NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 3, 2014

3:44 p.m.

REGULAR SESSION

SENATOR JOSEPH GRIFFO, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

I ask all present to please rise and join with me as we recite the Pledge of Allegiance to our Flag.

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

ACTING PRESIDENT GRIFFO: In the absence of clergy today, I ask everyone present to please bow their heads in a moment of silent reflection and prayer.

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

ACTING PRESIDENT GRIFFO: The reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 2nd, the Senate met pursuant to adjournment. The Journal of Friday, February 28th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT GRIFFO: 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 Libous.

SENATOR LIBOUS: Oh, Mr. President. Did you call on me, sir?

ACTING PRESIDENT GRIFFO: Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Allow me to ask you to call on Senator David Valesky, please.

ACTING PRESIDENT GRIFFO: Senator David Valesky.

SENATOR VALESKY: Thank you, Mr. President.

On page 12 I offer the following amendments to Calendar Number 57, Senate Bill 5792A, and ask that said bill retain its place on the Third Reading Calendar. And that's on behalf of Senator Savino.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill shall

retain its place on third reading.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Ritchie, on page 11 I offer the following amendments to Calendar Number 39, Senate Print Number 2114, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill shall retain its place on third reading.

SENATOR LIBOUS: On behalf of Senator Boyle, Mr. President, I wish to call up his bill, Senate Print 6250, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 13, by Senator Boyle, Senate Print 6250, an act to amend the General Business Law.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT GRIFFO: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

SENATOR LIBOUS: Mr. President, I now offer up the following amendments.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill shall retain its place on third reading.

SENATOR LIBOUS: Mr. President, are you ready, sir, for the reading of the noncontroversial calendar?

ACTING PRESIDENT GRIFFO: I am most certainly, Senator Libous.

SENATOR LIBOUS: Then we should proceed at this time.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 55, by Senator LaValle, Senate Print 347, an act to amend the Real Property Actions and Proceedings Law.

ACTING PRESIDENT GRIFFO: Read the last section.

SENATOR GIANARIS: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number

129, by Senator Larkin, Senate Print 283, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 164, by Senator Young, Senate Print 2677, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Espaillat to explain his vote.

SENATOR ESPAILLAT: Thank you,

Mr. President.

This bill, Senate Bill 2677, on surface seems to be a very good bill. It calls for a change in the current law that requires that architects, professional engineers or land surveyors licensed in the state stamp all plates and reports relating to the construction or alteration of buildings or structures prepared by such professional engineers as it pertains to farms across the State of New York.

So it seems reasonable that this is -- on the surface, this bill looks very good. However, it's yet another bill in a series of bills which propose to help the farm industry in the state while they continue to not allow farmworkers to get paid overtime, to be able to collectively bargain, to get a day's rest.

And today, when the Farm Bureau is here this evening treating us to some of the goods that are produced in New York State, I am sure we will be able to get a New York State apple or honey or other goods that are produced here in the Empire State. And all of those products, or most of them, are picked and selected by farmworkers in this state that are

sometimes working under very adverse conditions and are not entitled to the rights and privileges extended to other New Yorkers.

So again, as I did last year, I will be voting no on all of the farm bills until changes are made in the treatment of the farmworkers.

I will be voting in the negative, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Espaillat to be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Espaillat recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 166, by Senator Libous, Senate Print 3580A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Announce the results.

THE SECRETARY: In relation to Calendar Number 166, those recorded in the negative are Senators Espaillat, Hoylman, Perkins and Serrano.

Ayes, 54. Nays, 4.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 167, by Senator Zeldin, Senate Print 3823B, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Krueger to explain her vote.

SENATOR KRUEGER: Thank you, Mr. President. I rise to explain my vote.

I will be voting yes on this bill.

And I appreciate the fact that Senator Zeldin, after discussions with me, had amended the bill to address some of the concerns I had about safety by ensuring that the spearfishing could only take place underwater, not from boat to water, and at a distance from where people might be swimming, to hopefully prevent any dangerous accidents from taking place.

But while I vote yes today, it was also brought to my attention that there might be some concern that in recreational spearfishing, fish that are legally too small to be taken might actually be speared and killed.

And just to highlight to Senator Zeldin that we might need to think about that issue as well, that we don't want recreational fishermen to be unintentionally killing the small fish that are not legal under their licenses. And we don't want them to have to cheat and throw the fish back in the water rather than come back to shore with too small a catch -- or a catch that is too small under their license.

So it's amazing how complicated fishing can be. Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Krueger to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 167, those recorded in the negative are Senators Espaillat, Perkins and Serrano.

Ayes, 55. Nays, 3.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 168, by Senator Young, Senate Print 4396, an act to amend the Soil and Water Conservation Districts Law.

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, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

170, by Senator LaValle, Senate Print 2405, an act to amend the Education Law.

