NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 23, 2006

3:05 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: In the absence of clergy, may we bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 22, the Senate met pursuant to adjournment. The Journal of Saturday, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Nozzolio, on page number 9 I offer the following amendments to Calendar Number 24, Senate Print Number 1323B, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

SENATOR SKELOS: Madam President,

if we could take up Resolution 3283, by Senator Schneiderman, and have it read in its entirety.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Schneiderman, Legislative Resolution 3283, memorializing Governor George E. Pataki to proclaim January 26, 2006, as Juan Pablo Duarte Day in the State of New York.

"WHEREAS, The people of the Dominican Republic acquired autonomy and sovereignty on the 27th day of February, 1844; and

"WHEREAS, The Island of Quisqueya, the indigenous name for what later became the island of Hispaniola, was the cradle of thinking and advancement in the western hemisphere, establishing the first university and cathedral of the new world; and

"WHEREAS, On the 26th day of January, 1813, Juan Pablo Duarte, the founding father of the Dominican Republic, was born; and

"WHEREAS, During the month of

January of 2006, Dominicans celebrate the 121st Anniversary of Juan Pablo Duarte's birth; and

"WHEREAS, Juan Pablo Duarte, along with Francisco Del Rosario Sanchez and Ramon Matias Mella, formed La Trinitaria, a secret organization that initiated the movement for the independence of the Dominican Republic; and

"WHEREAS, During the month of February of 2006, Dominican nationals and Dominican Americans from throughout the Dominican Republic and the United States will celebrate the independence of the Dominican Republic; and

"WHEREAS, Since the 27th day of February, 1966, the Instituto Duartiano Inc. in New York City has promoted the memory and accomplishments of Juan Pablo Duarte; and

"WHEREAS, The Instituto Duartiano is an organization that is dedicated to maintaining and keeping alive the life and history of Juan Pablo Duarte, the liberator and founder of the Dominican Republic; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim January 26, 2006, as Juan Pablo Duarte Day in the State of New York. In recognition of this auspicious occasion, the members of the Instituto Duartiano will visit Albany, New York, on Monday, January 23, 2006; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to The Honorable George E. Pataki, Governor of the State of New York, and The Honorable Jose Fernandez, Consul General of the Dominican Republic."

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Briefly on the resolution.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: We are honored to demonstrate that this resolution is accurate in every respect, and that in fact we have members of the Instituto Duartiano here with us today, including the consul of the

Dominican Republic, general consul to our mission here.

And we are honored -- and I think everyone here who is a student of the history and the great history of the United States and the struggles for freedom here really would be well advised to learn something of the wonderful history of the Dominican Republic and the struggle for freedom.

Juan Pablo Duarte is the father of Dominican independence. He is an extraordinary figure. And the country that many of us have visited, many of us know and love, has a tradition of democracy really unparalleled. The participation -- if Americans voted the way Dominicans vote, we would have a much better government than we have now. And I say that with all respect to everyone here involved in the government of our fine state and our great country.

But this is a great day for the Dominican people and for all of us who have the honor to represent Dominican communities, or [in Spanish]. But I join with all of my colleagues here in celebrating this.

Bienvenidos a Albany a todo mis amigos los Duartianos y el Consul Fernandez.

Hoy celebramos el Inicio de la Herencia Dominicana en el estudo de Nueva York. Felicidades!

One hundred twenty-one years since the birth of Juan Pablo Duarte; a great deal to celebrate. Thank you, and we're honored to have these guests here join us today.

Thank you very much.

(Applause.)

THE PRESIDENT: All those in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is passed.

And thank you so much for giving us the privilege of your presence today.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. Senator Schneiderman would like to open that resolution up for

sponsorship.

THE PRESIDENT: Any member who does not wish to be a cosponsor of the last resolution, please notify the desk.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we return to motions and resolutions.

THE PRESIDENT: Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: On behalf of Senator Trunzo, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 6217.

THE PRESIDENT: So ordered, Senator.

SENATOR FUSCHILLO: Thank you.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: May we please have the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 11, by Senator Marcellino, Senate Print 2852, an act to amend the Criminal Procedure Law.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 31, by Senator Morahan, Senate Print 5559, an act to amend the Mental Hygiene Law.

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, 44.

THE PRESIDENT: The bill is passed.

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

Senator Little.

SENATOR LITTLE: Thank you, Madam

President. Before we proceed, if the Secretary would ring the bells so that members will be aware that we are going forward with the controversial reading of the calendar.

THE PRESIDENT: The Secretary will ring the bell.

The members should return to their seats so we can begin the controversial calendar.

Senator Little.

SENATOR LITTLE: Thank you, Madam President. May we return to reports of standing committees. I believe there is a report of the Finance Committee at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

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

Senate Print 6462A, Senate Budget Bill, an act to amend Chapters 50, 53, 54, and 55 of the Laws of 2005;

And Senate Print 6464, Senate Budget Bill, an act to amend Chapter 53 of the

Laws of 2005.

Both bills ordered direct to third reading.

THE PRESIDENT: Both bills ordered direct to third reading.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, according to the Senate Rules, bills from Finance are to be reported, unless there's unanimous consent, to first reading.

