

# COMMONWEALTH OF PENNSYLVANIA

## LEGISLATIVE JOURNAL

WEDNESDAY, JUNE 22, 2005

SESSION OF 2005

189TH OF THE GENERAL ASSEMBLY

No. 41

### HOUSE OF REPRESENTATIVES

The House convened at 11 a.m., e.d.t.

**THE SPEAKER (JOHN M. PERZEL)  
PRESIDING**

#### PRAYER

REV. JULIANN V. WHIPPLE, Chaplain of the House of Representatives, offered the following prayer:

Let us pray:

You can do all things, O God. Whatsoever lies within the realm of possibility lies also in Your power to perform and to bring to pass. You are might beyond our thinking, and You are goodness altogether. What You will for Your human creatures is the largest life for each of them, and all Your ways are righteousness and all Your paths peace.

Though You can do all things, O Lord, we cannot, even though sometimes we believe we can. We are often unsure whether the things we do are right or wise or good. We are so lacking in perception of the things we ought to understand. When we turn to other men and women, we see them not as Your awesome creations but as competitors for some prize or place we would like to win ourselves.

So we ask that You take out of our hearts any bitterness, hatred, unconcern, and even indifference as it respects others, Almighty God. Help us to feel kindly toward others, to be sincerely interested in their welfare and happiness. Unbend the hearts long twisted by jealousy of those of whom we have no cause to be jealous, by hatred of those we ought to love, by fear of things that have no power to hurt us, and by dread of duties meant to be blessings.

Guide us to love one another and to bear one another's burdens in the blessed comradeship of those who have a common purpose, to serve this Commonwealth to the best of our ability. Be present among us, O God, as we seek to serve You with honor.

Amen.

#### PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

### JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Tuesday, June 21, 2005, will be postponed until printed.

### HOUSE BILLS INTRODUCED AND REFERRED

**No. 1718** By Representatives SCHRODER, TURZAI, ARMSTRONG, BAKER, BALDWIN, BENNINGHOFF, BOYD, CALTAGIRONE, CREIGHTON, DeLUCA, GINGRICH, HERSHEY, HESS, LEH, McILHATTAN, PAYNE, PYLE, REED, ROHRER, SCAVELLO, STERN, E. Z. TAYLOR, WRIGHT, METCALFE and MUSTIO

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, rescinding the power of the Supreme Court to suspend statutes and to provide for the practice of law.

Referred to Committee on STATE GOVERNMENT, June 22, 2005.

**No. 1777** By Representatives HERMAN, GINGRICH, CURRY, HUTCHINSON, FABRIZIO, REED, FREEMAN, SATHER, SHAPIRO, BENNINGHOFF, ARGALL, BAKER, BASTIAN, BEBKO-JONES, BELARDI, BELFANTI, BUNT, CALTAGIRONE, CAPPELLI, CASORIO, CAUSER, CRAHALLA, CREIGHTON, CRUZ, DeLUCA, DeWEESE, D. EVANS, FICHTER, FLICK, GEIST, GEORGE, GERGELY, GOODMAN, GRUCELA, HANNA, HARHAI, HARRIS, HESS, JAMES, KAUFFMAN, M. KELLER, KOTIK, LEDERER, LEH, LESCOVITZ, LEVDANSKY, MARKOSEK, McCALL, McGILL, McILHATTAN, MUNDY, MYERS, O'NEILL, PETRARCA, PHILLIPS, PICKETT, QUIGLEY, RAYMOND, READSHAW, ROEBUCK, RUBLEY, SAINATO, SCAVELLO, SHANER, SOLOBAY, STABACK, STERN, SURRA, E. Z. TAYLOR, TIGUE, WALKO, WILT, WOJNAROSKI and YUDICHAK

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, authorizing the General Assembly to increase certain benefits or pensions.

Referred to Committee on STATE GOVERNMENT, June 22, 2005.

**No. 1778** By Representatives ZUG, ARMSTRONG, BARRAR, BENNINGHOFF, BOYD, CALTAGIRONE, FAIRCHILD, GEIST, GINGRICH, GOOD, GOODMAN,

HARHART, MANN, McILHATTAN, MYERS, O'NEILL, READSHAW, REICHLEY, SATHER, SOLOBAY, STERN, R. STEVENSON, E. Z. TAYLOR, THOMAS, TIGUE and YOUNGBLOOD

An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, further providing for the restricted use of emergency and municipal services tax.

Referred to Committee on FINANCE, June 22, 2005.

**No. 1779** By Representatives CREIGHTON, CALTAGIRONE, GEIST, METCALFE, SAINATO, SHANER, WANSACZ and DENLINGER

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for sales and use tax exclusions.

Referred to Committee on FINANCE, June 22, 2005.

**No. 1780** By Representatives CREIGHTON, ARMSTRONG, CALTAGIRONE, GEIST and MCGILL

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for imposition of sales and use tax.

Referred to Committee on FINANCE, June 22, 2005.

**No. 1781** By Representatives CREIGHTON, CALTAGIRONE, GOODMAN, LEACH, TIGUE and WILT

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for required financial responsibility.

Referred to Committee on TRANSPORTATION, June 22, 2005.

**No. 1782** By Representatives BIANCUCCI, BLAUM, FABRIZIO, DeWEESE, KOTIK, BEBKO-JONES, BELARDI, BELFANTI, BUNT, COSTA, CURRY, DALEY, FRANKEL, FREEMAN, GEORGE, GOODMAN, GRUCELA, HARHAI, JOSEPHS, LaGROTTA, LEDERER, McCALL, MUNDY, PALLONE, PETRARCA, PISTELLA, REICHLEY, SAINATO, SANTONI, SHANER, STABACK, STURLA, SURRA, TANGRETTI, J. TAYLOR, THOMAS, TIGUE, WALKO, YOUNGBLOOD and YUDICHAK

An Act providing for a comprehensive interagency plan for child day-care services and early childhood development services and for the powers and duties of the Department of Public Welfare.

Referred to Committee on CHILDREN AND YOUTH, June 22, 2005.

**No. 1783** By Representatives STEIL, BOYD, SCHRODER, BALDWIN, CALTAGIRONE, CLYMER, CRAHALLA, GINGRICH, GOOD, HERSHEY, METCALFE, NICKOL, PICKETT, RAPP, RUBLEY, SAYLOR, E. Z. TAYLOR, THOMAS, TURZAI, WRIGHT and JAMES

An Act providing for asbestos claims litigation.

Referred to Committee on LABOR RELATIONS, June 22, 2005.

### HOUSE RESOLUTION INTRODUCED AND REFERRED

**No. 362** By Representatives SEMMEL, TIGUE, STERN, BEBKO-JONES, ALLEN, ARGALL, BAKER, BALDWIN, BARRAR, BASTIAN, BELFANTI, BOYD, BUNT, CALTAGIRONE, CAPPELLI, CRAHALLA, DALLY, DeWEESE, DONATUCCI, FABRIZIO, FAIRCHILD, FREEMAN, GEIST, GEORGE, GERGELY, GINGRICH, GOOD, GOODMAN, GRUCELA, HABAY, HARHAI, HARRIS, HENNESSEY, HERMAN, HESS, HICKERNELL, HUTCHINSON, JAMES, LEACH, LEDERER, MANN, MARKOSEK, R. MILLER, MUSTIO, NAILOR, O'NEILL, PALLONE, PAYNE, PETRARCA, PHILLIPS, PICKETT, RAMALEY, RAPP, READSHAW, REICHLEY, ROHRER, RUBLEY, SAINATO, SAMUELSON, SATHER, SAYLOR, SCAVELLO, SCHRODER, SHANER, SOLOBAY, STABACK, SURRA, E. Z. TAYLOR, J. TAYLOR, THOMAS, WALKO, WATSON, WILT, WRIGHT, YOUNGBLOOD, ZUG and McCALL

A Concurrent Resolution directing the Legislative Budget and Finance Committee to conduct a comprehensive study and review of veterans services in Pennsylvania, exploring a broad range of options on how best to organize, fund, staff and operate veterans programs in order to provide the best possible services to Pennsylvania veterans and their families in the most cost-effective and efficient manner.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, June 22, 2005.

### SENATE BILLS FOR CONCURRENCE

The clerk of the Senate, being introduced, presented the following bills for concurrence:

#### **SB 457, PN 900**

Referred to Committee on URBAN AFFAIRS, June 22, 2005.

#### **SB 594, PN 668**

Referred to Committee on ENVIRONMENTAL RESOURCES AND ENERGY, June 22, 2005.

#### **SB 722, PN 976**

Referred to Committee on ENVIRONMENTAL RESOURCES AND ENERGY, June 22, 2005.

### BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that the following bills be taken off the table: HB 720 and HB 929.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### BILLS TABLED

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that the following bills be placed upon the table: HB 720 and HB 929.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that the following bills be taken off the table:

HB 816;  
HB 817;  
HB 818;  
HB 819;  
HB 820;  
HB 821;  
HB 822; and  
HB 823.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that SB 584 be taken from the table.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### BILL ON SECOND CONSIDERATION

The following bill, having been called up, was considered for the second time and agreed to, and ordered transcribed for third consideration:

**SB 584, PN 807.**

### BILL RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that the following bill be recommitted to the Committee on Appropriations: SB 584.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### LEAVES OF ABSENCE

The SPEAKER. There are no requests for leaves of absence.

### BILLS REPORTED FROM COMMITTEES, CONSIDERED FIRST TIME, AND RECOMMITTED TO COMMITTEE ON RULES

**HB 321, PN 2300** (Amended) By Rep. STAIRS

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for teacher qualification and for State certificates.

EDUCATION.

**HB 493, PN 2283** (Amended) By Rep. J. TAYLOR

An Act amending the act of June 12, 1919 (P.L.476, No.240), referred to as the Second Class County Recorder of Deeds Fee Law, providing for officer or employee to charge and collect fees and for additional fees; and authorizing establishment of a County Records Improvement Fund and County Records Improvement Committee.

URBAN AFFAIRS.

**HB 1291, PN 2301** (Amended) By Rep. STAIRS

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for background checks of prospective employees and conviction of certain offenses.

EDUCATION.

**HB 1358, PN 1633** By Rep. J. TAYLOR

An Act providing for the remediation of blighted properties in certain municipalities.

URBAN AFFAIRS.

**HB 1377, PN 2304** (Amended) By Rep. ALLEN

An Act amending the act of June 18, 1998 (P.L.655, No.85), known as the Boiler and Unfired Pressure Vessel Law, defining "water heating appliance"; and further providing for interpretation.

LABOR RELATIONS.

**HB 1492, PN 1809** By Rep. RAYMOND

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further providing for incorporated units of national veterans organizations.

LIQUOR CONTROL.

**HB 1512, PN 1846** By Rep. STAIRS

An Act establishing the Science Technology Partnership Program; and providing for State grants.

EDUCATION.

**HB 1580, PN 2302 (Amended)** By Rep. HERSHEY

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, further providing for the regulation of Cervidae livestock operations.

AGRICULTURE AND RURAL AFFAIRS.

**HB 1637, PN 2022** By Rep. ALLEN

An Act amending the act of August 24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, further providing for waiver of liens, for effect of waiver of liens and for rescission of contracts between contractors and subcontractors.

LABOR RELATIONS.

**HB 1646, PN 2303 (Amended)** By Rep. HERSHEY

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for a prohibition against unauthorized local government unit actions; establishing a cause of action for unauthorized enactment or enforcement of local ordinances governing normal agricultural operations; providing for duties of the Attorney General and for hearings; consolidating the Nutrient Management Act; further providing for scope, for legislative purpose, for definitions and for administration; providing for manure application; further providing for nutrient management and odor management certification; providing for odor management plans; further providing for the Nutrient Management Advisory Board, for financial assistance, for unlawful conduct, for civil penalties and for local preemption; providing for other statutes and for regulations; and making a related repeal.

AGRICULTURE AND RURAL AFFAIRS.

**HB 1731, PN 2284 (Amended)** By Rep. GEIST

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for impoundment of certain vehicles and combinations for nonpayment of fines, for immobilization, towing and storage of vehicle for driving without operating privilege or registration and for disposition of impounded vehicles, combinations and loads.

TRANSPORTATION.

**BILL REPORTED FROM COMMITTEE,  
CONSIDERED FIRST TIME, AND TABLED**

**SB 462, PN 981 (Amended)** By Rep. RAYMOND

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further providing for sales by Pennsylvania liquor stores, for authority to issue liquor licenses to hotels, restaurants and clubs, for sale of malt or brewed beverages by liquor licensees, for retail dispensers' restrictions on purchases and sales, for revocation and suspension of licenses, for renewal of amusement permits, for the point system for certain licensees and for the assessment of points for noncompliance; providing for renewal of permit for sales for off-premises consumption in cities of the first class; further providing for unlawful acts relative to malt or brewed beverages and licensees; and providing for hours of operation relative to manufacturers, importing distributors and distributors and for unlawful acts relative to liquor, malt and brewed beverages and licensees.

LIQUOR CONTROL.

**MASTER ROLL CALL**

The SPEAKER. The Chair is about to take the master roll. The members will proceed to vote.

The following roll call was recorded:

PRESENT—200

Adolph	Feese	Maher	Ruble
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Crighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

ADDITIONS—0

NOT VOTING—0

EXCUSED—1

Sather

LEAVES ADDED—3

Roebuck                      Tangretti                      Wojnaroski

**GUESTS INTRODUCED**

The SPEAKER. Today we have with us a special guest on the floor of the House. It is Lindsay Ettl. Lindsay is the guest of Representative Julie Harhart. She recently graduated from Catasauqua High School and will be attending St. Joe's in the fall. She is here job-shadowing Representative Harhart. Would that guest please rise and be recognized.

Seated in the gallery and joining us today are the guests of Representative David Hickernell. They are residents of the Adult Community of Timber Villa. Please join me in welcoming that crowd. Would they please stand and be recognized.

The Chair would like to welcome Tara Miller, a senior at Warwick High School. She is the guest today of Representative Roy Baldwin. She is located in the balcony. Would she please stand and be recognized.

The Chair would also like to welcome Anna Owen, who is the 2005 "There Ought To Be a Law" winner in Representative Semmel's district. Her idea for the law was to have people that are thinking of adopting or buying a pet to take an animal-care course. Anna attends Kutztown Elementary School and is accompanied by her parents, David and Naomi, and her brother, Samuel Owen. They are seated to the left of the Speaker. Would they please rise and be recognized.

The Chair would like to welcome to the hall of the House Mr. Eugene Baum and Mrs. Jewel Morris. Jewel Morris is employed in the district office of Representative Samuel Rohrer. They are the guests of Representative Gordon Denlinger. They are located in the balcony. Would those guests please rise and be recognized.

**ARCHIVAL INTERNS INTRODUCED**

The SPEAKER. The Chair would like to welcome four special individuals. These are four students who were selected this summer to participate in the Archival Internship Program, sponsored by the House of Representatives through the Bipartisan Management Committee. These bright and dedicated interns worked on a variety of interesting historical assignments. Their work has helped the House Archives better document the historical significance of this institution.

I would like to welcome to the hall of the House today, first, Scott Bedford. Would you please rise, Scott. He recently graduated from Bloomsburg University with a degree in history. Scott is from Pottsville and is the constituent of Representative Neal Goodman.

We have Amy Martin, a senior at Grove City College who is majoring in history with a minor in French. Amy is from Annville and is the constituent of Representative Mauree Gingrich. Welcome.

We have Erin Miller, a senior at Moravian College who is majoring in English with a minor in Spanish. Erin is from Mechanicsburg and is the constituent of Representative Glen Grell. Welcome.

Lastly, we have Lindsay Phelps, a senior at the University of St. Andrews in Scotland who is majoring in international relations and modern history. Lindsay is from Aliquippa and is the constituent of Representative Sean Ramaley.

**GUESTS INTRODUCED**

The SPEAKER. Serving today as a guest page is Corey Grove from Felton. Corey is the guest of Representative Stan Saylor. He recently attained his Eagle Scout Award and is a 2005 graduate from the Red Lion Area High School. Seated in the balcony, his parents are also with him, Todd and Glenna Grove, and his sister, Tiffinie. Would those guests please rise and be recognized.

**SUPPLEMENTAL CALENDAR A****RESOLUTION PURSUANT TO RULE 35**

Mr. FAIRCHILD called up **HR 360, PN 2285**, entitled:

A Resolution honoring Snyder County on its 150th anniversary.

On the question,  
Will the House adopt the resolution?

The following roll call was recorded:

**YEAS—200**

Adolph	Feese	Maher	Rubley
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	Mcllhattan	Shapiro
Benninghoff	Gerber	Mcllhinney	Siproth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak

Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Sather

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

**GUESTS INTRODUCED**

The SPEAKER. The Chair would like to welcome Caleb Shimmel and Zach Welsh, serving as guest pages today of Representative Frank Dermody. They are seated to the left of the Speaker. Would those guests please rise and be recognized.

They are actually serving papers as we speak. I am sorry, guys. They are up in the back, the right-hand side of the Speaker.

The Chair welcomes Ryan Campbell, who is a guest page from Blue Bell, Pennsylvania. He is attending Bucknell University. He is the guest today of Representative Mike Gerber. Would that guest please rise and be recognized.

**RULES COMMITTEE MEETING**

The SPEAKER. The Chair recognizes the majority leader, who calls for an immediate meeting of the Rules Committee.

**BILLS REREPORTED FROM COMMITTEE**

**HB 1192, PN 2205** By Rep. S. SMITH

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, providing for adoption assistance programs; and making a repeal.

RULES.

**HB 1508, PN 1842** By Rep. S. SMITH

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further providing for the powers of the Department of Labor and Industry relating to State-owned buildings; and establishing the Uniform Construction Fund.

RULES.

**HB 1704, PN 2166** By Rep. S. SMITH

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for drug delivery resulting in death.

RULES.

**BILLS ON SECOND CONSIDERATION**

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

**HB 1192, PN 2205; HB 1508, PN 1842; and HB 1704, PN 2166.**

**BILLS RECOMMITTED**

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that the following bills be recommitted to the Committee on Appropriations:

HB 1192;  
HB 1508; and  
HB 1704.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

**CALENDAR**

**BILLS ON THIRD CONSIDERATION**

The House proceeded to third consideration of **HB 1510, PN 1844**, entitled:

An Act amending the act of March 27, 1852 (P.L.197, No.147), entitled, "An act relative to the collection of taxes, in Crawford and Lawrence counties; to authorize the Commissioners of Erie county to borrow money; relative to a State road in Crawford county; extending the time for the completion of the works of the Centreville Water Company, and relative to Justices of the Peace of Bedford county," further providing for the collection of State and county taxes in Lawrence County.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?  
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

**YEAS—199**

Adolph	Feese	Mackereth	Rublely
Allen	Fichter	Maher	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth

Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	Perzel,
Fabrizio	Levdansky	Ross	Speaker
Fairchild			

NAYS-1

Maitland

NOT VOTING-0

EXCUSED-1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1650, PN 2061**, entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for resident, nonresident and tourist fishing licenses.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-200

Adolph	Feese	Maher	Rubley
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	Perzel,
Fabrizio	Levdansky	Ross	Speaker
Fairchild	Mackereth		

NAYS-0

NOT VOTING-0

EXCUSED-1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1055, PN 1914**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, providing for court-appointed child custody health care practitioners.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the bill stand for brief interrogation?

The SPEAKER. The Chair apologizes; I was looking for Mr. Evans.

Mr. Vitali, Mr. Evans agrees to stand and give a brief explanation of the bill. Mr. Evans.

Mr. J. EVANS. Mr. Speaker, this bill will help in court cases involving child custody matters. Currently the health-care practitioners who are mandated by the courts to provide custody evaluations are doing so, and in some cases their license is being appealed to the State Board, and that delaying procedure has in many cases delayed the court system for effectively getting this custody matter resolved. This bill will not detract or make it impossible for someone to challenge a license; that can be done, but the language has been worked in such a way that there will be a cooling-off period, Mr. Speaker, of 60 days following the completion of the court proceedings. So this will not impact that in any way, but it will help to speed up the court process, because it will stop what has become, in many cases, a delaying tactic in these particular cases.

Mr. VITALI. Thank you.

I have some follow-up questions. I have some concerns here. I used to do, in a former life, some legal work in the custody field. First of all, I am not clear how it would delay proceedings since claims made against an evaluator's license run on a totally different track and are in a totally different system than the custody proceeding itself. In other words, in deciding who gets custody, a judge in the court of common pleas typically holds hearings and makes that court order after hearing the custody evaluator's review, and a claim against a psychologist's license is made in a wholly different proceeding; in fact, I would suspect in many cases after that evaluation report has come down. So I am not really sure where the delay lies. I am just trying to understand that.

Mr. J. EVANS. Mr. Speaker, from what I have been advised, judges typically will wait until the review process is complete before issuing a decision in a child custody case. That is the

delay that we are speaking of. They will wait until that review has been made before making the determination on the custody. So in essence, that is what we are talking about.

Mr. VITALI. But do not— I mean, typically, if you have a disgruntled, you know, father or mother and they file a complaint, typically is that not after the report comes down?

Mr. J. EVANS. Yes, that is after the report comes out, but a judge will hold off on issuing his decision until the license challenge has been resolved. That is what we are talking about here.

Mr. VITALI. Yeah, I have never had that experience in my decade of practice. But let me ask you another question about this bill that troubles me. You say that you cannot, if you are a father or mother, a participant in a custody matter, you cannot file a complaint until 60 days after the conclusion of the matter. Now, you know, in my experience, these things are really never over until the child is 18. In other words, let us say a couple splits when the child is 2, let us say. I mean, that is an active— And the court will come down with an order giving some sort of custody and visitation, but that can be revisited when the child is 3 and 4 and 5 and 6 and so forth. So under the language, when is it over? When is this case over?

Mr. J. EVANS. Well, Mr. Speaker, as mentioned, this does not impede a person's right to challenge the license of the practitioner. The practitioner, keep in mind, is hired by the court to do this child custody evaluation. So these are people who are fairly reputable and have reputations to uphold, are hired by the court for this specific purpose. The 60-day period, I am not quite sure I understand what your concern is.

Mr. VITALI. Well, the language of your bill says you cannot file a complaint during the pendency of the matter. The question is, what do you mean by "during the pendency of the matter," because in a child custody dispute, if you view it one way, it is never over. If the court issues an order for a 2-year-old child, that order is frequently revisited multiple times as the child gets older and the circumstances of the parents change and people move and job situations change and the child's preferences change. So what do you mean by "pendency of the matter"?

Mr. J. EVANS. "Pendency" means until the final order is issued by the judge.

Mr. VITALI. Is the order ever considered final, though?

Mr. J. EVANS. Mr. Speaker, I believe it is.

Mr. VITALI. Okay. Thank you. I have no further questions.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—199

Adolph	Feese	Mackereth	Ross
Allen	Fichter	Maher	Rubley
Argall	Fleagle	Maitland	Ruffing
Armstrong	Flick	Major	Sainato
Baker	Forcier	Manderino	Samuelson
Baldwin	Frankel	Mann	Santoni
Barrar	Freeman	Markosek	Saylor
Bastian	Gabig	Marsico	Scavello
Bebko-Jones	Gannon	McCall	Schroder
Belardi	Geist	McGeehan	Semmel



Belfanti	George	McGill	Shaner
Benninghoff	Gerber	McIlhattan	Shapiro
Biancucci	Gergely	McIlhinney	Siptroth
Birmelin	Gillespie	McNaughton	Smith, B.
Bishop	Gingrich	Melio	Smith, S. H.
Blackwell	Godshall	Metcalfe	Solobay
Blaum	Good	Micozzie	Sonney
Boyd	Goodman	Millard	Staback
Bunt	Grell	Miller, R.	Stairs
Butkovitz	Grucela	Miller, S.	Steil
Buxton	Gruitza	Mundy	Stern
Caltagirone	Habay	Mustio	Stetler
Cappelli	Haluska	Myers	Stevenson, R.
Casorio	Hanna	Nailor	Stevenson, T.
Causer	Harhai	Nickol	Sturla
Cawley	Harhart	O'Brien	Surra
Civera	Harper	Oliver	Tangretti
Clymer	Harris	O'Neill	Taylor, E. Z.
Cohen	Hasay	Pallone	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnaroski
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Leach	Rieger	Yudichak
Ellis	Lederer	Roberts	Zug
Evans, D.	Leh	Roebuck	
Evans, J.	Lescovitz	Rohrer	Perzel,
Fabrizio	Levdansky	Rooney	Speaker
Fairchild			

NAYS-1

Vitali

NOT VOTING-0

EXCUSED-1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1717, PN 2174**, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for persons not to possess, use, manufacture, control, sell or transfer firearms, for firearms not to be carried without licenses, for licenses, for loans, lending or giving of firearms, for definitions, for jurisdiction, for full faith and credit and foreign protection orders, for responsibilities of law enforcement agencies, for commencement of proceedings, for hearings and for relief; providing for return of

relinquished firearms, other weapons and ammunition, for relinquishment for consignment sale or lawful transfer, for relinquishment to third party for safekeeping and for registry or database of firearm ownership; further providing for emergency relief by minor judiciary, for arrest for violation of order, for private criminal complaints for violation of order or agreement, for contempt for violation of order or agreement and for procedures and other remedies; and providing for immunity, for inability to pay and for limitation on warrantless searches.

