting no.

Thank you, Madam President.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Madam President, I've been in this chamber long enough to remember in the early years of my days here when we did not have the ability to do extenders, every state employee felt the pain every bit as much as we do. And I think that increased the lobbying on individual legislators. And it certainly had an impact on the Assembly.

The problem today doesn't lie with the Senate. We're prepared to pass a budget. We've had a number of responsible proposals. We also have a reform commitment that would have a contingency budget in place.

And yet the Assembly balks at that. And some Assembly members will even be so bold as to say to us directly, and sometimes publicly, that they look forward to the April 1st deadline because they know that we will feel the heat. Most of us who are

upstaters are much more subject to public scrutiny than are our Assembly counterparts, who come largely from New York City.

So this has become a real Hobbesian choice. Do we vote for it? Do we extend the budget and postpone the ultimate day of reckoning and allow another house to bargain and increasingly change the line over which we are negotiating?

I will vote for this extender today. But I am of the opinion that we need to start looking at new ways that we can put the pressure not on this house but on the Assembly, where their laxness in feeling the deadline responsibility that the Senate feels is the greatest single cause for a late budget in New York State right now.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 21. 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 1064 are Senators Breslin, Dilán, Duane, L. Krueger, Montgomery, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 44. Nays, 10.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you.

I believe a number of Senators wish to change their votes, so if you could recognize them.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, I was out of the chamber, and I wish to be recorded in the negative on Calendar 843, Senate 327.

THE PRESIDENT: Without objection, you will be so recorded as voting in the negative.

SENATOR STAVISKY: Thank you.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you. I'd

like unanimous consent to be recorded in the negative on Calendar Number 843.

THE PRESIDENT: You will be so recorded as voting in the negative.

Senator Andrews.

SENATOR ANDREWS: Yes, Madam President, I'd like to be recorded in the negative on Calendar 843.

THE PRESIDENT: You will be so recorded as voting in the negative.

Senator Skelos.

SENATOR SKELOS: 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, I move we adjourn until Tuesday, May 18th, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, May 18th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:28 a.m., the

Senate adjourned.)