NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 5, 2009

11:11 a.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT VALESKY: The Senate will please come to order.

I ask everyone present to please rise and recite with me the Pledge of Allegiance.

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

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

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

ACTING PRESIDENT VALESKY: The reading of the Journal.

The Secretary will read.

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

ACTING PRESIDENT VALESKY: 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 Klein.

SENATOR KLEIN: Mr. President, I have a privileged resolution at the desk. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: By Senator Smith, Senate Resolution Number 315, providing for a Senate Select Committee on Budget and Tax Reform.

ACTING PRESIDENT VALESKY: Are there any Senators wishing to be heard on the resolution?

Seeing none, the question is on the resolution. All in favor signify by saying

aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, would you please call on Senator Addabbo.

ACTING PRESIDENT VALESKY: Senator Addabbo.

SENATOR ADDABBO: Mr. President, good morning.

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. These bills are 1060 and 1061.

ACTING PRESIDENT VALESKY: So ordered.

SENATOR ADDABBO: Thank you.

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: Mr. President, if we could go to the noncontroversial reading of Senate Calendar Number 4.

Mr. President.

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: If we can just return to the order of motions and resolutions, I believe Senator Leibell has some privileged resolutions at the desk.

ACTING PRESIDENT VALESKY: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 306, commemorating National Salute to Hospitalized Veterans Week.

ACTING PRESIDENT VALESKY: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Leibell, do you wish to be recognized?

SENATOR LEIBELL: If I could, Mr. President, just for a moment, to acknowledge the importance of the service that our veterans have given to this country, but also to especially acknowledge the importance and significance of those who have been hospitalized as a result of their service.

This is a special time when we are called upon to think about them, to think about the service they've given, and to think about the sacrifices also that their families have made.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator, do you wish the resolution to be open for cosponsorship?

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT VALESKY: Senator Leibell's resolution is open for cosponsorship. Anyone wishing not to join the

resolution, please notify the desk.

The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 307, honoring the Lower Hudson Valley Building and Construction Trades Employee Assistance Program upon the occasion of its designation as Organization of the Year by the New Yorktown Chamber of Commerce.

ACTING PRESIDENT VALESKY: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

The Secretary will continue to read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 308, honoring Jared Feinberg upon the occasion of his designation as recipient of the Chairman's

Award by the New Yorktown Chamber of Commerce.

ACTING PRESIDENT VALESKY: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

The Secretary will continue to read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 309, honoring Richard Leahy upon the occasion of his designation as recipient of the John W. Chase Award by the New Yorktown Chamber of Commerce.

ACTING PRESIDENT VALESKY: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 310, honoring John C. Federspiel upon the occasion of his designation as Business Person of the Year by the New Yorktown Chamber of Commerce.

ACTING PRESIDENT VALESKY: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, can we now go to the noncontroversial reading of Senate Calendar Number 4.

ACTING PRESIDENT VALESKY: The Secretary will proceed with the

noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 4, by Senator Sampson, Senate Print 134, an act to amend the Real Property Law.

ACTING PRESIDENT VALESKY: Read the last section.

SENATOR LIBOUS: Lay it aside, please, Mr. President.

ACTING PRESIDENT VALESKY: The bill is laid aside.

SENATOR SAMPSON: Mr. President.

ACTING PRESIDENT VALESKY: Senator Sampson, why do you rise?

SENATOR SAMPSON: I wish to lay aside Calendar Number 4, Senate Bill Number 134. I'd like to lay it aside for the day.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 6, by Senator Larkin, Senate Print 663, an act to amend the Lien Law.

ACTING PRESIDENT VALESKY: Read

the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

SENATOR CRAIG JOHNSON: Mr. President.

ACTING PRESIDENT VALESKY: Senator Johnson, why do you rise?

SENATOR CRAIG JOHNSON: Mr. President, to explain my vote on this bill.

ACTING PRESIDENT VALESKY: Senator C. Johnson, to explain his vote.

SENATOR CRAIG JOHNSON: Thank you, Mr. President.

I congratulate Senator Larkin on the passage of this bill. I just want to make an observation.

We've been here for a couple of days, and the minority has made an effort to -- I don't want to use the word "criticize," but make an observation about how bills seem to be moving a little bit slower

than usual now that the Democrats are in the majority.

I want to make an observation. I haven't been here that long; I've been here for a couple of years. But I note that last year, the first bill that was able to get chaptered that got on the active list by the minority was April, April of '08.

We're here today --

SENATOR NOZZOLIO: Point of order, Mr. President.

ACTING PRESIDENT VALESKY: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, point of order.

I believe that Senator Johnson's colloquy today is out of order. What is his point? It's not germane.

SENATOR CRAIG JOHNSON: I'm explaining my vote.

ACTING PRESIDENT VALESKY: Senator Nozzolio, Senator Johnson has risen to explain his vote on the piece of legislation in front of us.

SENATOR NOZZOLIO: Mr. President, that I question Senator Johnson's comments as non-germane to the legislation before us.