On the question,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-199

Adolph	Fichter	Maher	Rubley
Allen	Fleagle	Maitland	Ruffing
Argall	Flick	Major	Sainato
Armstrong	Forcier	Manderino	Samuelson
Baker	Frankel	Mann	Santoni
Baldwin	Freeman	Markosek	Saylor
Barrar	Gabig	Marsico	Scavello
Bastian	Gannon	McCall	Schroder
Bebko-Jones	Geist	McGeehan	Semmel
Belardi	George	McGill	Shaner
Belfanti	Gerber	McIlhattan	Shapiro
Benninghoff	Gergely	McIlhinney	Siptroth
Biancucci	Gillespie	McNaughton	Smith, B.
Birmelin	Gingrich	Melio	Smith, S. H.
Bishop	Godshall	Metcalfe	Solobay
Blackwell	Good	Micozzie	Sonney
Blaum	Goodman	Millard	Staback
Boyd	Grell	Miller, R.	Stairs
Bunt	Grucela	Miller, S.	Steil
Butkovitz	Gruitza	Mundy	Stern
Buxton	Habay	Mustio	Stetler
Caltagirone	Haluska	Myers	Stevenson, R.
Cappelli	Hanna	Nailor	Stevenson, T.
Causer	Harhai	Nickol	Sturla
Cawley	Harhart	O'Brien	Surra
Civera	Harper	Oliver	Tangretti
Clymer	Harris	O'Neill	Taylor, E. Z.
Cohen	Hasay	Pallone	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Rieger	Youngblood
Ellis	Lederer	Roberts	Yudichak
Evans, D.	Leh	Roebuck	Zug
Evans, J.	Lescovitz	Rohrer	
Fabrizio	Levdansky	Rooney	Perzel,

Fairchild Mackereth Ross Speaker  
Feese

NAYS-1

Casorio

NOT VOTING-0

EXCUSED-1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

**STATEMENT BY MRS. TRUE**

The SPEAKER. The Chair recognizes the gentlelady from Lancaster, Mrs. True, under unanimous consent.

The gentlelady is entitled to be heard. Please keep the noise levels down. Please.

Mrs. True.

Mrs. TRUE. Thank you, Mr. Speaker.

I just rise to thank the members for supporting HB 1717, especially thanking staff, both sides of the aisle. The Judiciary Committee was wonderful about this. I wanted to thank my partner from the other side of the aisle, Representative Manderino, for her help on this bill. It has been a long time coming, and we are very grateful.

**GUESTS INTRODUCED**

Mrs. TRUE. I did want to take a moment with the members' indulgence to introduce to you, sitting on the House floor, to the left of the Speaker, Mike and Kathy Dyabelko, whose daughter, Stacy, was murdered by her ex-boyfriend. They have been with us from the get-go trying to get this passed. Would you please stand and be recognized.

We are sorry— Thank you. We are very sorry that you have to be with us for the reason that you are here, but we are grateful for your support.

The Coalition Against Domestic Violence worked very hard, as did a large number of Second Amendment activists that worked to make all this happen, and you have my thanks, and I would like Representative Manderino to say a few words also.

Thank you, Mr. Speaker.

**STATEMENT BY MS. MANDERINO**

The SPEAKER. The Chair recognizes the gentlelady, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Representative True thanked everybody, but somebody ought to thank Representative True for her leadership on this issue. It was a pleasure to work with her on it, and the domestic violence coalition was wonderful. It was a very painful and heart-wrenching process to get through. We are glad we did,

and I encourage the Senate to move quickly and get this bill to the Governor's desk this month.

Thank you.

**BILL ON THIRD CONSIDERATION**

The House proceeded to third consideration of **HB 1548, PN 1905**, entitled:

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, further providing for penalties.

On the question,

Will the House agree to the bill on third consideration?

The SPEAKER. It is the understanding of the Chair that all the amendments have been withdrawn. If that is not the case, please stand in place and you will be recognized.

On the question recurring,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

**YEAS-200**

Adolph	Feese	Maher	Rubley
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko

Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

### ANNOUNCEMENT BY SPEAKER

The SPEAKER. We have a very special day here today for the floor of the House of Representatives. Representative Markosek, last Tuesday, June 14, Joe broke the all-time voting attendance record for the House of Representatives. Joe has not missed a voting session since being elected in 1982, and Tuesday marked his 1,557th consecutive day of attendance of session, surpassing William Renwick in the 1955-1978 session.

### BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1317, PN 1565**, entitled:

An Act to promote the general welfare and stimulate the economy of the Commonwealth by requiring that all government agencies purchase only flags manufactured in the United States; and imposing a penalty.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentleman from Delaware, Mr. Vitali. The gentleman waives off.

The gentleman from Bucks, Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker. Mr. Speaker, thank you.

Mr. Speaker, I am delighted to make comments on HB 1317. This is legislation that would mandate that flags that are bought by State agencies, that is the United States flag or the Pennsylvania State flag, have the label made in the USA. And equally important is that we have a manufacturer right here in Pennsylvania, in Womelsdorf, Pennsylvania, the Valley Forge Flag Company, that makes the majority of our flags that we purchased here through General Services. So this is good legislation to help our textile industry as well.

So I am very pleased to make these remarks and ask the members of this House to support HB 1317. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—200

Adolph	Feese	Maher	Rubley
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causar	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	

Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

NAYS-0

NOT VOTING-0

EXCUSED-1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1062, PN 1961**, entitled:

An Act providing for a tax credit program to support community-based mental retardation services in this Commonwealth.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage. The question is, shall the bill pass finally? Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-200

Adolph	Feese	Maher	Ruble
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth
Bianucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causar	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.

Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

NAYS-0

NOT VOTING-0

EXCUSED-1

Sather

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1478, PN 1796**, entitled:

An Act amending Titles 7 (Banks and Banking) and 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, regulating payday loans in terms of practice, licensure and penalties; further providing for deceptive or fraudulent business practices; and providing for unlicensed payday lending.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

The SPEAKER. The Chair returns to HB 1478, PN 1796. We are on amendment 1437, the Bunt amendment.

On the question recurring,  
Will the House agree to the amendment?

The SPEAKER. On that question, going on the list from yesterday, the first gentleman to be recognized would be the honorable majority leader, the gentleman from Jefferson, Mr. Smith. Mr. Smith, we are on yesterday's list. Perhaps you have nothing to say and would like to relinquish your time to the next speaker.

Mr. S. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, let me just pick up a little bit with the argument from yesterday, and hopefully we will not have to revisit the entire issue. This is the legislation that deals with the payday lending regulations, and the amendment before us has to do specifically with whether or not that should maintain a database, if I am correct.

Mr. Speaker, I would urge the members— As I told our members in caucus, it is always difficult when you are kind of fighting with your friends and especially, in this case, with another member of leadership. As I know the Speaker recognizes, having been through these types of battles from time to time, it also makes it a little more difficult. But I would highly recommend and would appreciate a vote against the Bunt amendment.

The bill that has been put before us is one that has been crafted by a lot of debate, a lot of negotiation between the Secretary of Banking and many of the people in this industry, as well as some consumer groups. And as I have told members before, this is not a good choice in some respects, but sometimes our choices are between, you know, the lesser of two evils, perhaps, and I think what we are looking at is a bill that in and of itself can manage and provide a level playing field for legitimate businesses to function within this arena of payday lending.

The concern and the issues relative to the database are ones that certainly are worthy of consideration, but in fact, the database is a critical element if you are in fact going to regulate this industry. Without it, I think you have really taken the teeth out of the bill, and perhaps that is what some want, is to take the teeth out of the bill.

For those that would prefer to stick their head in the sand and pretend that if we do not do anything here today, if we do not do anything with payday lending, that this issue will somehow go away, I think that is a mistake. I am not thrilled with all of the prospects that this bill puts before us, but the simple fact is, Mr. Speaker, this is an industry, this is a practice that is growing across the country and growing in the Commonwealth. It is a practice that we need to recognize exists.

If we do not move forward with HB 14—

The SPEAKER. Excuse me. There is entirely too much noise. The gentleman has a right to be heard.

Mr. Smith, I apologize.

Mr. S. SMITH. Thank you, Mr. Speaker.

Just let me try to conclude quickly on this amendment, Mr. Speaker.

As I was saying, I suppose those that do not want this industry to exist, who would just like it to disappear, I respect that point of view, but I think that is somewhat like sticking your head in the sand. To do what amendment 1437 would do, I think, takes the teeth out of the bill. So between the balance of what we have before us, I think it is important that we move with the bill as it has been presented without the Bunt amendment because we cannot just ignore that this is going to take place.

These types of loans are going to take place, either aboveboard or below board. This bill will provide us a strong format from which this industry can function, where there will be a relatively level playing field as opposed to an unknown playing field, and I would just urge the members to oppose the amendment and support the bill as it has been presented.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Maher, for the second time on the amendment. Mr. Maher.

Mr. MAHER. Mr. Speaker, could I ask the maker of the bill to stand for a brief interrogation?

The SPEAKER. The gentleman, Mr. Ross, indicates he will stand. The gentleman, Mr. Maher, is in order and may proceed.

Mr. MAHER. Thank you, Mr. Speaker.

Mr. Speaker, the amendment that is before us deals strictly with the question of whether or not there should be a government database collecting transaction history on the individuals who work with these payday lenders. Looking at your bill, is there anything in your bill that provides statutory privacy protection for such a database? Is the word "privacy" even mentioned with respect to a database?

Mr. ROSS. Thank you, Mr. Speaker.

The Banking Department has strict regulations already in force that penalize any unauthorized distribution of information in their possession. So at this point, I think that has already been covered by existing regulation.

Mr. MAHER. And the regulation you are referring to, would that be the Article 3 restrictions upon department and employees thereof?

Mr. ROSS. I do not have the reference in front of me right now, Mr. Speaker.

Mr. MAHER. I will be happy to pause because I just want to ensure that we are both looking at the same—

Mr. ROSS. Would you care to share a copy with me?

Mr. MAHER. Let us see if we can get somebody to arrange a copy.

While we are waiting for that, Mr. Speaker, let me continue.

This database, as I understand it, without the Bunt amendment would be a database maintained not by the department itself but by a party contracted to do so. An independent party I think is the way the Banking Secretary refers to it. Is that correct?

Mr. ROSS. It is operated under the supervision of the Department of Banking, and they have the authority to have a third party set it up for them.

Mr. MAHER. As I understand it, the third party— Without the Bunt amendment, that third party would be contracted to build and maintain this database. Is that correct?

Mr. ROSS. Without the Bunt amendment, yes. The third party would be— The department has flexibility in terms of how they set it up, but they are allowed to use a third party to establish that database.

Mr. MAHER. In fact, I think it is more than allowed. Your language, without the Bunt amendment, your language would require that it be this third party providing the database. Is that correct?

Mr. ROSS. I believe the language is permissive, and I believe the Banking Department feels that they need the opportunity to contract with a third party, yes.

Mr. MAHER. All right. The language, and the reason— Do you have the copy of the regulation now?

Mr. ROSS. I do.

Mr. MAHER. Is that the regulation that you had in mind, the restrictions upon department employees thereof dealing with disclosures?

Mr. ROSS. This looks similar, yes.

Mr. MAHER. Do you see anything in that regulation that prohibits any action whatsoever by contractors?

Mr. ROSS. It is my understanding from the Secretary of Banking that that will be included in the request for proposal.

Mr. MAHER. I am sorry, Mr. Speaker.

Mr. ROSS. Mr. Speaker, it is my understanding that the language necessary to restrict the third party will be included in the request for proposal, along with penalty provisions in that case.

Mr. MAHER. So the privacy protection is, if I am understanding it, would be words yet to be written that are part of a request for proposal, some sort of a contractual obligation between whomever this firm is and the Secretary of Banking, but there is nothing in statute? Can you point to anything in statute that preserves the privacy of this database or even requires the privacy of this database?

Mr. ROSS. Since the database has not yet been created, obviously, the regulations associated with the database have not yet been created.

Mr. MAHER. Is there anything in this bill that would require privacy protection on this database?

Mr. ROSS. It is my understanding that this information is deemed private under existing right-to-know legislation. So that is your first point of protection. The second point of protection will be created as part of the request for proposal. We do not yet have the request for proposal crafted, so obviously, I cannot point to language within the request for proposal that would satisfy your concern, but I will assure you that the Secretary of Banking is extremely concerned about making sure that this information is kept private and that appropriate penalties are available to be levied against any employee of the private company that might be involved in this process.

Mr. MAHER. Mr. Speaker, you may remember, I have more than a passing familiarity with the Right-to-Know Law, but I am unaware of any section of the Right-to-Know Law that would serve to explicitly preclude release of this information by a contractor. The Right-to-Know Law speaks to the duties of the Commonwealth and its political subdivisions. If there is some section in the Right-to-Know Law that I am not recalling, perhaps you could point it out to me, the section that deals with the obligations of independent contractors with respect to private, individual information.

Mr. ROSS. Well, Mr. Speaker, in response, I would point to section 302, actually, of the Banking Code where disclosure of information is forbidden and there is a penalty and an expectation. And by extension, if the Secretary or any of their employees cooperates in any way with an organization that fails to protect the information, then I would assume that they would also be in trouble, and that is one of the reasons why they intend to protect the information properly.

I have no reason to assume that the Secretary of Banking would be happy or interested in allowing this information to be released. I think this is a ridiculous line of reasoning.

Mr. MAHER. Mr. Speaker, and now that we are back to referring to section 302 of the regulations, I will ask again, can you show me in section 302 of the regulations this protection that you are speaking to, where section 302 governs in any way the actions of independent contractors?

Mr. ROSS. "Neither the secretary nor any deputy, examiner, clerk, or" any "other employe of the department..."; any "other employe of the department." That includes, in my mind, anybody that is going to be hired by the department. So therefore, none of those people "...shall publish or

divulge...any information contained in or ascertained from any examination or investigation made by the department..."

Skipping ahead, there are penalty sections in here.

Mr. MAHER. Mr. Speaker, is it your position then that independent contractors of the Commonwealth are employees of the Commonwealth?

Mr. ROSS. Mr. Speaker, I do not pretend to be an attorney, and I recognize that if we want to bandy things around here, I am sure we can spend quite a considerable amount of time doing it. I think it is really quite off the point.

The substance and the issue and the correct answer that I think I should be giving to the questioner is, the Secretary of Banking is committed to enforcing penalties against any third party that would divulge any information, making it very plain that that would happen in the request for proposal, and I am insufficiently trained in the law to engage in the discussion further.

Mr. MAHER. Thank you, Mr. Speaker.

Mr. Speaker, if I might speak on the bill, on the amendment itself.

Mr. Speaker, I apologize for the length of that interrogation, but I wanted to be certain that I was not misunderstanding. What has been confirmed in my mind through that conversation is that the database to be created here where individuals' private banking data will be collected has no statutory protection whatsoever to ensure that there is any obligation on the party collecting this data to maintain this privacy.

Individuals will have no choice but to have this information sent upstream, and they will have no protection. The banking regulation that is being referred to governs behavior of the Banking Department employees. Independent contractors are not employees. They will not be governed. But even assuming for a moment they would be, do you know what the penalty is under this banking regulation for divulging private information? It is a maximum fine of \$1,000. Wow. That is real teeth.

We have heard some discussion yesterday that this database is benign. It is really no different than the scrutiny that a record might receive in connection with an audit. That was asserted and asserted and asserted.

Mr. Speaker, you may remember, I know a little bit of something about auditing. I spent two decades auditing, and let me assure you, auditors do not go in and collect individuals' records and compile them into a database that they make freely available. In fact, it is the contrary. In fact, we have statutory requirements on independent auditors that under the penalty, a criminal penalty, they must maintain confidentiality of any information that comes into their hands, comes into their view, in connection with that service. There is no confidentiality requirement on this database.

The Banking Secretary's letter today justifies this database saying and some of the other discussion is that we need real-time, moment-to-moment enforcement of this law. If that is sufficient cause to disregard the constitutional right to privacy of Pennsylvanians, then heaven help us because that same logic can be applied to just about any statute, just about any regulation. If that is the rationale, it is a very slippery slope. You are not much further away then from the black boxes in your automobiles being plugged in every time you have to go for an inspection and having integration with the GPS system (global positioning system) and they are spitting out the speeding tickets you should have received or the illegal parking you might have committed.

This real-time enforcement, this so-called real-time enforcement will create for the first time that I am aware of in Pennsylvania where information that if it was your information or my information, the government would have no business with without a search warrant or without a subpoena, for those Pennsylvanians who are the poorest, their rights, their protections are out the window.

I cannot understand the rational support for a government database. The private sector handles approval questions on financial transactions quite rapidly as it is. You may have been to a filling station sometime. You may have bought some gasoline using a credit card. How long do you have to wait before the approval happens? Seconds?

Let us assume that a rapid response is so important that we are willing to put the constitutional rights of Pennsylvanians aside. Do you really think that a government-owned, independently operated database is going to be quicker than what the free market is doing? I cannot imagine it.

I hope, I hope that the fury that exists in this chamber did not fully get wiped away overnight by the encouraging words to look past the rights of our neighbors and implore you, poor Pennsylvanians should not have a lesser standard of privacy, should not have lesser rights than those who have means. It is simply wrong. I think we all know it is wrong, and I ask your support for the Bunt amendment to deal with this very specific issue.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware, Mr. Kirkland. The gentleman waives off.

The gentleman from Lancaster, Mr. Sturla. The gentleman waives off.

The gentleman from Beaver, Mr. Veon. The gentleman waives off.

The gentleman from Philadelphia, Mr. Williams. The gentleman waives off.

The gentleman from Dauphin, Mr. McNaughton. He does not waive off. Mr. McNaughton.

Mr. McNAUGHTON. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of the Bunt amendment. The last speaker was very eloquent, long-winded but eloquent, in his issue and imploring those not to sacrifice the rights of the poor of the Commonwealth of Pennsylvania, and I, too, rise as a concern about their privacy.

In fact, this central database in the Commonwealth of Pennsylvania could be equated to other individuals who are subject to a central database maintained by the Commonwealth; those individuals being pedophiles, felons, sex offenders. A person going to get a \$300 loan in one of these establishments is going to be equated to a central database with a pedophile, a sex offender, and a convicted felon in the Commonwealth of Pennsylvania. I think that is wrong for those individuals of lesser means. I rise in support of the Bunt amendment, and I hope all you do, too.

Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Markosek, for the second time.

Mr. MARKOSEK. Thank you, Mr. Speaker.

Mr. Speaker, as we talked yesterday relative to this amendment, it would gut the bill, it would gut the bill like a fish, and it does irreparable harm to any hope of ever trying to

regulate this industry. We have seen the administration and we have seen the Secretary both adamantly in favor of this bill without any weakening amendments. There have already been negotiations to get the bill to where it is. This amendment is the killer amendment. The folks that would benefit most if this amendment went in are the folks that we are most precisely trying to regulate. If you are for protecting the consumer, if you are for protecting the consumer, then you need to vote "no" on the Bunt amendment.

The Bunt amendment strips the very teeth, the very teeth of the bill, as it is designed, away from the bill. I would ask the members, it really just boils down to do you want a regulated industry, and this would be the strongest regulation in the country. There are 36 other States that regulate this industry. The Ross bill, without amendments, would be the strongest. It would be the strongest in the United States. If you want this industry regulated— And I have heard a lot of people here in the last day or so talk about protecting the consumer, and yet they are saying they are for an amendment that takes out those protections. It just simply does not make sense.

If you have looked into this, if you have read the bill, if you know anything about this, the bill regulates the industry. The amendment takes out the guts, the teeth, that what we need most in order for the Department of Banking to do its job.

We have heard all of the arguments. I think Representative Ross has sufficiently addressed the arguments of privacy. There is far less, as far as information, the department will glean far less information than credit card companies and your current mortgages, your banks already have on you. The information is very small compared to what is already out there if you do any banking at all in this Commonwealth. So I believe that that is a red herring. That is a distraction to somehow get you to vote for this that essentially guts the bill and protects those actors in the industry that we most want to regulate.

So I would say, in the most strongest terms that I can, we need a vote against, if you believe in regulating this industry and protecting the consumer, we need to vote against the Bunt amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

## MOTION TO TABLE

The SPEAKER. The Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

I move to table this proposal, and I move to table it because this is not going to be an adequate solution to our dilemma.

The Governor has indicated—

## PARLIAMENTARY INQUIRY

Mr. S. SMITH. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. S. SMITH. Was the gentleman moving to table the bill with amendments or simply the amendment? I was not clear.

Mr. DeWEESE. That is my fault, and I apologize. The bill with amendments.

The SPEAKER. The bill with amendments.

On the question,  
Will the House agree to the motion?

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

I do this reluctantly, but there is no one on this floor, I believe, unless it would be two or three of the major protagonists on each side, who would have a solid grasp of the arcana of this bill, and I am also mesmerized by the admixture of people who are very, very threatened and confused and some almost bitter about the evolution of this proposal.

The fact is, Mr. Speaker, and that is what makes this democracy so special, but we have the most conservative elements within the Pennsylvania General Assembly led by their young battalion commander from Berks County, the very fundamental conservatives of Pennsylvania, the Commonwealth Caucus, against this proposal because they fear – and much of that perspective I can identify with; it is not without justification – they fear the invasion of privacy. The very honorable members of the Pennsylvania Legislative Black Caucus want to make certain that the protections in the proposal inure to the benefit of their constituencies, and those of us from rural parts of the State with difficult economic pictures certainly identify with our brothers and sisters in the Black Caucus. So more liberal and more conservative echelons within this General Assembly have amalgamated, and the Bunt amendment is the result of that dynamic.

Now, I will vote for the Bunt amendment if my motion to table fails, but at least one more iteration of this proposal later in the session is not without merit. The idea that the Governor will probably veto the measure if the Bunt amendment is included is a factor that we should consider. The fact, number three, that it could be dead on arrival in the Pennsylvania Senate is something that we should leaven within our thought processes.

So again, that age-old axiom that what comes out of sausage factories and legislative chambers are products that should not be viewed up close, notwithstanding, notwithstanding, we are not going to get a good work product, Mr. Speaker, out of today's deliberations. We are going pell-mell toward the precipice of June 30 midnight when we owe our 12 million Pennsylvanians a budget. We have drastic problems with Medicaid and the funding of our Medicaid for our disabled Pennsylvanians and poorer Pennsylvanians. And this, this legislation coming at us now should have a lot more support and a guarantee of a gubernatorial signature. This is just not the time for this bill to move forward.

I will vote for the Bunt amendment, I will vote for Chairman Bunt's amendment if my effort to table fails, but I just think, parliamentarily speaking, Mr. Speaker, a vote to table is a more appropriate measure at this time. I would ask for an affirmative vote.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, I oppose the motion to table this bill and the amendments that correspond to it. While this is an issue that many people have chosen to ignore, it is an issue that some people just maybe had not really paid a lot of attention to. It is not an issue that just came onto our horizon in the last day or two. As a matter of fact, the guts of this legislation have been in the works for a couple of, maybe 3 years or more. To suggest

that we would table this bill today and the implication being that we can come back in a day or two or three with, you know, a better product I do not think is an accurate implication to make relative to the process.

