NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 30, 2012

3:25 p.m.

REGULAR SESSION

SENATOR JOSEPH E. ROBACH, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT ROBACH: The Senate will come to order.

I ask everyone present to please join with me in repeating the Pledge of Allegiance.

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

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

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

ACTING PRESIDENT ROBACH: The reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 29th, the Senate met pursuant to adjournment. The Journal of Saturday, January 28th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT ROBACH: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

The Secretary will read the

substitutions.

THE SECRETARY: On page 9, Senator McDonald moves to discharge, from the Committee on Rules, Assembly Bill Number 8693 and substitute it for the identical Senate Bill Number 6107A, Third Reading Calendar 13.

ACTING PRESIDENT ROBACH: Substitution ordered.

THE SECRETARY: On page 9, Senator LaValle moves to discharge, from the Committee on Rules, Assembly Bill Number 8957 and substitute it for the identical Senate Bill Number 6136, Third Reading Calendar 20.

ACTING PRESIDENT ROBACH: Substitution ordered.

THE SECRETARY: And on page 13, Senator Seward moves to discharge, from the Committee on Corporations, Authorities and Commissions, Assembly Bill Number 8902 and substitute it for the identical Senate Bill Number 6128, Third Reading Calendar 75.

ACTING PRESIDENT ROBACH: Substitution so ordered.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Finance, reports the following nomination:

As Commissioner of the State Insurance Fund, Donald T. DeCarlo, of Southold.

ACTING PRESIDENT ROBACH: Senator Libous on the nomination.

SENATOR LIBOUS: Mr. President, at this time I move the nomination of Mr. DeCarlo.

ACTING PRESIDENT ROBACH: All in favor of the confirmation signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: Mr. Donald T. DeCarlo Southold is now confirmed as Commissioner of the State Insurance Fund.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Mr. President,

I'm going to read one motion that I have. I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: 2637, 4278, and 4279, by Senator Owen Johnson.

ACTING PRESIDENT ROBACH: So ordered, Senator Libous.

SENATOR LIBOUS: Mr. President, at this time I would ask for unanimous consent to have Senator Maziarz address the body.

ACTING PRESIDENT ROBACH: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Mr. President and my colleagues. It's truly an honor for me today to be here and to be representing my constituency, particularly the County of Niagara.

I have two guests with me here today, Mr. President. I have Deputy Sheriff Jonathan Andres and Deputy Sheriff Shawn Grapes. Deputy Andres and Deputy Grapes were recently honored as the Deputies of the Year by the New York State Sheriffs Association.

On the early morning hours of July 18, 2011, one of their colleagues, Niagara

County Deputy Sheriff Allen Gerhardt, was in his patrol vehicle and was pursuing a fleeing criminal suspect. Deputy Gerhardt unfortunately lost control of that vehicle. He slid into a guardrail. The guardrail penetrated his vehicle, going completely through the vehicle. And unfortunately that guardrail severed both of Deputy Gerhardt's legs.

As Deputy Gerhardt lay there bleeding, Deputy Jonathan Andres came upon the scene, followed by Deputy Shawn Grapes. Both of them took off their belts and applied tourniquets to both of the severed limbs of Deputy Gerhardt and assisted in getting Deputy Gerhardt immediate medical attention, which, in the eyes of the -- in the opinion of the doctors at Erie County Medical Center, saved Deputy Gerhardt's life.

Today Deputy Gerhardt is learning to walk again on his artificial legs. He's alive, though, and he's home with his young children because of the heroic actions of Deputy Andres and Deputy Grapes.

It was a well-deserved honor, well-deserved recognition. What they did on that dark night on that very rural, remote highway in

Niagara County was just beyond the praise of all of us here. They did their job, did their duty, and saved Allen Gerhardt's life and were justifiably recognized by their colleagues from across the State of New York.

So, colleagues, my colleagues here, ladies and gentlemen, I want to introduce you to Deputy Sheriff Jonathan Andres -- Jonathan, you want to stand up? -- and also the second Deputy of the Year, Deputy Sheriff Shawn Grapes. Shawn?

Congratulations, gentlemen, and thank you for the great work that you do.