ACTING PRESIDENT VALESKY: Senator Johnson, we'd ask you to try to confine your remarks to the substance of the bill and explain how you will be voting on the piece of legislation.

SENATOR CRAIG JOHNSON: Well, I think it's important for me to explain my vote because, you know, a lot of times it's not just about the bill but -- not just about the contents but also about the spirit of the bill.

And I think what's important about the spirit of the bill is the observation, as we move forward in this time of working in a bipartisan manner, in supporting legislation from both sides of the aisle, it's important to recognize that we are here to work in a bipartisan manner. And one of the most important things to recognize is moving bills from both sides, our own as well as the minority side.

So today we're here to support -- and I'm sorry that we didn't have a chance to hear your bill, Senator Sampson. But we're here to support, it looks like in almost a unanimous way, Senator Larkin's important piece of legislation.

But that's what makes it so important, is because it's done in a bipartisan manner. And we are reflecting and demonstrating that commitment, unlike when the minority was in the majority and making a Democratic Senator wait four months to get a piece of legislation on the floor.

So I will support this legislation today in the spirit of bipartisanship.

Thank you very much, Mr. President.

ACTING PRESIDENT VALESKY: Senator Johnson will be recorded in the affirmative.

The Secretary will announce the results.

I'm sorry, Senator Libous, why do you rise?

SENATOR LIBOUS: Thank you,

Mr. President. Could I also explain my vote?

ACTING PRESIDENT VALESKY:

Absolutely.

SENATOR LIBOUS: Mr. President, I heard what was spoken as Senator Johnson explained his vote. And I would just like to, Mr. President, through you, remind Senator Johnson that it is not how you start the race that counts, it's how you finish it.

ACTING PRESIDENT VALESKY:

Senator Libous, how do you vote on the bill?

SENATOR LIBOUS: Yes.

ACTING PRESIDENT VALESKY:

Senator Libous will be recorded in the affirmative.

Does anyone else wish to explain their vote?

Senator Maziarz, to explain his vote.

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

Mr. President, on this bill I would like to just say to all of my colleagues over there, and most particularly to you, David

Valesky, that --

SENATOR CRAIG JOHNSON: Point of order.

SENATOR MAZIARZ: -- that is what we have become --

SENATOR CRAIG JOHNSON: Point of order, Mr. President.

SENATOR MAZIARZ: -- the county legislature. That is what we have become.

SENATOR CRAIG JOHNSON: Point of order.

ACTING PRESIDENT VALESKY: Senator Craig Johnson, why do you rise?

SENATOR CRAIG JOHNSON: Point of order, Mr. President.

ACTING PRESIDENT VALESKY: State your point of order.

SENATOR CRAIG JOHNSON: Mr. President, my understanding of the rules is that with respect to debate and discussion and explaining your vote, it is inappropriate for Senators to individually name other Senators when it comes to the discussion.

I think that we as a body have to

do a better job. And quite frankly, we've allowed other Senators to point out and name other Senators.

Mr. President, I think it's inappropriate and my point of order is it's inappropriate for one Senator to specifically name another Senator who is not involved in the debate, who is not involved in the discussion. If Senator Maziarz wants to name anybody, he should name himself and focus on the issue at hand.

That's my point of order, Mr. President.

SENATOR MAZIARZ: Mr. President, now I have a point of order.

ACTING PRESIDENT VALESKY: Senator Maziarz, state your point of order.

SENATOR MAZIARZ: I would like the record read back to see if during my explanation of my vote I ever mentioned a Senator's name.

ACTING PRESIDENT VALESKY: I believe you actually mentioned my name, Senator Maziarz.

SENATOR MAZIARZ: You're presiding.

ACTING PRESIDENT VALESKY: Senator Maziarz, how do you vote on the legislation?

SENATOR MAZIARZ: In the affirmative.

ACTING PRESIDENT VALESKY: Senator Maziarz will be recorded in the affirmative.

Senator LaValle, to explain his vote.

SENATOR LaVALLE: Thank you, Mr. President.

Mr. President, I just want to say that this legislation before us will save homeowner associations money. It's a good bill that Senator Larkin has sponsored.

And I would also note, in explaining my vote, that today is Senator Larkin's birthday.

I vote in the affirmative.

ACTING PRESIDENT VALESKY: Happy birthday, Senator Larkin.

(Standing ovation.)

ACTING PRESIDENT VALESKY: Senator LaValle will be recorded in the affirmative on the bill.

The chair wishes to recognize the happy occasion of Senator Larkin's birthday.

Are there any other Senators who wish to explain their vote?

Hearing none, the Secretary will announce the results.

THE SECRETARY: Ayes, 57. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

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

SENATOR KLEIN: Mr. President, on behalf of the Majority Leader, I hand up the following leadership notice and ask that it be filed in the Journal.

ACTING PRESIDENT VALESKY: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, is

there any further business at the desk?

ACTING PRESIDENT VALESKY: There is none.

SENATOR KLEIN: There being none, Mr. President, I move we adjourn until Monday, February 9th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT VALESKY: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Monday, February 9th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:24 a.m., the Senate adjourned.)