NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

July 22, 2004

1:20 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will please come to order.

Senator Bruno.

SENATOR BRUNO: Can we do the Pledge of Allegiance, say a prayer, bless everyone in the chamber, Mr. President.

ACTING PRESIDENT MEIER: Certainly.

Please join me in the Pledge of Allegiance.

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

ACTING PRESIDENT MEIER: In the absence of clergy, may we bow our heads in a moment of silence.

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, July 21, the Senate met pursuant to adjournment. The Journal of Tuesday, July 20, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: 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 Bruno.

SENATOR BRUNO: Mr. President, I ask for an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Rules Committee in the Majority Conference Room.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

On behalf of Senator Nozzolio, I wish to call up Bill Print Number 7417, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1558, by Senator Nozzolio, Senate Print 7417, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Mr. President, we recommit the bill.

ACTING PRESIDENT MEIER: So ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we return to reports of standing committees.

I believe there's a report from the

Rules Committee. I ask that it be read at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 7683, by the Senate Committee on Rules, an act to amend the Real Property Tax Law and the Tax Law;

And Senate Print 7687, by the Senate Committee on Rules, an act to amend Chapter 405 of the Laws of 1999.

Both bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: I would move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: All those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those

opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

All bills directly to third reading.

Senator Bruno.

SENATOR BRUNO: Can we at this time take up Calendar Number 1887.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1887.

THE SECRETARY: Calendar Number 1887, by the Senate Committee on Rules, Senate Print Number 7683, an act to amend the Real Property Tax Law and the Tax Law.

SENATOR HASSELL-THOMPSON: Explanation.

SENATOR BRUNO: Is there a message of necessity from the Governor?

ACTING PRESIDENT MEIER: There is a message at the desk, yes.

SENATOR BRUNO: I would move that we accept that message.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of

necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MEIER: The message is accepted.

The bill is before the house.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT MEIER: Senator Bruno, an explanation has been requested of the bill.

SENATOR BRUNO: Thank you, Mr. President.

I'm going to be very short, very direct. This is a tax refund piece of legislation. It refunds $990 million to the taxpayers of this state, ultimately, over the next several years. And there's a description of the schedule in the bill.

Part of what we are doing here with this rebate, the Council and the Mayor have proposed a $400, approximately, rebate to the people of New York City. That is part of the

legislation that's before us on the floor.

Now, I listened with great interest either here or on the monitor as some people commented on when you cut taxes, the loss of revenue, and why don't we not cut taxes and get the revenue and support education and other things that way.

Well, that's an opinion. And it's a lot of people's opinion. But I would humbly submit it's the wrong opinion. Because I mentioned earlier that New York State residents are still the highest taxed per capita, because of local taxes and school taxes, now -- not state taxes -- in the whole country.

What does that mean? That means when other states have lower rates and businesspeople make business decisions, they take a look at their bottom line. And I talked this week with companies making decisions, and they look at the bottom line.

And if their employees and their profits are greater in Texas, in Carolina, in Virginia, in any other state other than New York, many of them -- in Connecticut --

make decisions to go there, costing people jobs, costing potential jobs. That's why our children and grandchildren are working in California and Texas, because companies see fit to grow there, locate there -- Atlanta, Georgia -- and expand there.

So when we talk about tax cuts, the proper way to expand the revenue base -- and unlike the federal government, we don't print money. We do not manufacture or print money. We have to get our revenue from companies that are prosperous and making profits, people that are employed, and they pay taxes. Sales taxes, when people go out and earn money. They're not buying things unless they're earning. Fees. That's where our revenue comes from.

So if we are more competitive with other countries -- we're in a global economy -- other states, we expand our revenue base. Because companies locate here, they grow here, they expand here, they make more money here, they pay more taxes, they hire more employees who pay taxes, they go out and stimulate the economy. Now, I didn't invent

this. That's a fact.

So this tax rebate package is part of helping New York State stay competitive, grow our economy. Nothing sadder than someone who can't get a job here. Either when they're out of college, out of school, just looking for a job. Nothing sadder than that.

So we're trying to do what we can to make New York State competitive, help people stay in their homes, be comfortable, have more spendable income. And people know how to spend their money in most cases better than the state knows how to spend it, or a municipality knows how to spend it, because they earn it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

If the sponsor would please yield for a question.

SENATOR BRUNO: I think Senator Balboni is fairly well versed in the subject, and I would like to defer to Senator Balboni.

SENATOR LIZ KRUEGER: Certainly.

SENATOR BRUNO: Thank you, Senator.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield for a question from Senator Krueger?

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni, nice to see you here today.