(Standing ovation.)

SENATOR MAZIARZ: Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Senator Gallivan.

SENATOR GALLIVAN: Thank you, Mr. President.

And thank you, Senator Maziarz, for bringing our Deputies of the Year to Albany and introducing them and their accomplishments in front of everybody.

And most importantly, let me thank

Deputy Andres, Deputy Grapes for what you do. It is an incredible honor to serve others in the capacity of a law enforcement officer. Many of you know that, as my background, I also served as a member of the State Sheriffs Association Executive Committee and know, in consideration of this particular award on an annual basis, how much competition there is.

So it really is, amongst the thousands of acts of law enforcement officers across New York State, amongst the thousands of heroic efforts, people putting their lives on the line on a daily basis to protect our community and to stand between the potential chaos and the order that is so important to all of us, it is incredible that you're singled out. And it really is well-deserved.

So very simply, I would like to thank you for your service, commend you for your actions and, even beyond what you did in this single instance, what you do on a daily basis to protect Niagara County and what you and your fellow law enforcement brothers and sisters do across the state to protect all of us.

Thank you. And thank you,

Mr. President.

ACTING PRESIDENT ROBACH: Thank you.

On behalf of Senator Maziarz, Senator Gallivan, all the members, thank you for your heroic acts and what you do every day. And welcome to the chamber.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time could we go to the reading of the noncontroversial calendar.

(Pause.)

SENATOR LIBOUS: Mr. President, if we could go back to motions and resolutions for a moment.

And I believe you should call on Senator Klein.

ACTING PRESIDENT ROBACH: Senator Klein.

SENATOR KLEIN: Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Number 533, 534, 570, 572, 583, 617, 620, 1514, 2484, 5076, and 5682, on behalf of myself.

ACTING PRESIDENT ROBACH: On behalf of Senator Klein, so ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, now could we have the reading of the noncontroversial calendar.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 13, by Member of the Assembly Weisenberg, Assembly Print Number 8693, an act to amend a chapter of the Laws of 2011.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 20, by Member of the Assembly Sweeney, Assembly Print Number 8957, an act to amend the Public

Service Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Senator LaValle to explain his vote.

SENATOR LaVALLE: Thank you, Mr. President.

This legislation is the Long Island Power Authority Oversight and Accountability Act. This legislation comes before us with the input from the Governor's office, the Senate and the Assembly. It is one of the most far-reaching pieces of legislation to have oversight on a public authority.

It will provide for an independent audit of both the operations and management of the Long Island Power Authority and look at every aspect of the business that they do, and also provide a vehicle for the consumer or the ratepayer, if they have any problems with the

authority.

I would like to thank at this time one of our colleagues, Senator Fuschillo, who encouraged me for a number of years to stay the course and pursue this so that the ratepayers on Long Island would have transparency and a process that would affect in a positive way not only the operation but hopefully the rates that our ratepayers pay.

I vote yes.

ACTING PRESIDENT ROBACH: Senator LaValle in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 39, by Senator Little, Senate Print 4024, an act to amend the Real Property Tax Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 48, by Senator Ranzenhofer, Senate Print 3225, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 54, by Senator Maziarz, Senate Print 152, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 55, by Senator Klein, Senate Print 585, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 56, by Senator Fuschillo, Senate Print 593A, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 7. This

act shall take effect on the first of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 58, by Senator Saland, Senate Print 1433, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar month next succeeding the 30th day after it shall have become law.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: In relation to Calendar Number 58: Ayes, 54. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 59, by Senator Sampson, Senate Print 1618, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 60, by Senator Saland, Senate Print 2194, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 61, by Senator Flanagan, Senate Print 3207, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to correct my vote. I voted no on Calendar 54. I need to vote no on Calendar 48 as well. I was recorded in the affirmative.

ACTING PRESIDENT ROBACH: Senator Montgomery, first, how are you voting on this bill? Because we're on the roll call. Are you a yes or a no on this one?

SENATOR MONTGOMERY: I'm voting no

on this bill.

ACTING PRESIDENT ROBACH: You're no on the current bill.

