NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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February 24, 2009

3:23 p.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: The invocation today will be delivered by Father Peter G. Young, of Mother Theresa Community here in Albany.

REVEREND YOUNG: Let us pray.

In these days of financial stress, we pray for the members of this chamber that You will bless them, O God.

By being a Senator, they have been accepted into the leadership position so that they now can more fully serve the people of New York State.

In this spirit of community, our prayer today will be to better achieve the goal of dedicated representation in the power that is entrusted to all of our legislative

leadership. May they attain Your satisfaction in Your services and those to your constituents.

Amen.

ACTING PRESIDENT VALESKY: Thank you, Father.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Monday, February 23, the Senate met pursuant to adjournment. The Journal of Friday, February 20, 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, may we at this time adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT VALESKY: All those in favor of adopting the Senate Resolution Calendar in its entirety please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The Resolution Calendar is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we please go to the noncontroversial reading of Senate Calendar 9.

ACTING PRESIDENT VALESKY: Senator Klein, I believe we have some substitutions to take care of first, if that would be all right.

SENATOR KLEIN: If we can please return to the order of motions and

resolutions.

ACTING PRESIDENT VALESKY: Motions and resolutions.

The Secretary will read.

THE SECRETARY: On page 6, Senator Aubertine moves to discharge, from the Committee on Agriculture, Assembly Bill Number 2301 and substitute it for the identical Senate Bill Number 1676, Third Reading Calendar 14.

And on page 7, Senator Sampson moves to discharge, from the Committee on Judiciary, Assembly Bill Number 4392 and substitute it for the identical Senate Bill Number 1728, Third Reading Calendar 20.

ACTING PRESIDENT VALESKY: Substitutions ordered.

On Senator Klein's motion, the Secretary will proceed with the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 15, by Senator Aubertine, Senate Print 1677, an act to amend the Agriculture and Markets Law, in --

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 16, by Senator C. Kruger, Senate Print 169, an act to amend the Domestic Relations Law, in relation to grounds.

SENATOR KLEIN: Can we lay that bill aside for the day.

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

THE SECRETARY: Calendar Number 20, substituted earlier by Member of the Assembly Weinstein, Assembly Print Number 4392, an act to amend Chapter 644 of the Laws of 2008, amending the General Obligations Law.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT VALESKY: The bill is passed.

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

SENATOR KLEIN: Mr. President, at this time can we please move to the controversial reading of the calendar.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells so that the members can be called to the chamber so that we can proceed with the controversial reading of the calendar in a few moments.

The Secretary will now proceed with the controversial reading of the calendar.

THE SECRETARY: Calendar Number 15, by Senator Aubertine, Senate Print 1677, an act to amend the Agriculture and Markets Law.

SENATOR LITTLE: Explanation, please.

ACTING PRESIDENT VALESKY: Senator Aubertine, an explanation has been requested.

SENATOR AUBERTINE: Thank you, Mr. President.

What this bill would do is it would address the practice of bloc voting by co-ops by authorizing Ag and Markets to send co-op producers a ballot to vote on issues concerning the milk market here in New York State.

ACTING PRESIDENT VALESKY: Senator Little.

SENATOR LITTLE: Thank you. Will the sponsor yield for a question?

ACTING PRESIDENT VALESKY: Senator Aubertine, do you yield?

SENATOR AUBERTINE: Yes.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR LITTLE: Thank you, Senator Aubertine.

I obviously am going to vote for this bill. I think it's a very good bill. And as a matter of fact, I submitted a very similar bill in January of this year. Did you happen to see my bill submitted?

SENATOR AUBERTINE: No, Senator, I didn't.

SENATOR LITTLE: Well, I believe my bill was submitted January 7th and your bill was February 4th. And it is a good bill.

I would have a question to ask, though. In the interest of bipartisanship, why wouldn't we look at the bill that I already had and support that bill? And we are doing bipartisanship bills on the floor, I believe.

SENATOR AUBERTINE: Well, Senator, I really don't know. I offered this bill up not only in this house but in the Assembly as well.

And I believe that the bill that you have before you today, certainly I would hope for bipartisan support in this chamber to support the dairy farmers of this state.

But I believe this bill addresses the issue of bloc voting, an issue that I am intimately familiar with on a personal level, as a former dairy farmer. And I would certainly appreciate your support on it.

SENATOR LITTLE: Thank you.

Will the sponsor yield to another question?

ACTING PRESIDENT VALESKY: Senator Aubertine, do you continue to yield?

SENATOR AUBERTINE: Yes, Mr. President.

SENATOR LITTLE: Thank you.

Senator Aubertine, are you aware of the differences between your bill and my bill?

SENATOR AUBERTINE: No, Senator, I'm not.

SENATOR LITTLE: Well, the only difference between the two bills is that -- in the first place, I am not a former dairy farmer and not quite as familiar, I'm sure, as you are with dairy farming. But I met with the Northern Agriculture dairy farmers just last week.

And we are, for our milk industry and our dairy industry, in a crisis right now, as the dairy price per hundredweight of milk is hovering around $14 and lower. And their cost of producing the hundred pounds' weight

of milk is something like $18. So we are seeing that our dairy farmers are hurting greatly.

What this bill does is says that if a co-op who does bloc voting has a change in the agreement or in the milk order, that they would have to notify the farmer, who many times is not aware of any change in the milk order.

My bill says that they need to notify the farmer immediately upon the change of that milk order and what's happening with the price of that milk. And your bill says 30 days.

My question to you would be, why 30 days? Isn't that a longer period of time when we're talking about dairy farmers who are in a real crisis because of their costs? They're not getting paid for their milk, they're not getting paid as much as it costs them to produce that milk.

SENATOR AUBERTINE: Well, I would first like to -- for the record, the milk futures for March of this year are going to be

closer to $9, not $14.

