NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 4, 2011

3:15 p.m.

REGULAR SESSION

SENATOR THOMAS F. O'MARA, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT O'MARA: The Senate will come to order.

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

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

ACTING PRESIDENT O'MARA: Today we have the Reverend Peter G. Young, from Mother Teresa Community here in Albany, to lead us in a prayer.

REVEREND YOUNG: Thank you, Senator.

Let us pray.

As Senators on this day of the session, we heard the bell that calls us to hear one another for the benefit of our New York State constituents. The invocation calls us to be true, to be best at what we might become as a legislative leader.

We need to heed the call of our own hearts, and with compassion and equity, as on this day in memory, especially with this thought of the murder of Martin Luther King in 1968 on this day. Too often we forget our

leaders that have sacrificed their lives for what we enjoy today. May we have that attitude of gratitude for what they have done for us.

Amen.

ACTING PRESIDENT O'MARA: Reading of the Journal.

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

ACTING PRESIDENT O'MARA: 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, on

page number 8 I offer the following amendments to Calendar Number 86, Senate Print number 1031A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT O'MARA: The amendments are received and adopted, and the bill retain its position on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Fuschillo, on page 19 -- it looks like a 4 or a 9. I'll guess 19 and see how close I am -- I offer the following amendments to Calendar Number 247, Senate Print Number 547 -- or 597. We need to close the loops on our 9s -- and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT O'MARA: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President,

on behalf of Senator Grisanti, on page 17 I offer the following amendments to Calendar Number 234, Senate Print 1737, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT O'MARA: The amendments are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Ranzenhofer, I believe there's a privileged resolution at the desk. May we please have it read in its entirety and call on Senator Ranzenhofer before we move for its adoption.

ACTING PRESIDENT O'MARA: The Secretary will read.

THE SECRETARY: By Senator Ranzenhofer, Legislative Resolution Number 1149, congratulating the 2010 Williamsville North High School Girls Field Hockey Team upon the occasion of capturing the New York State Class A Championship.

"WHEREAS, Excellence and success in

competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, On November 20, 2010, the Lady Spartans Williamsville North High School captured the Class A Girls Field Hockey Championship with a 1-0 victory over Mamaroneck. It was their second New York State title in four years, previously winning the championship in 2007; and

"WHEREAS, The 2010 Williamsville North High School Girls Field Hockey Team finished the season undefeated with an outstanding 21-0. The team amassed an extraordinary 18 shutouts during the season; and

"WHEREAS, In addition to winning two New York State championships in the past four years, the Williamsville North High School Girls Field Hockey Team has achieved a tradition of excellence over many years. It has vied for the state title six times in the last eight years. They have won eight section titles, nine division titles, and nine league titles since 1999 (eight since 2002), and 31 of its players have earned All-State status and 10 players have reached All-American status; and

"WHEREAS, The Williamsville North High School Girls Field Hockey Team has also been ranked number one on a weekly basis in the All-Western New York Coaches Poll since the 2003 season. Its record since 2002 is an outstanding 162-16-6, and it has compiled an exceptional 130-11-5 record since its first State Tournament team in 2003; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach Kristine LaPaglia and Assistant Coach Dalton Beaver, skilled and inspirational mentors respected for their

ability to develop potential into excellence; and

"WHEREAS, Coach Kristine LaPaglia has been coaching for 14 years and reached a career milestone this past season by securing her 200th career win in October. Her overall record as a coach is 207 wins, 48 losses and 13 ties; and

"WHEREAS, In 2008 and again in 2009, Coach LaPaglia was named the North Region Coach of the Year by the National Field Hockey Coaches Association; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the 2010 Williamsville North High School Girls Field Hockey Team, from the opening game of the season to capturing the Class A Championship, were a sisterhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school and community; and

"WHEREAS, Coach Kristine LaPaglia and Assistant Coach Dalton Beaver have done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Kristine LaPaglia, Assistant Coach Dalton Beaver, and the 2010 Williamsville North High School Girls Field Hockey Team's outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the 2010 Williamsville High School Girls Field Hockey Team, its members -- Juliet Holme, Michelle Gambacorta, Petrina Sciandra, Ashley Favata, Emily Woods, Tiffany Cioppi, Alayna Wageman, Christine Murphy,

Elise Kellner, Caitlin Dwyer, Elena Hingston, Emily Koestler, Lainey Materise, Sara Gambacorta, Michelle Rowekamp, Rachel Attea, Nikki Atkins, Ashley Fillmore, Jess Wess, and Allie Ahern -- and Coach Kristine LaPaglia and Assistant Coach Dalton Beaver on their outstanding season, overall team record, and Class A New York State Championship; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the members of the 2010 Williamsville North High School Girls Field Hockey Team, and to Coach Kristine LaPaglia and Assistant Coach Dalton Beaver."

