NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 19, 2005

3:04 p.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 afternoon to give the invocation is Reverend Dr. George Miller, III, president of Davis College in Johnson City, New York.

REVEREND DR. MILLER: Thank you, Lieutenant Governor. It's a privilege to give this prayer.

Let us pray.

What a great thought that the awesome Creator God of the universe allows us to come before Him and call Him Father. May we each sense Your love today for us as individuals, and may we completely trust You.

God, the leaders before me today I thank You for, because they are gifts from You. I thank You for their willingness to serve the people of the State of New York.

These men and women are stewards of Your purposes and resources and human lives and history. You have chosen them for action, action that can make a great and beautiful difference in the lives of every individual in the State of New York.

May they each realize that they cannot lead alone but that they need each other and, most important, that they need a God who gives to them wisdom, guidance, courage.

God, You have said that if any of us lacks wisdom, let us ask of God who gives generously to all. I pray that the precious gift of wisdom be granted to these leaders to be able to apply relevant values to the decisions before them.

May Your spirit inform and encourage them. May they receive wisdom to chart correct courses to all their goals. Help them to be guided by truth.

In all our differences, give them shared reality and an accurate view of every issue in a way that will lead to consensus. Lead this body of men and women to the

decisions that will lead to greatness.

God, accept our thanks today for allowing us to live in such a great country, the United States of America. We thank You for the freedoms that we enjoy every day. May we never take them for granted.

In this great land we are in, we realize that we are experiencing some disappointments and confusions and fears. You are the God of hope; give us all hope. Guide our president, his cabinet, and these elected officials before me today. Protect our troops around the world, especially in Iraq, those defending our freedom around this world.

In conclusion, Lord, I ask that, as the Apostle Paul tells us to do good to everyone at every opportunity, may we each obey that command, realizing that that command alone would be a powerful step toward peace and prosperity.

I pray these things in the name of our great God and Savior Jesus Christ. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate,

Monday, April 18, the Senate met pursuant to adjournment. The Journal of Sunday, April 17, 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 Skelos.

SENATOR SKELOS: Madam President, I believe there are two substitutions to be made at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 10, Senator Nozzolio moves to discharge, from the Committee on Codes, Assembly Bill Number 605 and substitute it for the identical Senate

Bill Number 1268, Third Reading Calendar 154.

And on page 15, Senator Robach moves to discharge, from the Committee on Veterans, Homeland Security and Military Affairs, Assembly Bill Number 6356 and substitute it for the identical Senate Bill Number 1611, Third Reading Calendar 295.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a resolution at the desk, Number 1529, by Senators Meier and Nozzolio. Could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senators Meier and Nozzolio, Legislative Resolution Number 1529, calling upon the United States Department of the Interior to reject the application by the Oneida Indian Nation of New York to place lands in trust and to reject the application by the Cayuga Indian Nation of New York to place their real estate holdings

in trust or declared "restricted fee."

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

Some three weeks ago the United States Supreme Court handed down a decision, by a vote of 8 to 1, authored by Justice Ruth Bader Ginsburg. This was in a litigation between the City of Sherrill and the Oneida Indian Nation of New York.

The Oneida Indian Nation has for a number of years within the Central New York area carried on a practice of purchasing land and then unilaterally declaring the land to be sovereign Indian land, refusing to pay property taxes, refusing to collect taxes on their commercial transactions that they conduct on that land, refusing to respect local building, zoning and fire codes, creating disputes over who has lawful police power over that territory.

And to make a long story short, the United States Supreme Court, simply put, said that an Indian nation having long ago relinquished the reins of government cannot,

after the passage of decades -- in this case, some 200 years -- unilaterally reestablish sovereignty.

Just within the last few days, the Oneida Indian Nation of New York, having lost in the highest court of the land, has brought an application before the Secretary of the Interior to have 17,000 acres placed in trust with the Department of the Interior Bureau of Indian Affairs, which would have the effect, by administrative action, of accomplishing that which the United States Supreme Court said was unworkable, unjust, and impossible. Those are Justice Ginsburg's words.

