NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 5, 2008

11:16 a.m.

REGULAR SESSION

SENATOR MICHAEL F. NOZZOLIO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT NOZZOLIO: The Senate will 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.)

ACTING PRESIDENT NOZZOLIO: In the absence of clergy, may we please bow our heads in a moment of silence.

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

ACTING PRESIDENT NOZZOLIO: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 4, the Senate met pursuant to adjournment. The Journal of Monday, March 3, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT NOZZOLIO: 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: Mr. President, there's a Resolution 4548 at the desk by Senator Young. If we could have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT NOZZOLIO: Resolution 4548, by Senator Young. The Secretary shall read.

THE SECRETARY: By Senator Young, Legislative Resolution Number 4548, congratulating the Fredonia Senior Little League Girls Softball Team upon the occasion of capturing the New York State Championship for the second consecutive year.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and

strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, it is the sense of this Legislative Body to congratulate the Fredonia Senior Little League Girls Softball Team upon the occasion of capturing the New York State Championship for the second consecutive year; and

"WHEREAS, Every member of the Fredonia Senior Little League Girls Softball Team was a New York State champion last year, either in Junior League or Senior League, and have all been district and sectional champions no less than four years each; and

"WHEREAS, Furthermore, many of the girls on the Fredonia Senior Little League

Girls Softball Team were on the Fredonia High School Softball Team that finished second in the 2007 New York State Class B Championships; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coaches John Arnold, John Bongiovanni, David Ortolano, Ronald Wasik and Richard Bartkowiak, skilled and inspirational tutors who have done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Loyally and enthusiastically supported by family, fans, and friends, the Fredonia Senior Little League Girls Softball Team have proven themselves to be an unbeatable combination of talents, reflecting favorably on their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Fredonia Senior Little League Girls Softball Team, its members -- Julie Arnold, Mary Kate Bongiovanni, Katrina Johnston, Mira Patel, Anne Wasik, Jenna Shaw,

Laura Poweski, Maeghan Farnham, T'ana Abt, Katie Bartkowiak, Chrissy Ortolano, Marah Dahn, Marge Wronski, Keri Ketcham -- and Coaches John Arnold, John Bongiovanni, David Ortolano, Ronald Wasik and Richard Bartkowiak, upon the occasion of capturing the New York State Championship for the second consecutive year; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Fredonia Senior Little League Girls Softball Team and Coaches John Arnold, John Bongiovanni, David Ortolano, Ronald Wasik and Richard Bartkowiak."

ACTING PRESIDENT NOZZOLIO: Senator Young, on the resolution.

SENATOR YOUNG: Thank you. On the resolution.

I am so incredibly proud to stand here today and see these fine young women who have achieved so much. It was not easy for them to get to Albany. The weather has been bad; it's icy out west. They had to travel over five hours to get here.

But the reason that they're here is

because they are achievers. And by the way, they had a tough time parking this morning too.

(Laughter.)

SENATOR YOUNG: It also shows how tenacious they are and how dedicated they are.

You know, we have some of the finest young people in my Senate district, and I believe that this team --

ACTING PRESIDENT NOZZOLIO: Senator Young, would you excuse me, suffer an interruption?

The house will come to order. The chatter in the back of the room, please take it outside.

SENATOR YOUNG: Thank you very much, Senator.

But I am so incredibly proud of all of their achievements. You know, it's not easy to win in the way that they did. And it's important to win, but it's also important to learn all of the life lessons that they have gained along the way as far as working together, as far as doing your best, striving your hardest. And that's really what it's all

about.

So I congratulate you. I think you're absolutely wonderful. I'm so proud to represent you. And I wish you much success now, but also in the future, because what you've been able to accomplish is something that you can take forward for the rest of your lives.

I want to congratulate the coaches, too, for the leadership and the guidance and the support that you have given these young women. You are absolutely fantastic.

And so I salute every single one of you. Thank you.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator Young.

Anyone else wishing to speak on the resolution?

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT NOZZOLIO: Opposed, nay.

(No response.)

ACTING PRESIDENT NOZZOLIO: The

resolution is adopted.

(Applause.)