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, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Libous, that completes the noncontroversial reading of today's calendar.

SENATOR LIBOUS: Thank you, Mr. President.

Are you ready for the controversial reading of the calendar?

ACTING PRESIDENT GRIFFO: We are.

The Secretary will ring the bell.

SENATOR LIBOUS: We will then proceed when you are ready, sir, with the controversial reading.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 55, by Senator LaValle, Senate Print 347, an act to amend the Real Property actions and Proceedings Law.

SENATOR KRUEGER: Explanation.

ACTING PRESIDENT GRIFFO: An explanation has been requested by Senator Krueger, Senator LaValle.

SENATOR LaVALLE: Yes. This legislation, Senator, is very simple. It says that the judgment direct that in the event such premises is purchased collectively by more than one individual, the names of each individual purchaser shall be disclosed in writing to such sheriff or referee.

So at a foreclosure sale, in most cases it's the referee that is appointed by a justice of the Supreme Court. In the order the justice lays out what steps you are to take, what the deposit is to be.

So what happens at the beginning of a sale is the referee says to those that are bidding: Please come and sign the sheet with your telephone number so that I as the referee know who's bidding on the property.

So, Senator Krueger, you bid, I bid, we have signed our names separately. But you and I kind of wink at one another because we see -- because you actually have to have the exact money that you need for your deposit. So if the sale goes up higher than either you or I know, then I don't have the deposit money. So when the sale is closed, I may have bid more.

But now when I go to the referee to sign the paperwork, I now notice, as the referee, that there are two people that are standing there and they now have made deal to both buy the property jointly. When we started the sale, everyone believed that you and I were separate bidders and we were not in the sale together.

So this basically says you have to declare, you have to declare that you're not bidding individually, that you are bidding collectively. And that's the sum total of the bill.

SENATOR KRUEGER: Through you, Mr. President, if the sponsor would please yield.

ACTING PRESIDENT GRIFFO: Senator LaValle, do you yield?

SENATOR LaVALLE: I guess.

SENATOR KRUEGER: Thank you.

ACTING PRESIDENT GRIFFO: The Senator yields, Senator Krueger.

SENATOR KRUEGER: Why should we care that somebody has made a deal in the process of the purchase to jointly purchase when they originally signed it separately? How does that impact either the community when the home or homes is purchased or the process of bidding?

SENATOR LaVALLE: Senator, you of all people in this chamber should care, because you are a person who believes, one, in transparency and, two, in procedure.

So I would like -- you know, I'm in the bidding and I really want this but I don't have the money in my pocket for the deposit. Now I might, I might, if I had a referee who had a good heart only, not by any other event, say: Would you let me go to the bank, Referee, so that I could get that extra money that I need for the deposit?

So you're changing the rules. If you and I are bidding, then we've got to play by the rules to have enough money in our pockets to be able to put down the requisite deposit that we

need, not change the rules.

And that's all we're doing with this bill.

SENATOR KRUEGER: Through you, Mr. President, if the sponsor would continue to yield.

SENATOR LaVALLE: Yes.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR KRUEGER: So under the sponsor's analysis, three of us might be bidding on one property, none of us might have adequate money to meet the bidding price. But if two of us decide to get together because we made a private either wink discussion or a conversation discussion, the two of us bidding together might win over the third party.

Is there something illegal about that under current law? And/or would having to record this down to give to a sheriff change the legal status of the question?

SENATOR LaVALLE: I don't know whether it's illegal. But it smells a little like two people are going around the procedure.

They are consorting to have a result

by the rules that no one else was playing by those rules. Everyone believed that they themselves were bidding on the property and had the requisite amount of deposit.

And that's always the key. A lot of the people who bid on these items, these sales, bring with them certified checks, all sorts of checks. And they also -- because the only other way you can put together that money is by cash.

So sometimes a referee will leave a sale with some checks and cash. And in some communities referees get a little antsy about walking away from a sale with a bunch of cash. And some of that cash, Senator, they could have gotten from another party.

This bill simply is we all play by the same rules and there is transparency, and you sign in at the sale either as a collective group or as a single group.

SENATOR KRUEGER: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT GRIFFO: Senator LaValle, do you yield?

SENATOR LaVALLE: I will yield, but

I don't know how many ways I can say the same thing.

ACTING PRESIDENT GRIFFO: Senator LaValle yields, Senator Krueger.

SENATOR KRUEGER: I'll try to ask questions that allow the sponsor to answer different things.

So right now three of us can go to a foreclosure sale and two of us can, after the bidding starts, come together and say let's go in together on this property. And under the law that Senator LaValle has proposed, will it stop us from doing that because we signed in separately, therefore we can't be a joint bidder? Or will it just allow that information to be known?

