NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 29, 2012

3:57 p.m.

REGULAR SESSION

SENATOR JOHN J. FLANAGAN, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FLANAGAN: The Senate will come to order.

I ask everyone present to please rise and recite the Pledge of Allegiance.

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

ACTING PRESIDENT FLANAGAN: Today's invocation will be offered by the Reverend Peter Young, from Mother Teresa Community in Albany.

REVEREND YOUNG: Thank you, Senator.

Let us pray.

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

In the spirit of community, our prayer today will be to better achieve the goal of dedicated representation in the power that is entrusted to all of our state legislators, and especially in the Senate group.

May you attain your satisfaction

in your services to all of your constituents, and may God bless your good work.

Amen.

ACTING PRESIDENT FLANAGAN: Thank you, Father.

The reading of the Journal.

THE SECRETARY: In Senate, Wednesday, March 28th, the Senate met pursuant to adjournment. The Journal of Tuesday, March 27th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: On page 14, Senator Martins moves to discharge, from the Committee on Agriculture, Assembly Bill Number 9158 and substitute it for the identical Senate Bill Number 6383, Third Reading Calendar 290.

ACTING PRESIDENT FLANAGAN: Substitution ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Grisanti, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And that would be Senate Print Number 5777.

ACTING PRESIDENT FLANAGAN: So ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time there will be an immediate meeting of the Finance Committee in Room 332, an immediate meeting of the Finance Committee in Room 332, followed immediately by the Rules Committee in 332.

So we will not come back here;

Finance will meet, Rules will meet, and then we will come back.

ACTING PRESIDENT FLANAGAN: Finance Committee meeting first in Room 332, followed by the Rules Committee in 332 as well.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:00 p.m.)

(Whereupon, the Senate reconvened at 4:21 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

And may we return to the reports of standing committees. I believe there's a report of the Finance Committee at the desk.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 6250D, Budget Bill,

State Operations Budget;

Senate 6251B, Budget Bill, Legislative and Judicial Budget;

Senate 6253E, Budget Bill, Aid to Localities Budget;

Senate 6254D, Budget Bill, Capital Projects Budget;

Senate 6256D, Budget Bill, an act to amend the Public Health Law;

Senate 6257E, Budget Bill, an act in relation to school district eligibility; and

Senate 6259D, Budget Bill, an act to amend Chapter 540 of the Laws of 1992.

ACTING PRESIDENT GRIFFO: The bills are so ordered direct to third reading.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there is a report of the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT GRIFFO: The Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Skelos, from the Committee on Rules, reports the following bills direct to third reading:

Senate Print 6027B, by Senator Lanza, an act to amend the Education Law;

6830, by the Senate Committee on Rules, an act to amend the Education Law;

And 6507A, by Senator Seward, an act to amend the Insurance Law.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: Mr. President, I move to accept the report of the Rules Committee.

ACTING PRESIDENT GRIFFO: All in favor of accepting the Rules Committee report say aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT GRIFFO: The Rules report is accepted.

Senator Libous.

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

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 290, substituted earlier today by Member of the Assembly Clark, Assembly Print Number 9158, an act to amend Chapter 395 of the Laws of 2008.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 2. Senators Parker and Rivera recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 414, by Senator Saland, Senate Print 1414A, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 416, by Senator Golden, Senate Print 1751A, an act to amend the Civil Rights Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 417, by Senator Skelos, Senate Print 1827, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first of November.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 417, those recorded in the negative are Senators Duane, Hassell-Thompson, Montgomery, Parker, Perkins and Squadron.

Ayes, 53. Nays, 6.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 418, by Senator Griffo, Senate Print 2322 --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay the bill aside.

THE SECRETARY: Calendar Number 419, by Senator Lanza, Senate Print 2945, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 423, by Senator Marcellino, Senate Print 5096, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 423, those recorded in the negative are Senators Duane, Espaillat, Gianaris, Hassell-Thompson, Krueger, Montgomery, Parker, Perkins, Rivera, Squadron, and Stavisky.

Ayes, 48. Nays, 11.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 424, by Senator Fuschillo, Senate Print 5241, an

act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Please announce the results.

THE SECRETARY: In relation to Calendar Number 424, those recorded in the negative are Senators Montgomery and Parker.

Ayes, 57. Nays, 2.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 428, by Senator Saland, Senate Print 6676, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 428, those recorded in the negative are Senators Montgomery, Parker and Perkins. Also Senator Hassell-Thompson.

Ayes, 55. Nays, 4.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 435, by Senator LaValle, Senate Print 1857A, an act to amend the Correction Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Hassell-Thompson to explain her vote.

SENATOR HASSELL-THOMPSON: Yeah, I voted incorrectly on one of the bills. And with unanimous consent, I would like to change my vote. I made an error.

ACTING PRESIDENT MARCELLINO:

Senator, if we can just complete this roll call. Then we can --

SENATOR HASSELL-THOMPSON: That's what I said, complete this roll call.

ACTING PRESIDENT MARCELLINO: Thank you.

Announce the results.

THE SECRETARY: Those recorded in the negative: Senators Montgomery and Parker.

