NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 25, 2005

11:14 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: With us this morning to give the invocation is Reverend Ken Lombardo, associate pastor at Resurrection Life Church in Cheektowaga.

REVEREND LOMBARDO: Can we please bow our heads.

Father, we come to You in the name of Jesus and want to thank You for this awesome country that You have blessed us with. We thank You for this fine state of New York. And we thank You for each legislator that's represented here today.

Lord, we ask that they would seek Your wisdom and Your guidance on decisions to be made regarding the State of New York. We pray that discretion will guard them in all their ways.

Lord, we pray for Your hand to continue to bless this state in the advancement and the economic development of New York. We also pray, Lord, that the prevalent needs of the needy will be satisfied throughout our state.

We pray, Lord, for Your continued hand of protection to watch over our state, that Your hand would watch us and keep us safe.

And we especially thank You for our military that has been so faithful in sacrificing their lives, laying their lives down so that we can experience freedom, independence and liberty.

Lord, we pray that You would keep them safe, that You would watch over them, that You would meet every need that they have, that You would help them to fulfill their mission and bring them home safe.

We ask now, Lord, that You would just bless this session, that you would cause it to be productive, and that much would be accomplished.

We ask this in Jesus' name. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, January 24, the Senate met pursuant to adjournment. The Journal of Friday, January 21, 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.

The Secretary will read.

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

Senate Print 85, by Senator Skelos, an act to amend the Limited Liability Company Law and the Partnership Law;

215A, by Senator Volker, an act to amend the Tax Law;

216A, by Senator Volker, an act to amend the Tax Law;

And Senate Print 752, by Senator McGee, an act to amend the Tax Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills directed to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, I move that we adopt the Resolution Calendar, with the exception of Resolution 199.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 199, 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, if we could take up Resolution Number 199, by Senator Meier, have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Meier, Legislative Resolution Number 199, celebrating the first annual Susan B. Anthony Day of Commemoration in the State of New York on February 15, 2005.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Would you please take up Calendar Number 6, Senate Print 216A.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: In relation to

Calendar Number 6, Senator Volker moves to discharge, from the Committee on Investigations, Assembly Bill Number 1500 and substitute it for the identical Senate Bill Number 216A, Third Reading Calendar 6.

THE PRESIDENT: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 6, by the Assembly Committee on Rules, Assembly Print Number 1500, an act to amend the Tax Law.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, this is an -- I think, given the nature of the situation under our new rules here, I would just like to explain quickly what this bill is.

This is an extender of the Erie County sales tax, which would make the Erie County sales tax 8 percent, or 8 and a quarter, because of our quarter, which we expect to let drop after the first of the year.

But this extender is the extender

relating to what I call a Rutkowski tax. There is another bill, which we do not have a home rule for, which is the Giambra tax, we call it, which is the request for another 1 percent.

This bill does not have any sharing in it, which I think Senator Brown has a problem with. The next bill does, the other bill, which will not move today because it does not have a home rule.

The problem is if we don't do this bill -- and what we're doing here today is enabling the Erie County Legislature to do the 1 percent. If we don't do it, there will be a huge hole in the Erie County budget. I don't have to explain it to everybody.

So that's what this bill is. We are not doing a tax. This is an enabling legislation. The tax will actually be done by the Erie County Legislature. And we do have a home rule with 10 votes, which is two-thirds of the Erie County Legislature.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Madam

President, if Senator Volker would yield for a question.

SENATOR VOLKER: Yeah, I can. Okay. Sure.

THE PRESIDENT: This is the noncontroversial calendar, Senator.

SENATOR STACHOWSKI: Oh, I thought we were -- can we lay this aside to the controversial, because I have a couple of questions.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Lay the bill aside.

And if we could then go to the controversial calendar.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: Then if we could ring the bells and go to the controversial calendar.

THE PRESIDENT: The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number

6, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 1500, an act to amend the Tax Law.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Madam President, if Senator Volker would yield for a question.

THE PRESIDENT: Senator Volker, do you yield for a question?

SENATOR VOLKER: Certainly.