ACTING PRESIDENT O'MARA: Senator Ranzenhofer on the resolution.

SENATOR RANZENHOFER: Thank you, Mr. President.

It gives me a great deal of pleasure to welcome the athletic director, Bob Rosen, and also Coach Kristine LaPaglia and Assistant Coach Dalton Beaver, and the young women who make up the 2010 Williamsville North High School Girls Field Hockey Team.

They got up early this morning and traveled nearly 300 miles to be here today. And I think what we see here today are a very dedicated, talented, energetic group of young women who not only excel on the field, as was indicated when the resolution was read, but also excel in the classroom.

I believe that their dedication, their teamwork, their hard work -- and we met a little bit earlier today. I told them that the relationships and the bonds that they formed with their teammates are ones that will really last with them forever. It's not just winning the state championship, but it's really what went into having the ability to get there -- the dedication, getting up early in the morning, supportive parents, talented coaches and assistant coaches -- to put them in a position where they are today.

So again, I would like to welcome them to the chamber and congratulate them not only on this year's success but continued success into the future.

Thank you very much, Mr. President.

ACTING PRESIDENT O'MARA: Thank

you, Senator Ranzenhofer.

And girls, congratulations on your success for the State Championship. Thank you for joining us here in Albany today, and I hope you enjoy your stay with us.

On the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT O'MARA: Opposed, nay.

(No response.)

ACTING PRESIDENT O'MARA: The resolution is adopted.

(Applause.)

ACTING PRESIDENT O'MARA: Senator DeFrancisco.

SENATOR DeFRANCISCO: May I speak on the resolution a moment?

ACTING PRESIDENT O'MARA: Without objection.

SENATOR DeFRANCISCO: Without objection.

I just want to congratulate the team here. I'm from Syracuse, New York, and we bring in champions all the time.

(Laughter.)

SENATOR DeFRANCISCO: And it's really nice that you would win the championship so Senator Ranzenhofer would finally get up and be able to stand up and speak on a resolution like that. So thank you very, very much.

(Laughter.)

ACTING PRESIDENT O'MARA: Objection sustained.

(Laughter.)

ACTING PRESIDENT O'MARA: Senator LaValle.

SENATOR LaVALLE: May we please have the noncontroversial reading of the calendar, Mr. President.

ACTING PRESIDENT O'MARA: The Secretary will read.

THE SECRETARY: Calendar Number 68, by Senator LaValle, Senate Print 2581, an act to amend the Public Service Law.

ACTING PRESIDENT O'MARA: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT O'MARA: Senator LaValle, why do you rise?

SENATOR LaVALLE: To explain my vote.

ACTING PRESIDENT O'MARA: Yes, to explain your vote.

SENATOR LaVALLE: Mr. President, this is very critical and important legislation for Long Island because it would provide an oversight of rates by the PSC to ensure that rates are just, reasonable and transparent.

We pay some of the highest rates in the entire nation. And this legislation would bring the Long Island Power Authority under the same scrutiny that all other energy providers would have, and that is a review by the PSC.

And it's consistent with the resolution that was passed in 1997 that had Long Island Power Authority by the PACB in

that document in '97 that any rate over 2.5 percent would be reviewable by the PSC. This legislation is consistent with that resolution that was passed in 1997.

I vote yes, Mr. President.

ACTING PRESIDENT O'MARA: Senator LaValle will be recorded in the affirmative.

Senator Fuschillo to explain his vote.

SENATOR FUSCHILLO: Thank you very much, Mr. President. Just briefly.

Let me thank Senator LaValle for his leadership on this issue for not just today but for a number of years.

Many years ago, LIPA was created to be the ratepayers' protector when we took over LILCO. I think they've failed at their responsibility. And this legislation is critically important for transparency, greater accountability of the LIPA board of trustees and the administration there as well.

This legislation had passed a number of years ago in both houses, and the governor -- one of the former governors had vetoed it. I hope it doesn't go onto the same

path. I urge the Assembly to do it, to follow Senator LaValle's lead, and for Governor Cuomo to sign it into law.

Thank you very much, Mr. President.

ACTING PRESIDENT O'MARA: Senator Fuschillo will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT O'MARA: The bill is passed.

THE SECRETARY: Calendar Number 76, by Senator Marcellino, Senate Print 559, an act authorizing the County of Nassau.

ACTING PRESIDENT O'MARA: A home-rule message is at the desk.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT O'MARA: The bill is passed.

THE SECRETARY: Calendar Number

90, by Senator Young, Senate Print 769, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT O'MARA: Read the last section.