The fact is, this industry exists in Pennsylvania. It is essentially unregulated in Pennsylvania. As a subsidiary of the overall lending system in Pennsylvania, I think it is something that we do need to address. The product that we have before us embodied in HB 1478 is one that has had a considerable amount of attention, albeit not by every individual member of this body.

I think it would be a disservice to table this bill at this juncture. It is a difficult issue, and it requires some difficult decisions to be made, and I do not think it is a good time for us to back away from this. We are not at a point of opportunities for additional compromises, quite frankly. We are at a point where we have to make some tough decisions, and you know, that is what we are here for.

I would simply urge the members to oppose the motion to table and let us proceed with the debate as it is before us.

Thank you, Mr. Speaker.

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. I stand with Raymond Bunt. I stand with Sam Rohrer. I ask for a vote to table.

The SPEAKER. The Chair thanks the gentleman.

It is moved by the gentleman, Mr. DeWeese, that HB 1478, along with amendments, be tabled.

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

YEAS—83

Bebko-Jones	Evans, D.	Lescovitz	Samuelson
Belardi	Fabrizio	Levdansky	Santoni
Belfanti	Fichter	Manderino	Shapiro
Bianucci	Forcier	Mann	Siproth
Bishop	Frankel	McCall	Solobay
Blackwell	Freeman	McGeehan	Stairs
Blaum	Gannon	Melio	Stern
Bunt	Geist	Mundy	Sturla
Butkovitz	George	Myers	Surra
Buxton	Gerber	O'Brien	Thomas
Casorio	Gergely	Oliver	Tigue
Cawley	Goodman	Pallone	Veon
Cohen	Grucela	Petrarca	Vitali
Corrigan	Haluska	Pistella	Waters
Cruz	Harhai	Preston	Wheatley
Curry	Harper	Ramaley	Williams
Daley	James	Readshaw	Wojnaroski
Dermody	Josephs	Rieger	Yewcic
DeWeese	Kotik	Roberts	Youngblood
Donatucci	Leach	Roebuck	Yudichak
Eachus	Lederer	Rooney	

NAYS—117

Adolph	Flick	Major	Ruffing
Allen	Gabig	Markosek	Sainato
Argall	Gillespie	Marsico	Saylor
Armstrong	Gingrich	McGill	Scavello
Baker	Godshall	McIlhattan	Schroder
Baldwin	Good	McIlhinney	Semmel
Barrar	Grell	McNaughton	Shaner
Bastian	Gruitza	Metcalfe	Smith, B.
Benninghoff	Habay	Micozzie	Smith, S. H.
Birmelin	Hanna	Millard	Sonney



Boyd	Harhart	Miller, R.	Staback
Caltagirone	Harris	Miller, S.	Steil
Cappelli	Hasay	Mustio	Stetler
Causser	Hennessey	Nailor	Stevenson, R.
Civera	Herman	Nickol	Stevenson, T.
Clymer	Hershey	O'Neill	Tangretti
Cornell	Hess	Payne	Taylor, E. Z.
Costa	Hickernell	Petri	Taylor, J.
Crahalla	Hutchinson	Petrone	True
Creighton	Kauffman	Phillips	Turzai
Dally	Keller, M.	Pickett	Walko
DeLuca	Keller, W.	Pyle	Wansacz
Denlinger	Kenney	Quigley	Watson
DiGirolamo	Killion	Rapp	Wilt
Diven	Kirkland	Raymond	Wright
Ellis	LaGrotta	Reed	Zug
Evans, J.	Leh	Reichley	
Fairchild	Mackereth	Rohrer	
Feese	Maher	Ross	Perzel,
Feagle	Maitland	Rubley	Speaker

NOT VOTING—0

EXCUSED—1

Sather

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,  
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman from Westmoreland, Mr. Tangretti.

Mr. TANGRETTI. Thank you, Mr. Speaker.

Mr. Speaker, let me try to frame this in a perspective that I think is one in which I have thought about for a long time and one of which I think perhaps can give a more substantial building of the case for why we need regulation of this industry now.

We have had members of this body get up and very eloquently talk about the legal possibility of the United States Supreme Court ruling on a Georgia case that may outlaw this industry, and that may very well happen. And I have talked to a couple of friends of mine from the Philadelphia delegation last night who find this industry absolutely abhorrent in terms of how it preys on their constituents as well as the other constituents of the Commonwealth, and I agree with them, and they want to repeal it. And up to this point, aside from the Georgia case, as I understand it, we have been preempted from doing that by the Federal government.

So we have a situation where, for example, in the Georgia case they outlawed it, it has been appealed, it is going through the appellate process, it is now in the Supreme Court, and guess what? That industry is continuing to operate day in and day out, preying on the poor and those who are in need of these kinds of services.

So what do we do in the meantime? As we debate this issue and as we stand here and allow ourselves the ability to try to think through this process and try to come up with a conclusion as to how we can best help our constituents, it just seems to me that those hundreds and perhaps thousands of people that, as we speak, are going to these facilities and asked to turn over and

over and over the same loan and caught in a cycle of debt, and we are allowing it to happen. That does not make sense to me.

Do we have to wait until the Supreme Court rules? Do we think that somehow this is going to go away? Do we think that by delaying this process that somehow our constituents are not going to go to these lenders and be victimized by them?

The only way that it makes sense to me that we can deal with this industry is to take Representative Ross's bill, a bill that has been negotiated and compromised and worked out with the industry, the toughest approach to this entire industry in the entire country, that says you cannot continue the way you have been operating; you will be restricted; you will be not allowed to make more than two loans in the entire industry based on a real-time data bank.

And let me just address my good friend from Allegheny County's point, because anybody in this room, and I venture to say everybody in this room, has applied for a mortgage or a loan of some sort. When you do that, Mr. Speaker, as you all know, the individual at the bank that you are working with picks up the phone and calls a credit lending agency, a credit reporting agency, and they have a list of everything you have ever applied for — every credit card, every loan. And what do you do? Are you making the assumption that somehow this is different, that it is not the same kind of information? Well, you are wrong; it is. It is the same information. The difference is, however, it is real time so that that poor individual who wants to turn that loan over again and again cannot do it because it is in a data bank protected by the State, not by some for-profit organization, who, by the way, was pledged to protect Visa's information, and we all know what happened last week with 40 million people who happened to hold Visa cards.

So, Mr. Speaker, think about the people today who are being victimized, who are being told, do not worry about paying the loan back today; we will just roll it over again and again and again. We are missing an opportunity to help those people who need our help the most.

I urge you not to support the Bunt amendment. It will literally prevent the regulation of the industry, it will allow these people to continue to be victimized, and it would be a mistake for this legislature to do that.

So I ask you to vote "no" on the Bunt amendment, and I appreciate your time.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Berks, Mr. Rohrer.  
Mr. ROHRER. Thank you, Mr. Speaker.

Mr. Speaker, we have heard a great deal of discussion on both sides of this issue today, and I appreciate the minority leader standing up and making the request for tabling that he did. Unfortunately, he had forgotten to ask me what I was going to do on the tabling, but I am going to stand with him in our regard to what I am going to do on this amendment by Representative Bunt, because I believe that, unlike what we have heard, claims made that if the passage of this amendment occurs, that it is going to destroy the bill, gut all the benefits of that bill, and make it of no effect, I think just the opposite. To me, the passage and the adoption of the Bunt amendment improves, it makes better a bill that was ostensibly done for reasons I think for which we would all agree. I have not heard anyone on the floor today say, or yesterday, that there is not some type of need that is needed in this industry. So what are we talking about then? We are talking about whether or not this

database, this collection of personal information, otherwise not available, housed and created by government, is necessary.

Now, the speaker who just spoke cited the mechanisms that are in place in current banking, in current credit cards, all of which function and I think function pretty well. These entities are not making bad loans. They are not in the business of losing money. They know how to take care of that. There is a huge difference. The question was, what is the difference? Well, there is a huge difference between a financial review system held in the private sector and that which is created and housed by government. There is a huge difference with that, and I believe that the statements that have been made earlier, I think, underscore that.

The concerns we have heard are security. The member from Allegheny County under interrogation asked that question very clearly. The law, the current law and the law that is in this bill, does not assure the security and the privacy of the data, and if anyone thinks that we can or should rely upon regulations or rely upon wording of a contract coming out of the department to assure, it tells me that we are being highly irresponsible when it comes to the protection that I believe that we have, obligation that is, to protect the privacy of our citizens. That ought to be in place prior to it. That ought to be a part of this bill. It ought to be a part of whatever we are passing, and it is not. And as I have talked to those who have been pro and con, I have said, what are the requirements? What does the law guarantee? It does not guarantee any privacy assurance, and I think that is a major thing, Mr. Speaker.

So the questions come down, I think, really to this: Do we need a government-created, managed, officiated warehouse of personal data to assure the regulation of an industry? How often do we do that in other things? We do not. That answer is not an honest answer. That is a bogus claim.

To me, it comes down to this: Do we want to, do we want to regulate an industry, or do we want to regulate people? The bill as is regulates people. The amendment, I believe, allows us to regulate appropriately an industry, and that is why I am going to support the Bunt amendment and believe that it is what we in this House are obligated to do.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Luzerne, Mr. Eachus.

Mr. EACHUS. Thank you, Mr. Speaker.

Yesterday I stood and I talked about similar things that Mr. Rohrer and Mr. Maher represented today. In a little bit of quick research last night, we found out that the Federal framework that relates to protection of personal information, the Federal Gramm-Leach-Bliley Act, protects financial institution databases from misuse and profiteering, but third-party organizations, which would be collecting the data under this bill, will not allow the same Federal protections that banking and other financial institutions, credible institutions, have to reach that threshold. That is concerning.

After losing 40 million pieces of data this week, a memo came out from representatives and organizations from MasterCard saying that they have immediately launched a forensic investigation of the processor that lost this data. Well, I can tell you that security is an issue relating to these large databases that house personal and financial information.

And as I said yesterday, I think it is discriminatory that we force the poorest people to have a database while the privileged,

who can afford, who go through a traditional banking institution, will have both the Federal protection of their data, under Federal Gramm-Leach-Bliley, as well as the ability to continue to have access to capital.

This will do a couple of other things. One, I really believe that this will add to processing fees, that individuals in this category of loan will see costs passed on to them for the transactional costs associated with these loans, and I also think that we are just getting it wrong. Government programs do not change personal behavior. People in our culture change personal behavior. If we want to do this right, if we really want to do this right and allow access to capital for the poorest of the poor, then let us enable our State-guaranteed credit unions to offer similar lines of credit to those who cannot get access to credit; let us enable other strategies that create incentives to opening lines of capital for those who are more risky.

This is the wrong way to go about business. It does not allow for the Federal protection of the data that you and I, as creditworthy citizens, would have, and I believe it will also increase costs in the end, and I thank you for supporting the Bunt amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Preston.

Mr. PRESTON. Thank you very much, Mr. Speaker.

I really thought, in some ways, that we were through with segregation, and segregation, by definition, is a way of separating a certain class, whether it is business, people, or subject matter, and treating them differently than everybody else, and I have heard several people who spoke against the Bunt amendment.

Now, I am trying to figure out when we talk about protecting consumers and that we should be trying to treat everything and every class or every subject or every entity equally, equally under the law, equally under our Constitution, and here we go again.

Now, we have young college kids who have no job, no source of unemployment, and we are not out here fighting at all to try to stop credit card companies from sending them free credit cards to be able to go in debt, with no source or no manner of paying, but yet, in a sense, the industry that we are talking about regulating, they verify employment and even verify your checking account.

I am also trying to sit down and think that predatory lending next to identification is our next major consumer issue in this Commonwealth. And I am looking at the banks, the financial institutions, and the other lending sources, whether it is credit unions and other different forms of sources that are not covered by this bill. I have heard different things about audits, but yet I never got an answer when and if the audits ever happen and how they are reported.

There is a security company that people use and the police agencies and Federal agencies use to do background checks and information, a separate contract, but yet, in a sense, here we are going to let the Secretary of Banking issue a contract to a for- or not-for-profit corporation that in some sense the contract he only has limited control of but will have control of maintaining the data, and he says that the Secretary assures us of security measures. But yet, in a sense, every single day, every single day for the last 3 weeks now, we have seen different issues related to private corporations where that data gets out, it is distributed, and I heard one gentleman say the fine is only of \$1,000. So if it

is good enough for these, how come we are not chomping at the bits and getting all the credit card corporations, how come we are not putting under the Secretary of Banking all of the banks, all of the different forms of credit unions?

And again, I asked the question, could not answer about the banks, could not answer about the other financial lending institutions, about when and where, and yet we see every day predatory lending and contracts with banks where people are being ripped off and we have to continuously go to the Attorney General.

So here we are letting the Secretary of Banking, again, go to an independent contractor, giving this information out, and we know, we know that it is not going to be guaranteed because no one can guarantee the security of an outside contractor, but guess who is going to be ultimately responsible for that contract? The Commonwealth of Pennsylvania under the guidance of the Secretary, but he cannot guarantee the security of that. I have a very serious problem about that.

And things are not equal here. Here again we are segregating and supposedly taking. I do not have my head in the sand. I am not buried in this. No one can stop anybody from getting five loans a day or applying for five credit cards, but yet, in a sense, here we are saying we have to protect a certain— And I do not know how they get a class of people when the average income of the people who are going through this process is \$28,000, \$28,000, and I would like to be able to see somebody refute those numbers, and they are working, but yet, in a sense, we are not doing anything to protect people from getting three credit lines with no job, no checking account, and just coming out because they have a college education.

I also asked the question about 30-day loans, and they do exist in financial institutions, and a lot of them are unsecured, depending on the reputation and the character of the person who is doing it.

All I am saying is, let us be fair, let us be equal, and let us not segregate and treat somebody differently than one. If it is good enough for another, then let us introduce the bill where this covers everybody who loans money, no matter what the period of time is, and let us make the Secretary of Banking responsible for all of the people under the Commonwealth of Pennsylvania all of the time, every single day, not just a few people who we think that we have to protect.

I would ask for support of the Bunt amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, for the government to harvest personal information about its citizens is wrong. Now, I have heard in the threat of the debate this morning about regulating this industry, and I think there is a disconnect here between regulating this industry and this database. How does acquiring a consumer's name, his address, date of birth, Social Security number, the amount borrowed, the number of loans, and the reason for the loan, how does that regulate this industry? How does that regulate this industry? And once this contractor acquires that information – and by the way, one of the members pointed out that this contractor would not be a financial institution, so therefore the Federal protections that are in place for this type of information would not be there – once the contractor acquires this information and possibly lets other people see it, what can be inferred from that information? Well, if you give me

somebody's last name, their ZIP Code (Zoning Improvement Plan Code), their date of birth, and their loan history, I can tell you a lot about them. What is going to prevent that information from getting into the hands of folks that would want to be in touch with those people for all kinds of other reasons than protecting them from their own actions?

Who owns this information, Mr. Speaker? Who owns the information? Who owns your name? Who owns your address, your Social Security number, your telephone number, your date of birth? You do. The consumer owns that. The individual owns that. That is their identity. And we saw this fiasco that happened with MasterCard, and by the way, as somebody pointed out, that was not MasterCard that allowed that information to get out, that it was hacked out by some computer hackers. That was somebody who was handling that information for MasterCard. That was their database company.

When you have a credit record, if something is wrong in that credit record, you can get it fixed. You can contact the credit reporting bureau and get that information purged or expunged or changed. You can get that credit history repaired. Once this information goes into this government database, it can never be changed. It is there. There is no avenue of appeal or redress. And if this government agency or this independent contractor screws up this thing somehow and it harms the individuals, what is the redress? Call up the bureaucrat at the Banking Department and say, "You have got to fix this problem," and the answer is, "Well, I'll get back to you." There is no right to correct this. There is no cause of action. There is no basis no matter what the extent of the injury that might be caused to a consumer.

The stated purpose of this database is to monitor and control the financial lives of our citizens. This is wrong. These people are not a threat to anyone. They simply want to borrow a small amount of money for a very short period of time. And why do we have to acquire a great deal of personal information about them because they want to get involved in this transaction? And what in the world does this have to do with regulating this industry? Absolutely nothing; nothing that I can see. And nobody has even made a case in any of the debate of the opponents to the Bunt amendment that in fact this database does regulate the industry. It does not. There are lots of other things that were pointed out by the minority leader that we should do to regulate this industry, but collecting personal information, private, personal, and financial information about our citizens is certainly not one of them.

Mr. Speaker, this is the camel's nose in the tent. This is the tail of the elephant. This is the sleeping tiger. This database can certainly be accessed by other government agencies on vague pretext – law enforcement, national security – without any requirements that we are requiring guidelines for a search warrant or a subpoena. Maybe a simple request, "Oh, we want to get information on all these individuals in ZIP Code so-and-so who are in your database." That is wrong to put that out there, Mr. Speaker, and what is to prevent this information from getting into the hands of other parties other than this third-party contractor that is going to handle this database on behalf of the department? And certainly it will be open to computer hackers. We saw what happened with MasterCard. Somebody is going to make it their mission to get into that database, get that information, and start selling it on eBay, because that is what has happened already. That stuff is around.

Those names of those folks, the MasterCard people, are on the Internet as we speak, being traded.

Mr. Speaker, this section of the bill is bad; it is wrong. I urge a “yes” vote on the Bunt amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. Cohen, for the second time.

Mr. COHEN. Thank you, Mr. Speaker.

We have just heard some very excellent speeches about why the Bunt amendment should be adopted.

The problems of the system that is set up under this bill as it now stands are endless. The data will undoubtedly be available for purchase in some way, legally or illegally. It is a system that is totally unprecedented, to the best of my knowledge, in Pennsylvania government. We have no system at all of regulating private transactions. We do not require anybody to get approval when they go for a mortgage, when they go for a personal loan, when they go into a pawnshop, when they sign up for a credit card. We do not regulate consumer behavior, and it is unclear to me why in this particular case we are supposed to regulate consumer behavior. This is a whole new avenue of interest for government. It is an avenue where the people are not demanding we regulate them. I have not had a single constituent say, stop me before I go to a payday loan.

This is just a brand-new extension of government. It is an overextension of government. This is an extremely complex legal situation that we are in. If we do nothing, the Federal rules will take effect, which are in some ways better than this bill. And I am not at all certain that the Bunt amendment will lead to a result that nothing will happen. I suspect that after it is duly announced that this kills the bill, then after that announcement is made and then it is clear that the House wants this bill, ways will be found so this will not kill the bill, but if it did kill the bill, it would not be the world’s worst thing.

So I would think that the Bunt amendment creates huge issues in itself as to the role of government that are brand new, that are undemanded by the public. They countervail either the idea of limited government or the democratic idea of government helping people where there is a clear need to help. There is no clear need for this. I strongly urge support of the Bunt amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware, Mr. Kirkland.

Mr. KIRKLAND. Thank you, Mr. Speaker.

Very, very briefly. Once again we stand in support of the Bunt amendment.

Mr. Speaker, it was stated by one of the previous speakers concerning the number of States that have payday loan legislation. Thirty-seven States have payday loan legislation, Mr. Speaker, and 35 of those States do not have a database, and there is a reason for that, and the reason is because, number one, the database does not work and, quite frankly, it is simply too intrusive.

Today we here in Pennsylvania can do something creative and we can also do something that impacts the lives of all of our constituents in a positive way, and that is by supporting the Bunt amendment that allows for credit bureau oversight rather than this database.

So I just wanted to rise once again, Mr. Speaker, in support of the Bunt amendment and ask that my colleagues would do likewise. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Erie, Mr. Evans.

Mr. J. EVANS. Thank you, Mr. Speaker.

I think most of us here in the chamber would be in agreement that this is an industry that is in need of regulation because they do prey on many of our poorer citizens in the Commonwealth, but I do believe strongly that the Bunt amendment and the issue on the database provision is a red herring.

The real issue here at stake is passage of this bill. Why is it that some segments of the payday lending community are supporting the Bunt amendment? Because, frankly, I believe they would like to see this bill go down in flames today.

This database provision does not give the government access to more consumer data than already is available without a database. The State database is going to be safe against dangers such as unauthorized access and identity theft. And third, Pennsylvania payday lenders are and will continue to report the customer data to private reporting agencies as part of the credit underwriting process.

Representative Ross has worked for many years on this bill and with the language, working with some of the more reputable firms in the industry, with the Banking Department, with all interested parties, and I think it is in our interest today to put up a “no” vote for this Bunt amendment, because we need to see the Ross bill pass without amendment today to be successful, and that is what it is going to take.

This database, I believe, protects the people that need to be protected, and that is why I am urging a “no” vote on the Bunt amendment today.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair at this time recognizes the gentleman from Philadelphia, Mr. Myers, in an effort to lighten us up a little bit.

Mr. MYERS. Thank you, Mr. Speaker.

You know, as I was sitting here and listening to the last speaker, he was talking about the Bunt amendment being a red herring, and what I thought about was a red devil.

You see, really, I am going to support the Bunt amendment because I hope it does gut the bill, because I do not believe in payday lending. I think that with all these smart people in this room and in this government, we could have thought of another way to make resources available to our constituents. We did not even try. We just woke up one morning and said, well, let us try to regulate loan sharking. Let us get in bed with criminals. Let me loan somebody some money and then they pay me 400 percent. You will all be sending me cigarettes.

And here, here we are trying to regulate a corrupt devilish business. I mean, why do we even want to regulate it? What we should do is make it illegal and have our people go somewhere where they are going to be treated fairly and get the resources that they need. Not only are they going to pay high interest rates that could roll over to over 400, then they have got processing fees, and then the banks in the industry, they are making 400 percent at the end of the year because that money keeps rolling over, rolling over, rolling over. It is a shame.

And then plus on top of that, you talk about identity theft cannot happen. Man, they have got people hacking into the Defense Department, and you mean some little corner store cannot get hacked into or some little corner store cannot get farmed out of business, fished out of business?

I believe that what we really need to do – and I know we are not going to do it – is that we really need to have some hearings

on this bill. We need to get other input. We need to use other creative thinking. This little group that wants to do this are not the best thinkers we have got today because they are way out of line.

And let me say this: The Federal government can regulate it? We must be crazy. We want to let people borrow money and give them no protection; borrow money today and next year lose your house. And you cannot get any medical insurance because we are getting ready to cut that, too.

I believe that the Bunt amendment ought to be voted up. I mean, look; I am only as good as my word. So my word is, the reason I want to see Chairman Bunt, who is my friend, have this amendment passed, so it guts the bill and we start all over. I ask for a "yes" vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. Thomas, for the second time.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, I think that Representative Myers said all that needed to be said. Why do you need a database for me to borrow \$100 and I am going to end up paying back \$152? It does not make sense. It does not make sense.

And secondly, why be selective about it? Why choose this class of people over here to maintain a database while everybody else is doing their own thing? And I concur with the people who say that with these credit card companies, banks, they maintain databases already. What you have actually provided is an affirmative vote for the Bunt amendment when you make that statement, because at the end of the day, you have to ask yourself why you need another database. Why do we need to aggravate an already aggravating situation, and why do we need to do it with people who cannot participate in these other databases?

Mr. Speaker, I say thank you to Representative Bunt, to Representative Myers, and you know, the Bunt amendment has got to be a good amendment because this is the first time I have seen this kind of bipartisan convergence on an amendment.

Vote "yes" on the Bunt amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Chester, Mr. Ross.

Mr. ROSS. Thank you, Mr. Speaker.

The question was just asked, why do we need a State database? I want to just ask you to think briefly about a couple of numbers. The first number is 22. The second number is 3 million. There are 22 examiners currently working for the Department of Banking. Their jobs include reviewing mortgages, consumer loans of a variety of sorts, including car loans, installment sales, pawnbrokers, money transmitters, a whole range of different operations, totaling over 15,000 different licensees; 22 people managing all of that. Three million is our best estimate, and we believe it is low, of the number of payday loans currently being taken out in Pennsylvania in 1 year. I want those two numbers to just sort of sink in for a minute.