What it created, really, that the Supreme Court -- what they seek to create, what the Supreme Court sought to avoid, is literally a patchwork, a checkerboard, if you will, of jurisdiction where one has a hard time figuring out from one parcel of land to the next who has the authority to tax, to regulate building, to regulate commerce, to regulate environmental concerns, you name it.

The argument of the Oneidas has been followed by at least one other tribe in

the country.

I hasten to add the Supreme Court did not extinguish, nor does this resolution attempt to extinguish, any lawful land claim that people might have resulting from ancient wrongs. But what it does do is attempt to make sure that we don't compound one wrong with yet another and another and another, by reversing the clear intent of the United States Supreme Court by administrative action.

This has come on rather quickly, and the federal law under which it is brought provides for a very narrow window of public comment.

This is a clear indication on the part of this body that what the United States Supreme Court has decided, after careful deliberation, should not be disposed of, disregarded, in effect overturned by a hastily drawn application filed in front of a federal administrative agency.

There is certainly an agreement to be reached here between the State of New York, its political subdivisions, and the Indian nations, but it should not be done

unilaterally by the actions of federal bureaucrats reacting within a narrow time frame set forth in federal law.

Thank you, Madam President.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President. On the resolution.

I rise to join my colleague Senator Meier in asking this body to enact this resolution to send a very clear signal to Washington that New York State and the New York State Senate does not approve of back-door sovereignty. That a bureaucrat to make a decision, in most cases behind closed doors, without the understanding of the extreme circumstances that exist -- we're talking about a very real life problem that affects literally tens of thousands of property owners in Central and Western New York.

The application of the Oneidas has seen the additional application of the Cayuga Indian Nation to place their real estate holdings in trust and ask the federal government for the same consideration that is

being asked in the Oneida case. The Cayuga Indians are suing for approximately 64,000 acres, impacting over 7,000 property owners in the central Finger Lakes.

The court, in Sherrill, clearly indicated the doctrines which the Cayuga Indians have been basing their case where, after rejecting and leaving and abandoning the property here in New York, after 200 years coming back and claiming this is now sovereign land of the Cayugas.

This type of application is one that should be knotted out, at the very least, in the court system and in the Legislature, not in the bureaucracy.

It impacts so many people. Imagine your home today, and your neighborhood, all of a sudden being part of an Indian reservation.

Or, in focus, putting a patchwork of sovereignty across the land that had always been -- or at least since the nation was founded -- New York State and the United States of America. Lands that would no longer be subject to the zoning codes, the environmental regulations, the taxation

questions that every other property in this state is to be considered and every other property of the state must comply with.

Back-door sovereignty is not the appropriate process. That this attempt disregards what the United States Supreme Court just ruled in the City of Sherrill. The collection of taxes from the Indian properties is fair, and it establishes a level playing field for all businesses. And we will continue to fight for that.

This resolution asks for the process to be opened, asks for our federal representatives, particularly our United States senators, to join us in opposing any efforts that seek to plant a tax-free reservation for the Cayuga Indian Nation. And that on that score, we're foursquare in support of all local officials in the region.

I appreciate this body considering this resolution. I thank Senator Meier for his role in its development. And I urge its passage.

Thank you, Madam President.

THE PRESIDENT: The question is

on the resolution. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

THE PRESIDENT: The resolution is adopted.

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 354, by Senator Golden, Senate Print 3374, an act to amend the Penal Law, in relation to concurrent and consecutive terms.

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, 51. Nays, 1. Senator Montgomery recorded in the

negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 355, by Senator Robach, Senate Print 3418, an act to amend the Criminal Procedure Law and the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 356, by Senator Libous, Senate Print 3420, an act to amend the Penal Law, in relation to vehicular assault.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 358, by Senator Trunzo, Senate Print 423, an act to amend the Vehicle and Traffic Law, in relation to speeding.

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 360, by Senator Trunzo, Senate Print 852, an act to amend the Vehicle and Traffic Law, in relation to aggressive driving.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 366, by Senator Spano, Senate Print 3416, an act to amend the Vehicle and Traffic Law, in relation to mandatory revocation.