So does our signing in separately on a document that goes to the referee and/or sheriff actually prevent us from becoming partners in the bidding at that specific auction?

SENATOR LaVALLE: Everyone signs in. And if we sign in together, we don't become business partners in the middle of the transaction. And that's what this is trying to avoid. It's very simple.

SENATOR KRUEGER: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT GRIFFO: Senator LaValle, do you yield?

SENATOR LaVALLE: This is the last time I'm yielding.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Well, I had more questions, but let me try to do this. So again, where I'm confused is multiple-part. And since I only get one more question, I have to make it a long complex question.

So question one, if this were to become law, does it then become illegal for us to decide to become partners in the auction after we have signed into a document?

Two, if that does make it illegal for us to do it, does that stop me from just selling it to the other party right after the auction?

And three -- because I think most people who go to auctions probably do have more money with them than they actually intended to

spend. You never know how high you're going to go up.

And then, three, so this would make it illegal to come together at the auction, but I think it wouldn't stop you from making the deal two seconds afterwards outside the auction. But, three, accepting that it's good to know this information and have everybody not be able to make deals during auctions, why would we exempt LLCs and corporations? They have deeper pockets to make these deals than anyone else.

So that's really three questions, I admit it. But I was told I only had one more, so I was tying all three together.

ACTING PRESIDENT GRIFFO: Senator LaValle on the multi-question.

SENATOR LaVALLE: I think you did a very good job.

I'm going to answer, but what I would hope, that now I'm interested, as the sponsor -- because this is such a very straightforward bill and one that I think people would appreciate who bid on properties so that they know that they're playing by the same rule.

The one good question that you asked

is could not the individual at some point in time after either sell, bring in, change the title on the property. And the answer is yes to that.

This bill, Senator, is one that I thought someone like yourself who's interested in fair play, is that everyone plays by the same rule. That's all this bill does.

ACTING PRESIDENT GRIFFO: Senator Krueger, would you like to speak on the bill?

SENATOR KRUEGER: Thank you so much.

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: Well, I agree with Senator LaValle, I am one of those people who likes fair play.

So in fact I have voted for this bill in the past, but sometimes you're busy and you're not thinking as carefully as you ought to.

So what really drove my concern today was the fact that this wouldn't be an even playing field because we're exempting LLCs. Who can, by the way, be an individual or multiple individuals in multiple LLCs. So you sort of can be an individual while you're a LLC. Or you can

be a corporation. I was concerned that we were not including them in this effort for fair play.

Second, I was concerned that the bill is simple and says you sign in. It doesn't say anywhere explicitly "and you're not allowed to change the rules of the game by becoming a partnership without formal process during the auction."

So it's just: Here, we'll let you know that we've signed in, Liz Krueger has signed in separately than Senator LaValle. But I don't see where it would stop us from making a deal either during the auction, even though we signed in, because it's not explicit that if you signed in separately you can't make a deal.

And it wouldn't stop us from deciding to make a deal for one to pay off the rest of it to the other the minute you walked out of the door.

And it wouldn't stop us if we called ourselves LLCs when we signed in, which a lot of people in real estate are LLCs. It wouldn't stop us from doing it if we were corporations or LLCs.

So I actually think this bill has been floating around for quite a while and not

moving anywhere in the Assembly because they also couldn't quite figure out how it got us to the stated goal.

After my discussion with Senator LaValle on the floor -- and I appreciate his answers -- I don't think it does get us to the stated goal. I could actually vote yes or no, because I'm not clear that this resolves any of the concerns he has.

So I'm going to vote yes in the hope that this bill could be amended to answer the concerns and perhaps move through the Assembly, which it hasn't for many years. I've learned there were three separate Assembly sponsors that have come and gone on that bill.

So I will vote yes, Senator LaValle. And yet I want to highlight to you I think this bill could be significantly improved if it covered corporations, LLCs, and it clarified that if you change the rules of the game during the auction, as described, that there's actually something that prevents you then from being able to purchase at that auction.

So thank you very much.

ACTING PRESIDENT GRIFFO: Thank

you, Senator Krueger.

Senator Sanders.

SENATOR SANDERS: Through you, Mr. President, if the sponsor will yield for a question.

ACTING PRESIDENT GRIFFO: Senator LaValle, do you yield to a question from Senator Sanders?

SENATOR LaVALLE: Yes.

SENATOR SANDERS: Arguably, my district has been the hardest-hit district in New York City on foreclosures, so I look at this bill with great interest. I like most of what it's doing. I can certainly see myself supporting it.

My question, of course, is why have we removed from the LLCs from here? They are some of the -- I'll be kind. Arguably, one can say that they may be the ones who are most adept at -- at -- well, the words "taking advantage" does come to mind quickly.

Why did we remove those corporations?

ACTING PRESIDENT GRIFFO: Senator LaValle.