So pursuant to the rules, I would request that those bills be reported to first reading and, if they're to move forward, to go to the Rules Committee in accordance with our ordinary process.

THE PRESIDENT: Senator Little.

SENATOR LITTLE: Thank you, Madam President. Will you please reference those bills to the Rules Committee.

And there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

THE PRESIDENT: The bills are not ordered direct to third reading, they are now committed to the Rules Committee.

And there will be an immediate meeting of the Rules Committee now.

SENATOR LITTLE: Thank you.

THE PRESIDENT: Thank you, Senator.

Senator Little.

SENATOR LITTLE: Thank you.

The Senate stands at ease pending the return of the Rules Committee.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 3:23 p.m.)

(Whereupon, the Senate reconvened at 3:31 p.m.)

ACTING PRESIDENT WINNER: Senator Little.

SENATOR LITTLE: Thank you, Mr. President. May we please return to reports of standing committees for a report of the Rules Committee.

ACTING PRESIDENT WINNER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, reports the following bills:

Senate Print 6464, Senate Budget Bill, an act to amend Chapter 53 of the Laws of 2005;

And Senate Print 6462A, Senate Budget Bill, an act to amend Chapters 50, 53, 54 and 55 of the Laws of 2005.

Both bills ordered direct to third reading.

SENATOR LITTLE: Move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT WINNER: Opposed, nay.

(No response.)

ACTING PRESIDENT WINNER: The report is accepted.

SENATOR LITTLE: Thank you, Mr. President. May we please take up Calendar Number 11 at this time.

ACTING PRESIDENT WINNER: The

Secretary will read.

THE SECRETARY: Calendar Number 11, by Senator Marcellino, Senate Print 2852, an act to amend the Criminal Procedure Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT WINNER: Senator Marcellino, an explanation has been requested.

SENATOR MARCELLINO: Thank you, Mr. President.

DNA technology has progressed to the point where the admissibility of properly collected and analyzed data should not be in doubt. This bill seeks to ensure that such admissible evidence will be admitted and considered during a trial.

ACTING PRESIDENT WINNER: Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's an amendment at the desk. I ask that the reading of the amendment be waived. I would like to be heard on the said amendment.

ACTING PRESIDENT WINNER: The reading is waived. The Senator will be heard

on the amendment.

SENATOR KLEIN: Thank you, Mr. President.

I want to commend Senator Marcellino on his legislation. I think it's going to go a long way towards prosecuting all types of crimes.

My amendment, however, I think would make this legislation that much stronger, because my amendment would get rid of or eliminate the five-year statutory limitation on rape. As everyone here knows, we're one of the few states that still has an antiquated law on our books which has a five-year statutory limitation on rape.

We all know, with the advent of DNA evidence, we can prosecute these crimes effectively more than five years -- even 10, 15, even 20 years into the future. Yet every year and every month more and more rapists are really getting a get-out-of-jail-free card because they can't be prosecuted for their heinous crime.

My legislation is different than some of the legislation that's been out there,

where my amendment will eliminate the five-year statutory limitation altogether, even if there's not DNA evidence. The reason for that is while DNA evidence is certainly important, tangible evidence that could be used years into the future to prosecute a rape crime, there's other types of physical evidence, I believe, that would withstand the test of time.

In many cases, unfortunately, serial rapists take trophies from their victims -- jewelry, things of that nature. Videotapes is another article that would withstand the test of time and could be used beyond the five-year statutory limitation.

I actually held a press conference on this with one of my colleagues, Diane Savino, and I always remember that there was one woman who was the New York City chapter president of NOW, National Organization of Women, who supports this legislation, who was a Queens prosecutor. She prosecuted a case or attempted to prosecute a case where she actually had evidence in the form of a videotape from an ATM machine identifying

positively the rapist. Yet it was over the five-year statutory limitation, so she was unable to prosecute the case.

So that's why I think we need to just get rid of the five-year statute, regardless of whether or not there's only DNA evidence.

I conducted a survey --

ACTING PRESIDENT WINNER: Senator Marcellino, why do you rise?

SENATOR MARCELLINO: Mr. President, I'd like to lay the bill aside. Lay the bill aside.

ACTING PRESIDENT WINNER: The bill is laid aside.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President. Could we have the noncontroversial reading of the Rules report.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 81, Senator Johnson, from the Committee on Finance, moves to discharge Assembly Bill Number 9564 and substitute it

for the identical Senate Bill Number 6464, Third Reading Calendar 81.

ACTING PRESIDENT WINNER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 81, Assembly Budget Bill, Assembly Print Number 9564, an act to amend Chapter 53 of the Laws of 2005.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT WINNER: The bill is passed.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President. May we continue in regular order.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 82, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 9562A and substitute it for the identical Senate Bill Number 6462A, Third Reading Calendar 82.

ACTING PRESIDENT WINNER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 82, Assembly Budget Bill, Assembly Print Number 9562A, an act to amend Chapters 50, 53, 54 and 55 of the Laws of 2005.

ACTING PRESIDENT WINNER: Read the last section.