Ayes, 57. Nays, 2.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe Senator Hassell-Thompson wanted to clarify her vote, because she was here and I think there was maybe some misunderstanding.

So if we could have unanimous concept for her to clarify her vote, I think that would be fine at this time.

ACTING PRESIDENT MARCELLINO: With unanimous consent.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On Bill Number S6676, Senator Saland, I am voting in the affirmative.

ACTING PRESIDENT MARCELLINO: That's Calendar Number 428, Senate Print 6676, and Senator Hassell-Thompson will be recorded in the affirmative.

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

ACTING PRESIDENT MARCELLINO: The bill still passes.

THE SECRETARY: Calendar Number 437, by Senator LaValle, Senate Print 3325A, an act to amend the Correction Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 437, those recorded in the negative are Senators Hassell-Thompson, Montgomery, Parker, Perkins and Rivera.

Ayes, 54. Nays, 5.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 438, by Senator Lanza, Senate Print 3744A, an act to amend the Executive Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 438, those recorded in the negative are Senators Adams, Duane, Hassell-Thompson, Montgomery, Parker and Perkins.

Ayes, 53. Nays, 6.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

SENATOR LaVALLE: Mr. President, could we go back to motions, please.

ACTING PRESIDENT MARCELLINO: Returning to the order of motions and resolutions.

SENATOR LaVALLE: On behalf of

Senator Martins, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Bill Number 6783.

ACTING PRESIDENT MARCELLINO: So ordered.

SENATOR LaVALLE: Mr. President, can we now go to the controversial reading of the calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read the controversial calendar, and we will ring the bells, please.

The Secretary will read.

THE SECRETARY: Calendar Number 418, by Senator Griffo, Senate Print 2322, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Senator Gianaris.

SENATOR GIANARIS: Would the sponsor yield for a question, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you yield to a question?

SENATOR GRIFFO: I do.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR GIANARIS: Thank you.

Mr. President, would the sponsor clarify if this bill would apply in the situation where merely --

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

If we could just have some order. We can get through this a lot quicker if we have quiet. Thank you.

I'm sorry, Senator.

SENATOR GIANARIS: Thank you, Mr. President.

It appears to me, in reading this bill, that it would apply in a circumstance where merely making any physical contact with a peace officer with the intent to annoy that person would subject someone to a felony. Is that correct?

SENATOR GRIFFO: Mr. President, through you. Senator Gianaris, the intent of the bill would be to couple nefarious intent along with physical contact. So pure harassment in itself, despite the fact that I think that is provocative, would not under this proposed bill do that. You would have to require -- it would

be a combination of both nefarious intent, which would include the annoyance, the harassment, along with the physical contact.

SENATOR GIANARIS: Mr. President, would the sponsor continue to yield.

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: The sponsor yields, Senator.

SENATOR GIANARIS: Yes, I understand there are two elements, both the intent and the contact. My concern is that the intent can simply be to annoy the person, and the contact could be any contact whatsoever.

So for example, would the sponsor agree that this legislation would make it a felony if someone were simply to tap a peace officer on the shoulder, say at a rally of some kind? If the intent is to annoy that person, is it the sponsor's intent that that person should be subject to a felony conviction?

SENATOR GRIFFO: Mr. President, through you. Senator Gianaris, the intent is to -- we're witnessing shocking incidents of disrespect and confrontation. So the intent is to try to protect those who are given the

responsibility and authority to keep the peace and safeguard our community.

So in that particular instance, if it's just an obnoxious behavior, that in itself would not be enough. But if you again were physically confronting the officer as well as harassing and annoying that officer, yes, you would be subjected to a felony.

SENATOR GIANARIS: And if the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: The sponsor continues to yield.

SENATOR GIANARIS: Is it correct that this bill does not require any physical injury whatsoever suffered by the peace officer before it would subject the person making physical contact to a felony?

SENATOR GRIFFO: Mr. President, through you. Senator Gianaris, essentially the reason for this bill was because, as I indicated, we are having a number of incidents in our community and trying to crack down on this total

disregard for the law.

And there are already statutes, as you're probably aware, that cover right now if there was a physical injury to the officer, then they could get a more severe charge. But right now just shoving, pushing, kicking, head-butting, and if there's no injury, then there is no charge.

So the answer to your question is yes, the intent of this is to ensure that that officer in the line of duty who's trying to keep the peace and is being in any way physically confronted, this, even without injury, would allow them to charge with a felony.

SENATOR GIANARIS: If the sponsor would yield for one final question, Mr. President.

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: The sponsor yields for a final question.

SENATOR GIANARIS: Just for consistency's sake, this bill would also apply to protect dog control officers in certain instances, wouldn't it?

SENATOR GRIFFO: It would -- peace

officers. Not all dog control officers are peace officers.

SENATOR GIANARIS: But in certain instances.

SENATOR GRIFFO: If you are considered a peace officer. It would also protect correctional officers.

SENATOR GIANARIS: Thank you. Thank you to the sponsor.

On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gianaris on the bill.

