NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 27, 2009

11:19 a.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 come to order.

I ask everyone to join me in reciting the Pledge of Allegiance.

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

ACTING PRESIDENT BRESLIN: The invocation today will be presented by the Reverend Peter G. Young, of the Mother Teresa Community in Albany.

REVEREND YOUNG: Let us pray.

As we enjoy today's May weather, in this Memorial Day weekend we recall with prayer and pride for our veterans that have sacrificed to provide us with our freedom.

If you were serving in this chamber in Kingston in 1777 in the Senate body, there was a death sentence for those Senators who were caught by the loyalists.

Today our Senators are challenged in economically difficult times. May You give us the grace of God to protect us and to help us to provide the answers to these economic

crises.

Amen.

ACTING PRESIDENT BRESLIN: Thank you, Father Young.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, May 26, the Senate met pursuant to adjournment. Senator Breslin in the chair, upon designation of the Temporary President. The Journal of Monday, May 25, 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.

Senator Klein.

SENATOR KLEIN: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT BRESLIN: Yes, Senator Klein, there are.

The Secretary will read.

THE SECRETARY: On page 20, Senator Aubertine moves to discharge, from the Committee on Agriculture, Assembly Bill Number 7266, and substitute it for the identical Senate Bill Number 4404, Third Reading Calendar 291.

ACTING PRESIDENT BRESLIN: Substitution ordered.

THE SECRETARY: On page number 27, Senator Sampson moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7132 and substitute it for the identical Senate Bill Number 3528, Third Reading Calendar Number 357.

ACTING PRESIDENT BRESLIN: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a report of the Finance Committee at the desk.

ACTING PRESIDENT BRESLIN: Senator Klein, there is a report of the Finance Committee here at the desk.

The Secretary will read.

THE SECRETARY: Senator Kruger, from the Committee on Finance, reports the following nominations.

As a member of the State Civil Service Commission, Joseph Dennis Hanrahan, of Latham.

ACTING PRESIDENT BRESLIN: Senator Kruger.

SENATOR CARL KRUGER: Please move the nomination.

ACTING PRESIDENT BRESLIN: Senator Savino, on the nomination.

SENATOR SAVINO: Thank you, Mr. President.

I rise in support of this nomination of J. Dennis Hanrahan to the State Civil Service Commission. Welcome.

This is a reappointment of Mr. Hanrahan, who was appointed last year, and a well-deserved reappointment. He recently appeared before the Senate Committee on Civil Service and Pensions, where he came to address us on his renomination. And he was able to

display to the committee a wealth of information about the civil service merit system, his commitment to it, his experience as a human resource manager, and his understanding of what for many people is a very boring, arcane piece of law but critically important to the state workforce.

So I am very pleased to say congratulations and to second the nomination of J. Dennis Hanrahan to the State Civil Service Commission.

ACTING PRESIDENT BRESLIN: Are there any other Senators wishing to be heard on the nomination?

The question, then, is on the motion to confirm the nomination of Joseph Dennis Hanrahan as a member of the State Civil Service Commission. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The

motion carries. The nomination is hereby confirmed.

Congratulations, Mr. Hanrahan.

(Applause.)

ACTING PRESIDENT BRESLIN: The Secretary will continue to read.

THE SECRETARY: As a member of the New York State Energy Research and Development Authority, David Elliman, of New York City.

As a member of the New York Job Development Authority, Emily Youssouf, of New York City.

As a member of the Administrative Review Board for Professional Medical Conduct, Richard D. Milone, M.D., of Rye.

As a member of the Citizen's Policy and Complaint Review Council, Julie A. Scalione, of Williamsville.

As a member of the Minority Health Council, Ingrid M. Allard, M.D., of Tarrytown.

As a member of the Public Health Council, Michael S. Fassler, of Bayside.

As a member of the State Hospital

Review and Planning Council, Anderson Torres, Ph.D., of the Bronx.

ACTING PRESIDENT BRESLIN: Senator Kruger.

SENATOR CARL KRUGER: Will you please move the nominations.

ACTING PRESIDENT BRESLIN: Are there any other Senators wishing to be heard on the nominations?

The question is on the motion to confirm the nominations of David Elliman, Emily Youssouf, Richard D. Milone, Julie A. Scalione, Ingrid M. Allard, Michael M. Fassler, and Anderson Torres. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The motion carries.

The nominations are hereby confirmed.

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 BRESLIN: All those in favor of adopting the Resolution Calendar in its entirety please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The Resolution Calendar is adopted in its entirety.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 229, by Senator Addabbo, Senate Bill 3252, an act to amend the Election Law, in relation to including email addresses and voter registration data.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of January next succeeding.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 268, by Senator Stavisky, Senate Print 1741, an act to amend the Vehicle and Traffic Law --

SENATOR KLEIN: Please lay the

bill aside for the day.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 273, by Member of the Assembly Gottfried, Assembly Bill Number 724, an act to amend the Public Health Law, in relation to retaliation.

ACTING PRESIDENT BRESLIN: 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: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 274, by Member of the Assembly Gottfried, Assembly Bill Number 763, an act to amend the

Public Health Law, in relation to private rights of action.