SENATOR BALBONI: Nice to be here.

ACTING PRESIDENT MEIER: Senator Krueger.

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

The memo attached to the bill describes that this program, the STAR section specifically, is designed to offset the effects of inflation on the original STAR program and replace regressive school property taxes with state broad-based tax revenue.

What broad-based tax revenue are we going to be increasing to replace that lost $990 million of what I would agree, property

taxes tend to be regressive taxes?

SENATOR BALBONI: Mr. President, as a part of the CFE discussion, there was a great deal of fiscal forecasting as to the growth of the economy of the State of New York within the next five years.

This particular proposal will result in a savings of almost a billion dollars when fully funded over five years. Within that time, it is estimated that the economic growth of the state will provide more than enough revenue when combined with, of course, responsible, perhaps not as favored tax revenue streams, such as VLTs, for other proposals like CFE.

So what we're really looking for is the growth numbers to provide for additional revenues that will offset any costs that might have to be used for this type of tax cut.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, if the sponsor's representative would continue to yield.

ACTING PRESIDENT MEIER: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes.

ACTING PRESIDENT MEIER: Senator Balboni yields.

SENATOR LIZ KRUEGER: Thank you.

The STAR section of the bill is in fact a state tax bill, and is the state making this decision for the state.

The New York City primary residents' property tax rebate section, and the New York City earned income tax credit section, are actually not state budget bills or state tax bills but, rather, the City of New York asking, as a local initiative, through a home-rule model, for the right to do this themselves.

And in fact, Senator Golden carries those two sections of this bill in another bill, 7606.

Why did we merge a state tax issue with two issues that were local issues and would, I would argue, more appropriately be treated separately in a separate bill which we have already?

SENATOR BALBONI: Mr. President, through you, as my colleague will notice, the sections of the bill that are amended are in

fact different and retain their original placement in the law.

Therefore, the fact that these amendments are considered within this particular package has no consequence as to their viability within the existing legal framework.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Well, it's true legally you can do it all as one omnibus bill, or you could keep it separate. Which would be, in fact, my preference.

Because as I stated in a debate with Senator Flanagan yesterday, I believe and respect the concept of home-rule requests when the decision is made by the locality and the impact would in fact be upon the locality rather than the rest of the State of New York.

And while I had problems with his bill yesterday, I ultimately voted for it because of my respect for the home-rule process.

This bill, because it merges two New York City home-rule issues with a larger state tax-cut decision, leaves me in the predicament of it's not a clear-cut case here.

You could support your locality's desires for home rule on two of the three sections of this bill that would only impact New York City and in fact be paid for by New York City, and then choose to have to vote for a section of the bill you're not comfortable with, or vote against the entire bill, even though it's three different issues.

And so I find myself in the predicament where I cannot vote for this bill because I cannot support a STAR rebate program at this point in time.

I appreciate Senator Balboni's statement that perhaps through natural growth we will make up for the lost revenue through this program. But our projections for the outyears on not only our budget deficit situation and the new increased costs for education -- because, while we spent much of the day on a CFE bill, it's not what will be the end of the story involving education

funds, and we will have greater costs for the State of New York to meet the obligations of that court decision than what we dealt with today. So even if he was correct on natural growth would absorb $200 million a year, that's not what we're going to be facing.

So I cannot support this bill, because I cannot support a STAR rebate program expansion at this time. I don't think we've done nearly enough analysis of our tax revenue picture and expenditures over the next five years. And I think it would be, frankly, irresponsible for us to be voting tax cuts at this point in time without explaining how we're going to pay for the things we need to pay for.

I wish that I could, in fact, support my city's desire through home rule to have the primary residents' property tax rebate passed, and the earned income tax credit -- although, for the record, I don't support the property tax rebate.

I also think the City of New York is facing serious deficits in the outyears. There were newspaper stories throughout

New York today on just that issue, that New York City is still facing serious fiscal problems in its outyears. And I don't think that they should be rebating their property taxes either, although they've requested to do so. And again, on the theory of home rule generally, I would like to agree with them om that.

So I have to say that I will vote no. I hope my colleagues will consider that issue as well.

And finally, just in response to the opening explanation of the bill, while I do understand the issues of sometimes you make decisions to do tax credits and tax reductions to help expand your economy, and certainly we are all concerned about making sure that our businesses stay here in New York and stay healthy, and that our young people can return to the state that they grew up in and raise families here, just for the record, the STAR program is specifically a program of tax rebates for senior citizens. So I'm not sure that argument applied in the case of this piece of legislation.

So I'll be voting no and ask my colleagues to consider doing the same.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Padavan.