SENATOR LITTLE: Right. Well, they said $14 and dropping.

SENATOR AUBERTINE: And USDA cost of production is not $20 but closer to $30.

So the difference between the cost of production and the cost being paid at the mailbox is, at the very least to say, extreme.

But having said that, this issue deals with more than just price. And I can cite you several instances. Probably the one instance would be component pricing, which in and of itself does not set the price of milk. But any issue dealing with the milk marketing order here in New York State, as I'm sure you're aware, has been in the past dealt with by bloc voting. And bloc voting is the culprit here.

We need to address bloc voting. This bill does that. It allows Ag and Markets 30 days to notify, and I believe that's a reasonable amount of time. I think to -- and again, I have not read your entire bill, but I think to require an instantaneous response may

be a little much.

And again, I do believe with the 30 days we can do what we need to do. We can notify farmers. We can allow them to make their own decision whether to be construed as part of a bloc vote or to vote individually. And this bill will accomplish just that.

SENATOR LITTLE: Thank you.

However, may I ask another question of the sponsor?

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR AUBERTINE: Yes.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR LITTLE: I still believe that in a crisis such as this, that giving 30 days to the dairy co-op to notify the farmer of a change in the milk order or any amendments to the program is too long.

Would you consider amending your bill so that it would be immediately?

SENATOR AUBERTINE: Well, Senator, I would take that under advisement, I

guess.

But again, just for clarification, I'm not aware of any current amendments to the milk marketing order here in New York State currently that would address the shortcomings in the milk pricing crisis that we're facing today.

So as I said earlier, this bill, as much as I would like it to, in all likelihood is not going to address the crisis that's here in front of us. This bill would allow farmers, as I said, to vote on milk marketing order issues.

SENATOR LITTLE: Thank you.

Would the sponsor yield for another question?

ACTING PRESIDENT VALESKY: Senator Aubertine, do you continue to yield?

SENATOR AUBERTINE: Sure.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR LITTLE: Thank you.

Senator Aubertine, do you have a sponsor in the Assembly for this bill?

SENATOR AUBERTINE: Not at this point in time.

SENATOR LITTLE: So it's a one-house bill.

SENATOR AUBERTINE: At this point.

SENATOR LITTLE: Thank you.

On the bill.

ACTING PRESIDENT VALESKY: Senator Little, on the bill.

SENATOR LITTLE: Thank you.

Right now I don't believe that any business or any group is more important to New York State than the farmers. We're all interested in where our food comes from, the quality of our food, the types of regulations that our food processors are under. And I would hope that we could do everything we can to help our farmers out.

And in so doing, I would still like to encourage the sponsor of this bill to have the bill immediately. This is the same bill as I had, and the only difference is 30 days versus notifying them immediately of any

changes. So I still would ask him to do that.

And I will vote in the affirmative on this bill. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Little.

Do any other Senators wish to be heard on the bill?

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. Will the sponsor yield for a couple of questions?

ACTING PRESIDENT VALESKY: Senator Aubertine, do you yield?

SENATOR AUBERTINE: Yes.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Aubertine, there's been discussion before during this session concerning the evils of one-house bills and that we really should make sure we have real bills to pass so they become law.

My question is prior to putting this bill in, or up to today, have you had any discussions with any Assembly members

concerning putting in this particular bill so that it actually becomes law?

SENATOR AUBERTINE: Well, Senator, as a member of the Assembly I most certainly have talked to the Assembly Ag chair, Assemblyman Magee. I've talked with nearly all my colleagues in the Assembly. I believe there's a good deal of support in the Assembly for this bill.

And certainly as we stand here today, to my knowledge, you're right, it is a one-house bill. But I believe that the support that I and this bill have enjoyed in the Assembly in the past, hopefully we can reflect that with this bill in the future.

SENATOR DeFRANCISCO: And just another question, if I could, please.

ACTING PRESIDENT VALESKY: Senator Aubertine, do you continue to yield?

SENATOR AUBERTINE: Yes.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: You indicated that you have sponsored this

identical bill in the past in the Assembly, is that correct?

SENATOR AUBERTINE: A bill very similar to this.

SENATOR DeFRANCISCO: Okay. And my last question, if you would yield one more time.

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR AUBERTINE: Yes.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Can you tell me whether or not anyone in the Assembly has committed to put this bill in so that it could become law this year?

SENATOR AUBERTINE: At this point in time, Senator, I cannot make that assertion.

SENATOR DeFRANCISCO: Okay. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator DeFrancisco.

Senator Marcellino.

SENATOR MARCELLINO: Yes. Would the sponsor yield to a question, just one question.

ACTING PRESIDENT VALESKY: Senator Aubertine, do you yield?

SENATOR AUBERTINE: Yes.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR MARCELLINO: Does your bill make this a requirement for the commissioner to notify the farmers? Or is it a discretionary thing?

SENATOR AUBERTINE: This is a discretionary thing.

SENATOR MARCELLINO: So it is not a requirement?

SENATOR AUBERTINE: Right.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Marcellino.

Do any other Senators wish to be heard on the bill?

Seeing none, the debate is closed and the Secretary will ring the bells.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61. Nays, 0. Senator Monserrate absent from voting.

ACTING PRESIDENT VALESKY: The bill is passed.

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

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

ACTING PRESIDENT VALESKY: No, there is not.

SENATOR KLEIN: There being none, I move that we adjourn until Wednesday, February 25th, at 3:00 p.m.

ACTING PRESIDENT VALESKY: On a motion by Senator Klein, there being no further business to come before the Senate, the Senate stands adjourned until Wednesday,

February 25th, at 3:00 p.m.

(Whereupon, at 3:43 p.m., the Senate adjourned.)