SENATOR MARCELLINO: Lay the bill aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 291, substituted earlier today by Member of the Assembly Magee, Assembly Print Number 7266, an act to amend the Agriculture and Markets Law, in relation to the milk producers security fund.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day after it shall have become law.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 294, by Member of the Assembly Dinowitz, Assembly Print Number 1800, an act to amend the Real Property Tax Law.

SENATOR KLEIN: Lay that bill aside for the day.

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

THE SECRETARY: Calendar Number 299, by Member of the Assembly Destito, Assembly Print Number 1204, an act to authorize the City of Utica.

ACTING PRESIDENT BRESLIN: There is a home-rule message at the desk.

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:

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 303, by Senator Stachowski, Senate Print 1967, an act to amend the Penal Law, in relation to the definition of assault in the second degree.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November next succeeding.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: I'm going to vote aye.

And to just be consistent, we're now into another special category that is raised to assault in the second degree. But

I'm getting close, because now we have building inspectors. Pretty soon we'll have dogcatchers, and we may have the full gamut of every single potential person that could possibly be raised from an assault third to an assault second.

So that day is near, and I'll vote yes.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco will be recorded in the affirmative.

Senator Volker.

SENATOR VOLKER: I agree with Senator DeFrancisco. Except, as I have pointed out on many, many occasions as the former chairman of Codes, the problem is that assault is probably one of the most undergraded areas in the law.

But getting the Assembly to pass a bill that increases the penalty for assault is like getting a -- I won't -- I'm trying to think of something. It's very, very difficult.

In fact, I notice that this is a

D felony. If I know the Assembly correctly, the only way it will pass the Assembly is as an E felony.

It's unfortunate, but the realities of this Legislature are that this house passes the tough assault legislation, and unfortunately the other house will not.

I vote aye.

ACTING PRESIDENT BRESLIN: Senator Volker will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 306, by Senator Monserrate, Senate Bill 3792, an act to amend the General Business Law.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of April next succeeding.

ACTING PRESIDENT BRESLIN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 310, by Senator Oppenheimer, Senate Print 1888, an act to amend the Tax Law.

ACTING PRESIDENT BRESLIN: There is a home-rule message at the desk.

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: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number

319, by Member of the Assembly Schimminger, Assembly Print Number 7822, an act to amend Chapter 391 of the Laws of 2007 relating to directing the law revision commission.

ACTING PRESIDENT BRESLIN: 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: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 326, by Member of the Assembly Cusick, Assembly Print Number 6914, an act to amend Chapter 395 of the Laws of 1978.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect April 1, 2009.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 341, by Senator Valesky, Senate Print 3493, an act to --

SENATOR KLEIN: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 369, by Senator Valesky, Senate Print 2960B, an act to amend the Tax Law, in relation to providing a tax credit for rehabilitation of historic properties.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 5. 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, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator Savino, Senate Print 5503, an act to amend the Executive Law.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 26. 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, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number

384, by Senator Savino, Senate Print 5504, an act to amend the Executive Law, in relation to terms and conditions of employment.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

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

SENATOR VOLKER: Yeah, I want to thank Senator Savino for passing these two bills. These are the pay bills for the State Police.

And I want to compliment the State Police for their patience. These agreements were made a long time ago. And I spoke at some length with Dan De Federicis and the leaders of the union, and they were willing to wait. And I just want to say to them, they certainly deserve the pay increase.

And let's hope in the future when

we get agreements that they are more promptly taken care of.

ACTING PRESIDENT BRESLIN: Senator Volker will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 420, by Member of the Assembly Magee, Assembly Print Number 2321, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT BRESLIN: 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: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The

bill is passed.

Senator Klein, that completes the noncontroversial reading of the active bills on the calendar.

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

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

Members are all asked to come to the chamber for the controversial reading of active bills on the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 274, by Member of the Assembly Gottfried, Assembly Print Number 763, an act to amend the Public Health Law.

ACTING PRESIDENT BRESLIN: Senator Hannon.

SENATOR HANNON: Mr. President, on the bill.

ACTING PRESIDENT BRESLIN: Senator Hannon, on the bill.

SENATOR HANNON: Mr. President, I

rise to oppose this piece of legislation.

A little bit of background. This is legislation that would expand the rights to sue a nursing home and to sue the people who run a nursing home. It would affect people who run not-for-profit nursing homes, it would affect people who run for-profit nursing homes, it would affect the municipalities that run nursing homes, such as our counties throughout the state. Even Albany County has two that they sponsor.

The backdrop of this immediately is that we have taken hundreds of millions of dollars away -- not by my acquiescence, not by my support, but by the action of the budget -- from the entire series of nursing homes throughout the state. So that they are under fiscal constraint like they have never been before.

This bill is introduced ostensibly to clarify when people can be sued who run nursing homes. If the bill were put in to clarify, you probably would say, why is it necessary after hundreds of years it needs to

be clarified?

It's very clear if you read the case law of the various courts -- the four Appellate Divisions, the many Supreme Courts, the Court of Appeals we have in this state -- that nursing homes are sued as a practical matter now, under the standard negligence statutes we have in this state which give rise to duties of care when you take care of people, which give rise to liabilities when people don't take care of people.

