NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 16, 2022

3:05 p.m.

REGULAR SESSION

SENATOR JAMAAL T. BAILEY, Acting President

ALEJANDRA N. PAULINO, ESQ., Secretary

P R O C E E D I N G S

ACTING PRESIDENT BAILEY: 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 BAILEY: In the absence of clergy, let us bow our heads in a moment of silent reflection or prayer.

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

ACTING PRESIDENT BAILEY: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, February 15, 2022, the Senate met pursuant to adjournment. The Journal of Monday, February 14, 2022, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: Senator Salazar

moves to discharge, from the Committee on Education, Assembly Bill Number 7981 and substitute it for the identical Senate Bill 6744, Third Reading Calendar 70.

ACTING PRESIDENT BAILEY: So ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Gianaris.

SENATOR GIANARIS: Please take up the reading of the calendar, Mr. President.

ACTING PRESIDENT BAILEY: The Secretary will read.

THE SECRETARY: Calendar Number 67, Senate Print 546, by Senator Mayer, an act to amend the Education Law.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: Ayes, 63.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 68, Senate Print 912A, by Senator Mayer, an act to amend the Education Law.

SENATOR LANZA: Lay it aside.

ACTING PRESIDENT BAILEY: Lay the bill aside.

THE SECRETARY: Calendar Number 69, Senate Print 2114, by Senator Bailey, an act authorizing and directing the Commissioner of Education to conduct a study on the number of children who are caregivers.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: Ayes, 63.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 70, Assembly Print Number 7981, by Assemblymember Reyes, an act to amend the Education Law.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: In relation to Calendar Number 70, those Senators voting in the negative are Senators Akshar, Borrello, Gallivan, Griffo, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo and Weik.

Ayes, 50. Nays, 13.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 118, Senate Print 7023, by Senator Mannion, an act directing the Commissioner of Health to conduct a study on the rates of reimbursement made through the New York State Medicaid durable medical equipment.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: Ayes, 63.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 277, Senate Print 2778, by Senator Stavisky, an act to amend the Education Law.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: In relation to Calendar Number 277, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Gallivan, Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec and Tedisco.

Ayes, 44. Nays, 19.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 372, Senate Print 1085, by Senator Gaughran, an act to amend the Public Service Law.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce

the results.

THE SECRETARY: Ayes, 63.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 404, Senate Print 6529, by Senator Stavisky, an act to amend the Education Law.

SENATOR LANZA: Lay it aside.

ACTING PRESIDENT BAILEY: Lay it aside.

THE SECRETARY: Calendar Number 425, Senate Print 996, by Senator Hoylman, an act to amend the Domestic Relations Law.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Senator Brisport to explain his vote.

SENATOR BRISPORT: Thank you, Mr. President.

This bill is a win for the LGBTQIA

community in this state, and it's also a message, during this national assault on queer rights and the queer community, that all people are welcome in New York.

You know, countless state legislatures around this nation are attacking trans rights across this country, keeping them out of sports, denying them gender-affirming surgery. The Florida state legislature has a bill colloquially known as the Don't Say Gay Bill. It would essentially ban elementary school teachers from letting their students know that queer people exist.

So this bill is a reminder that all families are welcome in New York, and it's a reminder to all state legislatures across this nation that our diversity makes us stronger.

So thank you to Senator Hoylman for introducing this. And thank you, Mr. President.

I vote aye.

ACTING PRESIDENT BAILEY: Senator Brisport to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar 425, those Senators voting in the

negative are Senators Borrello, Gallivan, Helming, O'Mara, Ortt and Serino.

Ayes, 57. Nays, 6.

ACTING PRESIDENT BAILEY: The bill is passed.

THE SECRETARY: Calendar Number 436, Senate Print 641, by Senator Liu, an act to amend the Administrative Code of the City of New York.

ACTING PRESIDENT BAILEY: Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: In relation to Calendar Number 436, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Griffo, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 45. Nays, 18.

ACTING PRESIDENT BAILEY: The bill is passed.

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

SENATOR GIANARIS: Can we move to the controversial calendar, starting with Calendar 404, please.

ACTING PRESIDENT BAILEY: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 404, Senate Print 6529, by Senator Stavisky, an act to amend the Education Law.

ACTING PRESIDENT BAILEY: Senator Lanza, why do you rise?

SENATOR LANZA: Mr. President, I believe there's an amendment at the desk. I waive the reading of that amendment and ask that Senator Borrello be recognized and heard.

