NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 4, 2008

11:02 a.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

I ask all to rise and join with me as we recite the Pledge of Allegiance to our Flag.

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

ACTING PRESIDENT GRIFFO: In the absence of clergy, I ask that we all bow our heads today in a moment of silence in remembrance for Dr. Martin Luther King, Jr., and his movement and cause, as we reflect on the 40th anniversary of his assassination.

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

ACTING PRESIDENT GRIFFO: The reading of the Journal.

THE SECRETARY: In Senate, Thursday, April 3, the Senate met pursuant to adjournment. The Journal of Wednesday, April 2, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT GRIFFO: 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, are there any substitutions at the desk at this time?

ACTING PRESIDENT GRIFFO: There are none, Senator Skelos.

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

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

The Senate stands at ease.

(Whereupon, the Senate stood at ease at 11:04 a.m.)

(Whereupon, the Senate reconvened at 11:09 a.m.)

ACTING PRESIDENT MAZIARZ: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees for the report of the Finance Committee.

ACTING PRESIDENT MAZIARZ: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator O. Johnson, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 6805D, Senate Budget Bill, an act making appropriations for the support of government: Transportation, Economic Development and Environmental Conservation Budget;

And Senate Print 6809C, an act to authorize funding.

ACTING PRESIDENT MAZIARZ: Without objection, the bills are reported to

the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Calendar Number 714, Senate 6805D.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 714, Senate Budget Bill, Senate Print 6805D, an act making appropriations for the support of government: Transportation, Economic Development and Environmental Conservation Budget.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT MAZIARZ: There is a message of necessity.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MAZIARZ: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ:

Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

Senator Skelos.

SENATOR SKELOS: If we could take up the bill at this time.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Calendar Number 715, Senate 6809C.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 715, Senate Budget Bill, Senate Print 6809C,

an act to authorize funding for the Consolidated Local Street and Highway Improvement Program and to amend the State Finance Law and others.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Can we have the last section read at this time.

ACTING PRESIDENT MAZIARZ: There is a message of necessity at the desk, Senator.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MAZIARZ: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Those opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: Announce the results.

Oh, I'm sorry. Senator Krueger.

SENATOR LIZ KRUEGER: To explain my vote, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Krueger, to explain her vote.

SENATOR LIZ KRUEGER: I'm voting yes on the language bill, as the budget bill.

But again, just to go on the record, we are doing a budget in the most ridiculous way this year. We have chapter amendments to bills we've already passed that we passed even though they didn't have the fundamental pieces in them.

This bill doesn't have fundamental -- these bills before us today, the TED bills, don't have fundamental sections in them, including capital monies.

We will all need a big pair of glasses and perhaps a jigsaw puzzle to help us understand, at the end of the day, what this budget actually was this year.

Clearly, this is hot off the press. Clearly, most of my colleagues have to honestly say they didn't read this.

And yet I can't find the distinct poison pills in these bills today. Although they are missing major sections, they do address some of the concerns of the revenue-sharing that we didn't deal with when we passed that bill.

So just for the record, this is a nightmare process. The people of New York deserve a better system. But despite that, I can't find enough things wrong in these two bills today to vote no, so I will be voting yes.

Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator L. Krueger will be recorded in the affirmative.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. I ask the opportunity to explain my vote.

Mr. President and my colleagues, this measure, I proudly say, was hammered out

by the Joint Budget Conference Subcommittee on Transportation. And because Senator Libous, who's chairman of the Senate Transportation Committee, could not serve in the subcommittee capacity because he's a participant in the overall budget committee, I was asked to chair, from the Senate's perspective, this measure.

And I must tell you, the Senators who were assigned to this committee worked extremely hard to ensure that the local road and bridge program, a program essential to the formation and continuation and support of an infrastructure that extends in such a grand way in this state -- if you put all the local roads that are eligible for CHIPS funding end to end, they would circumnavigate the globe four times. It's a huge amount of mileage, it's a huge amount of infrastructure. And this house has consistently supported the Consolidated Highway Improvement Program.

This measure continues that support and establishes a record increase in CHIPS funding, $51 million over last year. That means that the local property taxpayers will

not have to bear the burden, by themselves, of funding local roads and bridges.

I want to thank Senator Libous for his guidance. I want to thank the members of the subcommittee, who worked very hard to support this CHIPS program.

