NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 7, 2005

3:15 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 come to order.

May I ask everyone present to please rise and join me in the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: The invocation will be offered by the Reverend Peter G. Young.

REVEREND YOUNG: Thank you, Senator.

Dear Lord, we ask Your presence and Your blessings on this Senate chamber. We have come to express our concern about the welfare of our community and its constituents, to learn from each other, to grow in spirit and in character, to find Your will in our lives and in our neighborhoods.

We thank You for the opportunity in this Senate chamber to assemble ourselves at any time and in any place to discuss our concerns as citizens. We are mindful that many in our world do not enjoy such freedom.

Grant us the wisdom to carry out Your decisions within Your will, and bless us to continue to conduct our business with dignity and sensitivity to all.

Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 4, the Senate met pursuant to adjournment. The Journal of Thursday, March 3, 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.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, the Senate received a resolution from the Assembly advising the members of the Senate that the Senate and Assembly will meet at noon tomorrow in the Assembly chamber to elect Regents for the University of the State of New York, pursuant to Section 202 of the

Education Law.

ACTING PRESIDENT MEIER: Senator Schneiderman, I'm informed by the Secretary that we have received the communication and it is filed in the Journal Clerk's office.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator Schneiderman.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

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

ACTING PRESIDENT MEIER: The Secretary will conduct the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 49, by Senator Marcellino, Senate Print 769, an act to amend the General Business Law, in

relation to renewals.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41. Nays, 1. Senator Meier recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator DeFrancisco, Senate Print 2148, an act to amend the General Obligations Law, in relation to the statutory short form.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 86, by Senator Maziarz, Senate Print 977, an act to amend the Workers' Compensation Law, in relation to the direct deposit.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 94, by Senator Skelos, Senate Print 479, an act to amend the Penal Law, the Executive Law, and the Correction Law, in relation to prohibiting.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 95, by Senator Skelos, Senate Print 480, an act to amend the Penal Law, in relation to sexual assault against a child.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 98, by Senator Volker, Senate Print 878, an act to amend the Criminal Procedure Law, in relation to police officer statements.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. This act --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: The bill is laid aside.

THE SECRETARY: Calendar Number 100, by Senator Balboni, Senate Print 932, an act to amend the Penal Law, in relation to increasing the criminal penalties.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 103, by Senator Skelos, Senate Print 1170, an

act to amend the Criminal Procedure Law, in relation to the period of limitation.

ACTING PRESIDENT MEIER: 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.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator Rath, Senate Print 1513, an act to amend the Penal Law, in relation to endangering the welfare of a child.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 105, by Senator Rath, Senate Print 1517, an act to amend the Penal Law, in relation to establishing the crimes of attempting to lure or entice a child.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 107, by Senator Rath, Senate Print 1521, an act to amend the Penal Law, in relation to assaults committed in the presence of certain children.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 107 are Senators Andrews, Hassell-Thompson, and Montgomery. Ayes, 47. Nays, 3.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 108, by Senator Robach, Senate Print 1619, an act to amend the Penal Law, in relation to consecutive sentences.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 125, by Senator Maziarz, Senate Print 1136, an act to amend the Public Authorities Law, in relation to the allocation of replacement power.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Thank you very much, Mr. President.

This is an extremely important bill for economic development in all of Western New York. There are approximately 44 companies located in Niagara and Erie counties which employ in excess of 24,000 manufacturing employees.

I just want to publicly acknowledge

the work that Senator Volker, Senator Rath, my colleagues from Western New York -- Senator Stachowski -- have done on this bill.

But I especially want to thank the chairman of the Senate Energy Committee, who did an excellent job in shepherding this bill through the Energy Committee and educating us a whole lot about the replacement power process. And it could not have been done without the good work of Senator Wright.

And Senator Spano, from Westchester County, played a very important role in making sure that this bill got to the floor today too.

Thank you, Mr. President. I vote aye.

ACTING PRESIDENT MEIER: Senator Maziarz will be recorded in the affirmative.

Senator Rath, to explain her vote.

SENATOR RATH: To explain my vote.

For those who might wonder what replacement power is, if you can imagine a powerhouse of a power project sliding down into the Niagara Gorge a number of years ago,

and the power that was lost to the companies that used that in order to be competitive. Because, after all, they were right there at the seat and the heart of where power was generated in New York State in those days.

And so replacement power became an item that was given to the companies who had power when the Schoellkopf plant slipped into the Niagara Gorge. And so that has been an extraordinarily important part of the business plan of many companies in Western New York.

And thanks to everyone who made this a reality and made it happen, because there are a lot of people who will continue to work because companies will make decisions to expand, they will make decisions to move on and do more with their business plans as a result of maintaining this replacement power, which they've had almost since time immemorial, since that first Schoellkopf plant was built.

And the rates have gone up, but they have always been favorable to the companies who were the first companies on the Niagara Frontier who believed in this new

gimmick called electricity and put it into their buildings.