ACTING PRESIDENT BAILEY: Thank you, Senator Lanza.

Upon review of the amendment, in accordance with Rule 6, Section 4B, I rule it nongermane and out of order at this time.

SENATOR LANZA: Accordingly,

Mr. President, I appeal the ruling of the chair and ask that Senator Borrello be recognized.

ACTING PRESIDENT BAILEY: The appeal has been made and recognized, and Senator Borrello may be heard.

SENATOR BORRELLO: Thank you, Mr. President.

Mr. President, I rise to appeal the ruling of the chair. The proposed amendment is germane to the bill at hand because the bill prohibits proprietary schools from intimidating or retaliating against students who file complaints or bring a private right of action against the school.

And this amendment would repeal the bail discovery reforms that have enabled criminals to intimidate or retaliate against victims and witnesses. It's clear here that these laws are failing New Yorkers. In 2020 the murder rate was up nearly 50 percent. It's clear that while the rest of us were on lockdown, criminals were out rampaging.

In New York City, January 2022, the overall crime rate increased 38.5 percent compared to a year earlier, which includes a

33.1 percent increase in robberies and a 31.6 percent increase in shootings.

We are facing an acute public safety crisis in New York State. You can't pick up a newspaper or watch the news without hearing about horrific crimes perpetrated against innocent New Yorkers. Law abiding citizen, businesses and our law enforcement officers are at the mercy of the lawless who walk our streets.

This week's horrific bail reform example was the stabbing death of a young woman, Christina Lee, in Chinatown by a career criminal who had three open cases, including assault and possession of stolen property. If that judge had the freedom to use his discretion, it's very likely that suspect would have remained behind bars and Ms. Lee would still be here in New York today, alive.

The current lie about so-called bail reform is that it only applies to nonviolent offenses. Here are a few of the nonviolent offenses that require judges to release defendants back to the streets: Arson, robbery, assault, DWI, illegal gun possession. Those are just a few.

Another misinterpretation is that it's only our cities. But I held a press conference last week with law enforcement officials from my district, which is mostly rural and several small cities. At that event these officials talked about how hard it is to keep their communities safe because their hands are tied by these criminal justice changes.

They talked about criminals who have become so emboldened by their perpetual get-out-of-jail-free cards that they routinely mock arresting officers. Chautauqua County Undersheriff Richard Telford said that more than once, defendants have said to him: "Just give me my appearance ticket so I can get out of here."

Dunkirk Police Chief David Ortolano said that after a raid on a drug house, the drug dealer he arrested laughed at him and said, "I can't believe this is all you can do to me."

These so-called criminal justice reforms also force prosecutors to disclose the identities and contact information of victims and eyewitnesses. They prohibit judges from considering the dangerousness that the offenders pose to the public even in bail-eligible cases

and even if the offender has a history of violence or witness tampering or intimidation.

These reforms have enabled criminals to remain free in the community, armed with the knowledge about who is accusing them of their crimes. Victims and witnesses have never been more at risk of intimidation or retaliation. Police and prosecutors can no longer guarantee anonymity to victims and witnesses.

This has led to essential witnesses refusing to come forward and cooperate with law enforcement. This impacts the abilities of DAs to successfully prosecute those who continue to commit serious crimes and put New Yorkers in danger.

You can see the dangerous impacts these reforms have made on our state as its out of control crime rate continues. The question I put to my colleagues is, when do we put public safety over politics? What do we do to stop harming our communities in an effort to appease radical special interests?

The number-one job of those of us in this chamber is to keep New Yorkers safe. We are failing at that mission, and we must repeal these

laws.

For that reason, Mr. President, I strongly urge you to reconsider your ruling.

ACTING PRESIDENT BAILEY: Thank you, Senator Borrello.

I want to remind the house that the vote is on the procedures of the house and the ruling of the chair.

Those in favor of overruling the chair signify by saying aye.

(Response of "Aye.")

SENATOR LANZA: Request a show of hands.

SENATOR GIANARIS: We've agreed to waive the showing of hands, Mr. President, and record each member of the Minority in the affirmative.

ACTING PRESIDENT BAILEY: Without objection, so ordered.

Announce the results.

THE SECRETARY: Ayes, 20.

ACTING PRESIDENT BAILEY: The ruling of the chair stands, and the bill-in-chief is before the house.

Are there any other Senators wishing

to be heard?

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

Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Announce the results.

THE SECRETARY: Ayes, 63.

ACTING PRESIDENT BAILEY: The bill is passed.

Senator Gianaris.