ACTING PRESIDENT NOZZOLIO: On behalf on behalf of Senator Young and the entire New York State Senate, we wish to congratulate the Fredonia Senior Little League Girls Softball Team.

Congratulations as our state champions, that you are fine representatives of your region and your generation. We're very proud of you, as Senator Young has stated. Congratulations.

(Applause.)

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: I have two resolutions at the desk, 4550 and 4552. If we could have the titles read and move for their immediate adoption.

ACTING PRESIDENT NOZZOLIO: The Secretary shall read.

THE SECRETARY: By Senator

Skelos, Legislative Resolution Number 4550, commending the New York State School Music Association upon the occasion of hosting the Annual New York State School Music Association in Albany Day.

ACTING PRESIDENT NOZZOLIO: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT NOZZOLIO: Opposed, nay.

(No response.)

ACTING PRESIDENT NOZZOLIO: The resolution is adopted.

The Secretary shall read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 4552, commemorating the 60th Anniversary of Monsignor Edward J. Flanagan Squires Circle Number 574 in Lynbrook, New York.

ACTING PRESIDENT NOZZOLIO: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT NOZZOLIO:

Opposed, nay.

(No response.)

ACTING PRESIDENT NOZZOLIO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a resolution at the desk, 4549, by Senator DeFrancisco. If we could have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT NOZZOLIO: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 4549, congratulating the West Genesee Varsity Football Team upon the occasion of capturing the New York State Class AA Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them

for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those young people within the State of New York who, achieving outstanding success in athletic competition, have inspired and brought pride to their school; and

"WHEREAS, This Legislative Body is justly proud to congratulate the West Genesee Varsity Football Team and Head Coach Steve Bush upon the occasion of capturing the 2007 Class AA Championship; and

"WHEREAS, the West Genesee Varsity Football Team enjoyed a truly outstanding season, compiling an overall record of 11 wins versus only two defeats, an impressive record against a very difficult and competitive schedule; and

"WHEREAS, The road to the state title was not easy, but this team was able to pull out many impressive victories throughout

the year to lead them toward the sectionals and eventually the state playoffs; and

"WHEREAS, To earn the right to play in state competition, West Genesee first had to prove that their season-long success would carry them through sectional competition. On November 3, 2007, West Genesee took the Section III title by defeating a strong Cicero-North Syracuse team, a team that had defeated them on a last-second field goal earlier in the season. In the sectional championship game, they enacted revenge with a last-second field goal of their own, to lead the West Genesee Wildcats to their second Section III title, the first since 1998; and

"WHEREAS, Having secured a Section III title, it was on to the state quarterfinals, where West Genny was matched against the Section IV champions, Union-Endicott, and the Wildcats were able to win a defensive struggle, 21-7, at Binghamton's Alumni Stadium; and

"WHEREAS, It was then on to the state semifinal game at Paetec Park in Rochester, against the previously undefeated

Orchard Park Quakers from Section V, in a hard-fought game with the Wildcats hanging on to a 30-27 victory to advance to the state title game; and

"WHEREAS, The Class AA State Championship game was played at the Carrier Dome on November 25, 2007, against previously undefeated and number-one state-ranked Monroe-Woodbury from Section IX. West Genesee fell behind on the first drive, 7-0, but then tied the score and eventually took the lead in the first quarter and then never trailed again, culminating in a 42-21 victory to claim their first ever state championship; and

"WHEREAS, No team, no matter how gifted one or a handful of its members may be, can succeed without outstanding talent throughout its entire roster. Such was the case for the 2007 West Genesee Football Team, whose players included Joe Kesler, Dave Hildman, Matt McCabe, Joe Fazio, Ryan McConnell, George Eunice, Jim Marks, James Grecco, Nick Aiken, Tim Moran, Jeremy Jones, Kyle Nojaim, Nick Collins, Pat Shanley, Mike Carter, Jeremy Connors, Tim Town, Mike

