NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 16, 2009

3:13 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

Please rise and join with me in the Pledge of Allegiance.

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

ACTING PRESIDENT BRESLIN: The invocation today will be delivered by the Reverend Peter Young, of Mother Theresa Church in Albany, New York.

Father Young.

FATHER YOUNG: Thank you, Senator.

Let us pray.

Almighty and Eternal God, You have revealed Your glory to all nations. God of power and might, wisdom and justice, come to our Senators through Your authority with the prayer that Your laws are enacted and judgments are decreed, with our citizens benefiting then from the dedication of our session today.

We ask You this now and forever.

Amen.

ACTING PRESIDENT BRESLIN: Thank you, Father Young.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Friday, March 13, the Senate met pursuant to adjournment. The Journal of Thursday, March 12, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BRESLIN: 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, can we move to a reading of Calendar Number

20, please.

ACTING PRESIDENT BRESLIN: Senator Klein, there are substitutions at the desk.

SENATOR KLEIN: Mr. President, can we take up the substitutions at this time?

ACTING PRESIDENT BRESLIN: Yes, the Secretary will read.

THE SECRETARY: On page 9, Senator Sampson moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 4341B and substitute it for the identical Senate Bill Number 2581A, Third Reading Calendar 68.

On page 11, Senator Montgomery moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 5365 and substitute it for the identical Senate Bill Number 2231, Third Reading Calendar 98.

And on page 11, Senator Morahan moves to discharge, from the Committee on Elections, Assembly Bill Number 3910 and substitute it for the identical Senate Bill

Number 1535, Third Reading Calendar 100.

ACTING PRESIDENT BRESLIN: Substitutions ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, can we now go to a reading of Senate Calendar Number 20.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 19, by Senator Klein, Senate Print 1363B, an act to amend the Real Property Actions and --

SENATOR KLEIN: Will you lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 88, by Senator Schneiderman, Senate Print 2618, an act to amend the Criminal Procedure Law, in relation to prosecution.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 90, by Senator Stavisky, Senate Print 1736, an act to amend the Education Law, in relation to appointment of trustees.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

THE SECRETARY: Calendar Number 93, by Senator Valesky, Senate Print 2577, an act to amend Chapter 206 of the Laws of 1974 amending the Labor Law.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

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

ACTING PRESIDENT BRESLIN: The Secretary will please ring the bell.

Members are asked to come to the chamber for the controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 90, by Senator Stavisky, Senate Print 1736, an act to amend the Education Law.

ACTING PRESIDENT BRESLIN: Senator Stavisky.

SENATOR STAVISKY: Would you lay that aside for the day, please.

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

The Secretary will read.

THE SECRETARY: Calendar Number 93, by Senator Valesky, Senate Print 2577, an act to amend Chapter 206 of the Laws of 1974

amending the Labor Law.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I have an amendment at the desk, and I'd waive its reading and move its adoption.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco. The reading of the amendment is waived, and you may be heard on the amendment.

SENATOR DeFRANCISCO: Thank you.

ACTING PRESIDENT BRESLIN: Excuse me, Senator DeFrancisco.

Senator Klein.

SENATOR KLEIN: Mr. President, point of order.

ACTING PRESIDENT BRESLIN: Yes, Senator Klein.

SENATOR KLEIN: Mr. President, this amendment is not germane to the purpose of this bill, and I believe that it should be ruled out of order.

Calendar 93 relates to work practices, procedures, and standards to

protect persons who work on high-voltage lines. The amendment that's proposed by Senator DeFrancisco would make funds available to help municipalities, citizens and community groups intervene in proposed electric transmission projects.

The past practice of the Senate has been to apply the common definition of the term "germane," which is being relevant to the matter at hand. Using our standard, Mr. President, the amendment is not germane to the purpose of this bill that it would amend.

ACTING PRESIDENT BRESLIN: Thank you, Senator Klein.

SENATOR DeFRANCISCO: May I be heard on the issue of germaneness?

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, the ruling of the chair is the amendment is out of order.

SENATOR LIBOUS: Mr. President, I appeal the ruling of the chair.

ACTING PRESIDENT BRESLIN: The ruling of the chair can be appealed.

The question before the house is

should the ruling of the chair be overruled. All those in favor of overruling --

SENATOR LIBOUS: Mr. President, I believe we have an opportunity to speak on why it's germane.