SENATOR PADAVAN: Will Senator Krueger yield to a question.

ACTING PRESIDENT MEIER: Senator Krueger, do you yield for a question?

SENATOR LIZ KRUEGER: Yes, I will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PADAVAN: Senator, as you probably are aware -- but many of the other members here are not, because they're outside the City of New York -- as a result of a maximum allowed assessment increase of 6 percent and two rate increases within a matter of months apart, the total property tax increase to the average homeowner in the City of New York in my district and elsewhere was over 26 percent.

Now, the Mayor, calculating what these revenues would produce, wanted to

balance a budget. He determined that a portion of it could be returned, because it was not a sum of money they needed. The City Council agreed.

Now, can you explain to me, in view of that, why you feel that you do not want to return the small part of that overall tax increase to those property taxpayers in the City of New York?

SENATOR LIZ KRUEGER: Certainly.

As I mentioned, if that section was a freestanding bill or attached to the earned income tax credit request of the city, as it is in Senator Golden's S7606, I would vote for the bill out of respect for the home-rule decision of my city. Although, as I said and will say again, I still don't think that that is the wisest fiscal policy for the City of New York to take.

I am very familiar with the issue. I am, in fact, a co-op owner myself. So I suppose I am voting against my own tax cut when I say that I don't support this, because it's one-, two- and three-family-home owners who will receive the rebate, and condo and

cooperative owners who would receive the rebate.

Several problems with the rebate proposal, in my opinion. One, those taxes were increased for both renters and for owners, but this rebate proposal would only address returning the money to owners, not renters. So I think there's an inequity in the structure of the rebate.

Two, the City of New York, as you correctly explained, increased their property tax because they needed the money. And as I just said stated earlier, property taxes are regressive taxes. They are the taxes I like least.

But because property taxes, you know, are the only tax the City of New York can basically authorize for itself without state approval, and the state consistently, and this house, as well, consistently rejects the City of New York's request to change other taxes that are less regressive, they find themselves stuck with having to increase the property tax.

Not the right model to a fair

distribution of taxation, but unfortunately for the City of New York, our city, often the only model we, the state, allow them.

Again, they made that decision because of the need for money and the limitations from the state of other alternative tax options that they proposed but were rejected from pursuing.

But we know today, as we knew a year or so ago when this was first approved, that the City of New York's finances for the outyears are still seriously in deficit. In fact, the Financial Control Board has sent out warnings they might need to step in if the city doesn't address its outyear budget deficits.

So I suppose my response to your question is also a question: Is it really wise fiscal policy for the City of New York to put itself in a position where perhaps a year from now, again, they have to turn to the same population and say, Now we're going to raise you back again or even raise you more -- when they knew today, as of this day in July, that they are in a fiscal crisis for the outyears

from a budget perspective and don't have the answers for how they will balance the budget in future years?

But again, if they were separate, freestanding bills, I would, in respect to home rule, vote for them. But in tandem with the STAR expansion, which I don't believe we can justify at the state level, I will be voting against the bill.

Thank you. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 3. Those recorded in the negative are Senators Duane, L. Krueger, and Montgomery.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President,

can we take up Calendar Number 1888.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1888, Senator Bruno moves to discharge, from the Committee on Rules, Assembly Bill Number 11761 and substitute it for the identical Senate Bill Number 7687, Third Reading Calendar 1888.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1888, by the Assembly Committee on Rules, Assembly Print Number 11761, an act to amend Chapter 405 of the Laws of 1999.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR BRUNO: I would move that we accept the message.

ACTING PRESIDENT MEIER: All

those in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MEIER: The message is accepted.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Is there any housekeeping at the desk? Oh, you haven't -- I'm sorry.

ACTING PRESIDENT MEIER: Just a second, Senator. Sorry.

SENATOR BRUNO: I'm just looking for housekeeping.

ACTING PRESIDENT MEIER: The Secretary will conclude the roll.

THE SECRETARY: Ayes, 53. Nays, 2. Senators Duane and Padavan recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, is there anything else that we have to do that's at the front desk while we're here in session?

ACTING PRESIDENT MEIER: That's it, Senator.

SENATOR BRUNO: There being no further business to come before the Senate, I would move that we stand adjourned, subject to the call of the Majority Leader, with the expectation, if we're not called back before, that we would expect to be here on August 2nd, in session -- that's a Monday -- at 3:00 p.m., intervening days to be legislative days.

Thank you all. And thank you, Mr. President.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned, subject to the call of the Majority Leader. Intervening days will be legislative days.

(Whereupon, at 1:45 p.m., the Senate adjourned.)