Thank you.

ACTING PRESIDENT MEIER: Senator Rath will be recorded in the affirmative.

Senator Volker, to explain his vote.

SENATOR VOLKER: Briefly, Mr. President.

I took a pretty severe beating on this bill at one point. And I want to thank Senator Maziarz, who did an excellent job with this bill. And I want to also thank Senator Wright, who worked very hard to make this a reality.

And also, in an attempt -- and by the way, this has always been the law. It is under the federal charter. It dates back to -- John Daly and myself worked on this many, many years ago, the late Senator John Daly.

The problem back in Buffalo was that they didn't really understand what this was completely all about. And they also didn't realize that there's another 146

megawatts of power that has disappeared from Western New York because a number of plants have left the area.

They all, by the way, left in the -- before the last ten years, contrary to people's feeling lately. We haven't been losing plants, thank God.

But I want to thank Senator Maziarz and Senator Wright for what they have done. And we still hope -- this bill we expect to pass the Assembly, and we also expect the next bill that was sponsored by Senator Wright, relating to the North Country, to also pass the Assembly.

I vote aye.

ACTING PRESIDENT MEIER: Senator Volker will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 126, by Senator Wright, Senate Print 1393, an act to amend the Public Authorities Law, in relation to the allocation of preservation

power.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the noncontroversial -- oh, I'm sorry.

Senator Wright.

SENATOR WRIGHT: To explain my vote on the bill we just passed.

ACTING PRESIDENT MEIER: Without objection. Senator Wright, to explain his vote.

SENATOR WRIGHT: Let me first say that I'm very pleased that we were able to pass both pieces of legislation this afternoon.

As you all recognize, it was last session that we passed a combined bill that

had both provisions for Western and Northern New York together. And that, unfortunately, was not taken up by the Assembly. And they said to us: We want separate bills.

So we have worked cooperatively with Senator Volker, Senator Maziarz, Senator Spano, and of course Senator Bruno, who shepherded both bills through this house so that we are in a position to deliver what the Assembly indicated they were seeking, and that was to provide parity, fairness and equity to both Western and Northern New York, which are homes to the largest generating hydrofacilities in the state.

They have paid the cost over the years in terms of lost property, lost taxes. And they're entitled to the energy, they're entitled to the jobs that you have put in statute.

Thank you very much.

ACTING PRESIDENT MEIER: Senator Wright is recorded in the affirmative, and the bill is passed.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: To explain

my vote.

ACTING PRESIDENT MEIER: Without objection. Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I appreciate the effort that has gone into these bills. I would like to note that energy costs are a major impediment to economic growth throughout New York State and that the Governor's proposed budget allocates only $75 million for a one-year extension of the Power for Jobs program.

I hope that we will -- and there have been meetings and proposed legislation in the past in this house and in the Assembly. But I hope this year we will take the opportunity to provide something other than uncertain one-year funding for piecemeal programs, and not simply limit our energy cost reduction efforts to certain geographic areas.

I think that the effort that has gone into these bills demonstrates how difficult it is even to operate on a piecemeal basis. But throughout Central New York,

throughout the suburbs of New York City there is a need for low-cost power. And the best way to address that is with a comprehensive set of programs particularly focusing on the Power for Jobs program.

I hope we will be able to do better than the Governor's proposal for a $75 million one-year shot in that critical program in this year's budget.

Thank you, Mr. President. I vote in the affirmative. And I hope we will have more bills like this to deal with as the session comes along.

ACTING PRESIDENT MEIER: Senator Schneiderman votes in the affirmative, and the bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President. If we could go to the controversial reading at this time.

ACTING PRESIDENT MEIER: The Secretary will conduct the controversial reading of the calendar.

THE SECRETARY: Calendar Number

98, by Senator Volker, Senate Print 878, an act to amend the Criminal Procedure Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Mr. President, this is a bill that passed last year and received some questioning.

What this bill does, very quickly, is to allow the testimony of a police officer which was taken under oath to be admitted in a grand jury proceeding as long as there is an affidavit in relation to it.

And I might add that there are certain restrictions. If there was an adversarial examination of such officer previously conducted in regard to this offense, a transcript of that examination must be submitted.

And I pointed out last year that if the -- in the interests of justice, of course, any judge can order a person brought before the grand jury. The idea of this is to try to avoid unnecessary expense.

The second thing is, and probably the most important -- because I think most of the time the law enforcement officer will probably testify before the grand jury anyways -- is in relation to business records. And that's where the big savings is.

A lot of law enforcement officers are asked to come in and confirm business records. And I did that myself many years ago. You bring in a -- for instance, a -- I'm trying to think of something you bring in. A copy of an accident report. Or there's a whole series of things that you might bring in.

In this case, instead of doing that, you can give an affidavit, a sworn affidavit, relating to your connection with whatever that document is and whatever that accident report or whatever it is.