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT ROBACH: And you want unanimous consent -- you already changed your vote to no -- what one did you already vote no on that we just changed?

SENATOR MONTGOMERY: 58. I meant to vote yes on Calendar 58. But it's Calendar 48 that I want to be no on, and yes on Calendar 58.

ACTING PRESIDENT ROBACH: So you want unanimous consent to change your vote on Calendar 58 to a yes and 48 to a no?

SENATOR MONTGOMERY: That's correct.

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: We will grant consent on this occasion and then, after discussion with the leader, I think we want to go back to our old standards where we don't do that anymore.

But on this occasion we'll grant it, and then we'll deal with it as we move

forward.

SENATOR MONTGOMERY: Thank you for the consideration, Mr. President.

ACTING PRESIDENT ROBACH: You're welcome.

On Calendar 61, announce the results.

THE SECRETARY: Ayes, 53. Nays, 2. Senators Montgomery and Perkins recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 67, by Senator Fuschillo, Senate Print --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

SENATOR FUSCHILLO: Lay it aside for the day.

ACTING PRESIDENT ROBACH: Lay it aside for the day.

THE SECRETARY: Calendar Number 73, by Senator Griffo, Senate Print 5019B, an act to amend the Public Authorities Law.

ACTING PRESIDENT ROBACH: Read the

last section.

THE SECRETARY: Section 3. This act shall take effect on December 31, 2013.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 75, by Member of the Assembly Magee, Assembly Print 8902, an act to amend the Public Authorities Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2011.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 1. Senator Farley recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 84, by Senator Ritchie, Senate Print 3542, an act requiring the State Fire Prevention and Building Code Council.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 85, by Senator Ritchie, Senate Print 5160, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 86, by Senator Little, Senate Print 554, an act to amend the Parks, Recreation and Historic Preservation Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Announce the results.

THE SECRETARY: In relation to Calendar Number 86, those recorded in the negative are Senators Avella, Duane, Espaillat, Perkins, Rivera, Serrano, and Stavisky.

Ayes, 48. Nays, 7.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 87, by Senator Marcellino, Senate Print 922, an act to amend the Navigation Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Libous, that completes the noncontroversial calendar.

SENATOR LIBOUS: Thank you, Mr. President.

There will be an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT ROBACH: Immediate meeting of the Rules Committee in Room 332 of the Capitol.

The Senate will stand at ease until that meeting is completed.

(Whereupon, the Senate stood at ease at 3:46 p.m.)

(Whereupon, the Senate reconvened at 4:05 p.m.)

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

And I believe there's a report of Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT ROBACH: Returning to reports of standing committees, the Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Skelos, from the Committee on Rules, reports the following bills:

Senate Print 1315, by Senator Griffo, an act to amend the Alcoholic Beverage Control Law;

And 5560A, by Senator Saland, an act to amend the Executive Law.

Both bills reported direct to third reading.

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I now move to accept the report

of the Rules Committee.

ACTING PRESIDENT ROBACH: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The Rules report is accepted.

Senator Libous.

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

ACTING PRESIDENT ROBACH: Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Mr. President, on page 12 I offer the following amendments to Calendar Number 62, Senate Print 3210A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Libous.

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

ACTING PRESIDENT ROBACH: No further business at the desk, Senator Libous.

SENATOR LIBOUS: Mr. President, at this time I would like to extend a very warm happy-birthday wish to Senator Lee Zeldin from all the members of the chamber.

(Applause.)

SENATOR LIBOUS: Senator Zeldin, happy birthday.

And I believe if you call on Senator Neil Breslin, he has some important business to discuss.

ACTING PRESIDENT ROBACH: Senator Breslin.

SENATOR BRESLIN: Mine is of immense importance. And happy birthday, Senator Zeldin. But mine is much more important.

I wish Senator Tom Duane a happy birthday as well.

(Applause.)

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Mr. President, there being no further business at the desk at this time, I move that the Senate adjourn until Tuesday, January 31st, at 11:00 a.m.

ACTING PRESIDENT ROBACH: On motion, the Senate stands adjourned until Tuesday, January 31st, at 11:00 a.m.

(Whereupon, at 4:07 p.m., the Senate adjourned.)