Why a State database? We know that there are lots of other databases out there already. Every one of these payday lenders has a database of their loans. All the consumer credit organizations have databases that are keeping the same information; in fact, more information. What is different about this database? It has a specific purpose. It is to monitor not the borrowers but the lenders. We know and it has been well stated throughout the chamber in this debate that the lenders want to

trap people, at least some of them want to trap people in a cycle of debt. How can the Banking Department enforce the regulations of this bill if they do not know what the lenders are doing? How can you manage and review 3 million loans with 22 people?

Mr. Speaker, could I have order, please.

The SPEAKER. The gentleman is correct. He is entitled to be heard.

Mr. ROSS. Thank you, Mr. Speaker.

How can the State's Banking Department with 22 people manage 3 million loans and review to see whether or not there is a cycle of debt being established? There is only one way, and that is with a computer, and if you have a computer, you will have a database.

Now, let us talk briefly about this database because it has been described in many ways, but I will tell you what it is not. It is not a general source of review like a credit reporting agency where lots of members can go in and look in and search information about individuals. The way this would be set up, if you are taking out a loan at a payday lender, you would go to that payday lender; they would transmit the terms and the conditions of the loan to the database; the database would then say yes or no. It would not permit the lender to go through and review other information. It is limited to that purpose and that purpose alone.

Many people have suggested that there will be no penalties and no risks associated to the third party who helps set this database up. The Department of Banking has routinely contracted out with other third-party people to help them with certain services, I am told, and they, as part of that contract, put in substantial penalties, not \$1,000, substantial and effective penalties to prevent misuse of that information. There are also civil actions that can be taken under existing common law.

And so at the end of the day, there are a variety of things that can and will be done by the Secretary of Banking, but I appeal to you, if you care about any of these provisions in the rest of the bill, do not take the database out. I appreciate my colleague from Philadelphia's candor that he really wants to take the database out to neuter the bill, and I understand that some people feel that way. If you are at all troubled by some of the practitioners of this business and you feel that any governmental regulation is appropriate for them at all, any government regulation, if you take this database out, you will be making it impossible for any regulations to occur through the Banking Department. You will totally take them out of the game.

So I implore all of you to not vote for this amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The only person remaining is the gentleman from Montgomery, Mr. Bunt.

Mr. BUNT. Thank you, Mr. Speaker.

Mr. Speaker, first of all, to my good friend from Philadelphia, Mr. Myers, it is not my intention to offer this amendment to gut the bill. We would not be here today, we would not be here today had the prime sponsor of this legislation and the Secretary of Banking been agreeable to any one of us here to change an agreement that they made.

Mr. Speaker, when you go home, most of us are going to stop and get some gasoline. We are going to probably use a credit card. You have been told today that my amendment has a subprime credit reporting that is not real time. When you go to that gas station, look at the top of it. I do not care if you are in

Plunketts Creek, Pennsylvania. There is a little satellite dish at the top of that gas station that gives real-time authorization; maybe 15 seconds. Is that too much to ask to protect privacy and security and some severe constitutionality problems that I have with this?

I could have very easily gotten up yesterday and said, Mr. Speaker, I challenge the constitutionality of this measure. Mr. Speaker, you know and I know and Mr. Ross knows we could have won that yesterday.

So it is somewhat fortunate that this issue has had a public airing. PCN (Pennsylvania Cable Network) is going to carry this. The general public is going to watch this issue.

Going back to Biblical times, we have had money lenders. They are not going to go away. It ranks up there with one of the world's oldest professions. So we need, we need strong, effective regulations that are within the context of the legislation that the prime sponsor has put within his bill. I take no issue with them. I congratulated him in our caucus. I congratulated him on this floor yesterday. I congratulated the Secretary of Banking in a meeting in my office yesterday morning.

I have severe constitutional problems with the data bank. Is a person who is so down on their luck that they cannot get a credit card and have to utilize this business to get a loan, which the national average says is no more than \$300, what do they have to sell out for to get a lousy, measly \$300? They have to give up liberty, justice, fairness, security.

CNN at 11:30, there has been another breach – CVS (Consumer Value Stores) Pharmacy; CVS Pharmacy. It is on KYW; another breach. How would you like that? How would you like maybe the general public to know one of you, one of us purchases maybe an incontinence kit, an enema kit?

This legislation, HB 1478, is good except for the database. It is not my intention to kill it. I know that the Governor has – I have not heard the Governor say it, but through intermediaries, I have heard that the Governor is going to veto it. Is that what we do here? We sit here, and if this Governor or any Governor says he is going to veto something, well, then we adhere to what that Governor says? I think not. You were not elected to do that. Most of you received more votes than the Governor in your district.

Your constituents know you. They trust you to do the right thing. They trust you to hear the issues, and we trust our leadership to do the right thing as well. I have no issue where people vote on this issue. I take no issue with those who are lobbying for it. What a difference a day makes sometimes here.

Mr. Speaker, I ask you to do the right thing. The right thing here is to be fair to people, fair to the most challenged of our constituency that really needs to access these loans at these high interest rates. Do not let them sell out their life for their security, their liberty when the rest of us do not have to do that. There is real time, and the most important aspect of this subprime credit reporting that we all take advantage of is that those folks will finally be able to establish credit. Please join with me in supporting 1437.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—123

Allen	DeWeese	Kauffman	Reichley
Armstrong	Donatucci	Keller, M.	Rieger
Baker	Eachus	Kirkland	Roberts
Barrar	Ellis	Kotik	Roebuck
Bebko-Jones	Evans, D.	Leach	Rohrer
Belardi	Fabrizio	Lederer	Rooney
Belfanti	Fairchild	Leh	Ruffing
Bianucci	Feese	Lescovitz	Samuelson
Birmelin	Fichter	Maher	Santoni
Bishop	Fleagle	Manderino	Semmel
Blackwell	Forcier	Mann	Shapiro
Blaum	Frankel	McCall	Solobay
Boyd	Freeman	McGeehan	Stairs
Bunt	Gabig	McGill	Stevenson, R.
Butkovitz	Gannon	McNaughton	Stevenson, T.
Buxton	Geist	Metcalfe	Sturla
Caltagirone	George	Millard	Surra
Cappelli	Gerber	Miller, S.	Thomas
Casorio	Gingrich	Mundy	Tigue
Causer	Goodman	Mustio	True
Civera	Grucela	Myers	Veon
Clymer	Habay	O'Brien	Vitali
Cohen	Haluska	Oliver	Waters
Cornell	Harhart	Pallone	Wheatley
Creighton	Harper	Phillips	Williams
Cruz	Herman	Pickett	Wright
Curry	Hess	Preston	Yewcic
Dally	Hickernell	Pyle	Youngblood
DeLuca	Hutchinson	Quigley	Yudichak
Denlinger	James	Rapp	Zug
Dermody	Josephs	Reed	

NAYS—77

Adolph	Hanna	Miller, R.	Smith, B.
Argall	Harhai	Nailor	Smith, S. H.
Baldwin	Harris	Nickol	Sonney
Bastian	Hasay	O'Neill	Staback
Benninghoff	Hennessey	Payne	Steil
Cawley	Hershey	Petrarca	Stern
Corrigan	Keller, W.	Petri	Stetler
Costa	Kenney	Petrone	Tangretti
Crahalla	Killion	Pistella	Taylor, E. Z.
Daley	LaGrotta	Ramaley	Taylor, J.
DiGirolamo	Levdansky	Raymond	Turzai
Diven	Mackereth	Readshaw	Walko
Evans, J.	Maitland	Ross	Wansacz
Flick	Major	Rublely	Watson
Gergely	Markosek	Sainato	Wilt
Gillespie	Marsico	Saylor	Wojnaroski
Godshall	McIlhattan	Scavello	
Good	McIlhinney	Schroder	
Grell	Melio	Shaner	Perzel,
Gruitza	Micozzie	Sipthroth	Speaker

NOT VOTING—0

EXCUSED—1

Sather

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

The SPEAKER. The Chair recognizes the gentleman from Montgomery, Mr. Bunt. Does the gentleman, Mr. Bunt, have any further amendments?

Mr. BUNT. Mr. Speaker, may I approach the desk?

The SPEAKER. Sure.

(Conference held at Speaker's podium.)

The SPEAKER. For the information of the members, the gentleman, Mr. Bunt, has withdrawn the remainder of his amendments.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. D. EVANS offered the following amendment No. **A01527**:

Amend Sec. 1 (Sec. 5115), page 11, line 28, by striking out "and"

Amend Sec. 1 (Sec. 5115), page 11, line 30, by removing the period after "applicable" and inserting  
; and

(4) that the consumer has received counseling services required under subsection (f) and section 5116 (relating to renewal loans), by listing the name and address of the agency that provided those services.

Amend Sec. 1 (Sec. 5115), page 12, by inserting between lines 21 and 22

(f) Credit counseling.—A consumer may not receive any payday loan unless the consumer has, during the 90-day period preceding the date of application for the payday loan, received from a credit counseling agency approved by the Pennsylvania Housing Finance Agency an individual or group briefing, that may have included a briefing conducted by telephone or on the Internet, outlining the opportunities for available credit counseling and assisting the consumer to perform a related budget analysis.

Amend Sec. 1 (Sec. 5116), page 12, line 28, by inserting after "mechanism."

A consumer may not receive a renewal loan unless the consumer has, during the 90-day period preceding the date of application for a renewal loan, received from a credit counseling agency approved by the Pennsylvania Housing Finance Agency an individual or group briefing, which may have included a briefing conducted by telephone or on the Internet, outlining the opportunities for available credit counseling and assisting the consumer to perform a related budget analysis.

Amend Sec. 1 (Sec. 5125), page 18, by inserting between lines 28 and 29

(4) Have, during the 90-day period preceding the date of application for an extended payment plan, received from a credit counseling agency approved by the Pennsylvania Housing Finance Agency an individual or group briefing which may have included a briefing, conducted by telephone or on the Internet, outlining the opportunities for available credit counseling and assisting the consumer to perform a related budget analysis. The consumer must provide the payday lender with the name and address of the agency that provided those services.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Evans.

Mr. D. EVANS. Mr. Speaker, the amendment that I offer here today is, you have heard a lot of discussion about dealing with the cycle of debt, and this year, Mr. Speaker, the Governor in his budget or last year announced a task force for helping working families. I was the cochair of that particular panel along with the Secretary of Banking, and with that panel, Mr. Speaker, we basically talked a lot about increasing people's income, decreasing their expenses, and building their assets. That has been an issue in terms of growing people in the middle class. I have said if we do not provide the right type of information to people, we basically will put them in a position of still continuing in this cycle of debt.

In Washington, DC, this year, the United States Congress and the President of the United States, under the Federal bankruptcy law, mandated credit counseling – I want to repeat that, mandated credit counseling – and in order to file, in order to file for bankruptcy, now you must, you must have mandated counseling. Now, think about that, Mr. Speaker. For the first time in the history of this nation, before a person can file for bankruptcy, they must have mandatory counseling. That must be part of the process.

Well, Mr. Speaker, basically, in my view, and because we have had all the debates about these payday loans, I believe that we should use that very same concept and make counseling a part of this equation. I heard some people say the other day, well, what are we going to do? Tell them how to use their credit cards? Well, Mr. Speaker, the reality of it is, if the United States Congress and the President of the United States says, basically, that now for the first time in this nation in a Federal policy, counseling is the law of this land, I do not understand why we here in Pennsylvania would not do the same thing for these payday loans, because when you begin to look at this cycle of debt and what we are trying to do is avoid people from moving in the position of filing for bankruptcy, we should assure folks that they have all of the information that is necessary before they take this particular step.

I would say to you that the reason people move into this particular position is a lack of information, one, but also having the proper financial tools available to them. Counseling, in my view, is a part of that process. We did it in 2001 when we were debating the issue of predatory lending, but we did it in 2001 in the State law on a volunteer basis. I believe we should do this on a mandatory basis.

And the reason I am offering this particular amendment is so that we say to these individuals who may have to go this particular direction that counseling has to be a part of that equation. We do it a lot of times for various things. We do it for seat belts, we say to people. So I am saying to you that I think that we should do the same thing in this particular case, and I would ask for a "yes" vote on this amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Ross.

Mr. ROSS. Thank you, Mr. Speaker.

I want to begin by sharing my deep respect for not only the maker of the amendment but also what he is attempting to do. The idea of trying to provide credit counseling and better information for people so they do not abuse this product is I think an excellent one. Unfortunately, in my opinion, the way this has been crafted would actually be very, very negative.

The idea that someone who has found an emergency need and goes to a payday lender and then is going to say, okay; well,

I will stop and wait for a period of time while I am getting credit counseling before I go back and get the money is just not workable, and in fact, what it would do is just what I am worried about generally, which is to drive these borrowers to the Internet and other totally unregulated and unlicensed forms of borrowing, which would be even worse.

So I reluctantly must ask for a “no” vote on the amendment. I would point out that we have already a financial literacy program built into this bill that would be useful, and I think there may be other ways for us to talk about this whole question and develop some other programs that might be very helpful, and I think it is a good idea generally, but in this particular form, it is fatally flawed, and I would ask for a “no” vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Markosek.

Mr. MARKOSEK. Thank you, Mr. Speaker.

I would like to echo the comments of Representative Ross. This, while a well-intended amendment, is totally unworkable, in my opinion. What it does is mandates a person who wants to get one of these payday loans to get some counseling 90 days before they go in for a payday loan, and I think if you visualize folks, you know, low-income people or working people that need 200 bucks to get between here and next week, I do not think they are going to wait 90 days and first go to a counseling service and pay for that, or the question is, who would pay for that?

It is just totally unworkable, and I would respectfully ask for a “no” vote. Thank you.

The SPEAKER. On that question, the gentleman, Mr. Evans.

Mr. D. EVANS. Mr. Speaker, I would like to respond to what both of the gentlemen had to say about the aspect of unworkable.

The United States Federal government, before you go to court, indicates once you file for bankruptcy, you have to list specifically where you receive the counseling, first. The only thing I am saying in this amendment, and it does not prevent anybody from filing the application. They can file the application. However, in filing the application, they have to indicate on the application that they have gone to a counseling service. They have to indicate that, first.

Secondly, Mr. Speaker, under the Pennsylvania Housing Finance Agency, we currently provide a list of credit counselors. We provide that currently. So, Mr. Speaker, think about this for a second. You apply for this particular loan, and in applying for this particular loan, Mr. Speaker, the only thing you have to do is indicate that you have gone to ABC Credit Counseling. That is all that you have to indicate, Mr. Speaker. Mr. Speaker, it does not, in spite of the fact, as indicated by one of the speakers, it does not, Mr. Speaker, make it any more difficult for that person, except what it does is basically says that you have to go to the credit counseling.

So to indicate that it would just slow down the process, Mr. Speaker, it does not do that, because on the national level, in terms of bankruptcy, it is the same situation. So to indicate that it is unworkable is not correct, Mr. Speaker. It does not say – and I want to be very clear, and you need to read what it says – it does not say, Mr. Speaker; it only indicates on the application you have to provide information that you have gone to a credit counselor. That is all that it says.

Now, I do not understand why would we be against the idea of providing additional information and hoping, by providing

additional information, that we are empowering the individual to make better choices. It is not like the credit counselor is the big brother or the big sister. At the end of the day, the credit counselor is basically offering advice to that particular person.

So I would say to you, I would say to you, if we are trying to break the cycle of this debt, ultimately the aspect is about education; ultimately the aspect is about providing information. The only thing I am doing, Mr. Speaker, with this amendment is suggesting that additional information is provided. I do not understand why we would ever be opposed to the idea of people receiving additional information. Both speakers, both speakers, even in their own way, indicated that it is not like a bad idea, but because people are kind of locked into this particular bill, they basically say, well, we just do not think we should fit this in this particular bill. But think about it for a second. The only thing we are saying to individuals is that we want to have you have all of the information that is necessary. We are not having big brother or big sister decide if they get the loan or not. That is left up to the payday lender. But the only thing we are trying to say to them is, we want you to have the necessary information in making this decision. We do it on the Federal level with bankruptcy, which is the ultimate issue in terms of somebody managing their finances. Why cannot we kind of be on the front end just one time? Why cannot we invest from the front end rather than wait until people get to the end?

So I am saying to you, Mr. Speaker, I would hope we give this some strong consideration, and I would hope you support this amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—85

Bebko-Jones	DiGirolamo	Lederer	Samuelson
Belardi	Donatucci	Lescovitz	Santoni
Belfanti	Eachus	Levdansky	Shapiro
Bianucci	Evans, D.	Manderino	Sipiroth
Bishop	Fabrizio	Mann	Solobay
Blackwell	Frankel	McCall	Staback
Blaum	Freeman	McGeehan	Sturla
Butkovitz	Gabig	Melio	Surra
Buxton	George	Mundy	Tangretti
Caltagirone	Gerber	Myers	Thomas
Casorio	Gergely	Oliver	Tigue
Cawley	Goodman	Pallone	Veon
Cohen	Grucela	Petrarca	Vitali
Corrigan	Haluska	Pistella	Walko
Costa	Harper	Preston	Waters
Crahalla	Hasay	Ramaley	Wheatley
Cruz	James	Rieger	Williams
Curry	Josephs	Roberts	Wojnaroski
Daley	Kirkland	Roebuck	Yewcic
DeLuca	Kotik	Rooney	Youngblood
Dermody	Leach	Ruffing	Yudichak
DeWeese			

NAYS—115

Adolph	Geist	Markosek	Ross
Allen	Gillespie	Marsico	Rubley
Argall	Gingrich	McGill	Sainato
Armstrong	Godshall	McIlhattan	Saylor
Baker	Good	McIlhinney	Scavello
Baldwin	Grell	McNaughton	Schroder



Barrar	Gruitza	Metcalf	Semmel
Bastian	Habay	Micozzie	Shaner
Benninghoff	Hanna	Millard	Smith, B.
Birmelin	Harhai	Miller, R.	Smith, S. H.
Boyd	Harhart	Miller, S.	Sonney
Bunt	Harris	Mustio	Stairs
Cappelli	Hennessey	Nailor	Steil
Causar	Herman	Nickol	Stern
Civera	Hershey	O'Brien	Stetler
Clymer	Hess	O'Neill	Stevenson, R.
Cornell	Hickernell	Payne	Stevenson, T.
Creighton	Hutchinson	Petri	Taylor, E. Z.
Dally	Kauffman	Petrone	Taylor, J.
Denlinger	Keller, M.	Phillips	True
Diven	Keller, W.	Pickett	Turzai
Ellis	Kenney	Pyle	Wansacz
Evans, J.	Killion	Quigley	Watson
Fairchild	LaGrotta	Rapp	Wilt
Feese	Leh	Raymond	Wright
Fichter	Mackereth	Readshaw	Zug
Fleagle	Maher	Reed	
Flick	Maitland	Reichley	Perzel,
Forcier	Major	Rohrer	Speaker
Gannon			

NOT VOTING—0

EXCUSED—1

Sather

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. **GEORGE** offered the following amendment No. **A01602**:

Amend Sec. 1 (Sec. 5121), page 14, line 23, by inserting after "consumer"

, both in writing and verbally,

Amend Sec. 1 (Sec. 5121), page 14, line 26, by inserting after "Notice:"

Prior to obtaining a new loan, you are entitled to a list of Department of Banking-approved free credit counseling agencies in your area.

Amend Sec. 1 (Sec. 5121), page 14, line 27, by striking out all of said line and inserting

are entitled to an extended payment plan agreement with a fully disclosed rate, term and payment before you are committed to your first loan.

Amend Sec. 1 (Sec. 5121), page 15, line 3, by inserting after "may"

not

On the question,

Will the House agree to the amendment?

**PARLIAMENTARY INQUIRY**

AMENDMENT DIVIDED

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. George.

Mr. GEORGE. Mr. Speaker, would this amendment be divisible between lines 9 and 13?

The SPEAKER. The amendment is divisible.

Mr. GEORGE. Now, Mr. Speaker, what the amendment does, and we have been here a couple hours listening to each and all who want to provide some protection. When we talk about protection, these people that go to borrow these types of dollars, they are not just going there because they had many, many opportunities; they are going there many times because they could not get it anywhere else. So with that in mind, this amendment simply says that those who are borrowing must be told how much the rate, the payment, and the term for an extended payment agreement would be should this be necessary later.

Mr. Speaker, this is truly protection. It does not hurt the lender, it does not hurt the borrower, but it gives us the protection that is necessary. I ask that you would agree to the amendment.

The SPEAKER. The amendment is divisible at line 9.

For the information of the members, the gentleman has divided the amendment. Lines 1 through 8 are in; lines 14, 15, and 16 are in; 9 through 13 are out.

I apologize. The gentleman is only offering the amendment as it is pertained in lines 9 through 13.

On the question,

Will the House agree to the amendment as divided?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Ross.

Mr. ROSS. Thank you, Mr. Speaker.

I am in support of this amendment and ask for an affirmative vote.

On the question recurring,

Will the House agree to the amendment as divided?

The following roll call was recorded:

YEAS—200

Adolph	Feese	Maher	Rubley
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Siptroth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalf	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causar	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti

Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

NAYS-0

NOT VOTING-0

EXCUSED-1

Sather

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment as divided was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **GEORGE** offered the following amendment No. **A01603**:

Amend Sec. 1 (Sec. 5113), page 9, line 16, by striking out "17.5%" and inserting  
The Wall Street Journal's Published Prime Rate plus 10.0% or 17.5%, whichever is less,  
Amend Sec. 1 (Sec. 5114), page 9, line 27, by striking out "monthly income" and inserting  
paycheck

On the question,  
Will the House agree to the amendment?

AMENDMENT WITHDRAWN

The **SPEAKER**. On that question, the Chair recognizes the gentleman, Mr. George.  
Mr. **GEORGE**. Mr. Speaker, we are pulling that amendment.  
The **SPEAKER**. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Ms. **BISHOP** offered the following amendment No. **A01697**:

Amend Sec. 1 (Sec. 5113), page 9, line 16, by striking out "exceed 17.5%" and inserting  
be less than a percentage of the amount advanced equal to the prime rate, as reported by the Board of Governors of the Federal Reserve System, nor more than 21%

Amend Sec. 1 (Sec. 5115), page 12, lines 2 through 21, by removing the colon after "by" in line 2 and all of lines 3 through 21 and inserting

a query of the payday lender's own records.

Amend Sec. 1 (Sec. 5125), page 17, line 23, by striking out "(v)" and inserting

(iv)

Amend Sec. 1 (Sec. 5125), page 18, lines 10 through 13, by striking out all of lines 10 through 12 and "(v)" in line 13 and inserting

(iv)

Amend Sec. 1 (Sec. 5126), page 20, lines 5 through 8, by striking out all of lines 5 through 7 and "(12)" in line 8 and inserting

(11)

Amend Sec. 1 (Sec. 5126), page 20, line 10, by striking out "(13)" and inserting

(12)

Amend Sec. 1 (Sec. 5141), page 36, lines 3 through 5, by striking out "compiled with all of the" in line 3 and all of lines 4 and 5 and inserting

required a consumer to verify in writing that

Amend Sec. 1 (Sec. 5141), page 36, lines 8 through 10, by striking out all of said lines

Amend Sec. 4, page 38, lines 8 through 14, by striking out all of lines 8 through 13 and "(2)" in line 14 and inserting

(1)

Amend Sec. 4, page 38, line 15, by striking out "(3)" and inserting

(2)

On the question,  
Will the House agree to the amendment?

The **SPEAKER**. The gentleman, Mr. Ross.  
Mr. **ROSS**. Thank you, Mr. Speaker.

I am afraid I must reluctantly ask for a negative vote on this. It actually has several different problems with it, which I could go into, but I would be repeating several of my previous arguments, but it is, I think, a problematic amendment, and I encourage the members to vote it down.

AMENDMENT PASSED OVER TEMPORARILY

The **SPEAKER**. The House will temporarily go over this amendment.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **WHEATLEY** offered the following amendment No. **A01856**:

Amend Sec. 1, page 37, by inserting between lines 22 and 23 § 5154. Expiration.

The provisions of this chapter expire June 30, 2017.