Savings on this could be very substantial.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

Would the sponsor yield for one brief question.

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

The Senator yields.

SENATOR SCHNEIDERMAN: What is the estimated cost saving from the portion of this bill that would eliminate the need in, as you pointed out, in some cases for police officers to testify as live witnesses in a grand jury?

SENATOR VOLKER: The State Police estimates $150,000.

I think they're awfully conservative. I would probably say close to a million dollars in total. Because this is not just State Police officers, this is for law enforcement officers.

I would have to say that the overtime amounts -- and some police officers, by the way, are not particularly happy with this legislation, because obviously they make quite a bit of money in overtime costs and so forth.

And in some of the cities, two cities in particular that I'm aware of, this could save two cities in particular a lot of money. Because the grand jury proceedings are blocked up a lot by law enforcement officers that are brought in to testify.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Mr. President, on the bill.

I agree with Senator Volker's point about the business records issue. I do think that it is something that really is a pro forma part of testimony in front of a grand jury or at a full trial. That's a commonsense proposal that would save money in the state.

However, I cannot bring myself to vote for this bill because of the second provision. And this was discussed in the debate last year, and I think this is tremendously important.

It is not -- we should be very, very cautious about proposals to save relatively small amounts of money in the context of the state budget by reducing the due process protections for the citizens of

this state.

And I think that the grand juries are the creatures of prosecutors already. You know, the expression that you can get a grand jury to indict a ham sandwich if you want to is not that far off. I've been a witness in grand jury proceedings, and it is something where the prosecutor controls the flow. They move it along very quickly, usually.

The one thing that in my mind is the most critical thing that the grand jurors actually bring to the process is their ability to evaluate the credibility of witnesses. Grand jurors do have the power to ask questions of witnesses or to discuss the testimony of witnesses.

And I think that for us to have a one-sided fix with the goal of saving $150,000 or $250,000 or $300,000 in a $105 billion state budget I think is tremendously shortsighted. In a democracy that provides for due process of law, we should be very cautious about trying to save money by reducing the ability of grand jurors to assess the credibility of a witness.

If a police officer wants to come in in a controversial case seeking an indictment of a defendant, one of the things that in my mind is most critical is to allow a jury and allow a grand jury to assess the credibility of that witness.

This would allow a prosecutor to make a determination: You know, I don't think that police officer makes a very good witness. He looks like he's nervous, he's lying. I'm going to try and cross every T and dot every I under this provision to keep him out. But if I do have a police officer as a witness I think is going to make a good witness, I'm going to use him.

It puts too much power in the hands of prosecutors. It is too quick a fix of a problem that I don't think is really an enormous problem. We're going to be debating on Wednesday a death penalty statute that costs hundreds of millions of dollars for us to try to move forward a procedure that has resulted thus far in massive expense and actually no executions of anyone.

To save $150,000, $200,000,

$250,000, even a million dollars by removing the due process protection of allowing grand jurors to assess the credibility of a police witness I think is a mistake.

I'm going to vote no, and I encourage everyone to vote no. I hope we can separate out the first portion of this bill, because I do think that's something that would have substantial support everywhere, in this house and in the other house. But until we do that, Mr. President, I will be voting no.

Thank you.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard?

Debate is closed, then.

The Secretary will sound the bells, please.

(Pause in proceedings.)

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I'm going to vote no on this bill, largely for the reasons that Senator Schneiderman mentioned.

It's one thing to put in business records, but it's another thing, especially -- any witness, whether it's a police officer or not, when in restricting the time that an affidavit could be presented to when the officer actually knows these things from personal knowledge or witnessed the occurrence. What more important witness would there be?

And I just think that if this is allowed, then there's really no purpose for the grand jury. And maybe we should, if we want to save money, start thinking about abolishing the grand jury, because otherwise it will have no real purpose if we start allowing witnesses to testify, in quotes, by affidavit.

I vote no.

ACTING PRESIDENT MEIER: Senator

DeFrancisco will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 98 are Senators Andrews, Breslin, DeFrancisco, Diaz, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Paterson, Savino, Schneiderman, and A. Smith.

Ayes, 43. Nays, 12.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Yes, we do have a motion, Senator.

Senator Fuschillo.

SENATOR FUSCHILLO: On behalf of Senator Saland --

ACTING PRESIDENT MEIER: Just a second, Senator.

Can we have some order in the chamber.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you,

Mr. President.

On behalf of Senator Saland, on page number 16 I offer the following amendments to Calendar Number 133, Senate Print Number 478, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bill will retain its place on the order of third reading.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Had I been in the chamber when the Calendar Number 96 was voted by this body, I would have voted no. I believe it was voted on Wednesday.

ACTING PRESIDENT MEIER: The record will so reflect, Senator.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, March 8th, at 3:00 p.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, March the 8th, at 3:00 p.m.

(Whereupon, at 3:43 p.m., the Senate adjourned.)