I also want to thank the dozens and dozens of town and county highway superintendents who traveled to Albany to spend time to demonstrate the importance of this program. It's essential to the support of the upstate economy, it's essential to our entire state. And I thank our Senators for making this increased amount of money for CHIPS possible.

Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: Thank you. Senator Nozzolio will be recorded in the affirmative.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I too want to explain my vote.

I'm going to vote for this with some reluctance, and I'm going to explain my vote here.

First of all, Senator Nozzolio, thank you for your leadership on the committee and to the members of the committee.

He mentioned a couple of areas -- CHIPS funding, which is extremely important to our highway superintendents at the local level in helping to keep local property taxes down, because the money there would come out of local government and ultimately raise property taxes. And the additional $60 million is long overdue, and the committee did an outstanding job.

Where I'm frustrated, and I'm going to just share this with my colleagues, is that I have been trying for the last three years to clean up the Dedicated Highway Trust Fund. And this house voted unanimously to do that. Unfortunately, the Assembly and the second floor failed to be a partner here.

Every year $750 million comes from this fund, out of the fund, goes to snow and ice removal, and $200 million of it then goes to fund the Department of Motor Vehicles. That's money that can go into road and bridge repair.

In this budget, the former governor gave us a proposal, and that proposal basically was to put a $15 surcharge on every insurance policy, every car that you own in New York State. Well, we rejected that because they wanted to create a bridge fund.

They don't have to create a bridge fund; we already have one. They have to stop raiding the existing bridge fund.

But unfortunately, as this house tried to move that forward, the second floor -- and the new second floor, unfortunately -- the Division of Budget doesn't quite understand it, but instead what they did is they transferred $134 million from the General Fund to the dedicated fund to cover the offset. Now does that make any sense to any of us here? Absolutely not.

I want to say thank you to my colleagues in this house because last year we voted unanimously to clean up the fund. It has to get done.

We are going to embark on a capital plan very soon, as soon as next week, a capital plan for highways, roads and bridges

throughout our state, and a capital plan for the MTA.

The plans that were provided to us have huge deficits. There's no money to fund those plans. Had we cleaned up the Dedicated Highway Fund, we would have had a significant amount of money to go out and help fund those plans.

So I will vote for this because I think it's important to move government forward, Mr. President. But I have to tell you, it makes no sense to take $134 million out of the General Fund, transfer it to the Dedicated Highway Trust Fund, and at the same time continue to raid that fund for snow and ice removal when it should be coming out of the DOT budget, and continue to raid that fund for the operation of the Department of Motor Vehicles when we have bridges and roads in this state that need repair.

I will vote aye, but very reluctantly.

ACTING PRESIDENT MAZIARZ: Senator Libous will be recorded in the affirmative.

Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Thank you, Mr. President. I wish to explain my vote on this bill.

You know, doing the budget is, to use the old joke, like making sausage. The process is not very nice, but the end product is something you really want.

The end product of this environmental bill is a positive one. We have increased the EPF by $50 million, by law. That's the first time in history that's been done. The EPF, the Environmental Protection Fund, is guaranteed no less than $250 million; in fact, this year it's $255 million. The fund will go up to $300 million next year. Again, guaranteed by law. A first; we can all be very proud of that.

There are many good projects that are done in here. I have only one problem and only one concern. In order to balance our budget, we were forced to accept a $125 million sweep out of the EPF program. This was proposed by Governor Spitzer and

accepted by both houses out of necessity, because we frankly need the money to do what we have to do.

I am concerned that the Division of Budget would not entertain language that would start the process for repaying past sweeps from the EPF. I believe we're going to have to do that. We're pushing huge amounts of money in this situation, and the potential for disaster is there.

I am urging and I'm going to be working the rest of this session and the coming year to make sure that we have a policy and we have a procedure to repay the money that has been taken out of the EPF so we can make sure that it is whole and stays to be one of the more viable funding sources for the environment in this great state.

So I will vote aye, Mr. President, with those caveats that I just mentioned. Thank you.

ACTING PRESIDENT MAZIARZ: Senator Marcellino will be recorded in the affirmative.

Any other Senators wishing to

explain their vote?

If not, the clerk will announce the results.

THE SECRETARY: Ayes, 56. Nays, o.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Malcolm Smith.

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

I want to first thank the Majority Leader and my colleagues for the moment of silence that we offered today on behalf of Dr. Martin Luther King.