Amend Sec. 2 (Sec. 4107), page 37, line 30, by removing the semicolon and inserting

. This paragraph expires June 30, 2017;

Amend Sec. 3 (Sec. 7331), page 38, line 4, by inserting before “A”

(a) General rule.—

Amend Sec. 3 (Sec. 7331), page 38, by inserting between lines 6 and 7

(b) Expiration.—This section expires June 30, 2017.

On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Wheatley.

Mr. WHEATLEY. Mr. Speaker, this amendment, like many of the ones prior to this, is the way that I feel and many of my constituents feel would strengthen this bill.

A lot of discussions we have had talk about what will happen to our constituents if in fact we regulate this industry and how we regulate it. In the bill currently that is being proposed, HB 1478, it talks about a reporting mechanism to the General Assembly and to the Governor after 3 years. What we would like to see and what we wanted to do in this amendment is set a sunset provision, a time frame of 12 years basically, four reporting cycles, for us to really evaluate what is happening in our communities across the Commonwealth, what has taken place, what has transpired, and hopefully the wisdom of this chamber would allow for this passage, and we believe it will only strengthen it. Only in time will we know exactly what happens, but if we put a provision in here like this, that maybe in 2017 – I think that is 12 years – 2017, we can see exactly what we need to do to make changes and how we can change it.

So I would ask for an affirmative vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Markosek.

Mr. MARKOSEK. Thank you, Mr. Speaker.

I reluctantly have to stand and oppose the amendment of my next-door neighbor there, Representative Wheatley. The problem with the sunset, it might sound good, but there was a situation in one of the other States, I believe it was North Carolina, where they had a sunset. You know, once this bill, assuming it would get passed, would go into effect, you would probably take that number of 400 current operations and multiply it somewhat, maybe even double it or triple it, and you can imagine what would happen down the road if all of a sudden with, say, 1,000 of these operations ongoing, all of a sudden they would sunset. We found out what happened on chapter 30 with the sunset. I think it is 2 or 3 years now since that has been up for renewal, and we still do not have a final say on that.

So while it sounds like a good idea, it really would create a huge amount of chaos, assuming this bill would pass, and for that reason I would have to reluctantly offer and ask the members to vote “no” on this particular amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Ross, from Chester.

Mr. ROSS. Thank you, Mr. Speaker.

And I, too, must ask for a negative vote on this. It is not fair to ask people to invest or have people invest in a business and site and then pull the rug out from underneath them later.

I would say that the maker of the amendment has a later amendment which I can support, which I think goes to the heart of some of his concerns here, so I would ask for a negative vote on this amendment at this time.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I support Mr. Wheatley’s amendment. This is a very, very complex field in addition to all the complexities of the legislation as it now stands or the complexities on how it is actually going to be implemented. We really do not know how whatever we pass will be implemented. I think this will be a way to find out, and we will have, I am sure, by 2017 and a lot sooner than 2017 Federal regulations in effect. So this field will not be totally unregulated if we do not act promptly in 2017, and there is nothing stopping anybody from introducing an amendment to the law long before 2017 to get rid of the sunset period. But right now we do not know exactly how this is going to be implemented, and the Wheatley amendment will give us a chance to find out and then make corrective action if necessary.

The SPEAKER. The Chair thanks the gentleman.

Mr. Wheatley.

Mr. WHEATLEY. I do not mean to make this day longer than it has to be. I am just going to say, as it relates, and I appreciate both the prime sponsor, Representative Ross, as well as Representative Markosek in the effort that has gone into 1478. I do believe, though, one, what happened in North Carolina, from everything that I have read and heard about the situation in North Carolina, maybe the time frame was not long enough, the time period. Maybe the legislature itself was not as aware of both sides of the issue of what needed to take place once the sunset happened.

I do believe in our General Assembly. I do believe in the ability of the men and women in this chamber to understand that when this thing comes up in 2017, that if we need more time to look at it or evaluate it, to pass an amendment that pushes us past that date. I do not believe that this will stop the industry from investing. And as an aside to that, this is not meant to derail us regulating this industry. This is meant to just say we should proceed with caution in this industry, and if we give ourselves some time to look at it and we give ourselves some time to evaluate it, and if this date comes up, before this date comes up, we can make any changes that we need to, but this will force us to address it.

So I would again, you know, just ask my colleagues here in this chamber to consider an affirmative vote on this amendment; that it does not, in my opinion, change the intent of what we are trying to accomplish with the regulating of this industry. I think it will be helpful. I think it is a consumer-friendly process, and I would encourage you all to vote “yes” on it.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—78

Bebko-Jones	Eachus	Levdansky	Santoni
Belardi	Evans, D.	Maher	Shapiro

Belfanti	Fabrizio	Manderino	Solobay
Biancucci	Fichter	Mann	Stetler
Blackwell	Frankel	McGeehan	Sturla
Blaum	Freeman	Metcalfe	Surra
Butkovitz	Gerber	Mundy	Tangretti
Buxton	Gergely	Myers	Thomas
Caltagirone	Goodman	Oliver	Tigue
Casorio	Grucela	Pallone	Veon
Cawley	Haluska	Pistella	Vitali
Cohen	Hanna	Preston	Walko
Costa	Harper	Ramaley	Wansacz
Cruz	Hutchinson	Rieger	Waters
Curry	James	Roberts	Wheatley
Daley	Josephs	Roebuck	Williams
DeLuca	Kirkland	Rooney	Yewcic
Dermody	Kotik	Ruffing	Youngblood
DeWeese	Leach	Samuelson	Yudichak
Donatucci	Lederer		

NAYS—122

Adolph	Forcier	Major	Rohrer
Allen	Gabig	Markosek	Ross
Argall	Gannon	Marsico	Rubley
Armstrong	Geist	McCall	Sainato
Baker	George	McGill	Saylor
Baldwin	Gillespie	McLhattan	Scavello
Barrar	Gingrich	McIlhinney	Schroder
Bastian	Godshall	McNaughton	Semmel
Benninghoff	Good	Melio	Shaner
Birmelin	Grell	Micozzie	Siptroth
Bishop	Gruitza	Millard	Smith, B.
Boyd	Habay	Miller, R.	Smith, S. H.
Bunt	Harhai	Miller, S.	Sonney
Cappelli	Harhart	Mustio	Staback
Causer	Harris	Nailor	Stairs
Civera	Hasay	Nickol	Steil
Clymer	Hennessey	O'Brien	Stern
Cornell	Herman	O'Neill	Stevenson, R.
Corrigan	Hershey	Payne	Stevenson, T.
Crahalla	Hess	Petrarca	Taylor, E. Z.
Creighton	Hickernell	Petri	Taylor, J.
Dally	Kauffman	Petrone	True
Denlinger	Keller, M.	Phillips	Turzai
DiGirolamo	Keller, W.	Pickett	Watson
Diven	Kenny	Pyle	Wilt
Ellis	Killion	Quigley	Wojnaroski
Evans, J.	LaGrotta	Rapp	Wright
Fairchild	Leh	Raymond	Zug
Feese	Lescovitz	Readshaw	
Fleagle	Mackereth	Reed	Perzel,
Flick	Maitland	Reichley	Speaker

NOT VOTING—0

EXCUSED—1

Sather

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. WHEATLEY offered the following amendment No. **A01857:**

Amend Sec. 1 (Sec. 5115), page 12, by inserting between lines 21 and 22

(f) Confidentiality of information.—All consumer information, including personal identification information, obtained by a payday lender in the course of business and maintained by the department pursuant to subsection (e) shall be considered strictly confidential and shall be withheld from disclosure except as provided for in this chapter. Consumer information collected and maintained in the database provided for under subsection (e) shall not be considered a public record for the purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

Amend Sec. 1 (Sec. 5121), page 15, line 5, by inserting after “plan,”  
or if you have actual knowledge of any unfair, deceptive or fraudulent business practice or false, misleading or deceptive advertising engaged in by the lender,

Amend Sec. 1 (Sec. 5126), page 20, by inserting between lines 12 and 13

(14) Disclosing or releasing or attempting to disclose or release for financial gain or otherwise personal identification information of any consumer obtained or secured by the payday lender in the loan transaction process.

(15) Negotiating a sixth payday loan in a 90-day period with a consumer who has not undergone financial literacy counseling.

(16) Including, collecting or recovering or attempting to include, collect or recover the amount of the deposits required under section 5127(b) (relating to Commonwealth Financial Literacy Account) in any fee or charge for payday loan transactions authorized under this chapter.

On the question,  
Will the House agree to the amendment?

AMENDMENT WITHDRAWN

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Wheatley.

Mr. WHEATLEY. Thank you, Mr. Speaker.

This amendment basically sets in place, which I think a lot of the issues that the General Assembly has discussed today, around the confidentiality of the information that is being collected into the database. However, I believe with the passage of the Bunt amendment, this is probably null and void. So I would actually, I mean, I think maybe talking to the Parliamentarian, Mr. Speaker, I do not even know if this is a relevant amendment any longer. Better yet, I probably can just withdraw this amendment, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

The SPEAKER. Does the gentleman, Mr. Wheatley, have any further amendments that he wishes to offer?

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **WHEATLEY** offered the following amendment No. **A01858**:

Amend Sec. 1 (Sec. 5136), page 29, line 30; page 30, line 1, by striking out “setting forth such information as the department shall require”

Amend Sec. 1 (Sec. 5136), page 30, line 6, by inserting after “filed.”

The report shall include, but is not limited to, the following:

(i) The total number of payday loans made during the preceding calendar year.

(ii) The minimum, maximum and average dollar amount of payday loans made during the preceding calendar year.

(iii) The average annual percentage rate and the average term of payday loans made during the preceding calendar year.

(iv) The total number of returned checks, the total of checks recovered and the total of checks charged off during the preceding calendar year.

(v) The total number of payday loans paid in full, the total number of loans that went into default and the total number of loans charged off during the preceding calendar year.

(vi) The total number of consumer complaints.

(vii) Frequency of repeat use by consumers of postdated or delayed deposit checks.

(viii) Verification that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any payday loan during the preceding calendar year.

(ix) Information on the number of consumers referred to financial literacy counseling within the preceding calendar year.

(x) Any other information or data the department may require.

Amend Sec. 1 (Sec. 5153), page 37, line 16, by inserting after “chapter”

and for no less than three triennial periods thereafter

Amend Sec. 1 (Sec. 5153), page 37, lines 20 through 22, by striking out all of said lines and inserting following:

(1) A compilation of aggregate data concerning the payday lending industry in this Commonwealth as reported to the department in accordance with section 5136(a)(3) (relating to licensee requirements).

(2) Information on consumer complaints, including alleged or confirmed reports of unfair or deceptive trade practices and false, misleading or deceptive advertising.

(3) The effectiveness of the database in providing real-time reporting of loan transactions, verification of consumers’ borrowing and repayment history, enrollment in extended payment plans and use of financial literacy programs.

(4) Information on the effectiveness of a financial literacy counseling and education program.

(5) Any other information the department may deem necessary and appropriate.

On the question,  
Will the House agree to the amendment?

The **SPEAKER**. On that question, the Chair recognizes the gentleman, Mr. Wheatley.

Mr. **WHEATLEY**. Thank you, Mr. Speaker.

Mr. Speaker, I believe with the help and assistance of the prime sponsor, Representative Ross, and

Representative Markosek, this is an amendment that is agreed to. Basically, it clarifies the reporting of the information that will be collected, and I am asking that we do that every 3 years, that it be reported back to the General Assembly and updated on what is going on in the Commonwealth as it relates to this industry. So I would ask for an affirmative vote.

The **SPEAKER**. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Ross.

Mr. **ROSS**. Thank you, Mr. Speaker.

The maker of the amendment is correct. I do agree with this amendment, and I am happy to support it.

The **SPEAKER**. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—200

Adolph	Feese	Maher	Rubley
Allen	Fichter	Maitland	Ruffing
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Manderino	Samuelson
Baker	Forcier	Mann	Santoni
Baldwin	Frankel	Markosek	Saylor
Barrar	Freeman	Marsico	Scavello
Bastian	Gabig	McCall	Schroder
Bebko-Jones	Gannon	McGeehan	Semmel
Belardi	Geist	McGill	Shaner
Belfanti	George	McIlhattan	Shapiro
Benninghoff	Gerber	McIlhinney	Sip troth
Biancucci	Gergely	McNaughton	Smith, B.
Birmelin	Gillespie	Melio	Smith, S. H.
Bishop	Gingrich	Metcalfe	Solobay
Blackwell	Godshall	Micozzie	Sonney
Blaum	Good	Millard	Staback
Boyd	Goodman	Miller, R.	Stairs
Bunt	Grell	Miller, S.	Steil
Butkovitz	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O’Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O’Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Payne	Thomas
Cornell	Hennessey	Petrarca	Tigue
Corrigan	Herman	Petri	True
Costa	Hershey	Petrone	Turzai
Crahalla	Hess	Phillips	Veon
Creighton	Hickernell	Pickett	Vitali
Cruz	Hutchinson	Pistella	Walko
Curry	James	Preston	Wansacz
Daley	Josephs	Pyle	Waters
Dally	Kauffman	Quigley	Watson
DeLuca	Keller, M.	Ramaley	Wheatley
Denlinger	Keller, W.	Rapp	Williams
Dermody	Kenney	Raymond	Wilt
DeWeese	Killion	Readshaw	Wojnaroski
DiGirolamo	Kirkland	Reed	Wright
Diven	Kotik	Reichley	Yewcic
Donatucci	LaGrotta	Rieger	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth		Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Sather

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

The SPEAKER. It is the information of the Chair that the gentleman, Mr. Wheatley, has withdrawn his other amendments. Mr. Wheatley?

Mr. WHEATLEY. That is true. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Ms. **MANDERINO** offered the following amendment No. **A01903**:

Amend Title, page 1, lines 1 and 2, by striking out “Titles 7 (Banks and Banking) and 18 (Crimes and” in line 1, all of line 2 and inserting

the act of April 8, 1937 (P.L.262, No.66), entitled, as amended, “An act relating to consumer credit; requiring licenses from the Secretary of Banking; restricting licenses to domestic business corporations; fixing minimum capital requirements; conferring certain powers on the Secretary of Banking; limiting interest and other charges; providing certain exemptions; and imposing penalties,”

Amend Bill, page 1, lines 9 through 18; pages 2 through 37, lines 1 through 30; page 38, lines 1 through 6, by striking out all of said lines on said pages and inserting

Section 1. Section 2 of the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, amended June 20, 1947 (P.L.665, No.288), December 9, 1982 (P.L.1072, No.249) and December 21, 1998 (P.L.1287, No.167), is amended to read:

Section 2. Definitions.—The following terms shall be construed in the act to have the following meanings, except in those instances where the context clearly indicates otherwise:

“Person” includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized.

“Contract” means a promissory or judgment note, bill of exchange, judgment, mortgage, conditional sales, contract, lease or bailment by which the lessee or bailee has the option of becoming or is bound to become the owner of real or personal property upon full compliance with the terms of the agreement, or any other form of negotiable or nonnegotiable instrument evidencing an agreement to pay a sum certain in money at a fixed or determinable time, either by a single payment or by stated installments.

“Applicant” means a corporation applying for a license under the provisions of this act.

“Licensee” means a corporation holding a license issued under the provisions of this act, which license has not been cancelled, surrendered or revoked and has not expired.

“Consumer” means the person who is the maker on a note, or the acceptor of a bill of exchange, or the defendant on a judgment, or the mortgagor on a mortgage, or the lessee on a lease, or the bailee on a bailment, or the purchaser on a conditional sales contract, or the person or persons obligated to pay any other negotiable instrument defined as a “contract” under this act.

“Charges” means and includes all interest or discount and the service charge which a licensee is authorized to collect by the provisions of this act.

“Default” means failure to pay a contract when due or failure to pay any stated installment when due.

“Payday loan” means a short-term cash advance of three thousand dollars (\$3,000) or less which is secured or facilitated by (i) holding a consumer’s personal check for future deposit or (ii) access to the consumer’s bank account. The term includes any form of this lending, notwithstanding the presence of some other element introduced to disguise the true nature of the transaction, such as the sale or provision of personal property or service incidental to the advance of funds, and notwithstanding the medium in which the transaction is conducted.

“Revolving loan account” means an agreement pursuant to which (i) the licensee may permit the borrower to obtain one or a series of loans or advances from time to time: Provided, however, That the aggregate of the unpaid principal balances due a licensee from a consumer under this act on any date shall not exceed the sum of twenty-five thousand dollars (\$25,000), (ii) the unpaid principal balances and the appropriate charges are debited to an account, (iii) the charges for the loan are computed on the outstanding unpaid principal balances of the account from time to time, and (iv) the borrower has the privilege of paying the balances in installments.

“Capital or capitalization” means the legal or stated capital which, at any particular time, is fully paid in and the sum of the par value of all shares issued and outstanding or the amount of consideration received by the corporation for all shares issued and outstanding without par value but is limited to the amount which has been credited to capital stock accounts.

Section 2. Section 3 of the act, amended December 18, 1984 (P.L.1083, No.216), December 12, 1994 (P.L.1060, No.144) and July 2, 1996 (P.L.490, No.80), is amended to read:

Section 3. License Required.—A. On and after the effective date of this act, no person shall engage or continue to engage in this Commonwealth, either as principal, employe, agent or broker, in the business of negotiating or making loans or advances of money on credit, in the amount or value of twenty-five thousand dollars (\$25,000) or less, and charge, collect, contract for or receive interest, discount, bonus, fees, fines, commissions, charges, or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned or advanced, or on the unpaid principal balances when the contract is payable by stated installments except a domestic business corporation organized under or existing by virtue of the Business Corporation Law of this Commonwealth, after first obtaining a license from the Secretary of Banking of the Commonwealth of Pennsylvania in accordance with the provisions of this act.

B. Any person who shall hold himself out as willing or able to arrange for or negotiate such loans of twenty-five thousand dollars (\$25,000), or less where the interest, discount, bonus, fees, fines, commissions or other considerations in the aggregate exceeds the interest that the lender would otherwise be permitted by law to charge or who solicits prospective borrowers of such loans of twenty-five thousand dollars (\$25,000), or less shall be deemed to be engaged in the business contemplated by this act, unless otherwise permitted by law to engage in such activities. [The referring borrowers to a licensee shall not be deemed to be engaged in the business contemplated by this act if no charge, no matter how denominated, for such reference is

imposed on the prospective borrower by the person making the reference.] No licensee shall knowingly include in any loan under this act any amount which is to be paid by the borrower to another as a fee or charge, no matter how denominated, for referring said borrower to the licensee.

C. Notwithstanding subsection A, the Secretary of Banking may license a branch office in another state provided the licensee maintains a place of business in this Commonwealth which is licensed under the provisions of this act.

D. Notwithstanding any other provision of law, including the act of December 16, 1992 (P.L.1144, No.150), known as the Credit Services Act, any person in the business of negotiating, arranging for or assisting in procuring a loan referred to in this section shall be deemed to be engaged in the business of negotiating or making a loan referred to in this section. This subsection applies to payday loans.

Section 3. The act is amended by adding a section to read:

Section 18.1. Prohibition Against Payday Loans.—A. It shall be unlawful for any person to engage in the business of making, arranging for or soliciting payday loans. This prohibition shall not apply to a loan made by a bank, thrift union or credit union, except that it will apply to any person that arranges a loan made by a bank, thrift union or credit union if the entire circumstances of the transaction show that the arranger holds, acquires or maintains a preponderant economic interest in the revenues generated by the loan.

B. Any person, including any responsible agent or officer of a corporation, partnership or association, that engages in the business of making, arranging for or soliciting payday loans shall be guilty of a misdemeanor of the first degree.

C. Any payday loan made in violation of this section shall be void. In addition, the consumer shall be entitled to recover against any person violating this section, actual damages, plus a statutory penalty in the amount of three times the face amount of the payday loan, together with reasonable attorney fees and costs.

Amend Sec. 4, page 38, lines 7 through 16, by striking out “as follows:” in line 7, all of lines 8 through 16 and inserting in 60 days.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentelady, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

As it may have been evident by some of my remarks to some of the amendments yesterday, I am no fan of this payday lending industry. As a matter of fact, I think this is the absolutely wrong approach for Pennsylvania to be taking to this issue. We should not be legitimizing an industry with 455-percent interest rates, worse than loan sharks. We ought to be outlawing them, and that is what my amendment does. Let us be the brave State like the State of Georgia did and just say no to legitimizing this industry.

My amendment deletes the language in HB 1478 and makes it illegal to make payday loans in Pennsylvania. You know, our forefathers had some really good insight, and as a matter of fact, back in 1937 they passed a law in this Commonwealth to bring these kinds of loans underneath our Banking Department and our small consumer loan industry. It is just that 70-some years later they did not foresee the kind of agency and broker relationships with outside banks that had developed. And what I am doing is putting payday loans under our current consumer regulation, the Consumer Discount Company Act, making it illegal to do those payday loans and requiring anyone making these kinds of loans in Pennsylvania to follow the regular

banking laws of Pennsylvania. This is the way that we ought to be heading in our Commonwealth.

Now, some folks will say this is a risky proposition. I am going to tell you why it is not. First of all, let us start with the very basics. We have an industry that is fearing for its existence, because it is operating right now under out-of-State banks that the FDIC (Federal Deposit Insurance Corporation) is cracking down on and saying no more than six loans a year. Their industry cannot survive on six loans a year. Their industry requires or their industry average, is probably the fairer way to say it, is close to 10 loans a year per person in order to make their line of business profitable. They are scared to death of being under the FDIC guidelines, and that is why they are scrambling in all the States to be regulated as their own industry, so that they do not have to have relationships with nationally chartered banks, so that they do not have to be under FDIC regulation. Why would we want to do that? It is not good for Pennsylvania; it is not good for Pennsylvania consumers. What is good for Pennsylvania consumers is to stop this predatory practice here and now.

Let us not legalize and legitimize loan sharking. Let us outlaw it. Vote for this amendment.

The SPEAKER. The Chair thanks the gentelady.

The Chair recognizes the gentleman, Mr. Ross.

Mr. ROSS. Thank you, Mr. Speaker.

This sounds good. It sounds really like you are going to feel better if you were to vote for this amendment, but I would like to highlight for you what will happen if in fact we go the route of Georgia and attempt to ban all of the existing storefront payday lenders.

First of all, there will be litigation, but we have heard there is going to be litigation either way anyway from some of us, so that may not be a critical issue. There is some real question as to whether this would be in fact legal. But having gotten past that, remember that number that I gave you earlier, that 3 million loans that are currently being taken out in Pennsylvania, and I think all of you, whether you realize it or not, have been actually solicited by payday lenders. You have been solicited on the Internet. People have sent you e-mails saying, do you need some money? Are you coming a little short this month? Those Internet lenders are sitting there waiting to take over this entire business here in Pennsylvania, those 3 million loans. If somebody is in need and is using the payday lending industry right now and they come short and the storefronts are all gone, where will they go? There is only one place for them to go, and that is going to be the Internet lenders.

Now, the Internet lenders operate in the following fashion: You give them your bank tracking numbers so that they can put money into your account, the proceeds of the loan, and then later on they take that money and the fees back out. Now, if they can get into your bank account and take money out, then I do not see anything to stop them from draining your account. Being on the Internet, they do not have to be in Pennsylvania. They could be anywhere, the Cayman Islands, and if they are, how are you going to expect the Secretary of Banking with his 22 examiners to find these people and get your constituents' money back? I would suggest it is impossible. So although you feel that you are actually helping your constituents, you are actually exposing them to a far worse danger.

One of our colleagues has earlier talked about the red devil. This is a case of the devil you know versus the devil you do not. I urge a negative vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Hasay.

Mr. HASAY. Thank you, Mr. Speaker.

Mr. Speaker, I rise to support the Manderino amendment.

Today we live in a society where you finance the house, you finance the cars, you refinance the house again, you get in credit card crisis where you have to refinance the house, and now we come to payday lending.

I cannot believe in the few years I have served in this chamber that we are attempting to pass a 400-percent interest rate, and in some cases, a 900-percent interest rate. We are just digging a hole, digging a hole for these people that cannot manage their money and buy on credit. This is not a help; this is just going to make things worse.