SENATOR KLEIN: Mr. President, the ruling is on germaneness.

ACTING PRESIDENT BRESLIN: Right. I don't believe there's a debate on the germaneness of the ruling.

SENATOR LIBOUS: Yes. Yes, Mr. President, I believe there is.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, there is no appeal under the rules, of an appeal to the chair. You can talk about the underlying bill itself.

SENATOR DeFRANCISCO: Well, how about if I speak about both, because apparently there's some confusion at the desk.

Because if there's a ruling on germaneness, I would assume that someone who feels that ruling was wrong would have an opportunity to convince his or her fellow Senators that the ruling was wrong, and they

may want to vote the other way on an appeal.

And if we can't express our reasons why it's not germane, then --

ACTING PRESIDENT BRESLIN: You were premature, possibly, in asking for a ruling.

SENATOR DeFRANCISCO: May we have a moment, please?

ACTING PRESIDENT BRESLIN: Sure.

(Pause.)

SENATOR KLEIN: Mr. President.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Can you please recognize Senator DeFrancisco to speak on why he believes his amendment is germane.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, to speak on the germaneness of the issue.

SENATOR DeFRANCISCO: Thank you.

And I appreciate the opportunity to speak on this motion, which has always been debatable in the past. And it's especially appropriate during Sunshine Week, and with the

new leadership expressing their willingness to make sure the process is fair to all sides.

And it's nice that we're able to do what we've always been able to do by the new ruling on germaneness.

This particular bill, the amendment, deals with the same topic as the original bill that Senator Valesky is sponsoring, 2577. As Senator Klein mentioned, that bill deals with the safe work practices for the safety of people working on lines, high-energized voltage lines, that protect those people that happen to be working on those projects.

This amendment deals with a fee that would be charged to transmission projects, to the people pursuing transmission projects, so that the municipalities can effectively protect their citizens, who are not -- who could be people working on power lines, they could be the general public -- that they're required to make sure are safe from danger, including danger from these lines.

Right now municipalities don't have that opportunity to raise the funds without a pot of money created by this amendment, which amendment would in fact allow the municipalities to contest some of these projects and/or modify the projects for the health and safety of the people in their community as well as the environment.

So I believe for those reasons, Mr. President, this amendment -- could you call for some order?

ACTING PRESIDENT BRESLIN: Can we please have some order to allow Senator DeFrancisco to speak.

Senator DeFrancisco.

SENATOR DeFRANCISCO: So I believe that due to the safety issues in both the bill and the amendment, that this is germane.

And I call upon all colleagues in the Senate to at least allow the amendment to be formally debated for the consideration of the rest of the house on this particular amendment.

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

The question shall be on the ruling of the chair, should it be overruled.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

First of all, I think the present bill is a good bill. The issue is public safety. And the amendment was also a bill that Senator Valesky and I cosponsored, this amendment that goes to public safety. So the nexus of the bill, and germaneness, is public safety.

The main bill deals with the safety of workers. The amendment deals with the safety of communities, for a fund on environmental safety, on visual pollution, on health hazards that may emanate from the lines, as well as property damage to our communities.

So for those reasons, on the issue of safety, there's a nexus. And they're

interrelated. And for those reasons, both the Senator Valesky main bill and the amendment, which is also a Valesky co-sponsored bill -- which has already passed in the Assembly last year -- we have an opportunity to make this bill better. And it's something we all have supported in the past.

So for those reasons, I would ask the chair to reconsider that it is germane on the issue of safety.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Bonacic.

The question is on the ruling of the chair, should it be overruled. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT BRESLIN: The nays have it. The ruling of the chair is upheld.

The debate is closed.

Ring the bells.

Come to your seats.

SENATOR WINNER: Point of order, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Winner, point of order.

SENATOR WINNER: Could I inquire of the chair as to --

SENATOR LIBOUS: Can we have some order in the chamber? I can't hear Senator Winner's point of order to the chair.

ACTING PRESIDENT BRESLIN: Can we please have order? Everyone taking their conversations outside would be appreciated.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Libous.

Senator Winner.

SENATOR WINNER: Mr. President, I just wanted to inquire of the chair, it's my understanding that the ruling of the chair -- there was a motion to overturn the ruling of the chair. And a vote, therefore, in the

affirmative would be to overturn the ruling of the chair, and a vote in the negative would be to uphold the ruling of the chair.