We all know 40 years ago today in Memphis, the Lorraine Motel, there were two shots that rang out that at that moment, when the firefighters and the police department ran along that street to figure out where those shots came from, and Jesse Jackson and Andrew Young and a number of individuals stood on that balcony and pointed to where those shots came from, little did we know that those shots would be shots that were heard around the world.

We all know that Martin Luther King famous speech "I Have a Dream." And there are many who would tell you that dreams are free, and dreams cost you nothing, so therefore you should dream forever. I must say that it is obvious that for Martin, that particular dream cost him his life.

But it was a dream that 40 years ago today we should be able to enjoy some of the accomplishments of the dream that he sought.

When I look around this chamber and I see a Hispanic, Efrain Gonzalez, sitting next to a Jewish woman by the name of Liz Krueger, that was part of a dream. When I see a Jewish person by the name of Jeff Klein sitting next to an African-American named Malcolm Smith, that was a dream. When I see a Catholic sitting next to a Protestant, that was also part of a dream.

When I look around this chamber and see an African-American who is quote, unquote, a leader that sits across from another individual who is also a leader, I would say that 40 years ago what Martin dreamed about

has begun to come true.

What many of us have forgotten while we dream is there is something that happens after you dream. You've been there; I've been there. When you dream, there comes a time when you wake up. And if you reflect on your dream, you think of one of two things. Either it alters that immediate day that you are going to proceed with, or it alters your long-term plan.

And very few of us have never had a nightmare. I believe if Martin was here today, there is one part of his dream that still holds a little bit of nightmarishness for himself. Part of that is the fact that we voted on a budget yesterday that is leaving prisons open.

Part of it is a nightmare that says when you have a number of children in this state that cannot compete with other children around this country and around this world, there is still a nightmare that exists.

Part of is a dream that says when I go up to Watertown or I go to Syracuse or Buffalo, I can walk down the street and see

abandoned buildings, boarded-up buildings, just like what it looked like in Memphis, just like what happened when Martin was trying to save and help those particular sanitation workers.

I think Martin would say there is still a part of his dream that holds a nightmare corner in a chapter that needs to be dealt with.

I am hopeful that as we continue to do our work here, that as we continue to finish this budget -- and I guess it's by no accident that on this 40th day we are now at the sunset, if you will, of our budgetary process -- but I would hope that each and every one of us would take a moment and reflect on all that Martin Luther King stood for.

Think about what it would mean if all of our children could be adequately educated so that they don't have to go into special ed, so that they don't have to use special ed as the door to going into a prison criminal justice system, so that they would be able to be contributors to the society, just

like each and every one of you are.

All of you had that opportunity to be educated and receive that promise of New York that we all talk about. There are many of us right now who are not giving that promise to other children around this state. It is up to us to take a look inside and find that Martin in you that allows this state to be moved to that next frontier.

And so on this 40th anniversary of a day that will live in infamy, a day in which a gentleman that we all know as Martin Luther King, Jr., is now no longer dreaming but is now hoping that we remember the dream that he had, which many people say cost nothing but I say cost his life.

Thank you very much, Mr. President.

ACTING PRESIDENT MAZIARZ: Thank you very much, Senator Smith.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate conference of the Majority in the Majority Conference Room.

ACTING PRESIDENT MAZIARZ: There will be an immediate conference of the

Majority in the Majority Conference Room.

SENATOR SKELOS: And the Senate will stand at ease.

ACTING PRESIDENT MAZIARZ: Senator Dilan, I'm sorry.

SENATOR DILAN: Thank you, Mr. President.

First of all, I would like to thank all my colleagues and staff for their kind words, thoughts, and prayers upon the passing of my mother. I just want to say thank you very much for all your kind deeds.

And secondly, there will be an immediate meeting of the Minority in Room 315.

Thank you.

ACTING PRESIDENT MAZIARZ: Thank you. There will be an immediate meeting of the Minority in Room 315.

The Senate stands at ease.

(Whereupon, the Senate stood at ease at 11:28 a.m.)

(Whereupon, the Senate reconvened at 1:05 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, the Senate will adjourn subject to the call of the Majority Leader. Let me just check that.

Mr. President, the Senate will stand adjourned subject to the call of the Majority Leader.

ACTING PRESIDENT MAZIARZ: Thank you, Senator Skelos.

On motion, the Senate stands adjourned at the call of the Majority Leader.

(Whereupon, at 1:07 p.m., the Senate adjourned.)