I think with the Manderino amendment, we should do what Georgia did. I think it is important. I think it is important; you know what our society is like, maybe not in every district where it is a little more conservative, but what we are doing here today is legalizing loan sharking worse than it was in the twenties and thirties. So, Mr. Speaker, I am asking you to support the very important Manderino amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman from Allegheny, Mr. Markosek.

Mr. MARKOSEK. Thank you, Mr. Speaker.

Mr. Speaker, again, some of the issues that the lady has brought up, some of the things that she feels are wrong with this industry, and there are some egregious players out there, that is in fact why we are even debating the bill here and have a bill, is to eliminate some of that and to control some of that. What her amendment would do is basically make everything we have done here up until now just a waste of time, and by doing that, we would essentially be turning over the industry to a market that is totally unregulated, that is really kind of just down on the streets, if you will, and it is the kind of thing that we are trying to avoid by doing that.

I do not think any of us here wish to see anybody harmed by a payday loan, but on the other hand, they are not going away. They are here to stay. There are 400 of them now, and they are here to stay because there is a demand for them. That demand will continue; it will grow. This will not stop it. This will only muddy the waters further. I am not even sure if we totally banned it if it would be constitutional. I am not smart enough to determine that and I am not in a position to determine that, and that is really not our job. But I think that we are in a situation with this amendment that we need to oppose this amendment, and let us get a system in place where we can work this out and put some kind of regulation in that we can live with.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentelady, Ms. Manderino, for the second time. Oh; I apologize.

The gentleman, Mr. Tangretti.

Mr. TANGRETTI. Thank you, Mr. Speaker.

Mr. Speaker, the gentelady from Philadelphia knows I have the utmost respect for her abilities and her intellect and her hard work, but I raise the same issue that I raised earlier. Even if we were to pass her amendment and even if it were to become law, we have a long process of legal challenges that are going to be exercised as a result of that, and we may or may not win them. What do we do in the meantime? What do we do with the

people who every day, right now as we speak, are being victimized?

I think that we have come to the point where we have to understand that this process is one in which we have an obligation to protect some folks now, as quickly as possible. We cannot allow this continually deregulated industry to prey on those who can least afford it. Let us at least put into place regulatory oversight and then work with Representative Manderino and others who want to repeal the whole process.

Now, we make the laws. If we create a regulated industry and then some years later, maybe vis-a-vis Representative Wheatley's amendment or idea, we decide we want to do away with it, we can do that. But I do not think we should waste the time of allowing this to percolate through the legal process, the legal channels, and at the same time allowing folks to be continually victimized.

So I would ask you to not vote for Representative Manderino's amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Kirkland.

Mr. KIRKLAND. Thank you, Mr. Speaker. Just real quickly.

I wanted to kind of clarify things concerning the reason the payday loan industry is outlawed in Georgia. One of the reasons was, under the Georgia Industrial Loan Act, Mr. Speaker, a borrower is able to borrow \$300, and after they borrow that \$300 and they repay that \$300 back, they were also required to pay back \$220 on top of that \$300. Also, Mr. Speaker, they were also required by the industry to purchase auto insurance and auto memberships. Mr. Speaker, one of the main reasons that this was outlawed in Georgia is that approximately 25 members of the Georgia legislature were involved financially, were involved financially with the industry, and so, Mr. Speaker, I just wanted to kind of clarify that issue.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentelady, Ms. Manderino, for the second time.

Ms. MANDERINO. Thank you, Mr. Speaker.

I would like to just address three points that were made by the opponents to my amendment. I will go in reverse order.

Why was this outlawed in Georgia? It was outlawed in Georgia because the Georgia legislature, unlike the Pennsylvania legislature, held public hearings, had people come and testify, examined this issue from both sides, and decided that they were not going to be a part of legalizing predatory practices and they did not want it in their State. It is as simple as that. You can go back and look at the record. In Georgia, you can go back and look at the Senate bill in Georgia; you can go back and look at the hearings in Georgia. They had testimony from military people about all of these around their bases and the devastation of those families of service men and women and others in their communities who got caught up in these predatory practices and could find no way to dig themselves out. That is why Georgia outlawed it. That is why Pennsylvania should outlaw it, too.

What are we going to do in the meantime if we outlaw it and the legal challenges keep going on? It is a very simple answer. If we outlaw it and they continue to operate in the short run under the FDIC nationally chartered banks, the industry is going to have to comply with their guidelines, and their guidelines are saying, no more than six of these loans a year; bad practice, predatory practice; you cannot do it. I would be happy with that



as an interim solution while legal challenges went through Pennsylvania. That is better than what they want us to do here today on the floor of the House. Today on the floor of the House we would be legitimizing 22-week loans a year, 41-week loans a year, or more. I will be very happy to sit in the interim during the legal challenges and only have it be six times a year that somebody can get one of these predatory loans.

And finally, what about those Internet lenders? Gosh jolly. They are there today. As we sit here, they are on the Internet today. But you know what? They are not on the street corner next to the liquor store. They are not on the street corner next to the military base. They are not on the street corner next to future racinos or casinos. And guess what? In order to take advantage of those Internet sites, you have to have a bank account. I bet you if we did a survey of all of the people who get payday loans, that the vast majority of them do not have bank accounts. It is a different customer; it is a different consumer; it is different kind of access. It is not going to be an issue that we solve or defeat, put out of business the Internet providers or put them in business, by what we do today. But what we do today can protect a vast number of Pennsylvania consumers, and that is what I am for, and I hope that is what you are for, too.

Vote for this amendment.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentleman, Mr. Ross, for the second time.

Mr. ROSS. I regret to rise for a second time, but I have to counter something that was totally inaccurate that was just stated. Every payday borrower has to have a bank account. This is not a product for the unbanked. It is not a product for the poor. The average lender is in a \$35,000 to \$50,000 area. It is not for the uneducated. Fifty-eight percent of those borrowers are college-educated.

There were earlier statements that this is a racist industry. Seventy percent of the borrowers are White, 19 percent Black, 11 percent Hispanic. That is in fact a pretty good cross section of the entire population of Pennsylvania. So those statements are flat-out inaccurate.

Once again, I ask for a “no” vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, to just clarify a couple things.

Number one, in terms of the requirements for getting these loans, you can have a bank account or dedicated wages, one or the other, so the statement that Representative Manderino made was not totally incorrect.

But at the end of the day, Mr. Speaker, there is nothing wrong – let me say that again – there is nothing wrong with policymakers, there is nothing wrong with policymakers from all parts of this great State, the Keystone State, there is nothing wrong with us saying no, no to a process, no to an activity, that cannot, will not, improve the lives of the people that we represent. There is nothing wrong with us saying no.

Some have said, what do we do, because the market is here? Well, Mr. Speaker, drugs have been here. Are we going to legalize it? The people of California have said that they want to be able to use marijuana for medical purposes. Does that mean that the United States Supreme Court has to sign off on it? No. Mr. Speaker, we can say no. There is no redeeming value, no redeeming qualities, to why we have to create a legislative

scheme that allows people to go and borrow \$100, \$200, \$300, and then end up having to pay 17 percent in return.

In Philadelphia County, since January, over 800 people are facing mortgage foreclosures each month. In Allegheny County the number might be 1100, 1200 people facing mortgage foreclosure each month. In Erie County, mortgage foreclosures. In York County, mortgage foreclosures. Credit card companies are accelerating their rates, so if you are a day or a couple days late in your payment, your rate can go from 9 percent to 29 percent because of this acceleration clause. Credit card companies, banks, are very restrictive in who they are lending money to. Mr. Speaker, the people in Pennsylvania already have enough to deal with and do not need us adding, adding another layer of pain on a situation that they are already facing.

We can do something for the people of Pennsylvania today by putting up a “yes” vote for the Manderino amendment. Our forefathers laid the foundation by declaring this activity illegal. We in this General Assembly not too long ago declared it illegal under the Pennsylvania check-cashing licensing law. We declared payday lending illegal, very specifically.

So, Mr. Speaker, we have spoken on behalf of the people of Pennsylvania. We have spoken, and now it is time to set the record straight, draw the line in the sand, that if we want to do something for the problems that people in Pennsylvania are facing, let us expand the community credit law. There are other products out there that will allow people to get short-term loans and have some protection.

Mr. Speaker, vote “yes” on the Manderino amendment and do something for the people of Pennsylvania. Thank you.

The SPEAKER. The Chair thanks the gentleman.

## LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence, and there is a request for a leave of absence for the gentleman, Mr. WOJNAROSKI. Without objection, that leave will be granted.

## CONSIDERATION OF HB 1478 CONTINUED

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

### YEAS—95

Armstrong	Denlinger	James	Roberts
Baldwin	Dermody	Josephs	Roebuck
Bebko-Jones	DeWeese	Kauffman	Rooney
Belardi	DiGirolamo	Kirkland	Rubley
Belfanti	Diven	Kotik	Ruffing
Biancucci	Donatucci	Leach	Samuelson
Bishop	Eachus	Lederer	Scavello
Blackwell	Evans, D.	Levdansky	Shapiro
Blaum	Fabrizio	Manderino	Solobay
Boyd	Frankel	McCall	Sturla
Butkovitz	Freeman	McGeehan	Surra
Buxton	Gabig	Millard	Thomas
Caltagirone	Gannon	Mundy	Tigue
Casorio	Geist	Myers	True
Cawley	George	Oliver	Vitali
Cohen	Gerber	O'Neill	Walko
Costa	Gergely	Pallone	Waters
Crahalla	Goodman	Petrone	Wheatley

Creighton	Grucela	Pistella	Williams
Cruz	Haluska	Preston	Wright
Curry	Hanna	Ramaley	Yewcic
Daley	Harhart	Reed	Youngblood
Dally	Hasay	Reichley	Yudichak
DeLuca	Hickernell	Rieger	

NAYS—104

Adolph	Grell	McIlhinney	Schroder
Allen	Gruitza	McNaughton	Semmel
Argall	Habay	Melio	Shaner
Baker	Harhai	Metcalfe	Siptroth
Barrar	Harper	Micozzie	Smith, B.
Bastian	Harris	Miller, R.	Smith, S. H.
Benninghoff	Hennessey	Miller, S.	Sonney
Birmelin	Herman	Mustio	Staback
Bunt	Hershey	Nailor	Stairs
Cappelli	Hess	Nickol	Steil
Causar	Hutchinson	O'Brien	Stern
Civera	Keller, M.	Payne	Stetler
Clymer	Keller, W.	Petrarca	Stevenson, R.
Cornell	Kenney	Petri	Stevenson, T.
Corrigan	Killion	Phillips	Tangretti
Ellis	LaGrotta	Pickett	Taylor, E. Z.
Evans, J.	Leh	Pyle	Taylor, J.
Fairchild	Lescovitz	Quigley	Turzai
Feese	Mackereth	Rapp	Veon
Fichter	Maher	Raymond	Wansacz
Fleagle	Maitland	Readshaw	Watson
Flick	Major	Rohrer	Wilt
Forcier	Mann	Ross	Zug
Gillespie	Markosek	Sainato	
Gingrich	Marsico	Santoni	
Godshall	McGill	Saylor	Perzel,
Good	McIlhattan		Speaker

NOT VOTING—0

EXCUSED—2

Sather	Wojnaroski
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Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **STETLER** offered the following amendment No. **A01913**:

Amend Sec. 1 (Sec. 5126), page 20, by inserting between lines 12 and 13

(14) Making a payday loan or renewal loan to any individual under 18 years of age.

On the question,  
Will the House agree to the amendment?

AMENDMENT PASSED OVER TEMPORARILY

The **SPEAKER**. The Chair will temporarily go over that amendment.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **THOMAS** offered the following amendment No. **A01957**:

Amend Sec. 1 (Sec. 5137), page 31, by inserting between lines 12 and 13

(3) Transact a payday loan business within 500 feet of a military base.

On the question,  
Will the House agree to the amendment?

The **SPEAKER**. On that question, the Chair recognizes the gentleman, Mr. Thomas.

Mr. **THOMAS**. Thank you, Mr. Speaker.

Amendment 1957 is another effort to try and bring some reasonableness to an unreasonable discussion, and what 1957 says in effect is that our military bases should be off limits, should be off limits, at least within 500 feet of these payday lending stores. I know that the bill provides some protection for military personnel, but this talks about the location of these stores rather than personnel itself. We do not need these stores opening up near our military bases and enticing our military personnel into getting into more debt. You know, it is a real challenge that you have when you are serving your country. You are trying to concentrate on your commitment to your country, but in many cases you know that you have a family back home, that you need to try and make sure that they are okay.

Someone asked me for the testimony of the captain of the U.S. naval command in Georgia. I made reference to this captain yesterday, and someone from the House asked me for those comments. This captain testified during the Georgia hearings on payday lending, and I was kind of surprised but not shocked that military personnel are having to worry about debt on top of debt while trying to concentrate on service to our country and I know are protecting our country. And I know that this captain, if he had his way, Captain Cahoon, he would outlaw these stores all across the country. But, Mr. Speaker, for Pennsylvania, I am asking through this amendment that no payday lending store should be located within 500 feet of our military bases, and I ask for an affirmative vote. Thank you.

**THE SPEAKER PRO TEMPORE  
(JERRY BIRMELIN) PRESIDING**

The **SPEAKER** pro tempore. The Chair recognizes the gentleman, Mr. Ross.

Mr. **ROSS**. Thank you, Mr. Speaker.

We specifically considered the issue of military lending and are quite concerned about that and included a section which gives direct protection to the military personnel themselves. The location is a matter, I think, of indifference because we have covered this point already, and I must ask for a negative vote on this amendment, because it further complicates and will actually further drag this bill down. The military personnel are protected in the bill already, and I ask for a “no” vote.

The **SPEAKER** pro tempore. The Chair recognizes the gentleman, Mr. Markosek.

Mr. MARKOSEK. Thank you, Mr. Speaker.

I agree with the previous speaker. There is quite a bit of language in the current bill that will deal with the military personnel. One other thing to think about is, the amendment, and I am sure it was not intended this way, but it really does, when you think about it, discriminate against military personnel, because it is only 100 feet for people using slot machines but we make military personnel walk 500 feet. So that is another reason to oppose it, and I would ask for a “no” vote.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Thomas, for the second time.

Mr. THOMAS. Thank you, Mr. Speaker.

The speaker is correct. It is 100 feet on gaming, 500 feet on military bases. But, Mr. Speaker, excuse me for my passion, my passion for our young men and women that give up 24/7 of their time and energy to make sure that we remain safe – safe – in the greatest country on this planet. I want to make sure that predators, predators are as far away from becoming an attractive nuisance, as far away from becoming an attractive nuisance as possible. So that is why 500 feet was selected, because I want to make sure that predators— And payday lenders are predators. They prey on the suffering of people who cannot access cash, ready cash, in any other manner.

So, Mr. Speaker, and yes, the bill deals with personnel, and I thank both my chairman, Markosek, and I thank the majority chair for considering this, because this was not a part of the original payday lending bill; this was something that was put in. So I thank them for that, but now I want to add not only personnel but I also want to add existence, where these places are located. They should not be located within 500 feet of our military bases.

Mr. Speaker, I ask for an affirmative vote on amendment 1957. Thank you.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS-91

Barrar	Diven	Kotik	Samuelson
Bebko-Jones	Donatucci	Leach	Santoni
Belardi	Eachus	Lederer	Shapiro
Belfanti	Evans, D.	Levdansky	Siproth
Biancucci	Fabrizio	Maher	Solobay
Bishop	Frankel	Manderino	Staback
Blackwell	Freeman	Mann	Stetler
Blaum	Gabig	McCall	Sturla
Butkovitz	Geist	McGeehan	Surra
Buxton	George	Metcalfe	Tangretti
Caltagirone	Gerber	Mundy	Thomas
Casorio	Gergely	Myers	Tigue
Cawley	Goodman	Oliver	Veon
Cohen	Grell	Pallone	Vitali
Costa	Grucela	Petrarca	Walko
Creighton	Habay	Pistella	Wansacz
Cruz	Haluska	Preston	Waters
Curry	Hanna	Ramaley	Wheatley
Daley	Hasay	Rieger	Williams
DeLuca	James	Roberts	Yewcic
Dermoddy	Josephs	Roebuck	Youngblood
DeWeese	Kauffman	Rooney	Yudichak
DiGirolamo	Kirkland	Ruffing	

NAYS-108

Adolph	Gannon	McGill	Ross
Allen	Gillespie	McIlhattan	Rubley
Argall	Gingrich	McIlhinney	Sainato
Armstrong	Godshall	McNaughton	Saylor
Baker	Good	Melio	Scavello
Baldwin	Gruitza	Micozzie	Schroder
Bastian	Harhai	Millard	Semmel
Benninghoff	Harhart	Miller, R.	Shaner
Birmelin	Harper	Miller, S.	Smith, B.
Boyd	Harris	Mustio	Smith, S. H.
Bunt	Hennessey	Nailor	Sonney
Cappelli	Herman	Nickol	Stairs
Causar	Hershey	O'Brien	Steil
Civera	Hess	O'Neill	Stern
Clymer	Hickernell	Payne	Stevenson, R.
Cornell	Hutchinson	Petri	Stevenson, T.
Corrigan	Keller, M.	Petrone	Taylor, E. Z.
Crahalla	Keller, W.	Phillips	Taylor, J.
Dally	Kenney	Pickett	True
Denlinger	Killion	Pyle	Turzai
Ellis	LaGrotta	Quigley	Watson
Evans, J.	Leh	Rapp	Wilt
Fairchild	Lescovitz	Raymond	Wright
Feece	Mackereth	Readshaw	Zug
Fichter	Maitland	Reed	
Fleagle	Major	Reichley	
Flick	Markosek	Rohrer	Perzel,
Forcier	Marsico		Speaker

NOT VOTING-0

EXCUSED-2

Sather Wojnaroski

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?  
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-143

Adolph	Forcier	Markosek	Ruffing
Allen	Frankel	Marsico	Sainato
Argall	Gabig	McGeehan	Santoni
Armstrong	Gannon	McGill	Saylor
Baker	George	McIlhattan	Scavello
Baldwin	Gerber	McIlhinney	Schroder
Barrar	Gergely	McNaughton	Semmel
Bastian	Gillespie	Melio	Shaner
Benninghoff	Gingrich	Micozzie	Shapiro
Biancucci	Godshall	Millard	Siproth
Boyd	Good	Miller, R.	Smith, B.
Bunt	Grell	Miller, S.	Smith, S. H.
Buxton	Haluska	Mustio	Sonney

Caltagirone	Hanna	Nailor	Staback
Cappelli	Harhai	Nickol	Stairs
Causer	Harhart	O'Brien	Steil
Civera	Harper	O'Neill	Stern
Clymer	Harris	Pallone	Stetler
Cornell	Hennessey	Payne	Stevenson, R.
Corrigan	Herman	Petrarca	Stevenson, T.
Costa	Hershey	Petri	Tangretti
Crahalla	Hickernell	Petrone	Taylor, E. Z.
Daley	Kauffman	Phillips	Taylor, J.
DeLuca	Keller, M.	Pickett	True
Denlinger	Keller, W.	Pistella	Turzai
Dermody	Kenney	Preston	Veon
DeWeese	Killion	Pyle	Walko
DiGiorlamo	Kirkland	Quigley	Wansacz
Diven	Kotik	Rapp	Watson
Donatucci	LaGrotta	Raymond	Wheatley
Ellis	Leh	Readshaw	Wilt
Evans, J.	Lescovitz	Rieger	Wright
Fairchild	Mackereth	Rohrer	Zug
Feese	Maher	Rooney	
Fichter	Maitland	Ross	Perzel,
Fleagle	Major	Rubley	Speaker
Flick			

NAYS—56

Bebko-Jones	Dally	Josephs	Roberts
Belardi	Eachus	Leach	Roebuck
Belfanti	Evans, D.	Lederer	Samuelson
Birmelin	Fabrizio	Levdansky	Solobay
Bishop	Freeman	Manderino	Sturla
Blackwell	Geist	Mann	Surra
Blaum	Goodman	McCall	Thomas
Butkovitz	Grucela	Metcalfe	Tigue
Casorio	Gruitza	Mundy	Vitali
Cawley	Habay	Myers	Waters
Cohen	Hasay	Oliver	Williams
Creighton	Hess	Ramaley	Yewcic
Cruz	Hutchinson	Reed	Youngblood
Curry	James	Reichley	Yudichak

NOT VOTING—0

EXCUSED—2

Sather	Wojnaroski
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1014, PN 1965**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for application for certificate of title, for transfer of ownership of vehicle, for application for certificate of title by agent and for an electronic titling program.

On the question,  
Will the House agree to the bill on third consideration?

Mr. **GEIST** offered the following amendment No. **A01717**:

Amend Sec. 1, page 1, line 8, by striking out "1119" and inserting

1119(a) and (b)

Amend Sec. 2 (Sec. 1151.1), page 5, line 21, by striking out "by lienholders"

Amend Sec. 2 (Sec. 1151.1), page 5, lines 23 through 30; page 6, lines 1 through 14, by striking out all of said lines on said pages and inserting

(c) Mandatory participation.—Except for individuals and lienholders who are not normally engaged in the business or practice of financing vehicles, lienholders shall participate in the electronic titling program.

Amend Sec. 4, page 7, line 11, by striking out "in 60 days." and inserting as follows:

- (1) The addition of 75 Pa.C.S. § 1151.1(c) shall take effect in two years.
- (2) The remainder of this act shall take effect in 60 days.

On the question,  
Will the House agree to the amendment?

The **SPEAKER** pro tempore. On that question, the Chair recognizes the gentleman, Mr. Geist. He does not seek recognition.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—199

Adolph	Feese	Mackereth	Ross
Allen	Fichter	Maher	Rubley
Argall	Fleagle	Maitland	Ruffing
Armstrong	Flick	Major	Sainato
Baker	Forcier	Manderino	Samuelson
Baldwin	Frankel	Mann	Santoni
Barrar	Freeman	Markosek	Saylor
Bastian	Gabig	Marsico	Scavello
Bebko-Jones	Gannon	McCall	Schroder
Belardi	Geist	McGeehan	Semmel
Belfanti	George	McGill	Shaner
Benninghoff	Gerber	McIlhattan	Shapiro
Biancucci	Gergely	McIlhinney	Siptroth
Birmelin	Gillespie	McNaughton	Smith, B.
Bishop	Gingrich	Melio	Smith, S. H.
Blackwell	Godshall	Metcalfe	Solobay
Blaum	Good	Micozzie	Sonney
Boyd	Goodman	Millard	Staback
Bunt	Grell	Miller, R.	Stairs
Butkovitz	Grucela	Miller, S.	Steil
Buxton	Gruitza	Mundy	Stern
Caltagirone	Habay	Mustio	Stetler
Cappelli	Haluska	Myers	Stevenson, R.
Casorio	Hanna	Nailor	Stevenson, T.
Causer	Harhai	Nickol	Sturla
Cawley	Harhart	O'Brien	Surra
Civera	Harper	Oliver	Tangretti
Clymer	Harris	O'Neill	Taylor, E. Z.
Cohen	Hasay	Pallone	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko

Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Leach	Rieger	Yudichak
Ellis	Lederer	Roberts	Zug
Evans, D.	Leh	Roebuck	
Evans, J.	Lescovitz	Rohrer	Perzel,
Fabrizio	Levdansky	Rooney	Speaker
Fairchild			

NAYS-0

NOT VOTING-0

EXCUSED-2

Sather Wojnarowski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Mr. **DeLUCA** offered the following amendment No. **A01875**:

Amend Title, page 1, line 4, by striking out “AND” and inserting a comma

Amend Title, page 1, line 5, by removing the period after “program” and inserting

, for stop intersections or junctions and for traffic-control devices.

Amend Sec. 3, page 6, line 15, by striking out “AND 1154” and inserting

, 1154, 6109(e) and 6112(a)

Amend Bill, page 7, by inserting between lines 10 and 11 § 6109. Specific powers of department and local authorities.

\*\*\*

(e) Engineering and traffic investigation required.—

(1) Action by local authorities under this section shall be taken only after completing an engineering and traffic investigation when and in such manner as required by regulations promulgated by the department. No engineering and traffic investigation is required to establish a speed limit under section 3362(a)(1.2) (relating to maximum speed limits).