I believe it was misstated that that was a vote -- that the motion was to -- or an affirmative vote was to uphold the ruling of the chair and a vote in the negative was to --

ACTING PRESIDENT BRESLIN: I don't believe that's what I said.

SENATOR WINNER: Well, good, then I'm glad that I wasn't hearing properly.

But then following that up, I'd also like to make an inquiry as to what was the vote on that motion.

ACTING PRESIDENT BRESLIN: Overwhelming.

(Laughter.)

SENATOR WINNER: Is the vote recorded?

ACTING PRESIDENT BRESLIN: No, it is not, Senator.

SENATOR WINNER: Well, Mr. President, I believe that we should have a

recorded vote with regard to that motion.

ACTING PRESIDENT BRESLIN: It's been the precedent and the rules that that is not recorded, Senator Winner.

SENATOR KLEIN: Mr. President.

SENATOR WINNER: Could you make reference to the rule, Mr. President, that says that there not be a recorded vote on a motion to overturn the ruling of the chair?

ACTING PRESIDENT BRESLIN: Senator Klein -- excuse me, Senator Winner.

SENATOR KLEIN: Point of order, Mr. President. This is done by a voice vote.

ACTING PRESIDENT BRESLIN: It's done by a voice vote. And it's over with, Senator Winner.

Read the last section.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT BRESLIN: Senator Libous, why do you rise?

SENATOR LIBOUS: I believe Senator Winner asked a question, and I didn't hear the answer. He asked if the rule could be referred to.

If indeed there is a rule in the Senate that says it is a voice vote, I believe Senator Winner's question to the chair was could you please refer to the rule. Which rule --

ACTING PRESIDENT BRESLIN: It's been the practice of this body that it would be a voice vote, Senator Libous.

SENATOR LIBOUS: So there is no official rule.

ACTING PRESIDENT BRESLIN: It's the custom of this house that it's a voice vote.

Why do you rise, Senator Ranzenhofer?

SENATOR RANZENHOFER: I have a question, Mr. President.

On a voice vote, is the determination by who has more people voting or who's louder?

ACTING PRESIDENT BRESLIN: I think it's a sense of which side had more votes voting and not who is the loudest, Senator Ranzenhofer.

SENATOR RANZENHOFER: Okay, thank you.

ACTING PRESIDENT BRESLIN: You're very welcome.

SENATOR LaVALLE: Mr. President.

ACTING PRESIDENT BRESLIN: Senator LaValle, why do you rise?

SENATOR LaVALLE: Mr. President, I'm going to request a slow roll call on this.

Tradition is not an answer. There is either a rule or no rule, not tradition. So I ask for a slow roll call.

ACTING PRESIDENT BRESLIN: Senator LaValle, a slow roll call is only warranted on final consideration of a bill or resolution or a concurrent resolution.

SENATOR LaVALLE: Mr. President, could you --

ACTING PRESIDENT BRESLIN: That would be Rule 8, Section 6.

SENATOR LaVALLE: Okay, thank you.

SENATOR KLEIN: 6(B).

ACTING PRESIDENT BRESLIN:

Section 6(B).

Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Valesky, to explain his vote.

SENATOR VALESKY: Thank you, Mr. President.

I rise to explain my vote in the affirmative, in particular because I'm a bit concerned that the conversation this afternoon has taken away from the importance of the legislation that's before us.

It's my understanding that in 1974 the State Legislature, and a number of times since then, approved legislation that governs the physical safety of those high-voltage-electric-line workers. And we did so again, I believe, just last session.

It seems to me that it makes perfect sense to not allow this law to sunset

in the future, because what we are doing is considering something extremely important, and that is the personal health and safety of those workers, who perform very dangerous work.

It does not seem to make sense that every few years those electrical workers would have to go through a process by which they come to this Legislature on a matter of their own personal safety and ask and request their Legislature and their Governor to extend the law. Which is what has happened for the past 35 years.

Upon passage of this bill today in this house, hopefully the Assembly will follow suit, the Governor will sign that bill into law, and the electrical workers in this state, who perform a very dangerous function, will no longer have to be concerned about whether or not this law would be extended in the future.

So I am pleased to support this bill. I ask members on both sides of the aisle to support this bill as well and ask that it be moved at this time.