THE SECRETARY: Section 2. This act shall --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WINNER: The bill is laid aside.

That concludes the reading of the Rules report.

SENATOR LITTLE: Thank you, Mr. President. May we have the controversial

reading of the Rules report.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: Calendar Number 82, substituted earlier, Assembly Budget Bill, Assembly Print Number 9562A, an act to amend Chapters 50, 53, 54 and 55 of the Laws of 2005.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT WINNER: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Mr. President, this bill is the Governor's supplemental appropriations bill which he presented to us along with the budget. It includes $1.3 billion in all-funds appropriation, of which $809 million is for General Fund appropriations. This includes $50 million in heat funding, $245 million to make payments earlier than originally scheduled to the MTA for transit operation aid, and $606 million in funding for Medicaid.

ACTING PRESIDENT WINNER: Senator Valesky.

SENATOR VALESKY: Mr. President, I believe there's an amendment at the desk. I ask that the reading of the amendment to be waived and to be heard on that amendment.

ACTING PRESIDENT WINNER: The reading is waived, and you may be heard on the amendment, Senator Valesky.

SENATOR VALESKY: Mr. President, the bill that we have just approved in this house unanimously appropriates an additional $50 million to the Low-Income Home Energy Assistance Program, which will assist low-income New Yorkers in paying their home heating bills this year.

This particular piece of legislation and this amendment seeks to address another energy issue that we have in this state, and that is the higher-than-anticipated energy costs that school districts are facing in the 2005-2006 academic year. In fact, the Comptroller of the State of New York has reported that school districts will spend $200 million more this year on energy costs than they did last year.

And so this amendment creates a

$100 million two-year grant program for school districts across the State of New York to apply to receive resources to help pay the higher-than-anticipated energy costs.

The factors that would be used to determine availability for school districts, through the Commissioner of Education, would be the district's ability to absorb the increased costs, the impact that energy costs are having and are projected to have on both academic programs and on school property-tax bills in the next academic year, and also it's intended to reward those school districts who have undertaken conservation measures and other steps to reduce their energy costs.

I would encourage my colleagues today to support this amendment. Thank you very much, Mr. President.

ACTING PRESIDENT WINNER: Those Senators in agreement with the amendment please signify by raising your hands.

The Secretary will announce the results.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin,

Connor, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky, and Valesky.

ACTING PRESIDENT WINNER: The amendment is not agreed to.

Any other Senator wishing to be heard?

Debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WINNER: Senator Wright, to explain his vote.

SENATOR WRIGHT: Thank you, Mr. President.

I'm voting in favor of this deficiency budget and want to commend the Governor for the inclusion of an additional

$50 million to the home energy assistance program.

It wasn't but three months ago that we were back here last September voting on a bill that Senator Spano had advanced called the Senior Heat Program and clearly went on record in terms of our commitment and willingness to ensure that the elderly population had additional funding and assistance.

So I'm very glad to see this appropriation, look forward to the next bill and support for that with a further appropriation of $50 million.

Let me also add that relative to our school districts, I don't think there's anyone that isn't concerned about the costs that school districts are facing, that colleges are facing, that hospitals are facing. There are numerous institutions that are facing increased energy costs.

I think those are the kind of issues we should be looking at in the budget, and particularly in light of school district aid being a reimbursable aid, after the fact

could be well addressed in this year's budget.

I'm voting aye. Thank you, Mr. President.

ACTING PRESIDENT WINNER: Senator Wright will be recorded in the affirmative.

Senator Golden, to explain his vote.

SENATOR GOLDEN: Thank you, Mr. President.

I too will be voting yes on this bill. It's an important bill, and the Governor has put in another $50 million to make it $100 million going to those who need assistance across the city and state of New York.

This money will be going to the Office of Temporary and Disability Assistance, who will make the decisions on how that money will be distributed. But it's important that our families receive this refund and these dollars because of the amount of money that it costs today per gallon of heating oil.

New York, statewide, today we're paying about $2.56 or $2.57 per gallon, versus $1.65 a year ago, a 24 percent increase and a

60 percent increase over the last two years.

About 805,000 households took the opportunity to get that assistance this past year. There were 2.5 million households that had the opportunity to go after it, but only 805,000 took that opportunity.

Today there are many seniors over 60, there are many people that are handicapped, there are many families of four that make under $41,000, and I think it's important that we get this money out to them as soon as possible.

So I vote aye.

ACTING PRESIDENT WINNER: Senator Golden will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT WINNER: The bill is passed.

Senator Skelos.

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

Before I move to adjourn, I'd just like to mention that Mayor Brown --

(Applause.)

SENATOR SKELOS: Mayor Brown, Mayor Brown, the pocket's empty.

(Laughter.)

SENATOR SKELOS: Mr. President, would you please lay Calendar Number 11 aside for the day.

And there being no further business to come before the Senate, I move we stand adjourned until Tuesday, January 24th, at 11:00 a.m.

ACTING PRESIDENT WINNER: The bill is laid aside for the day.

And on motion, the Senate stands adjourned until Tuesday, January 24, at 11:00 a.m.

(Whereupon, at 3:51 p.m., the Senate adjourned.)