(2) This subsection shall not apply to actions by local authorities in adopting regulations or ordinances designating any intersection or junction of non-Federal and noninterstate highways or roadways within a residence district as a stop intersection or junction and in erecting official traffic-control devices giving notice of such designation.

\*\*\*

§ 6122. Authority to erect traffic-control devices.

(a) General rule.—The department on State-designated highways and local authorities on any highway within their boundaries may erect official traffic-control devices, which shall be installed and maintained in conformance with the manual and regulations published by the

department upon all highways as required to carry out the provisions of this title or to regulate, restrict, direct, warn, prohibit or guide traffic.

(1) [Local] Except as provided in paragraph (3), local authorities shall obtain approval of the department prior to erecting an official traffic-control device on a State-designated highway except where department regulations provide otherwise.

(2) [Local] Except as provided in paragraph (3), local authorities shall obtain approval of the department prior to erecting any traffic signal except in a municipality with a traffic engineer qualified in accordance with department regulations.

(3) Notwithstanding any other provision of this section, a local authority may erect a stop sign on a non-Federal and noninterstate highway in a residence district within its boundaries without the approval of the department.

\*\*\*

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. DeLuca. He waives off.

The gentleman, Mr. Vitali, from Delaware County is recognized.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the amendment give a brief explanation.

The SPEAKER pro tempore. The gentleman, Mr. DeLuca, agrees to do that. He is recognized for that purpose.

Mr. DeLUCA. Mr. Speaker, what this amendment does, it permits the municipalities, who know more about the local traffic in their district, from going through an engineering study, putting up stop signs and that there. So this passed this House last session four times; unfortunately, it died in the Senate, but municipalities do not have to spend all this money under this legislation.

Mr. VITALI. Okay. I am still a little— I think you assume knowledge. Can I ask you, because I do not know, what are we talking about? We are talking about in what circumstances? I want you to tell me what current law is, first, and then how this would change it.

Mr. DeLUCA. Under current law, they need an engineering study to erect certain stop signs and traffic signals in the municipalities, which is very expensive, and a lot of times the municipalities do not want to spend the money at the detriment of the safety of the citizens out there. Now, who knows better than the local police departments where these signs and where these traffic signals should go, and certainly you do not need a traffic study every time to do that.

Mr. VITALI. Now, are we talking about on State roads or municipal roads?

Mr. DeLUCA. We are talking about on municipal roads—

The SPEAKER pro tempore. The question recurs, will the House—

Mr. VITALI. Well, I think we are still on—

Mr. DeLUCA. Excuse me, Mr. Speaker. I do not know if you heard me, but—

The SPEAKER pro tempore. The Chair is sorry to interrupt you. There was quite a lull there, and I assumed we were done. So, Mr. Vitali, are you still in the process of interrogating?

Mr. VITALI. Yes. He had walked over, I think, to an aide to get further explanation of my question, but we are still in active interrogation right now.

The SPEAKER pro tempore. All right. You have the Chair’s apologies and may continue with that interrogation.

Mr. DeLUCA. Yes, it is on local roads.

Mr. VITALI. Because I mean, I am not aware— For example, in my township when we put up, let us say, a stop sign on a non-State road, I think right now they just pass a local ordinance and they are done with it. I was not aware that if—

Mr. DeLUCA. Certain roads, Mr. Speaker, you do have to have a traffic study. There are other municipal roads where you do not. You can pass an ordinance; that is true. But on certain roads you need an engineering study. If it was only to pass an ordinance, I would not have introduced this bill, and certainly we worked with the Transportation chairmen on both sides of the aisle for the last two sessions on this bill, and we had no problems with it, Mr. Speaker.

Mr. VITALI. Has PENNDOT taken a position one way or the other on this?

Mr. DeLUCA. No.

Mr. VITALI. Have any of the municipal associations, like the Township Supervisors or Boroughs Association or County Commissioners Association, have any of those associations taken a position—

Mr. DeLUCA. For the last two sessions, Mr. Speaker, the associations did not take a position. The municipalities back in Allegheny County, they are in favor of the legislation, and I have not heard any people who were not in favor of the legislation.

Mr. VITALI. So your work—

Mr. DeLUCA. Anything that can save them money, certainly, and also create a safety mechanism for their citizens, they are in favor of, naturally.

Mr. VITALI. Okay. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from York County, Mr. Saylor.

Mr. SAYLOR. Thank you, Mr. Speaker.

I rise to oppose the amendment. It is my belief that when you are talking about State highways here, I do not believe the municipalities have the right to put stop signs up on State highways. First of all, we as legislators every day have to decide and appropriate money for State highways in our districts, and we may in the future here be facing a gas tax or a registration or driver's license increase, and what reason should we give local municipalities to be able to put stop signs and stoplights on State highways across this State when you and I as legislators and the Governor have to sit there and be held accountable for the actions on those highways? It is our responsibility; it is our engineers in this State who do the studies.

If you believe that giving local municipalities the ability to put stop signs at every intersection they wish to put, you are opening up a big can of worms. Some municipalities will handle it with great responsibility, but you and I know that that is not the case in all occasions that may happen with stop signs and traffic lights. That is the whole purpose today of the regulations that our Department of Transportation has. The Secretary of Transportation, all of them that we have had over the years, takes this job with great responsibility, and they have guidelines set up by the Federal government and the State government on dealing with these stop signs, and if they meet warrants that are set up by traffic safety engineers, then they are granted the ability to put a stop sign up. But to sit there and say, well, I decide as a nonqualified engineer, whether it is a police officer or it is a township supervisor or commissioner, is just wrong.

So I oppose this amendment if we are talking about State highways, and that is my reading of this amendment, is it does include State highways at this point in time, and so I ask my colleagues to vote this down, because I have great faith in our Department of Transportation in doing the job they do in protecting the citizens of this Commonwealth. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. DeLuca.

Mr. DeLUCA. Mr. Speaker, let me say that if you read the bill, it is in residential districts, and anybody who is— Now, you might have faith in PENNDOT and some of the other bureaucrats out there, but let me say this to you. In residential districts, I have faith in the local municipalities and the local police department to provide public safety for the citizens in the residential areas of the communities. That is all we are talking about, in the residential communities in the community.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Vitali, for the second time.

Mr. VITALI. Let me just clear something up, Mr. Speaker. I rose beforehand for interrogation and now again for interrogation.

The SPEAKER pro tempore. And I guess your question is, are you really speaking for the second time, and the answer is yes.

Mr. VITALI. Okay.

The SPEAKER pro tempore. Interrogation counts as one of your times.

Mr. VITALI. Okay. Gotcha.

I just want to interrogate the maker of the amendment again because I want to clarify, because I think when I was up at the mike last time, I asked you, does this apply to State roads, and you said no, and then I think the gentleman from York County, his question assumed that it did apply to State roads. So I just want to ask that question point-blank—

Mr. DeLUCA. And I am going to answer you point-blank, Mr. Speaker.

Mr. VITALI. —does this apply? Yes or no? Does it apply to the State roads?

Mr. DeLUCA. Mr. Speaker, I will answer you point-blank, too.

Mr. VITALI. Yes.

Mr. DeLUCA. In certain situations, it could. At intersections, at intersections, it could; it could do that, but not on State roads and predictably where we do that kind of stuff, and not on interstates and Federal highways.

Mr. VITALI. Okay. So this does apply to some State roads. Is that what you are saying?

Mr. DeLUCA. Yes, it does, as long as it is residential, and we are getting the definition for "residential."

Mr. VITALI. Because I would like to clarify that because I know in my municipality, although my municipality, Haverford Township, is overwhelmingly residential, there are a surprisingly large number of State roads. So the question is a real one for me. State roads in residential areas, is the engineering requirement under this amendment waived?

Mr. DeLUCA. Yes.

Mr. VITALI. Okay.

Mr. DeLUCA. In residential areas, yes.

Mr. VITALI. Okay. I think I want to speak on the amendment then.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. VITALI. I mean, I have some concerns here because of the political element of the posting of stop signs and traffic signals. Many times commissioners will bow to intense but narrow public pressure from a small group of people to put up stop sign after stop sign, which it really does not benefit the greater good of people trying to get from one place to another, and sometimes the necessity of an engineering study to see if in fact these stop signs and streetlights are really necessary serves as a counterbalance against this intense local political pressure to the commissioner, who basically views this in terms of losing votes or gaining a couple of votes.

I frankly have some concern here, and I am frankly surprised that there is not opposition from PENNDOT in this case, but I actually have some concerns if this is applying to State roads.

Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Blair County, Mr. Geist.

Mr. GEIST. Thank you, Mr. Speaker.

Would the gentleman, Mr. DeLuca, stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman indicates he is willing to do so, and you may proceed with your interrogation.

Mr. DeLUCA. Yes, Mr. Speaker, yes.

Mr. GEIST. Mr. Speaker, could you define what you mean by what roads in what district and the definition that you see or perceive based upon Mr. Vitali's questioning of a State road?

Mr. DeLUCA. Yes; let me explain this, Mr. Speaker.

We have a definition of it: "The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business."

Mr. GEIST. Thank you, Mr. Speaker.

Mr. Speaker, that definition does not preclude State roads, does it?

Mr. DeLUCA. No, it does not.

Mr. GEIST. Mr. Speaker, I believe that the idea of the amendment as drafted is for local roads, and in the case that you are talking about now, Mr. Saylor's district, Route 30, going through a local municipality with intersecting roads, they would be able to erect stop signs on Interstate 30 based upon that definition, and I do not think that that is really what you want to do. Is it?

Mr. DeLUCA. Mr. Speaker, let me just clarify this and refresh your memory, Mr. Speaker.

I worked with you on this amendment, and this is an amendment that we came up with for my intentions of doing this piece of legislation. Am I correct?

Mr. GEIST. That is correct.

Mr. DeLUCA. All right.

Mr. GEIST. And I am trying to help you.

Mr. DeLUCA. Okay.

Mr. GEIST. Mr. Vitali opened up this on the definitions.

Mr. DeLUCA. Mr. Speaker, we are trying to do the residential districts. Yes, we are, Mr. Speaker.

Mr. GEIST. Mr. Speaker, could we take 5 minutes, please, and have a little discussion?

The SPEAKER pro tempore. Mr. Geist, let me advise that I will allow you to have that discussion, while others may want to make comments on the amendment. And if you would, we

will hold the vote on the amendment until you let me know that your discussion is concluded.

In the meantime the gentleman, Mr. Saylor, from York County is recognized for the second time.

Mr. SAYLOR. Thank you, Mr. Speaker.

I think Representative Vitali brings up some great points, and I in fact can prove that such a case happened in York County where a candidate ran and got what they wanted in the stop sign or traffic light, and of course, as soon as they got that, they no longer were a member of the board of commissioners in the township. And by doing so, they also then ended up costing the taxpayers of their particular township for their small development hundreds of thousands of dollars in additional taxpayers' dollars just to suit a bunch of residents in one particular ward of a township.

Now, if that is a wise use of taxpayers' dollars, is to allow people to run for office to get a stop sign or a traffic light wherever they darn well please to put one, on a State highway, then, you know, I do not know; maybe we should make townships now start paving State highways if they want to put traffic lights and stop signs on them. I always thought it was our responsibility to take care of State highways. I thought it was we who got blamed when things happened on State highways and not the township because they surely do not want to take responsibility for them, but they surely want to be able to put stop signs up or traffic lights up and cause more accidents on these highways, but yet they want us to give them more and more money to pave township highways, they want us to make sure we maintain State highways, but they want to interfere with the business of State highways.

So I just think that we are truly out of line with not trusting the responsible people in our Department of Transportation in doing the right thing and doing the studies that are required for safety reasons, and the key word there is safety studies. The Departments of Transportation here and in Washington do not require those things just for the sake of having fun or dishing out taxpayers' dollars.

### MOTION TO TABLE

Mr. SAYLOR. So I make a motion that we table this amendment, because at this point in time, I think it should be reviewed by a full Committee of Transportation.

The SPEAKER pro tempore. Mr. Saylor, it is my understanding that the maker of the amendment wishes to withdraw his amendment. Would you withdraw your motion, please. It would make things a lot easier.

### MOTION WITHDRAWN

Mr. SAYLOR. I will withdraw my motion. Thank you, Mr. Speaker.

### AMENDMENT WITHDRAWN

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. DeLuca, for the purpose of withdrawing his amendment.

Mr. DeLUCA. Mr. Speaker, talking to both Transportation chairmen – I appreciate the help that Representative Geist and Representative McCall have given me the latitude to – I intend

to withdraw this and come back with an amendment that will certainly answer Mr. Vitali's concerns and also Mr. Saylor's concerns.

Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Surra, for the purpose of making a motion to suspend the rules to offer an amendment. Mr. Surra.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair returns to leaves of absence and requests that the gentleman, Mr. TANGRETTI, from Westmoreland County be placed on leave for the remainder of the day. Without objection, the leave is granted.

CONSIDERATION OF HB 1014 CONTINUED

RULES SUSPENDED

The SPEAKER pro tempore. Mr. Surra, you are recognized for the purpose of a motion.

Mr. SURRA. Thank you, Mr. Speaker.

I believe this is an agreed-to motion to suspend the rules to offer amendment A2027 to HB 1014.

The SPEAKER pro tempore. The gentleman, Mr. Surra, moves that we suspend the rules for the offering of amendment A2027. That is a question for the members to decide.

On the question, Will the House agree to the motion?

The following roll call was recorded:

YEAS-198

Table listing names of members who voted 'YEAS' (198 total). Includes names like Adolph, Allen, Argall, Armstrong, Baker, Baldwin, Barrar, Bastian, Bebko-Jones, Belardi, Belfanti, Benninghoff, Bianucci, Birmelin, Bishop, Blackwell, Blaum, Boyd, Bunt, Butkovitz, Buxton, Caltagirone, Cappelli, Casorio, Causer, Cawley, Civera, Clymer, Cohen, Cornell, Fairchild, Feese, Fichter, Fleagle, Flick, Forcier, Frankel, Freeman, Gabig, Gannon, Geist, George, Gerber, Gergely, Gillespie, Gingrich, Godshall, Good, Goodman, Grell, Grucela, Gruitza, Habay, Haluska, Hanna, Harhai, Harhart, Harper, Harris, Hasay, Levdansky, Mackereth, Maher, Maitland, Major, Manderino, Mann, Markosek, Marsico, McCall, McGeehan, McGill, McIlhattan, McIlhinney, McNaughton, Melio, Metcalfe, Micozzie, Millard, Miller, R., Miller, S., Mundy, Mustio, Myers, Nailor, Nickol, O'Brien, Oliver, O'Neill, Pallone, Rooney, Ross, Rubley, Ruffing, Sainato, Samuelson, Santoni, Saylor, Scavello, Schroder, Semmel, Shaner, Shapiro, Siptroth, Smith, B., Smith, S. H., Solobay, Sonney, Staback, Stairs, Steil, Stern, Stetler, Stevenson, R., Stevenson, T., Sturla, Surra, Taylor, E. Z., Taylor, J., Thomas.

Table listing names of members who were present or voted. Includes names like Corrigan, Costa, Crahalla, Creighton, Cruz, Curry, Daley, Dally, DeLuca, Denlinger, Dermody, DeWeese, DiGirolamo, Diven, Donatucci, Eachus, Ellis, Evans, D., Evans, J., Fabrizio, Hennessey, Herman, Hershey, Hess, Hickernell, Hutchinson, James, Josephs, Kauffman, Keller, M., Keller, W., Kenney, Killion, Kirkland, Kotik, LaGrotta, Leach, Lederer, Leh, Lescovitz, Payne, Petrarca, Petri, Petrone, Phillips, Pickett, Pistella, Preston, Pyle, Quigley, Ramaley, Rapp, Raymond, Readshaw, Reed, Reichley, Rieger, Roberts, Roebuck, Rohrer, Tigue, True, Turzai, Veon, Vitali, Walko, Wansacz, Waters, Watson, Wheatley, Williams, Wilt, Wright, Yewcic, Youngblood, Yudichak, Zug, Perzel, Speaker.

NAYS-0

NOT VOTING-0

EXCUSED-3

Table listing names of members who were excused: Sather, Tangretti, Wojnarowski.

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring, Will the House agree to the bill on third consideration as amended?

Mr. SURRA offered the following amendment No. A02027:

Amend Title, page 1, line 4, by striking out "AND" and inserting a comma

Amend Title, page 1, line 5, by removing the period after "program" and inserting

and for restrictions on use of highways and bridges.

Amend Sec. 3, page 6, line 15, by striking out "AND 1154" and inserting

, 1154 and 4902(g)(2)

Amend Sec. 3, page 7, by inserting between lines 10 and 11 § 4902. Restrictions on use of highways and bridges.

\*\*\*

(g) Penalty.-

\*\*\*

(2) Any person operating a vehicle or combination in violation of a prohibition or restriction imposed under subsection (b) is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of [not less than \$25 and] not more than [\$100] \$500.

On the question, Will the House agree to the amendment?

The following roll call was recorded:



YEAS—198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causar	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causar	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Sather	Tangretti	Wojnaroski
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 137, PN 138**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for lighted lamp requirements for motorcycles.

On the question,  
Will the House agree to the bill on third consideration?

Mr. **SURRA** offered the following amendment No. **A01791**:

Amend Title, page 1, line 3, by removing the period after "motorcycles" and inserting  
and for restrictions on highway and bridge use.

Amend Sec. 1, page 1, lines 6 and 7, by striking out all of said lines and inserting

Section 1. Sections 3526 and 4902(g) of Title 75 of the Pennsylvania Consolidated Statutes are amended to read:

Amend Bill, page 1, line 15, by striking out all of said line and inserting

§ 4902. Restrictions on use of highways and bridges.

\* \* \*

(g) Penalty.—

\* \* \*

(2) Any person operating a vehicle or combination in violation of a prohibition or restriction imposed under subsection (b) is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of [not less than \$25 and] not more than [\$100] \$1,000.

Section 2. This act shall take effect as follows:

(1) The amendment of 75 Pa.C.S. § 4902(g) shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

On the question,  
Will the House agree to the amendment?

**AMENDMENT WITHDRAWN**

The **SPEAKER** pro tempore. On that question, the Chair recognizes the gentleman, Mr. Surra.

Mr. **SURRA**. Mr. Speaker, if we would, we have to suspend the rules to offer amendment 2059 and withdraw this one.

**RULES SUSPENDED**

The **SPEAKER** pro tempore. The gentleman withdraws amendment 1791 and asks for a suspension of the rules for what amendment, sir?

Mr. **SURRA**. 2059.

The **SPEAKER** pro tempore. 2059.

On the question,  
Will the House agree to the motion?

The following roll call was recorded:

**YEAS—198**

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Sipthroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causer	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

**NAYS—0**

**NOT VOTING—0**

**EXCUSED—3**

Sather                      Tangretti                      Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration?

Mr. **SURRA** offered the following amendment No. **A02059**:

Amend Title, page 1, line 3, by removing the period after “motorcycles” and inserting

and for restrictions on highway and bridge use.

Amend Sec. 1, page 1, lines 6 and 7, by striking out all of said lines and inserting

Section 1. Sections 3526 and 4902(g) of Title 75 of the Pennsylvania Consolidated Statutes are amended to read:

Amend Bill, page 1, line 15, by striking out all of said line and inserting

§ 4902. Restrictions on use of highways and bridges.

\*\*\*

(g) Penalty.—  
\*\*\*

(2) Any person operating a vehicle or combination in violation of a prohibition or restriction imposed under subsection (b) is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of [not less than \$25 and] not more than [\$100] \$500.

Section 2. This act shall take effect as follows:

(1) The amendment of 75 Pa.C.S. § 4902(g) shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

On the question,

Will the House agree to the amendment?

The **SPEAKER** pro tempore. The Chair recognizes the gentleman, Mr. Surra, for a brief explanation of his amendment.

Mr. **SURRA**. Mr. Speaker, it is the same amendment we passed unanimously moments ago.

The **SPEAKER** pro tempore. That is a pretty brief explanation.

Mr. **SURRA**. Thank you.

The **SPEAKER** pro tempore. The question is, will the House agree to the amendment?

The Chair, on that question, recognizes the gentleman from Lehigh County, Mr. Reichley.

Mr. **REICHLEY**. Mr. Speaker, would the maker of the amendment stand for a brief interrogation?

The **SPEAKER** pro tempore. Apparently his explanation was too brief for you. So Mr. Surra agrees to stand for an interrogation.

Mr. **SURRA**. Certainly.

Mr. **REICHLEY**. Thank you, Mr. Speaker.

I know we did not really engage in any discussion of the previous amendment. So I would like to get an understanding of what the basis is of the amendment in this situation, please.

Mr. **SURRA**. I would be happy to, Mr. Speaker.

This has been worked out with the Transportation Committee staffs, and basically what it is, current law under special circumstances under section 4902(g) of Title 75 that deals with bridges and certain places on highways in Pennsylvania, the penalty for disobeying this certain restriction— Like in my district it would be the Boot Jack Hill area, and if anybody has every traveled up Route 219 going north, there is a hill that goes right into the town of Ridgway which was notorious for many years with truck accidents. They built a bypass for that. Lately the fine is so low, trucks are sneaking down the hill, because the fine is between \$25 and \$100, and it would be if a truck violated any of those special provisions under that section for any road, any bridge, where these exist, and what this does, it raises the

penalty up to \$500. So if someone is intentionally sneaking down the hill, they can be fined \$500, or if someone just makes a mistake, it is their first time on the highway, it can be as low as \$10.

Mr. **REICHLEY**. Mr. Speaker, would the new fine apply to just trucks as you have indicated in your example that you described?

Mr. **SURRA**. Yes.

Mr. **REICHLEY**. And is it for certain motor vehicle violations related to crossing bridges, or is it for speeding or overweight, or what is it exactly?

Mr. **SURRA**. It is bridges and places on highways, like special circumstances like hills, steep hills that go into communities. Trucks are prohibited from going through many of these places where these provisions occur. They can do countless thousands of dollars of damage to a bridge by an overloaded truck. And since I have been in the General Assembly, we have allowed heavier and heavier trucks to traverse our highways, and if they go down these places where they are not supposed to, people can get killed, aside from the damage that is done to property.

Mr. **REICHLEY**. Mr. Speaker, why was the \$500 amount, identified by the maker of the amendment, going all the way from, I think the language that was deleted was from \$25 to \$100 and now it has gone up to \$500 without any clarification or reduction possible. Is that right?

Mr. **SURRA**. That is a good question, Mr. Speaker.

My local police and magistrates wanted it to be \$1,000, and I had a bill introduced to make it \$1,000. The amendments I had drafted to this legislation made it \$1,000, and we worked with the majority staff and decided that \$500 was an agreed-to amount.

It is similar to what we did with people that passed school buses, with a sliding scale, basically allowing it up to the magistrate, who is a locally elected judge, to decide whether someone intentionally violates the section or if it is a mistake. So it can be as low as \$1 and up to \$500, Mr. Speaker.

Mr. **REICHLEY**. Thank you, Mr. Speaker.

Mr. **SURRA**. Thank you.

