NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 27, 2006

3:13 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, Friday, February 24, the Senate met pursuant to adjournment. The Journal of Thursday, February 23, 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: Thank you, Madam President.

On behalf of Senator Meier, 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 4302.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: Madam President, amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Spano, page number 14, Calendar Number 119, Senate Print Number 6440;

By Senator Nozzolio, page number 16, Calendar Number 155, Senate Print Number 1947;

By Senator Leibell, page number 20,

Calendar Number 204, Senate Print Number 3813;

By Senator Leibell, page number 21, Calendar Number 210, Senate Print Number 5102;

And by Senator Nozzolio, page number 24, Calendar Number 258, Senate Print Number 4015.

I now move that these bills retain their place on the order of third reading.

THE PRESIDENT: Without objection, the amendments are received and the bills will retain their place on the Third Reading Calendar.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: 3377.

THE PRESIDENT: So ordered.

SENATOR NOZZOLIO: Madam President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause, on behalf of Senator

Wright: 5534A and 5834.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions to be made at this time?

THE PRESIDENT: Yes, there are, Senator.

The Secretary will read.

THE SECRETARY: On page 14, Senator Robach moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 9421 and substitute it for the identical Senate Bill Number 6479, Third Reading Calendar 112.

And on page 19, Senator Meier moves to discharge, from the Committee on Social Services, Children and Families, Assembly Bill Number 9617 and substitute it for the identical Senate Bill Number 6469, Third Reading Calendar 196.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President,

there's a resolution at the desk, 3667, by Senator Balboni. Could we please have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Balboni, Legislative Resolution Number 3667, urging a further investigation into the sale of certain port operations at the Port of New York from Peninsular and Oriental Steam Navigation Company to Dubai Ports World.

"WHEREAS, The Port Authority of New York and New Jersey testified at a hearing on port security by the Senate's Committee on Veterans, Homeland Security and Military Affairs that the port contributes $24.4 billion to the nation's economy; and

"WHEREAS, It also stated that cargo that is handled in the port serves 80 million people, or roughly 35 percent of the United States population. The port handles 5,000 ships per year and, on average, transfers roughly 6,000 containers each day; and

"WHEREAS, The sale of critical

infrastructure to a company controlled by a foreign power may be reviewed by the Committee on Foreign Investment in the United States. It is chaired by the federal Department of Treasury and includes the Departments of Defense, State, Homeland Security, and the Attorney General. The committee determines if these sales could affect national security and if those sales should go forward; and

"WHEREAS, On January 17, 2006, the committee approved the transfer from the Peninsular and Oriental Steam Navigation company to Dubai Ports World; and

"WHEREAS, The committee is allowed to authorize an investigation which may take up to 45 days, to allow a detailed investigation; now, therefore, be it

"RESOLVED, That this Legislative Body urges the New York State Congressional delegation to memorialize the President to order the committee to exercise its authority to investigate this transaction with respect to all salient security issues; and be it further

"RESOLVED, That copies of this

resolution, suitably engrossed, be transmitted to each member of the New York State Congressional delegation."

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Thank you very much, Madam President.

While most of us were doing something else last week than being here, the nation and I would daresay part of the globe was engaged in a debate over whether or not this country should allow a country to own and operate a major portion of the port of New York and other ports around this nation.

The concern has revolved around whether or not the proper security checks have been made on the company seeking to run the port.

In conversations with various people, including Congressman Peter King, chairman of the Homeland Security Committee for the United States Congress, what has become very apparent is that though an investigation was undertaken, it did not have the proper transparency or sufficiency necessary to assure us, both as citizens of

this nation and citizens of this state, that the owner and operators of that port, the Port of New York, would in fact not have any terrorist links or capabilities.

This Senate will be seeing bills later on that will talk about trying to shore up port security. Right after 9/11, there were many books written about various vulnerabilities in the United States. One of them pointed to the vulnerabilities of the Port of New York. Shortly thereafter, several Senators from this chamber -- in particular, Senator Leibell and Senator Wright and Senator Morahan -- all went to the port and discussed with representatives from Howland Hook, one of the major operators, what their security concerns were. And at that time, their ability to look into containers that were coming into the United States was very limited.