We look at the Trial Lawyers' memo that says "We need to specify the tort causes of action that are among the remedies offered to patients."

But if you look at the bill, it's not limited to those tort remedies that are listed in the bill. It said "for purposes of this section, injury shall include," and then goes on to say what they are. But "shall include" and not be limited to.

So clearly, listing these is not the reason for this bill. Well, then, what is the reason?

What is sought under this bill is to change the common law right to sue for -- and to have a statutory right to sue, but to curtail the rights of people to put in a defense and say that the person suing has been partially negligent on their own part.

Now, the partial negligence, it's called, under -- for all the law professors, it's called comparative negligence. That allows there to be some mitigation of damages if the person bringing the suit is partially at fault. It's up to the trier of the facts, it's up to the judge, the jury. They're the ones who make the decisions. We're not involved.

But if we pass this statute, we curtail that ability. In so curtailing that ability, we're going to raise the costs of running a nursing home, raising the costs at the very same time that we have --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Hannon.

Could we have some order, please.

Thank you. Continue; I apologize.

SENATOR HANNON: I'm sorry.

Thank you very much, Mr. President.

So we raise costs and we curtail the ability to run these nursing homes. What happens? They're not getting the money from the state. They're not getting the money from the federal government. They're not getting the money from insurers. They're going to have to either charge the patients more or deliver less services.

In the end, this proposal is counterproductive. In the end, this proposal will hurt patients. And I don't believe it's supported. And for that, I would urge everybody in this chamber to reject this proposal.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Hannon.

Are there any other Senators wishing to be heard?

Hearing none, the debate is closed.

The Secretary will ring the bell.

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 Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, the interesting thing about this bill is --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Saland.

Can we have some quiet, please, in the chamber.

SENATOR SALAND: The interesting thing about this bill is it's yet another in a continuum of bills that we have seen brought before this house which basically seems to go out of its way to do harm to business in the State of New York.

We endured one of the most horrific budgets we have seen certainly within anybody's memory. For those of us who have

the misfortune of being a suburb in the MTA region, we endured perhaps the most horrendous of horrendous taxes in the form of the payroll tax.

There is no nursing home patient who does not have the right to sue, who does not have the right to recover damages. There has been no hue and cry over the need for such legislation as before us.

This legislation is special interest legislation, legislation that is intended to benefit the trial lawyers, who are its biggest advocates here for this type of quote, unquote relief.

Those who will be damaged will be nursing homes and, ultimately, nursing home patients, in that many of us know full well we have a difficult time finding nursing home beds for the people in our respective communities who want them.

This will be another disincentive, another effort to try yet to pile onto nursing homes. And we will once again see the quality of life in New York and the ability of

business to thrive be punished.

I vote in the negative.

ACTING PRESIDENT BRESLIN: Senator Saland will be recorded in the negative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 274, those recorded in the negative are Senators Alesi, Farley, Flanagan, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Little, Marcellino, Nozzolio, Padavan, Ranzenhofer, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 41. Nays, 21.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the controversial reading of the active bills on the calendar.

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

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President. I have two announcements.

The first is that one of the things we attempt to do when we come into these chambers is to present good government and good governmental policies. And with us this morning are three fifth-grade classes from Columbus Elementary School in the City of Mt. Vernon, with their principal, Mr. Peter Ragaglia; their teachers, Ms. Irene Boykin, Mr. Baldino, Ms. Lipedusi -- I hope I said that right -- Ms. Dimas, and Kathy First, who is a volunteer.

More importantly, we have with them two mentors who have been working for 21 years as mentors to third, fourth, and fifth graders as a part of our intergenerational program, in the person of Ms. Lavinia Smith, who is 86 years old, and in the person of Ms. Macklebee, who is 75 years old, both of whom have been a part of our program for that extensive period.

And I would just like this audience

to know that they are there reviewing and observing, and, in the persons of Ms. Macklebee and Ms. Smith, both of whom have been in these chambers each year for the nine years that the Columbus School has been coming.

And they want you to know that they continue to be proud of the work that we do here in state government, and they just wanted to be acknowledged.

My second announcement is that immediately following our session we will be having a Majority conference in the Majority Conference Room, Room 332, immediately following session.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Hassell-Thompson.

There will be an immediate meeting of the Senate Majority in Room 332.

Senator Klein.

SENATOR KLEIN: Mr. President, can you now recognize Senator Marcellino for an announcement.

ACTING PRESIDENT BRESLIN:

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. There will be a meeting of the Minority in Room 314 immediately following session.

ACTING PRESIDENT BRESLIN: There will be a meeting of the Senate Minority in Room 314 immediately after session.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: Yes, there is, Senator Klein.

SENATOR KLEIN: I hand up the following committee notice on behalf of Senator Smith and ask that it be filed in the Journal.

ACTING PRESIDENT BRESLIN: So ordered.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: No,

Senator, the desk is clear.

SENATOR KLEIN: As there is no further business, I move that we adjourn until Monday, June 1st, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT BRESLIN: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Monday, June 1st, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:52 a.m., the Senate adjourned.)