THE PRESIDENT: Proceed, Senator Stachowski.

SENATOR STACHOWSKI: Senator Volker, every year for years the conversation in Western New York and Erie County in particular has been, you know, why don't you change the makeup of this 1 percent of the sales tax. And the standard reason for always doing it on noncontroversial calendar was because the Erie County budget was done.

But from everything I've seen in the papers and -- it still isn't done. So if ever there would be a time to discuss this 1 percent, even before we ever get to the

additional 1 percent, you know, the easy way for a county executive to balance his budget without ever having to raise property taxes or do any hard choices and still keep all your friends on, this would be it. This would be our chance to discuss that and see if that's a better way of doing government or sharing with everybody else and making them more stable.

And maybe someday when we think of our option, instead of a Buffalo-Erie County merger that we've all been reading about, we could maybe go back to a system that worked successfully, the old board of supervisors, which would save an awful lot of money. Because then the board of supervisors would be doing the meeting and they would be agreeing on what should be done in a municipal agreement kind of way, and we wouldn't have to worry about creating new municipal zones, et cetera.

So wouldn't this properly be the time to maybe discuss this 1 percent? Albeit I know that in reality this would really put him in a head-scratching mode. But with his background as the City of Buffalo comptroller,

I would think that if anyone is capable of finding a way out without losing any of his friends, he might be able to do it.

SENATOR VOLKER: That's a lot to answer, Senator.

I do have to admit to you that it is a rather odd situation. Technically, the budget is passed in Erie County, although it is being challenged, if I understand. The county legislature has not been able to get the 10 votes to do the next sales tax.

It is true that the county real property tax is 30 percent below what it was six years ago, which is not well known, I think, in Erie County. But there has not been an increase in the Erie County real property tax in many years.

But I think the problem is if we don't do this 1 percent here -- which, by the way, there's already a home-rule message for -- we put the county in a position where they would automatically be in a default situation. And quite frankly, as I've mentioned, possibly in a control board situation. Because there's really, at this

point in January, not a great deal, I suppose, that could be done. It would be awfully difficult.

Frankly, you talk about dysfunctional, unfortunately the county looks a little bit dysfunctional right now because here we are trying to patch holes in a budget. But I think the problem really is if we don't do this, they are in a total disaster situation. So I would ask that we give them the authority.

And by the way, they could do -- could technically do something else, I suppose, than this, although we don't seem to have enough votes to do anything else.

SENATOR STACHOWSKI: Madam President, if the Senator would yield for one more question.

THE PRESIDENT: Senator Volker, will you wield to another question?

SENATOR VOLKER: Certainly.

THE PRESIDENT: You may proceed, Senator Stachowski.

SENATOR STACHOWSKI: Senator -- and at the risk of being not germane, because

I want to ask you a question on the second bill that we're not doing today. But it will enable me with a clear conscience to support this, because I hate to put him in a bigger hole than he already has.

Isn't it true that the bill we have at their request for 1 percent and has taken well over a -- this is a couple of months late now, isn't it true that that might not even be the bill that they may request? Because they're now talking about 3/4 of a percent instead of a 1 percent, and then not giving aid to the localities but yet to get some of the votes he's going to still have to give aid to the localities, et cetera.

So don't we -- I mean, for that reason alone, I will probably vote for this. But isn't it true that they don't even know if they want 1 percent or .75 percent?

SENATOR VOLKER: That is true. Although, you know, I believe -- and I may be wrong on this, but I think that if they wanted to do .75 or whatever it is, three quarters, I don't think they would actually need another bill. Because this enables them to enact 1

percent. But -- my counsel says they would need another bill. I'm not so sure about that.

It's never happened before. But think about it. If we have a bill that says you can add 1 percent and they pass a resolution that says three-quarters of that, we probably would have to reaffirm it, maybe. But they probably could do it.

But you're right, they're now arguing again over whether it should be less than the 1 percent.

The other bill, as you know, has a sharing provision in it which was agreed to by the county legislature when they passed it initially.