Since that time, time and time again, experts in the field of homeland security and security in general have pointed to the port as being vulnerable. And yet today, many experts still have that

expectation, that, God forbid, something of a weapon of mass destruction nature and category could be smuggled into the Port of New York or any port in this nation.

You heard some of the statistics about the Port of New York, but I guess one of the things that really make this so compelling for me is this statistic: within 50 miles from the Port of New York there lives 40 million people. That is some of the greatest population concentration in the globe. It's the third or fourth largest port in the nation. The economic impact, if something happened there, would be dramatic.

What we seek and we should all seek in this chamber is not a closing of the door to global interests in the Port of New York and not to have a company-specific strategy against terrorism, because that would be narrow-minded, shortsighted, and ultimately ineffective -- because our enemies across the globe would simply change the name of their business or the country from which they operate and would come at us another way.

But what we have to be assured of

is that the steps that are taken by the federal government as well as the state are such that can convey to us that the people who are doing business in our ports and running our ports are in fact terrorist-clean.

This resolution today basically sums up what the individual company has agreed to do; that is, wait for 45 days. But a part of it is also to say to the President of United States: Please look at this company with a very, very hard eye to see if in fact the proper security checks have been done. Because at the end of the day, all New Yorkers and, frankly, all citizens of the United States need and deserve a process that is uniform and that is clear and safe.

I would urge all the members of this chamber to vote in favor of this resolution.

Thank you, Madam President.

THE PRESIDENT: Senator Leibell.

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

And to echo what Senator Balboni has been saying, it was after 9/11 that a

number of us did go down to the Port of New York, had the opportunity to review some of their procedures there.

It's become quite clear over time that our greatest vulnerability is going to be our ports. And certainly we have had an enemy during this period of international terrorism that has struck at many of our transportation hubs.

These are particularly dangerous times for our state and our nation. And certainly we also live in a unique period of international commerce, and no one wishes to see that deterred. However, every country and its people have the first obligation to be secure in their national endeavors. As we look at the future, we unfortunately can be quite certain that we will be hit again by those who oppose us and our way of life.

I would urge that the United States Congress and our federal officials proceed with the greatest caution and understand the great dangers that we all face. And, in their efforts to make friends and possibly new allies, to remember these most dangerous of

times and that no one will take better care of us and no nation will take better care of us than we will of ourselves.

So I support this resolution and would urge its passage.

THE PRESIDENT: Senator Nozzolio.

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

Madam President, my colleagues, I rise to thank Senator Balboni for his leadership in pursuing this important issue rapidly. Because we as a state need to stand tall to send the message clearly to Washington, D.C., that the important security of our ports should not be held to any entity that is not totally accountable to the people of the United States of America.

Accountability is the issue. And that a decision, however made, must be reviewed through the scrutiny of establishing accountability.

There's no more important security issue than at the pinpoint of our commerce, the commerce of the United States of America, through each port through our great nation.

Those ports present great opportunities and also present great concern. The concern is with security.

And unless and until we fully have a complete and fundamental accountability of what we can expect in terms of security, any provision should not move forward.

Senator Balboni, Senator Leibell, thank you for your leadership on this very critical question. And that I rise to admonish all those who are making these decisions that New York requires accountability.

Thank you, Madam President.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam President, I also rise to thank my two colleagues for bringing up this very important resolution.

I think the key message -- I won't repeat what others have said, because I agree with all of it. But the key point here, and I think that Senator Balboni and Senator Leibell have spoken to it, is that security is

everybody's responsibility. We can't simply allow it or leave it to the federal government or any other entity. New York State, every locality, every citizen is responsible for our own protection and our own self-protection, and we must take a leadership role.

And I again thank my two colleagues for bringing this to the forefront and bringing this resolution forward. I support it wholeheartedly.