I vote in the affirmative. Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Valesky.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I agree with Senator Valesky that this is a good bill. We should always protect the safety of our workers, especially in high-risk jobs.

But we should also protect the safety of everybody else in that community. And that's why it's a little bit distressing that a bill that Senator Valesky also sponsors was our very amendment, so he understands how important it is for that bill to pass.

And it could have been a much broader bill that protected more people. And it just seems unbelievable that it would not even be considered today when there's a sponsor who's sponsoring the underlying legislation who's in support of it.

There's only one possible reason for that. It's because the new Majority has

not brought that bill themselves to the floor. And this is the type of practice that we would hear over and over again that was going to change on day one; the reform, the system was going to be different. And so that's the only reason that our amendment wasn't voted on it. And it's wrong.

Secondly, Senator Valesky mentions -- and I do support the bill, and it's important to protect electrical workers. But the current bill doesn't expire till the year 2013, four years from now.

And I understand the importance of it, but how could this bill be so urgent or more urgent than passing a one-house budget in this Senate so we can go to conference committees? Which, by the way, happen to be part of the process that we adopted by the Legislature so that we could have a budget that is open and discussed in public.

So, you know, there is so much hypocrisy that we see by just this little amendment. And I think the public out there should know about it. Despite the fact that

the bill is a good bill, it's certainly not as urgent as a one-house budget bill that we could start the public process.

So I vote in the affirmative.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you, Mr. President. I rise to explain my vote and to vote in the affirmative.

And I commend Senator Valesky on this piece of legislation. I think, notwithstanding a point about the timing, I think what's important is getting the job done now, making sure that our electrical workers don't have to worry year after year as the clock ticks by as to whether or not they're going to have the permanent protection that they should be afforded.

But I sat here today during the debate and just was amazed about how all of a sudden at this point in time the amendment that was offered up by the Minority took such importance when the same bill offered by

Senator Valesky was before the Minority when they were in the Majority.

Where were you last year when Senator Valesky had the very same bill? You were silent. You were quiet. And it's now all of a sudden, right now, this becomes the most important thing of the day.

I would watch what we say when we talk about the word "hypocrisy." I would watch what we say when we use that word. It's a very strong word. And we should all respect one another in this house.

The important thing today is what Senator Valesky is accomplishing. It's a very good bill. The electrical workers of this state are here to be protected, and I commend Senator Valesky.

I vote aye, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Morahan, why do you rise?

SENATOR MORAHAN: I was just going to explain my vote as well.

But I'm curious about the statements made by Senator Johnson, in that I

don't believe this bill was ever on the floor for us to vote on this bill last year. I believe this bill may have never received the proper committee approval; therefore, it wasn't here, for whatever reason.

But to say that we didn't vote for it on the floor is not quite accurate. I don't believe it was on the floor last year.

I vote yes.

ACTING PRESIDENT BRESLIN: Thank you, Senator Morahan.

Senator Bonacic, to explain his vote.

SENATOR BONACIC: Explaining my vote, and more as a response to Senator Johnson.

To refresh your recollection, the Senate Majority, on the subject of the amendment, came up with a million dollars to fight the NYRI line. The amendment deals with $450,000 to make the utilities pay for future fights.

So when you speak of hypocrisy, the Senate Majority, when they were in power,

acted to put up the money to accomplish what we wanted this amendment to accomplish in the prospective years. Just clarifying the record.

I think it's a good bill that Senator Valesky put forward. He's got the unanimous consent of everyone on the floor, and that's a good way to proceed for good legislation.

But to throw aspersions of hypocrisy, I think that erodes future cooperation.

ACTING PRESIDENT BRESLIN: Thank you, Senator Bonacic.

Announce the results.

THE SECRETARY: Ayes, 61. Nays, 0.

ACTING PRESIDENT BRESLIN: The bill is passed.

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

SENATOR KLEIN: Mr. President, can we please recognize Senator Ruth Hassell-Thompson for a brief announcement.

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

Immediately following today's session will be a meeting of the Majority in Conference Room 332. Immediately following session.

ACTING PRESIDENT BRESLIN: There will be a meeting of the Majority in the Majority Conference Room immediately following session, in Room 332.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, I move that we adjourn until Tuesday, March 17th, at 3:00 p.m.

ACTING PRESIDENT BRESLIN: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, March 17th, at 3:00 p.m.

(Whereupon, at 3:45 p.m., the Senate adjourned.)