SENATOR STACHOWSKI: I'm sorry, Madam President, I actually have one -- absolutely one last question.

THE PRESIDENT: Senator Volker, will you yield for one last question?

SENATOR VOLKER: I certainly will.

THE PRESIDENT: You may proceed, Senator.

SENATOR STACHOWSKI: Senator, while you spoke you triggered something else in my mind.

Do you think any of the money from this extra 1 percent is the county money that our county executive used to put on commercials bashing all of state government for their ineffectiveness and their not able to do anything about Medicaid and it's because of their ineffectiveness?

And this is now a bill that -- this is now a budget that's not really settled that was due on November 1st, but we're -- do you think any of this money was used to pay for those TV commercials? Because we do know he used taxpayers' money.

SENATOR VOLKER: No, actually, the TV commercials, as I understand it, were monies that he -- were from his campaign fund. And I think the only money I know of that was county money was the money that was used to send around slingers and so forth claiming that with the extra penny it would take care of Medicaid.

There was no television or anything

of that nature. That came, I think, out of his campaign fund and from some money that was raised from the business community in Buffalo, from what I understand.

SENATOR STACHOWSKI: Thank you.

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

Senator Brown.

SENATOR BROWN: Thank you, Madam President.

On the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR BROWN: I'm going to be voting against this increase in the Erie County sales tax, this additional 1 percent from 7 percent to 8 percent.

I've voted against increasing the Erie County sales tax in the past. And the reason I have voted against it is because this additional 1 percent is not shared with the City of Buffalo. The City of Buffalo, the second-largest city in the State of New York, the largest municipality in Erie County, the City of Buffalo is still roughly a third of

the county population.

And when I look at the sales-tax sharing in Monroe County with the City of Rochester and I look at the sales-tax sharing in Onondaga County with the City of Syracuse, both of those counties share more of their sales tax with their largest municipalities, their largest cities. And those cities are not the percentage of those counties that the City of Buffalo is of Erie County.

So for that reason, I will be voting against this additional 1 percent tax.

Senator Stachowski and Senator Volker addressed the other bill that deals with yet an additional 1 percent tax in Erie County. That will raise our sales tax to 9 and a quarter percent, one of the highest sales taxes in the entire state.

And when that comes before us formally -- if it comes before us, if the executive and the legislature can get their acts together and it comes before us, I will be voting against that tax as well. Because even though there is some sharing of that additional 1 percent tax with the City of

Buffalo, I don't think the sharing is enough.

I think we have to look at supporting the second-largest municipality in our state with more resources. And the only growth tax in Erie County is the sales tax. And I think Erie County needs to do better by the City of Buffalo. So I will be voting against this additional 1 percent.

THE PRESIDENT: The debate is closed.

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 PRESIDENT: Senator Maziarz, to explain your vote.

SENATOR MAZIARZ: Thank you, Madam President.

Just very briefly, I am reluctantly voting in favor of this bill. Because to vote against this bill is really to vote to lay off hundreds of Erie County employees, which would be devastating to the County of Erie.

That's what you're doing when

you're voting against this bill, and that's why I'm reluctantly voting in favor of this legislation.

Thank you.

THE PRESIDENT: You will be so recorded as voting in the affirmative, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, this is our first vote on the controversial calendar.

We'll keep the roll call open, because I know that there are a number of members on both sides of the aisle that are at a Finance subcommittee meeting. They've been notified that we are on a controversial calendar vote, and they will be coming over shortly.

(Pause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, are we at that point of announcing the results?

THE PRESIDENT: The Secretary will announce the results.

(Pause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If you could announce the results.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 50. Nays, 1.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

THE PRESIDENT: No, Senator Skelos.

SENATOR SKELOS: Please recognize Senator Oppenheimer.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you very much.

I would like unanimous consent to be recorded in the affirmative on Calendar 6.

THE PRESIDENT: You are so recorded, Senator.

SENATOR OPPENHEIMER: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

THE PRESIDENT: No, Senator.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Monday, January 31st, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate now stands adjourned until Monday, January 31st, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:37 a.m., the Senate adjourned.)