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, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 367, by Senator Marcellino, Senate Print 3419, an act to amend the Vehicle and Traffic Law, in relation to suspended licenses.

THE PRESIDENT: 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, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 487, by Senator Saland, Senate Print 461, an act to grant Linda LaPierre retroactive membership.

THE PRESIDENT: 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, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator Seward, Senate Print 2466, an act authorizing the Village of Dryden to reinstate.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 491, by Senator Robach, Senate Print 3676, 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: Those recorded in the negative on Calendar Number 491 are Senators Bonacic, Hassell-Thompson and Little.

Ayes, 53. Nays, 3.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 494, by Senator Volker, Senate Print 989, an act to amend the Tax Law, in relation to authorizing the County of Wyoming.

THE PRESIDENT: There is a local fiscal impact note 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 PRESIDENT: Senator Breslin, to explain your vote.

SENATOR BRESLIN: Thank you, Madam President.

I stand and I applaud Senator Volker for listening to the wishes of Wyoming County to find new ways of revenue to support the ever-mounting cost of things like Medicaid.

I also have a bill for Albany County that's similar in nature. And the testy -- the sometimes testy Albany county

executive is really looking forward to the hopes that it might pass later in the session.

And I vote yes on this. Thank you.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 55. Nays, 1. Senator Valesky recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 495, by Senator Golden, Senate Print 1470, an act to amend Chapter 929 of the Laws of 1986.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

524, by Senator Meier, Senate Print 2441, an act to amend the Real Property Tax Law, in relation to providing a tax exception.

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 PRESIDENT: Senator Breslin, to explain your vote.

SENATOR BRESLIN: Thank you, Madam President.

Again I rise, to applaud Senator Meier for sponsoring this legislation. I have virtually identical legislation for Albany County which hopefully will be heard later this session.

Volunteer firefighters are such an important part of the fabric of our communities, and they save literally billions of dollars. But they're declining in numbers, and we have to provide incentives for them.

And this is a very good real property tax incentive. And I vote yes.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 577, by Senator Meier, Senate Print 4583, an act to amend Chapter 58 of the Laws of 2005 amending the Public Health 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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 578, by Senator Marcellino, Senate Print 4584 --

THE PRESIDENT: The Secretary

will continue to read.

THE SECRETARY: -- an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

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 PRESIDENT: Senator Marcellino, to explain your vote.

SENATOR MARCELLINO: Thank you, Madam President.

Today we are passing at this point a bill that is going to pass the Assembly and will be signed by the Governor into law.

This bill will eliminate a loophole in the law that actually encourages drivers who are driving drunk and incur an accident, severely injuring or killing another individual, from leaving the scene of the crime.

Right now it's in their best

interests to leave the scene and come back later. This bill closes that incentive and makes it even-steven and raises the penalties for leaving the scene and not taking care of that injured party.

There would be people around today if someone -- if these people would stop, take care of the injured party and deal with the legal ramifications afterward. But because of the current law's weakness, they don't. This bill fixes that. Hopefully it will discourage them from leaving the scene, save lives, and make our roadways safer for everyone.

I thank all my colleagues who voted for this piece of legislation, and I thank the members of the other house and Assemblyman Weisenberg for carrying the bill in the other house and passing that too.

Thank you.

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

Senator Golden, to explain your vote.

SENATOR GOLDEN: To explain my

vote, Madam President.

The bill that came out today that's being passed here today by Senator Marcellino and this conference sends a message across this state that it's long overdue that we take serious action against those that are committing crimes here in this great state.

We had a couple up here today from Brooklyn, New York. Their names are the Papandreas family. Two years ago -- I'm sorry, three years ago, in 2002, at Christmas season, walking across the street, a hit-and-run driver comes, kills this man at 10 o'clock in the morning, and leaves the scene. He returns to the scene, drives past it, never gets arrested.

A month later, the police department becomes informed and they arrest this man. And he serves four months in prison for killing that individual -- known to the police department for his speed, his reckless endangerment, his reckless handling of a vehicle, numerous summonses.

And today, this is a good sign by getting that bill passed, so we don't have to

see families across this state suffer like the Papandreas family suffered or Amy Plantz suffered from Albany County here.