SENATOR GIANARIS: This bill seems like yet another in a pattern we've seen from the majority which is driven by good intent, is intended to respond to situations for which peace officers need protection, but goes way beyond what is necessary in order to achieve its goal and would subject people who should not be subjected to felony convictions to just that.

The hypotheticals one can come up with are many. I raised a couple during the debate. The idea that someone at a rally who would be literally just tapping an officer on the shoulder, if it's proven that the intent of that

person was to annoy the officer, could end them up in jail for several years.

And it seems to me that's not what the sponsor actually intends to do, but yet as written that's what the legislation does.

So until bills like this are more tightly worded to achieve the goal they actually seek and would not create overbroad consequences subjecting people to felonies where clearly they shouldn't be -- in some cases we have direct experience in New York with political protests and rallies where police have been accused of being overly aggressive and charging protesters who are exercising their First Amendment rights with crimes that they should not have been charged with.

If this bill were to become law, we would open a can of worms in terms of allowing people who are exercising their First Amendment rights to engage in relatively peaceable political protests to wind up in jail for years at a time.

And so I think the bill as written is way too overbroad. I will be voting in the negative, and I encourage my colleagues to do the

same.

ACTING PRESIDENT MARCELLINO: Are there any other Senators who wish to be heard on this bill?

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

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I know that we've debated this legislation or some version of it for many, many years and many times. I just want to reiterate that this is the same type of legislation which is so loosely written and can be misused or abused by law enforcement and others -- i.e., peace officers, a number of different categories of peace officers that we have in this very room

given license to. So it leaves them open to be able to arrest someone, charge them with a felony because they felt harassed.

So I think that goes just a little bit too far. And we just had very recently an incident that has wracked our nation; the issue in Florida is just exactly what could happen and what this kind of legislation allows for. And that is for unfettered license to charge someone -- this doesn't allow them to shoot someone, but it allows a person to be arrested and charged with a felony because a peace officer or a police officer feels harassed.

So I adamantly oppose this concept, and I vote no.

ACTING PRESIDENT MARCELLINO: Senator Montgomery will be recorded in the negative.

Announce the results, please.

THE SECRETARY: In relation to Calendar Number 418, those recorded in the negative are Senators Duane, Gianaris, Hassell-Thompson, Krueger, Montgomery, Parker, Perkins, Rivera, Serrano, Stavisky, Stewart-Cousins. Also Senator Squadron. Also

Senator Huntley. Also Senator Adams. Also Senator Espaillat.

ACTING PRESIDENT MARCELLINO: Ladies and gentlemen, before the clerk announces the results, we have three more bills on the calendar. So anybody who's thinking of leaving shouldn't.

Announce the results, please. We're going read the negatives again to be assured that we're correct.

THE SECRETARY: In relation to Calendar Number 418, those recorded in the negative are Senators Adams, Duane, Espaillat, Gianaris, Hassell-Thompson, Huntley, Krueger, Montgomery, Parker, Perkins, Rivera, Serrano, Squadron, Stavisky, Stewart-Cousins. Also Senator Dilan.

Absent from voting are Senators Peralta, Robach and Smith.

Ayes, 41. Nays, 16.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Libous, completes the reading of the controversial calendar.

SENATOR LIBOUS: Mr. President, we

have a supplemental calendar before us, Supplemental Calendar 30A. Could we have the noncontroversial reading of that, please.

ACTING PRESIDENT MARCELLINO: The Secretary will read from Supplemental Calendar 30A.

THE SECRETARY: Senator Lanza moves to discharge, from the Committee on Rules, Assembly Bill Number 8683B and substitute it for the identical Senate Bill Number 6027B, Third Reading Calendar 477.

ACTING PRESIDENT MARCELLINO: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 477, by Member of the Assembly Cusick, Assembly Print Number 8683B, an act to amend the Education Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect September 1, 2012.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Calendar Number 478 is high and will be laid aside for the day.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 479, by Senator Seward, Senate Print 6507A, an act to amend the Insurance Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Announce the results, please.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Libous, that completes the

reading of the supplemental calendar.

SENATOR LIBOUS: Mr. President, I have several very important announcements for the body.

And before I ask if there's any further business at the desk, I believe you will call on Senator Hassell-Thompson for an announcement.

ACTING PRESIDENT MARCELLINO: If you insist, I will call on Senator Hassell-Thompson for an announcement.

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

Immediately following session there will be a meeting of the Democratic Conference in the Democratic Conference Room.

ACTING PRESIDENT MARCELLINO: Immediately after session there will be a meeting of the Democratic Conference in the Democratic Conference Room, which if I remember is 314.

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

ACTING PRESIDENT MARCELLINO: The desk is clear.

SENATOR LIBOUS: Before I announce

tomorrow's session, Mr. President, I will make an announcement that tomorrow's session will begin at 10:00 a.m. sharp. Senator Breslin and I will be here, and session will commence. We would hope other members would join us so that we can move along with the very important business of the day.

And there being no further business, Mr. President, to come before the Senate today, I move that we adjourn until Friday, March 30th, at 10:00 a.m.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until Friday, March 30th, at 10:00 a.m.

(Whereupon, at 4:48 p.m., the Senate adjourned.)