Simiele, Yaw Awuah, Mike Mercer, Ben Waldron, Sirron Wright, Mike Delaney, Marcus Armstrong, Josh Cruz, Tom Flynn, Will Furdyn, AJ Reese, Scott Erikson, Nate Wells, Rich Longo, Mark Ferguson, Nick Pedrotti, Christos Dimkos, Mike Gagnon, Nick Cammuso, Nick Rinaldi, Kevin Heron, Stefan Cavedine, Mike Severance, John Gacek, Vinny Lamanna, Ossama Mere, Craig Simmons, Ben Wysokowski, Stephen Pooler, Tony Pedrotti, Doug Ayer, Jake Fietkiewicz, Dan Kolinski, Jeff Mancuso, Kevin Petrick, Luke Cometti, along with Team Managers Samantha Cromp, Kelly Collins, Vanessa Mangovski and Jessica Andrianos; and

"WHEREAS, The hard work and dedication of the coaching staff -- Head Coach Steve Bush and Assistants Joe Corley, John Lawrence, Corey Brooks, Dana Eells and Jon Paone -- throughout the entire year led to a team that believed it could win the big games and inspired a great spirit of teamwork and commitment from all of the players; and

"WHEREAS, While football is a team sport, special recognition from the title game should be noted. Tim Moran was named Most

Valuable Player, Stephen Pooler was named Most Valuable Offensive Lineman, Dan Kolinski was named Most Valuable Defensive Lineman, and Nick Cammuso was given the Sportsmanship Award; and

"WHEREAS, In addition to the excellent play, hard work and teamwork of its players, and the talent and dedication of Coach Steve Bush and his staff, the West Genesee Wildcats enjoyed another huge advantage with a very supportive and enthusiastic fan base of parents, cheerleaders and area residents, particularly in the title game, where thousands of fans were adorned with the team's blue and gold colors in support of their team; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the West Genesee Varsity Football Team on their successful team season and overall team record, and upon the capture of the 2007 Class AA Football Championship; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted

to the members of the 2007 West Genesee Varsity Football Team and Coach Steve Bush."

ACTING PRESIDENT NOZZOLIO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Mr. President.

First I would like to mention that sitting next to me is Senator George Maziarz from Niagara Falls. The reason I mention that is because he never brings a championship team here, and it's a very sad thing.

(Laughter.)

SENATOR DeFRANCISCO: And in order to get back at me today, when the wonderful girls softball team was being honored, he says, "Oh, no Syracuse today, huh?" I said "No, they're next."

Because we've brought many championship teams from Central New York here to be honored by this wonderful body, the New York State Senate. And the resolution that you heard read will be a part of the permanent record of this body.

And, you know, in reading the resolution and in helping to prepare the

resolution, it was really an interesting, very difficult season where you lost by a field goal and came back to beat the same team by a field goal, last second, is that what happened? It's unbelievable, to go on into this championship year. That shows real guts, real determination.

And I notice that you beat the Union-Endicott team in Binghamton. And that's precisely why Senator Libous is not in our chambers today, because he's so embarrassed about that loss because they thought they were going to win.

(Laughter.)

SENATOR DeFRANCISCO: And you also beat the team from Orchard Park, and Senator Volker also didn't make the meeting today. He's still in mourning from that game.

(Laughter.)

SENATOR DeFRANCISCO: No, they congratulate you as well.

This is a wonderful tribute to all of you, to the hard work, the determination. And all of your names are in the complete resolution, and we'll get all of you copies of

that resolution.

So what I'll tell you lastly is this. You are going to remember this the rest of your life, being part of a team that did something that very few teams do. Only one does each year in each of the divisions. You'll remember your friends, you'll be friends with them forever.

So congratulations on the great things you've done. And translate this experience, the teamwork, during your lifetime, and you're going to be winners at everything you do.

So congratulations. And on behalf of all the citizens of my district, we're all very, very proud of you.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator DeFrancisco.

Anyone else wishing to be heard on the resolution?

The question is on Senator DeFrancisco's resolution honoring the New York State Class AA champions, the West Genesee Wildcats Football Team. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT NOZZOLIO: Opposed, nay.

(No response.)

ACTING PRESIDENT NOZZOLIO: The resolution is adopted.

Congratulations to the players and coaches. That all of Central New York is proud of West Genesee. If it could not be Auburn winning the New York AA football title, certainly we're glad that it's a neighbor.

And congratulations to all of you.

(Applause.)