There are 1,500 people killed in traffic accidents a year -- 1,500 people. If we could take those reckless drivers and those that drive while intox and those that drive under the influence of drugs, if we could take them off the street and save hundreds of lives a year and prevent these tragedies from happening to these families -- so we have to take this serious.

And hopefully we will get more of these bills passed in this conference and in the Assembly so that we can send a message and take this seriously.

We took homicide seriously. Twenty-four hundred homicides were committed in this state in 1993. We got serious in the City of New York and the State of New York, and we changed the entire makeup of the city and state in how we deal with crime.

We have to do the same thing today with this dangerous driving that's going on around the state. Make a difference. Make an

impact.

And I commend you, Senator Marcellino, and all of my colleagues on this bill today. And I vote yes.

Thank you.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the reading of the calendar.

SENATOR SKELOS: Madam President, if we could go back to motions and resolutions and adopt the Resolution Calendar, with the exception of Resolutions 1477 and 1528.

THE PRESIDENT: All in favor of so adopting the Resolution Calendar please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution 1477, by Senator Alesi, have the title read, move for its immediate adoption, and open it up for sponsorship.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Alesi, Legislative Resolution Number 1477, memorializing Governor George E. Pataki to proclaim April 25-30, 2005, as Small Business Week in the State of New York.

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, if we could take up Resolution 1528, by

Senator Alesi, have the title read, move for its immediate adoption, and open it up for cosponsorship.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Alesi, Legislative Resolution Number 1528, memorializing Governor George E. Pataki to proclaim April 18, 2005, as Healthy and High Performance Schools Day in New York State, and to proclaim the week of week of April 18-22, 2005, as School Buildings Week in the State of New York.

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.

And any member who does not wish to cosponsor the last two resolutions, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Is there any

housekeeping at the desk?

THE PRESIDENT: Yes, there is, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Madam President. On behalf of Senator Oppenheimer, I would move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Bill Number 3067.

THE PRESIDENT: So ordered.

SENATOR SCHNEIDERMAN: Thank you.

THE PRESIDENT: You're welcome.

Senator Skelos.

SENATOR SKELOS: Please recognize Senator Klein.

THE PRESIDENT: Senator Klein.

SENATOR KLEIN: Madam President, I have a motion at the desk and would like to have it called up at this time and the opportunity to speak on the said motion.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Print 2809, by Senator Klein, an act to amend the

Elder Law.

THE PRESIDENT: Senator Klein.

SENATOR KLEIN: Thank you, Madam President.

This motion would increase the eligibility levels in the EPIC program. Everyone knows that the EPIC program is a wonderful opportunity for senior citizens to save an awful lot of money on their prescription drugs. Most seniors have the ability to save 80 percent of their prescription drug costs.

In the past, the problem with the program was that the income eligibility was very, very low. We used to have it at $16,500. And several years ago we raised the individual level to $35,000 and $50,000 for a married couple.

My amendment would raise the maximum income level for a single individual to $50,000, and for a married couple to $75,000.

This is extremely important, because while the EPIC program is enjoyed by many, I still believe that even people with

that type of income level still have a very large out-of-pocket expense when it comes to prescription drugs.

The analysis that my office did shows a tremendous positive impact for my constituents in the Bronx and Westchester. If we raise the income eligibility, over 600 more individuals in Bronx County would be eligible for the EPIC program and over 2,600 individuals in Westchester County.

So clearly the EPIC program, which is funded by cigarette tax dollars, by our increase in cigarette taxes and through the tobacco settlement, with the legislation that we passed recently and the Attorney General denying access to purchase cigarettes over the Internet through credit cards, I believe this would increase our HCRA fund, increase the tax revenue that we generate through cigarette taxes, and enable us to raise this income level.

I urge the passage of this motion.

THE PRESIDENT: All those Senators in favor of the petition out of committee please signify by raising your

hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, Stachowski, Stavisky and Valesky.

THE PRESIDENT: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Wednesday, April 20th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate now stands adjourned until Wednesday, April 20th, 11:00 a.m.

(Whereupon, at 3:35 p.m., the Senate adjourned.)