SENATOR LaVALLE: Mr. President, through you. As I had said to -- and I think Senator Krueger has drilled down to say that the individual -- that's what we're talking about, whoever signs in.

And that, by the way, happens now, would happen later. Because the person who is the referee needs to know who the people are that are bidding and that, at the end of the day, they're real, that they have a telephone number. Now, right now, those individuals sometimes put their corporate name after. You know, LLC, LLP, whatever.

But I think what we're trying to do -- and we can't, as you well know, Senator, get into each person's larcenous intent. We try the best here. And I put this bill in based, obviously, on some experience in this area. And there are some other bills that I have.

But I do believe that this takes care of, for the referee, the playing of games that go on in the bidding process when some of those people they think -- a lot of these people go to, within the course of a week, many, many, many sales, foreclosure sales. Many. They are

professionals. So sometimes they do.

As I had said and Senator Krueger said, they come with lots of checks, cash and whatever. But they should know going in that I who am a first-timer -- and I've seen this with first-time people, with good intentions, are up against people who are professionals and they know how they're going to put together their money for the deposit to get through the sale and beyond.

So -- but I think this does it. We're only trying to cure one problem in the total sale. There are lots of things that we might have included in this bill that take place after the sale. But we didn't. We tried to make it very simple to deal with the problem of people not playing fairly.

SENATOR SANDERS: Mr. President.

ACTING PRESIDENT GRIFFO: Senator Sanders.

SENATOR SANDERS: I applaud the sponsor, and I will support the bill. But I urge him to amend it to include the corporations that he has left out.

Thank you very much.

ACTING PRESIDENT GRIFFO: Senator O'Brien.

SENATOR O'BRIEN: Thank you, Mr. President. If the sponsor will yield to one just very brief question.

ACTING PRESIDENT GRIFFO: Senator LaValle, do you yield for a brief question?

SENATOR LaVALLE: Just one second.

ACTING PRESIDENT GRIFFO: Senator O'Brien.

SENATOR O'BRIEN: Thank you. Just one quick question.

As I understand it, the intent here is that when people arrive to bid at public auction or mortgage foreclosure, that this would limit the ability of individual bidders to kind of get together and pool their resources in a way that wasn't anticipated before they arrived at the time for the auction.

And I guess my question would be whether or not in the sponsor's view that would limit potentially the sale proceeds that might otherwise be realized if bidders could act collectively at the time of the mortgage foreclosure. And then perhaps that would happen

at the disadvantage of lienors or other people expecting to be paid from the proceeds of the sale, where oftentimes the attempt is to try to maximize the bid price.

ACTING PRESIDENT GRIFFO: Senator LaValle.

SENATOR LaVALLE: Through you, Mr. President. I do not believe that this limits where people are going in terms of their bids.

It is obvious that people want to come in with a sale, a purchase at the lowest possible price. But as I had indicated, these potential purchasers are, for the most part, professionals. They know where the property is. They've seen the property. They have an idea of how much needs to go in to make that property whole.

And so if it's a really good property, that will get bid up and the offers will become fast and furious. And that's where the potential of an individual to come short in terms of the money, the requisite money they need for their deposit.

SENATOR O'BRIEN: Thank you. I'm not sure I would agree with the conclusion that

it doesn't necessarily limit the ultimate price that could be obtained at auction, but I think I will support the legislation in any event.

Thank you.

ACTING PRESIDENT GRIFFO: Thank you, Senator O'Brien.

Any other member wishing to be heard?

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

The Secretary will read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

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

SENATOR LIBOUS: Well, thank you, Mr. President. I appreciate you notifying us.

Is there any further business at the

desk?

ACTING PRESIDENT GRIFFO: There is no further business before the desk.

SENATOR LIBOUS: All right. Well, we're not going to adjourn yet because I have some hand-ups.

ACTING PRESIDENT GRIFFO: Can I have some order in the house.

SENATOR LIBOUS: Mr. President, on behalf of Senator Klein, Senator Skelos, I'd like to hand up the following committee assignments and ask that such assignments be filed in the Journal.

ACTING PRESIDENT GRIFFO: The assignments are received and will be filed in the Journal.

SENATOR LIBOUS: And on behalf of Senator Skelos, Senator Klein, I'd like to hand up the following leadership assignments and ask that such assignments be filed in the Journal.

ACTING PRESIDENT GRIFFO: The leadership assignments are also received and shall be filed accordingly.

SENATOR LIBOUS: And, Mr. President, there being no further business, I

move that we adjourn until Tuesday, March 4th, at 3:00 p.m.

ACTING PRESIDENT GRIFFO: On motion, the Senate stands adjourned until Tuesday, March 4th, at 3:00 p.m.

Senate adjourned.

(Whereupon, the Senate adjourned at 4:23 p.m.)