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution Number 4445, by Senator Robach, was adopted on March 4th. If we could just have the title read, to refresh everybody's recollection, and then have it cosponsored by the Senate.

If anybody wishes not to cosponsor it, they should notify the deck.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator Skelos.

The Secretary shall read.

THE SECRETARY: By Senator Robach, Legislative Resolution Number 4445, memorializing Governor Eliot Spitzer to declare May 2008 as "Hepatitis C Awareness Month" in the State of New York.

ACTING PRESIDENT NOZZOLIO: Senator Robach.

SENATOR ROBACH: Yes, Mr. President. I just wanted to add to the resolution very, very quickly.

One of the important things that we do here is our partnership with trying to keep New Yorkers healthy. And while I love sports, I want to take a moment on this hidden disease, hepatitis C, equally as important.

We have some champions of healthcare, the advocates of the Hepatitis C Coalition, not only from Rochester, Long Island, but across the state who are always here advocating for not only a cure, research, education, treatment, you name it. There have really been some champions in helping remind us and increasing public awareness on sometimes what's called this hidden disease,

hepatitis C.

So I not only want to commend having this day and this resolution, but I also want to especially thank the advocates from across the state who work tirelessly every day on behalf of trying to make this disease more bearable and less acute for each and every one of us as New Yorkers.

Thank you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator Robach.

And the resolution was adopted on March 4th.

Senator Skelos, Senator Farley has a motion.

Senator Farley.

SENATOR FARLEY: It's nothing personal. It's on behalf of Senator Volker.

Mr. President, on page 26 I offer the following amendments to Calendar Number 324, Senate Print 6701, and I ask that that will retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: The amendments are received and adopted, and the

bill will retain its place on Third Reading Calendar. Thank you.

Senator Skelos.

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

ACTING PRESIDENT NOZZOLIO: The Secretary shall read the noncontroversial calendar.

THE SECRETARY: Calendar Number 72, by Senator Maltese, Senate Print 6688, an act to amend the Civil Service Law, in relation to independent hearing officers.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 133, by Senator Robach, Senate Print 4828, an

act to amend the Workers' Compensation Law, in relation to presumption.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 162, by Senator Padavan, Senate Print 1462, an act to amend the Agriculture and Markets Law, in relation to prohibiting.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The

bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Maltese, Senate Print 6733, an act to amend the General Municipal Law and the Retirement and Social Security Law, in relation to increasing.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1, 2008.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 263, by Senator Alesi, Senate Print 34, an act to amend the Business Corporation Law, in relation to allowing homeowners associations.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 309, by Senator Rath, Senate Print 675B, an act to amend the Penal Law and others, in relation to establishing the offenses of aggravated abuse.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 24. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Ayes, 54. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 315, by Senator Rath, Senate Print 2323A, an

act to amend the Penal Law, in relation to the crime of facilitating.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of November.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 373, by Senator Fuschillo, Senate Print 6548A, an act to amend the General Business Law, in relation to enacting.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 90th day.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 393, by Senator Skelos, Senate Print 437, an act to amend the Correction Law, in relation to the duty of sex offenders.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, I would like to explain my vote, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes. I believe that this bill is to require that a sex offender verify their address within 10 days, which I believe was already in law.

However, it doesn't give that person an opportunity to rebut the charge of a

violation if in fact they live in the same place and for some reason the mail didn't get to them or they didn't receive the mail.

So in fact, even if the person continues to reside and does not receive the mail, for whatever reason, they will be charged with a violation.

So I'm going to oppose this bill, because I think it's unfair to not allow a person an opportunity to appeal a violation if in fact they were not at fault.

So I'm going to vote no, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Montgomery will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 54. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 398, by Senator Nozzolio, Senate Print 5450,

an act to amend the Correction Law, in relation to permitting correction officers.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

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

SENATOR SKELOS: Thank you.

Mr. President, is there any further business at the desk?

ACTING PRESIDENT NOZZOLIO: There is no housekeeping at the desk, Senator.

SENATOR SKELOS: There being no none, I move we stand adjourned until Monday, March 10th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT NOZZOLIO: On motion, the Senate stands adjourned until

Monday, March 10th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:39 a.m., the Senate adjourned.)