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

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT O'MARA: The bill is passed.

THE SECRETARY: Calendar Number 128, by Senator Maziarz, Senate Print 164C, an act to amend Vehicle and Traffic Law.

ACTING PRESIDENT O'MARA: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT O'MARA: Senator Rivera to explain his vote.

SENATOR RIVERA: Thank you,

Mr. President. To explain my vote.

I will be voting in the negative on this bill. The only reason I am doing that, I want it to be clear, it seems that certain aspects of this bill might create certain situations that would actually -- if in a situation, for example, where there's a designated driver who is a permitted driver while there is a driver who has been -- who is the supervising driver who is intoxicated, and yet the permitted driver is not, it seems that this bill would put that person in a situation where they might be liable for a Class E felony.

Also, the possibility that if there's no infraction, let's say that there is a checkpoint and the person goes through the checkpoint, is pulled over for no reason except that they went through the checkpoint -- and again, the permitted driver is totally sober, but some of the other folks in the vehicle or the driver to the side might be intoxicated, that might create a situation where they might be held liable for a Class E felony.

For those reasons, although I certainly believe that it is important to protect us, all of us, from drunk driving, in this case, in this bill, I'm going to have to vote in the negative.

Thank you, Mr. President.

ACTING PRESIDENT O'MARA: Thank you, Senator Rivera.

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT O'MARA: Senator Rivera will be recorded in the negative.

Senator Maziarz to explain his vote.

SENATOR MAZIARZ: Thank you very much, Mr. President. To explain my vote.

Mr. President, this legislation would provide for additional criminal penalties for an individual, a supervising driver -- that is, someone who is supervising an individual who has a learner's permit and who is under the influence of drugs or alcohol.

This legislation came about because of a very tragic incident in Orleans County on

September 4, 2009, where Corey Buzard, who had been drinking all day at a family party, and was way to too drunk to drive but he convinced a 17-year-old cousin to drive him to a convenience store to get additional alcohol. And he put his 8-year-old daughter Abagail in the back seat of car.

It was a dark night, it was a rainy night, Orleans County is an extremely rural county, and this young 17-year-old driver drove off the road into a gully, and little Abagail was killed. A beautiful little red-haired girl; her mother said her eyes were blue like the sky. And she died a horrible death which I won't describe here today.

And her father did absolutely nothing, nothing to try to save his daughter's live. He didn't because he was too drunk to even to attempt to save his 8-year-old daughter.

This legislation hopefully will get voted on here in this house today, and, along with my colleagues in the Assembly, we can hopefully provide that this tragic accident that happened to little Abagail will not

happen again.

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

ACTING PRESIDENT O'MARA: Senator Maziarz to be recorded in the affirmative.

Senator Adams to explain his vote.

SENATOR ADAMS: I understand my colleague's concern about the bill, but I have to commend Senator Maziarz on this bill.

Because the point of a supervisor, a driver or person in the vehicle, you know, that is the reason why we put in place these procedures. Because you expect the person who's the intelligent one in the vehicle is to actually ensure that no one is on the road that's driving while either under the influence of alcohol or drugs.

And I thinking this sends a strong message that we have to really concern ourselves about, you know, who's on the road. Not only does it impact the individuals in the vehicle, but it impacts others who are on the road.

So I'll be voting aye for this bill. I think this is a good bill. And I

think it covers a very important aspect. I understand my colleague's concern over it, but I think the bill in itself is a good bill. I'll be voting aye.

ACTING PRESIDENT O'MARA: Senator Adams to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 128, recorded in the negative: Senator Rivera.

Ayes, 56. Nays, 1.

ACTING PRESIDENT O'MARA: The bill is passed.

THE SECRETARY: Calendar Number 161, by Senator LaValle, Senate Print 2978 --

SENATOR LaVALLE: Lay the bill aside for the day, please.

ACTING PRESIDENT O'MARA: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 175, by Senator Golden, Senate Print 2168, an act to amend the Penal Law.

ACTING PRESIDENT O'MARA: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first of November.

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 175, those recorded in the negative are Senators Duane, Montgomery and Perkins.

Ayes, 54. Nays, 3.

ACTING PRESIDENT O'MARA: The bill is passed.

THE SECRETARY: Calendar Number 258, by Senator Young, Senate Print 771 --

SENATOR LIZ KRUEGER: Lay it aside.

ACTING PRESIDENT O'MARA: The bill is laid aside.

THE SECRETARY: Calendar Number 261, by Senator Ritchie, Senate Print 4080, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT O'MARA: Read the last section.

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

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT O'MARA: The bill is passed.

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

SENATOR LaVALLE: Thank you, Mr. President.