THE PRESIDENT: 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: Madam President, if we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

59, by Senator Volker, Senate Print 5575, an act to amend the Criminal Procedure Law, in relation to the procedure following a verdict.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 120th 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 91, by Senator LaValle, Senate Print 6421, an act to amend Chapter 676 of the Laws of 2002 amending the Education 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, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 98, by Senator Maziarz, Senate Print 110A, an act to amend the Highway Law, in relation to the designation.

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 112, substituted earlier today by Member of the Assembly Lupardo, Assembly Print Number 9421, an act to amend the Civil Service Law and the State Finance Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to

explain your vote.

SENATOR DUANE: Thank you, Madam President.

Each year billions of dollars are expended on outside contracts in New York State. And often the public does not know the true costs of the contracts which are given to outside contractors and we have no way to compare the cost-effectiveness of those contracts with the work that's performed by public employees, because when public employees do the work we know what the cost ratio is for those services.

This bill was unanimously passed last year in this house. I note that the sponsor of the legislation has crafted new language in the bill which addresses the Governor's objections and which the Governor says caused him to veto that legislation.

I'm hopeful that the Governor will sign the bill this year, because this bill will make state government more transparent and accountable. And so for that reason, I'm recommending that we all cast a yes vote on this piece of legislation.

Thank you, Madam President.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 157, by Senator DeFrancisco, Senate Print 42, an act to amend the Real Property Law, in relation to allowing an assignment of mortgage.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 158, by Senator DeFrancisco, Senate Print 43,

an act to amend the Estates, Powers and Trusts Law, in relation to the disqualification.

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 SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 167, by Senator Larkin, Senate Print 2475A, an act to amend the General Business Law, the Highway Law, and the Vehicle and Traffic Law, in relation to peddling.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 169, by Senator Fuschillo, Senate Print 6355, an act to amend the General Business Law, in relation to clarifying.

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Meier recorded in the negative.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number 179, by Senator Meier, Senate Print 5643A, an act to amend the Retirement and Social Security Law, in relation to earnings limitations.

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number 196, substituted earlier today by Member of the Assembly Scarborough, Assembly Print Number 9617, an act to amend the Family Court Act.

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number 253, by Senator Rath, Senate Print 1515, an act to amend the Vehicle and Traffic Law, in relation to restrictions.

ACTING PRESIDENT YOUNG: Read the

last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number 254, by Senator LaValle, Senate Print 2069, an act to amend the Vehicle and Traffic Law, in relation to certification.

ACTING PRESIDENT YOUNG: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Little, Senate Print 724, an

act to amend the Town Law, in relation to authorizing.

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number 265, by Senator LaValle, Senate Print 1353, an act to amend the General Municipal Law, in relation to allowing.

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill

is passed.

THE SECRETARY: Calendar Number 266, by Senator Larkin, Senate Print 2622A, an act to amend the General Municipal Law, in relation to enacting the Local Government Mergers Law.

ACTING PRESIDENT YOUNG: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 180th day.

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT YOUNG: The bill is passed.

Senator Skelos, that completes the reading of the calendar.

SENATOR SKELOS: Thank you much, Madam President.

Senator Duane, I just want to congratulate you on the great job, how efficiently everything moved. And perhaps you'll be sitting in that chair for years to come.

(Laughter.)

SENATOR DUANE: Madam President, I'm hopeful that will be the case, with just one teeny, tiny little minor change.

ACTING PRESIDENT YOUNG: What would that be?

SENATOR DUANE: Thank you, Madam President.

(Laughter.)

SENATOR SKELOS: Any further business to come before the Senate?

ACTING PRESIDENT YOUNG: There's no business.

SENATOR SKELOS: There being no further business, I move we stand adjourned until Tuesday, February 28th, at 3:00 p.m.

ACTING PRESIDENT YOUNG: On motion, the Senate stands adjourned until Tuesday, February 28th, at 3:00 p.m.

(Whereupon, at 3:36 p.m., the Senate adjourned.)