SENATOR GIANARIS: Can we next move to Calendar 68, please.

ACTING PRESIDENT BAILEY: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 68, Senate Print 912A, by Senator Mayer, an act to amend the Education Law.

ACTING PRESIDENT BAILEY: Senator Rath, why do you rise?

SENATOR RATH: Thank you, Mr. President. Will the sponsor yield for a question.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Absolutely.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: Thank you, Mr. President.

Senator Mayer, good to see you.

SENATOR MAYER: Good to see you, Senator.

SENATOR RATH: I have a few questions today.

The first is, why did the sponsor choose tenth grade as the cut-off point for preregistering?

SENATOR MAYER: This bill that we passed previously operationalizes the provisions of the laws of New York from 2019, Chapter 2, which requires local boards of education to adopt policies to promote student voter registration and preregistration.

And since we changed the eligible

age at which you could preregister, it's absolutely appropriate to start at tenth grade.

SENATOR RATH: Thank you, Mr. President. Will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Absolutely.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: Are there any restrictions or controls that prevent and/or ensure that students are not unduly influenced when filling out these forms?

SENATOR MAYER: Well, Senator Rath, currently, let me explain that in many more affluent districts the League of Women Voters actually already has a table allowing any student who wishes to, to enroll either in a party or in no party or make their own choice whether to enroll at all.

What this bill does is says for every district schools must comply with the provisions that we adopted previously and simply make available voter registration and

preregistration applications. Make them available.

SENATOR RATH: Thank you, Mr. President. Will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Sure.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: So let me reask my question. Are there any specific restrictions or controls that you know of that can unduly influence or make sure there is no undue influence for the students who are filling out these forms?

SENATOR MAYER: Senator Rath, respectfully, I think that the presumption that there would be any pressure -- the same as there would be when you go to the Board of Elections or the Department of Motor Vehicles or anywhere else. We have a society where you get a form and you make a choice.

And this is simply affording it to those who are able to preregister and to

register.

SENATOR RATH: Thank you.

Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: Let me ask about parents and parents being made aware or having some type of participation or the forms coming back to the children's homes so that the parents are aware of what their students and what their children might be doing within the schools.

SENATOR MAYER: Well, in the first place, we adopted a law already that allows a form to say: Are you at least 16 years of age and understand that you must be 18 years of age on or before Election Day to vote, and that until you will be 18 years of age at the time of such election, your registration will be marked pending and you will be unable to cast a ballot in any election.

So we specifically allowed

16-year-olds to preregister. This simply operationalizes that. It does not require parental approval for a 16-year-old to fill out the form.

SENATOR RATH: Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: Thank you.

Would a teacher and/or other school employee be allowed to advise students as to where political parties stand or how they should register?

SENATOR MAYER: There's absolutely no reason, Senator Rath, to assume that there is pressure exerted in making a form available. It's just like a form to sign up for swim club, there were -- the local Republican student committee or student government. It's simply making a form available.

SENATOR RATH: Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: Next I want to get into the confirmation process. I'm not sure I received a full answer the last time around, but I'll ask this question now.

Is there any confirmation that students and parents will receive that the forms have been completed and properly submitted?

SENATOR MAYER: The parent part is not required under the laws that are previously adopted. A 16-year-old can preregister without parental notification and consent.

So I'm not sure why your question is asking about parents. This is for 16-year-olds to preregister, or 17-year-olds, and 18-year-olds to register.

SENATOR RATH: Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: With all due respect, if there are school administrators that are involved in this process, parents ought to be involved in this process just as much.

But I'll go on to my next question. If a student is not eligible to vote, such as they're not 18 years of age on Election Day, would a preregistered student still receive information leading up to the Election Day?

SENATOR MAYER: This bill before us that we're voting on has nothing to do with the election -- information prior to Election Day.

This is simply giving you the form, 16, 17, 18, you fill it out, it gets back to the Board of Elections. If the Board of Elections does or doesn't give you information, that's up to the board. There's nothing in this bill requiring information regarding an upcoming election.

SENATOR RATH: Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor continue to yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: Therein lies my concern with regards to the administration, the process, the follow-up and the confirmation.

If someone is 18 years of age on Election Day or not, they've filled out all this paperwork but there's no guarantees, there's no tracks, there's no confirmation that the process is working properly.

Someone who's 17 years old might get information with regards to a polling place or a registration card. How are we making sure that poll workers are also educated and trained on who is eligible and who is not eligible on Election Day based on this process through the schools and the boards of elections?