Now may we have the controversial reading of the calendar, please.

ACTING PRESIDENT O'MARA: The Secretary will ring the bells.

The Secretary will read.

THE SECRETARY: Calendar Number 258, by Senator Young, Senate Print 771, an act to amend the Agriculture and Markets Law.

SENATOR LIZ KRUEGER: Explanation, please.

ACTING PRESIDENT O'MARA: Senator Young, an explanation has been requested.

SENATOR YOUNG: Certainly.

This legislation requires that information collected and maintained by the

Department of Agriculture and Markets relating to the registration and identification of premises and animals shall be held confidential.

ACTING PRESIDENT O'MARA: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would please yield to a question.

ACTING PRESIDENT O'MARA: Senator Young, will you yield for a question?

SENATOR YOUNG: Yes.

SENATOR LIZ KRUEGER: Thank you.

So if this bill became the law, my understanding is you could no longer, through Freedom of Information, find out records of health problems on specific farms. So let's say a specific farm had an outbreak of documented mad cow disease; there would be no way for the public to find out that information.

SENATOR YOUNG: Through you, Mr. President. Actually, the Department of Ag & Markets may disclose such confidential data provided that the department determines that

disclosure is needed for the protection of the public or animal health and safety.

So if there were, you know, an outbreak of mad cow disease, for example, that information could be disclosed by the department if they deem it to be the right course to take.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

On the bill.

ACTING PRESIDENT O'MARA: On the bill.

SENATOR LIZ KRUEGER: Thank you. I appreciate the sponsor's answer to my question.

I have to say I think that when it comes to public health, the public's right to find out information -- such as has there been a disease outbreak potentially having a risk to the public if they were to in fact digest that food -- has a greater public good to make sure that that information can be made available.

It's not that I don't trust our Department of Ag & Markets. We've

historically had wonderful people leading the department. I hope to have a new commissioner there who I'll be very confident in.

Nonetheless, I think that the public's overriding right to be able to find out information about the health conditions of farm animals and whether there is any kind of outbreak of disease and whether there is any kind of risk to those of us in the public who count on making sure that our food supply is healthy and does not cause disease is an overriding right of the public, particularly at a time where we know that unfortunately at the federal level they've decreased the amount of supervision and inspections that take place.

We've seen growing, year after year, an increased rate of disease associated with our food supply not being carefully evaluated before it comes to market. We have a growth in salmonella, we have a growth of food-poisoning cases that track back to our food supply.

And given the fact that government is not always as diligent as we all hope it

would be, particularly in times of limited resources, I cannot vote for a bill that would decrease the public's right to find out information that is known by a government agency on something as important as our health, the public's health and our food supply.

So I'll be voting no, Mr. President. Thank you.

ACTING PRESIDENT O'MARA: Thank you, Senator Krueger.

Senator Young on the bill.

SENATOR YOUNG: On the bill, Mr. President.

Actually, this legislation is strongly supported by the New York State Farm Bureau.

And some of the information that could be given out there could work to the disadvantage of the farmers, because competitors can use this information against them as far as having a competitive -- putting them at a competitive disadvantage.

I share my colleague Senator Krueger's support for public health issues.

And actually, this legislation protects public health. Because one of the emerging trends that we're concerned about has to do with terrorism and biosecurity and bioterrorism. By protecting this information, we actually can avoid some of the security risks that are out there.

So I would encourage my colleagues to vote yes.

Thank you.

ACTING PRESIDENT O'MARA: Any other Senators wishing to be heard?

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT O'MARA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT O'MARA: Announce the results.

THE SECRETARY: In relation to Calendar Number 258, those recorded in the negative are Senators Adams, Avella, L. Krueger, Montgomery, Oppenheimer, Rivera,

Serrano, Stavisky and Stewart-Cousins.

Absent from voting: Senator Smith.

Ayes, 48. Nays, 9.

ACTING PRESIDENT O'MARA: The bill is passed.

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

SENATOR LIBOUS: Mr. President, can we return to motions and resolutions, please.

ACTING PRESIDENT O'MARA: Motions and resolutions.

SENATOR LIBOUS: On behalf of Senator Fuschillo, on page 14 I offer the following amendments to Calendar Number 183, Senate Print 2728A, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT O'MARA: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

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

ACTING PRESIDENT O'MARA: No

further business.

SENATOR LIBOUS: There being no further business at the desk, Mr. President, I move that the Senate will adjourn until Tuesday, April 5th, at 3:00 p.m.

ACTING PRESIDENT O'MARA: On motion, the Senate stands adjourned until Tuesday, April 5th, at 3:00 p.m.

(Whereupon, at 3:47 p.m., the Senate adjourned.)