SENATOR MAYER: Well, again, let me clarify, Senator Rath.

One, it appears to me you have a problem with the laws we passed previously. I don't know how you voted on those. But that law allows this registration to take place without parental or supervisory input.

This says to a 16- or 17-year-old: You can fill out the form, and when you're ready to go, then you won't be pending. But for now, you're pending. That's what that law did.

This bill before us simply says we're going to make it appropriate, we're going to operationalize the provisions we already adopted, which said that local boards of education are required to adopt policies to promote student voter registration and preregistration.

You may disagree with it, but that is the law that is behind the impetus for this bill before us.

SENATOR RATH: Thank you.

Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor continue to yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR RATH: We may have disagreements on process and language and how this is carrying out, and I have grave concerns.

Previous legislation that was passed may have been flawed and perhaps should be altered and improved.

This question, though, is who controls the form after it is filled out? And who is responsible for delivering those forms to the Board of Elections?

SENATOR MAYER: In response to your question, Senator Rath, in line 17, in sync with the previous law that we passed, it says that the policy shall include procedures for acquiring and transmitting voter registration and preregistration applications to and from the local boards of elections.

So like any other decision implemented by policy, the school, I assume the board of education and the superintendent will together make a policy which implements this.

SENATOR RATH: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT BAILEY: Senator Rath on the bill.

SENATOR RATH: Thank you.

First of all, thank you, Senator Mayer, for your responses and our

conversation back and forth.

First of all, I'm surprised that this bill isn't brought before the Elections Committee. I actually think that's the appropriate committee and the appropriate venue to be talking about this.

And like so many other proposals that are advanced through this body, it will be a costly and burdensome administrative responsibility on our local governments, on our public and our private schools. In many ways it might be considered an unfunded mandate.

From the boards of elections, to schools, to teachers -- that have already had more than enough on their plates, particularly throughout the pandemic -- this bill is yet another example of the disconnect between Albany policymakers in this chamber and the public servants at home serving our children.

While I support all of our students registering to vote -- of course, when they are eligible -- I think arbitrarily making schools the conduit of that process is unnecessary and inconsiderate of the administrative workload and the burden that will be put on the schools and

the school districts.

Furthermore, while this bill has noble and good intentions, it is not well thought out. I believe it is expensive and burdensome.

For these reasons, Mr. President, I'll be voting in the negative. Thank you.

ACTING PRESIDENT BAILEY: Are there any other Senators wishing to be heard?

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

Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Senator Mayer to explain her vote.

SENATOR MAYER: Thank you, Mr. President.

I'm glad I have the opportunity to talk about this bill. I actually feel quite strongly and passionately about the need for all of us, as elected officials, to ensure that the next generation of New Yorkers, one, knows that

they have the right to vote; two, becomes educated about our civic process and our incredible democracy that gives this right to vote.

And secondly, consistent with the laws that we passed proudly in 2019 allowing preregistration by those under 18, implements this in every school.

Let me just make the point that I made during the debate. If you go to the more affluent schools in my district and I suspect elsewhere in the state, there's frequently a League of Women Voters volunteer, largely women, usually highly educated, and they have a table in that school for 16-, 17- and 18-year-olds. And more power to them.

When I got to be a Senator and I had some of these districts, I went and saw that, and I said, Isn't that terrific, the students in my more affluent districts know about how to register.

And then I went to the schools that I traditionally represent in the City of Yonkers, where there is no League of Women Voters in the school. And why shouldn't those students have

the same opportunity and be encouraged, and say, Oh, this is how you do it, it's easy, just fill out the form.

You can decide whether you want to be in any party or no party. You can decide you don't want to vote. But here is your sacred right, that you have the ability to participate in this democracy. And isn't that great that we are talking about it to you when you can preregister.

Because we made that important change, we are now implementing it. This is an important bill to bring democracy alive and keep it well with the next generation. I proudly vote yes.

ACTING PRESIDENT BAILEY: Senator Mayer to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 68, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Griffo, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 45. Nays, 18.

ACTING PRESIDENT BAILEY: The bill is passed.

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

SENATOR GIANARIS: Is there any further business at the desk?

ACTING PRESIDENT BAILEY: There is no further business at the desk.

SENATOR GIANARIS: I move to adjourn until tomorrow, Thursday, February 17th, at 9:00 a.m.

ACTING PRESIDENT BAILEY: On motion, the Senate stands adjourned until Thursday, February 17th, at 9:00 a.m.

(Whereupon, the Senate adjourned at 3:32 p.m.)