The **SPEAKER** pro tempore. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

#### YEAS—191

Adolph	Fabrizio	Mackereth	Rublely
Allen	Fairchild	Maher	Ruffing
Argall	Feese	Maitland	Sainato
Armstrong	Fichter	Major	Samuelson
Baker	Fleagle	Manderino	Santoni
Baldwin	Flick	Mann	Saylor
Barrar	Frankel	Markosek	Scavello
Bastian	Freeman	Marsico	Schroder
Bebko-Jones	Gabig	McCall	Semmel
Belardi	Gannon	McGeehan	Shaner
Belfanti	Geist	McGill	Shapiro
Benninghoff	George	McIlhattan	Siproth
Bianucci	Gerber	McIlhinney	Smith, B.
Birmelin	Gergely	Melio	Smith, S. H.
Bishop	Gillespie	Metcalfe	Solobay
Blackwell	Gingrich	Micozzie	Sonney

Blaum	Godshall	Millard	Staback
Boyd	Good	Miller, R.	Stairs
Bunt	Goodman	Mundy	Steil
Butkovitz	Grell	Mustio	Stern
Buxton	Grucela	Myers	Stetler
Caltagirone	Gruitza	Nailor	Stevenson, R.
Cappelli	Habay	Nickol	Stevenson, T.
Casorio	Haluska	O'Brien	Sturla
Causer	Hanna	Oliver	Surra
Cawley	Harhai	O'Neill	Taylor, E. Z.
Civera	Harhart	Pallone	Taylor, J.
Clymer	Harper	Payne	Thomas
Cohen	Harris	Petrarca	Tigue
Cornell	Hasay	Petri	True
Corrigan	Hennessey	Petrone	Turzai
Costa	Herman	Phillips	Veon
Crahalla	Hershey	Pickett	Vitali
Creighton	Hickernell	Pistella	Walko
Cruz	Hutchinson	Preston	Wansacz
Curry	James	Pyle	Waters
Daley	Josephs	Quigley	Watson
Dally	Kauffman	Ramaley	Wheatley
DeLuca	Keller, W.	Rapp	Williams
Denlinger	Kenney	Raymond	Wilt
Dermody	Killion	Readshaw	Wright
DeWeese	Kirkland	Reed	Yewcic
DiGirolamo	Kotik	Rieger	Youngblood
Diven	LaGrotta	Roberts	Yudichak
Donatucci	Leach	Roebuck	Zug
Eachus	Lederer	Rohrer	
Ellis	Lescovitz	Rooney	Perzel,
Evans, D.	Levdansky	Ross	Speaker
Evans, J.			

NAYS-7

Forcier	Keller, M.	McNaughton	Reichley
Hess	Leh	Miller, S.	

NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?  
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing

Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causer	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

VOTE CORRECTIONS

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Gruitza, for a correction of the record.

Mr. GRUITZA. Thank you, Mr. Speaker.

Mr. Speaker, on HB 1478 my switch was jammed on the negative, and I wish the record to reflect that I intended to vote in favor of that measure, a "yes" vote for 1478.

Thank you.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

The Chair recognizes the gentleman, Mr. Rooney, for a correction of the record.

Mr. ROONEY. Thank you, Mr. Speaker.

Also on HB 1478 I would like the record to reflect that I intended to vote "no" on final passage.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

The Chair also recognizes the gentleman, Mr. Goodman, for a correction of the record.

Mr. GOODMAN. Likewise, Mr. Speaker, on HB 1478 I was recorded as a negative. I would like to be recorded as a positive.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

The Chair also recognizes the gentleman, Mr. Casorio, for a correction of the record.

Mr. CASORIO. Thank you, Mr. Speaker.

Mr. Speaker, on HB 1717 I was recorded in the negative. I would like to be recorded in the affirmative, please.

Thank you.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

Are there any other corrections of the record while we are doing that? We will get them all taken care of at once.

**BILLS ON THIRD CONSIDERATION**

The House proceeded to third consideration of **HB 1507, PN 1972**, entitled:

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further providing for definitions; and providing for applicability and for liability on certain uncertificated buildings.

On the question,  
Will the House agree to the bill on third consideration?

**RULES SUSPENDED**

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Wilt, for a motion to suspend the rules for the purpose of offering an amendment.

Mr. WILT. Thank you very much, Mr. Speaker.

I would like to ask for a rules suspension to offer amendment No. A02066, which is a technical amendment to clean up some technical matters in HB 1507.

On the question,  
Will the House agree to the motion?

The following roll call was recorded:

**YEAS—198**

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson

Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Sipthro
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causer	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Sather	Tangretti	Wojnaroski
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A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration?

Mr. WILT offered the following amendment No. **A02066**:

Amend Title, page 1, line 6, by striking out “; and providing” and inserting

and

Amend Title, page 1, lines 6 and 7, by striking out “AND FOR LIABILITY”

Amend Sec. 1 (Sec. 103), page 1, lines 18 and 19; page 2, lines 1 through 8, by striking out all of said lines on said pages and inserting “Industrial Board.” The Industrial Board under sections 445 and 2214 of the act of April 9, 1929 (P.L.177, No.175), known as

The Administrative Code of 1929, which hears requests for variances and extensions of time and appeals of decisions of the Department of Labor and Industry under the Uniform Construction Code.

\* \* \*

“Uncertified building.” An existing building which, prior to April 9, 2004, was not approved for use and occupancy by the Department of Labor and Industry or a municipality which was enforcing a building code. The term does not include a residential building.

Amend Bill, page 2, lines 10 through 30; page 3, lines 1 through 18, by striking out all of said lines on said pages and inserting

Section 2. Section 902 of the act is amended to read:

Section 902. Applicability to [historic] certain buildings[, structures and sites].

(a) Historic buildings, structures and sites.—The provisions of the 1999 BOCA National Building Code, Fourteenth Edition, relating to the construction, repair, alteration, addition, restoration and movement of structures shall not apply to existing buildings and structures, or new buildings and structures not intended for residential use on historic sites, that are identified and classified by the Federal, State or local government authority as historic buildings or sites where such buildings and structures are judged by the code official to be safe and in the interest of public health, safety and welfare.

(b) Uncertified buildings.—Subject to subsection (c), all of the following apply:

(1) A construction code official shall issue a certificate of occupancy to an uncertified building if that building meets the requirements of this subsection, unless the official deems the building to be unsafe because of inadequate means of egress, inadequate light and ventilation, fire hazards or other dangers to human life or to public welfare.

(2) An uncertified building shall comply with the following:

(i) Means of egress requirements of the International Building Code pertaining to minimum number of exits, maximum travel distances to exits, means of egress illumination, minimum egress widths and heights for exit doors, exit stairs, exit ramps and exit corridors. Waivers shall be as follows:

(A) A construction code official may waive requirements for minimum egress widths and heights for exits, exit access doors, exit ramps and exit corridors if the construction code official determines that any nonconforming openings provide sufficient width and height for building occupants to pass through or egress the building.

(B) A construction code official may waive any requirements under this subparagraph if:

(I) the construction code official determines a requirement to be technically infeasible; or

(II) the building owner demonstrates that the building met the applicable egress requirements which existed under the act of April 27, 1927 (P.L.465, No.299), referred to as the Fire and Panic Act.

(C) A waiver shall be documented on the certificate of occupancy.

(ii) Fire safety requirements of the International Building Code with respect to fire alarms, fire extinguishers, heat and smoke detectors and automatic sprinkler systems. If the code requires that a building have automatic sprinkler systems, the only buildings required to install automatic sprinkler systems shall be those buildings classified in use groups E (educational),

H (high-hazard), I (institutional), R-1 or R-2 (residential) and those buildings which have occupied floors more than 75 feet above lowest level of fire department access. Buildings in use groups R-1 and R-2 which do not have occupied floors more than 75 feet above lowest level of fire department access may, instead of installing automatic sprinkler systems, install hard-wired interconnected heat and smoke detectors located in all lobbies, corridors, equipment rooms, storage rooms and other spaces that are not normally occupied. If construction began on a building prior to May 19, 1984, there is no requirement for the installation of automatic sprinkler systems under this subparagraph. If construction of a building began after May 18, 1984, automatic sprinkler installation required under this subparagraph shall be completed within five years of the effective date of this subsection; or an occupancy permit issued under this subsection shall be invalid. Waivers shall be as follows:

(A) A construction code official may waive any requirements under this subparagraph if:

(I) the construction code official determines a requirement to be technically infeasible; or

(II) the building owner demonstrates that the building met the applicable fire safety requirements which existed under the Fire and Panic Act.

(B) A waiver shall be documented on the certificate of occupancy.

(iii) Accessibility requirements as follows:

(A) If construction of a building began before September 1, 1965, no accessibility requirements shall be imposed.

(B) If construction of a building began after August 31, 1965, and before February 18, 1989, and if the building was subject to the requirements of the former act of September 1, 1965 (P.L.459, No.235), entitled, “An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement,” it shall have:

(I) at least one accessible entrance;

(II) an accessible route from the accessible entrance to any public spaces on the same level as the accessible entrance; and

(III) if toilet rooms are provided, at least one accessible toilet room for each sex or a unisex toilet room, complying with the accessibility requirements of the International Building Code.

(C) If construction of the building began after February 17, 1989, all accessibility requirements of the International Building Code shall be met.

(3) Structural requirements shall not be imposed, unless a construction code official determines that the building or a portion of the building has defects which are dangerous as defined in the International Existing Building Code. A construction code official may impose only those requirements minimally necessary to remove any danger to the building’s occupants.

(4) A building owner may file an application for a variance from this subsection concerning accessibility with the advisory board under section 106. A building owner may file an application for a variance from this subsection concerning other standards as follows:

(i) The application must be filed with the board of appeals if the building is in a municipality which elected to enforce this act.

(ii) The application must be filed with the Industrial Board if any of the following apply:

(A) The building is located in a municipality which elected not to enforce this act.

(B) The building is a State-owned building. As used in this clause, the term "State-owned building" means a building owned or constructed for Commonwealth entities, consisting of the General Assembly; the Unified Judicial System; the Pennsylvania Higher Education Assistance Agency; an executive agency; an independent agency; and a State-affiliated entity or State-related institution, as defined in 62 Pa.C.S. § 103 (relating to definitions).

(5) A municipality, an official or employee of a municipality, and a third party acting on behalf of a municipality shall not be liable for civil damages as a result of its act or omission in permitting the occupancy of a building under this subsection.

(6) A building subject to this subsection shall be permitted to maintain its current occupancy as long as the owner demonstrates reasonable efforts to comply with this subsection.

(7) An uncertified building which was built before April 27, 1927, shall be deemed a certified building for purposes of this act.

(c) Applicability of Uniform Construction Code.—Nothing in subsection (b) shall be construed as to affect applicability of Chapter 3 if a building is subject to renovation, additions, alterations or a change in use or occupancy.

On the question,  
Will the House agree to the amendment?

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Wilt, for a brief explanation of his amendment.

The Chair recognizes the gentleman from Philadelphia, Mr. Cohen.

Mr. COHEN. Thank you.

Mr. Speaker, it is my understanding this is an agreed-to amendment, but we have not had a chance to caucus on it. Will the gentleman explain to us what this amendment is?

Mr. WILT. Yes, Mr. Speaker.

This amendment is basically a rewrite of HB 1507. It was negotiated between all of the stakeholders over the last day or so.

HB 1507 is an opportunity for the General Assembly to correct something that did not exist in the Pennsylvania UCC code (Uniform Construction Code) when we did it, and that is, HB 1507 would exempt buildings that were never issued a certificate of occupancy, and in many downtown areas and rural areas of Pennsylvania, we have these buildings that need to be renovated and we have businesses operating in them that need to upgrade with new technology, and they have been unable to get the buildings to conform to the UCC. So we have asked that

we go back in and make this exemption from the Uniform Construction Code for these buildings that never received their occupancy certificate. We are talking primarily about buildings that are more than 50 years old.

Mr. COHEN. Mr. Speaker, could the gentleman just go over what the changes are from the original version of the bill that passed the committee? That is what we caucused on.

Mr. WILT. Certainly, Mr. Speaker.

The major changes in the original language that are contained in this amendment are the accessibility issues that are certainly of interest to me as the prime sponsor of this bill and those of us that have worked on it, fire and panic code was put into the bill, and finally, fire extinguishers, minimal fire standards that you would find in the UCC were included in this bill.

Mr. COHEN. Thank you, Mr. Speaker. I have no further questions.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Bucks County, Mr. Steil.

Mr. STEIL. Thank you, Mr. Speaker.

I rise to support amendment A2066. This is a very critical piece of legislation because it corrects what is apparently a deficiency in our issuance of occupancy permits for nonresidential buildings primarily – well, exclusively. Most of these buildings are in communities that did not enforce a building code, and as a result, it was left to the Department of Labor and Industry to issue these occupancy permits. For one reason or another, the permits were not issued, and the individuals who are now in those buildings, the owners of the buildings, without this bill will be subject to bringing those buildings up to the current International Building Code standard. What this amendment does and what the bill does is ensure that, for whatever reason those occupancy permits were not issued, those buildings will be held to no greater standard than that which was in effect at the time the occupancy permit was first applied to. There are exceptions for the accessibility code and fire and panic, but other than that, the same standards will apply.

So this is very important legislation to protect building owners, and I ask for an affirmative vote. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rublely
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Sipthoth
Bishop	Gillespie	McNaughton	Smith, B.

Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causar	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?  
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato

Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Sipthroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causar	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 600, PN 673**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, providing for military tax credits for employers who pay or subsidize the wages of an employee called to active duty.



On the question,  
Will the House agree to the bill on third consideration?

Mr. **TIGUE** offered the following amendment No. **A01891**:

Amend Sec. 1 (Sec. 3003.16), page 2, lines 3 through 22, by striking out all of said lines and inserting

Section 3003.16. Military Tax Credit for Certain Employers.—(a) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Active duty.” State active duty under 51 Pa.C.S. § 508 (relating to active State duty for emergency) and active duty, other than active duty for training, ordered under 10 U.S.C. § 101 et seq. (relating to armed forces) or 32 U.S.C. § 101 et seq. (relating to National Guard).

“Additional compensation.” Compensation, the payment of which is not required by Federal or state law, paid by a soldier’s civilian employer in the form of payment of the difference between a soldier’s military pay and allowances and his civilian salary or a periodic stipend or other payment, while the soldier is performing a qualifying period of military service.

“Pay and allowances.” The basic pay, housing and subsistence allowances paid to members of the Pennsylvania National Guard and reserve components of the armed forces of the United States when performing active duty.

“Qualifying periods of military service.” A period of active duty, other than active duty for training, of 30 or more consecutive days’ duration to which a member of the Pennsylvania National Guard or other reserve components of the armed forces of the United States is ordered.

“Soldier.” A member of the Pennsylvania National Guard or reserve component of the armed forces of the United States performing a qualifying period of military service.

(b) Whenever a soldier performs a qualifying period of military service and the soldier’s civilian employer pays the soldier additional compensation, the employer shall be entitled to a credit against any tax due from the employer under Article III, IV, VI, VII, VIII, IX or XV of this act equal to 20% of the additional compensation not to exceed twenty-five thousand dollars (\$25,000), paid to the soldier.

(c) The credit allowed by subsection (b) shall apply against any payment of estimated tax or payment of the tentative tax due from the employer on account of the taxes described in subsection (b).

(d) The Secretary of Revenue shall promulgate regulations necessary for the administration of this section.

On the question,  
Will the House agree to the amendment?

The **SPEAKER** pro tempore. On that question, the Chair recognizes the gentleman, Mr. Tigue.

Mr. **TIGUE**. Thank you, Mr. Speaker.

Mr. Speaker, this amendment is agreed to by the administration and everyone. It amends the bill so that if an employer provides additional pay to a reservist or National Guard person on active duty, we will allow them a tax credit equal to 20 percent of what they allow to make up the difference in pay for those who are activated.

Thank you, Mr. Speaker.

The **SPEAKER** pro tempore. The Chair thanks the gentleman.

Are there any other members wishing to speak on this amendment?

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Sipbroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causer	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O’Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O’Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Sather                      Tangretti                      Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

The Chair recognizes the gentleman, Mr. Vitali, for comments.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the bill stand for brief interrogation?

The SPEAKER pro tempore. The gentleman, Mr. Nailor, agrees to stand for interrogation. You may begin.

Mr. VITALI. Thank you, Mr. Speaker.

I am reading the summary of this, and I think it is a bill that we considered in this House before where, if I am getting this correctly, it would require the Commonwealth to give 100 percent tax credit to an employer if an employer's employee goes into the military and has a lesser wage as a result. Is that essentially it? Maybe you could fill in the details just to make sure I am getting that accurately.

Mr. NAILOR. That was accurate. The amendment changed that. I have introduced this bill. You are correct. I have introduced it the last four sessions.

Mr. VITALI. Okay.

Mr. NAILOR. Now, what happened was, I asked for 100 percent credit between the military pay and civilian pay if there was a loss and that family was depending on a certain amount of income.

Mr. VITALI. Right.

Mr. NAILOR. A hundred percent, I realized, was too much of a credit. It was not going to be accepted, but nobody was willing to work with me. Now this session people are willing to work. More and more of our National Guard and reservists have been activated and sent overseas, and we see this as a real problem, and we are trying to have an incentive to encourage businesses to make up this difference for those families.

The Governor has come down with his language. He has provided that language to Representative Tom Tigie, who is Democrat chairman of the Veterans Affairs and Emergency Preparedness Committee, and we have agreed on that language. The maximum amount of the credit would be 20 percent of the difference or a maximum of \$25,000, whichever is less. That is acceptable to all.

Mr. VITALI. In other words, right now let us say you had an employee who is earning \$120,000 and goes into the military, and let us just say, to keep the numbers even, his pay is now \$20,000. So he goes from \$120,000 to \$20,000. So he suffers a \$100,000 pay loss. The maximum amount of credit in that case could be \$20,000?

Mr. NAILOR. That is correct.

Mr. VITALI. Okay. And the administration is fine with this?

Mr. NAILOR. It is their language that we put in, yes.

Mr. VITALI. Thank you.

Mr. NAILOR. Mr. Speaker?

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Nailor.

Mr. NAILOR. I just want to thank a couple of people.

We did come together on both sides of the aisle. Geography made no difference. I think the House has a proud history of supporting and recognizing our service men and women when they serve for us around the world.

Representative Denny Leh, chairman of the Finance Committee, brought this bill out unamended.

Representative Tigie stepped forward as Democrat chairman of Veterans Affairs and Emergency Preparedness to offer the amendment with the cooperation of the administration and Governor Rendell. So we have all worked together, and I think it is something that all of us as Pennsylvanians can be proud of.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,  
Shall the bill pass finally?

The SPEAKER pro tempore. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causer	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigie
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Sather                      Tangretti                      Wojnaroski

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 761, PN 1992**, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the offense of invasion of privacy; and providing for actions involving products or services used to invade privacy.

On the question,  
Will the House agree to the bill on third consideration?

Mr. **GEORGE** offered the following amendment No. **A01976**:

Amend Title, page 1, line 1, by striking out “TITLES” and inserting

Title

Amend Title, page 1, lines 1 and 2, by striking out “AND 42 (JUDICIARY AND JUDICIAL PROCEDURE)”

Amend Title, page 1, line 4, by inserting a period after “privacy”

Amend Title, page 1, lines 4 and 5, by striking out “; AND PROVIDING FOR ACTIONS INVOLVING PRODUCTS OR” in line 4 and all of line 5

Amend Sec. 2 (Sec. 8317), page 4, lines 20 through 26, by striking out all of said lines

Amend Sec. 3, page 4, line 27, by striking out “3” and inserting  
2

On the question,  
Will the House agree to the amendment?

AMENDMENT WITHDRAWN

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. George.

Mr. GEORGE. Would the Speaker yield a moment? We are in a little bit of a discussion on it, so would you go over this, please, and if you cannot go over it, I will withdraw it for the next bill. Okay.

Mr. Speaker, if I am confusing the issue, I will withdraw the amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman. The amendment is withdrawn.

There are no other amendments to the bill that the Chair is aware of.

On the question recurring,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Seavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causer	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Sather                      Tangretti                      Wojnaroski

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 586, PN 659**, entitled:

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for definitions.

On the question,  
Will the House agree to the bill on third consideration?

Mr. **W. KELLER** offered the following amendment No. **A01343**:

Amend Title, page 1, line 5, by removing the period after "definitions" and inserting

and for the scholarship organization educational improvement tax credit programs.

Amend Bill, page 2, line 14, by striking out all of said line and inserting

Section 2. Sections 2003-B(c) and (d) and 2007-B of the act, amended December 23, 2003 (P.L.304, No.48), are amended to read: Section 2003-B. Qualification and application.

\* \* \*

(c) Scholarship organizations and pre-kindergarten scholarship organizations.—A scholarship organization or pre-kindergarten scholarship organization must certify to the department that the organization is eligible to participate in the program established under this article[.] and must agree to annually report the following information to the department by September 1, 2005, and September 1 of each year thereafter:

(1) (i) The number of scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(ii) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(iii) The number of scholarships awarded during the immediately preceding school year to eligible students in grades K-8.

(iv) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades K-8.

(v) The number of scholarships awarded during the immediately preceding school year to eligible students in grades 9-12.

(vi) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades 9-12.

(vii) Where the scholarship organization or pre-kindergarten scholarship organization collects information on a county-by-county basis, the total number and the total amount of scholarships awarded during the immediately preceding school year to residents of each county in which the scholarship organization or pre-kindergarten scholarship organization awarded scholarships.

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than July 1, 2005, and July 1 of each year thereafter, the department

shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed scholarship organization and pre-kindergarten scholarship organization.

(3) The department may not require any other information to be provided by scholarship organizations or pre-kindergarten scholarship organizations, except as expressly authorized in this article.

(d) Educational improvement organization.—

(1) An application submitted by an educational improvement organization must describe its proposed innovative educational program or programs in a form prescribed by the department. The department shall consult with the Department of Education as necessary. The department shall review and approve or disapprove the application. In order to be eligible to participate in the program established under this article, an educational improvement organization must agree to annually report the following information to the department by September 1, 2005, and September 1 of each year thereafter:

(i) The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year.

(ii) A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements.

(iii) The names of the public schools and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented.

(iv) Where the educational improvement organization collects information on a county-by-county basis, the total number and the total amount of grants made during the immediately preceding school year for programs at public schools in each county in which the educational improvement organization made grants.

(2) The department shall prepare sample forms for reporting the data required under this subsection, and shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed educational improvement organization by July 1 of each year. The department may not require any other information to be provided by educational improvement organizations, except as expressly authorized in this article.

\* \* \*

Section 2007-B. Lists and reports.

(a) Annual listing of organizations.—The Department of Revenue shall provide a list of all scholarship organizations, pre-kindergarten scholarship organizations and educational improvement organizations receiving contributions from business firms granted a tax credit under this article to the General Assembly by June 30 of each year.

(b) Contents of annual report.—The department, in consultation with the Department of Education and the Department of Revenue, shall report, by December 31, 2005, and December 31 of each year thereafter, the following information:

(1) The total number of scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(2) The total and average amounts of scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(3) The total number of scholarships awarded during the immediately preceding school year to eligible students in grades K-8.

(4) The total and average amounts of scholarships awarded during the immediately preceding school year to eligible students in grades K-8.

(5) The total number of scholarships awarded during the immediately preceding school year to eligible students in grades 9-12.

(6) The total and average amounts of scholarships awarded during the immediately preceding school year to eligible students in grades 9-12.

(7) To the extent that such information is reported under section 2003-B(c)(1)(vii), the total number and the total amounts of all scholarships awarded during the immediately preceding school year to residents of each county in this Commonwealth.

(8) The names of all educational improvement organizations making grants during the immediately preceding school year, the names of all innovative educational programs receiving such grants and the total amount of such grants received by each educational improvement organization.

(9) A description of how grants made during the immediately preceding school year were utilized in each innovative educational program, including demonstrated or expected innovative educational improvements.

(10) The names of the public schools and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented.

(11) The total number of business firms receiving tax credits under this article during the immediately preceding fiscal year.

(12) The number of businesses that made total contributions, for which they received tax credits under this article during the immediately preceding fiscal year, in amounts less than \$10,000.

(13) The number of businesses that made total contributions, for which they received tax credits under this article during the previous fiscal year, in amounts greater than or equal to \$10,000 and less than or equal to \$100,000.

(14) The number of businesses that made total contributions, for which they received tax credits under this article during the previous fiscal year, in amounts greater than or equal to \$100,000 and less than or equal to \$200,000.

(15) The number of businesses that made total contributions, for which they received tax credits under this article during the previous fiscal year, in amounts greater than \$200,000.

Section 3. This act shall take effect in 60 days.

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Keller, for a brief explanation of his amendment.

Would the gentleman, Mr. Keller, please approach the Speaker's desk.

(Conference held at Speaker's podium.)

The SPEAKER pro tempore. Will the real Mr. Keller please stand?

Of the two Mr. Kellers present, do either one of you want to claim the authorship of amendment 1343?

That is Mr. William Keller. The Chair apologizes to Mr. Mark Keller, but his name was listed as the sponsor of that amendment, and that is why his name was called up.

On the question, the Chair recognizes Mr. William Keller, and he must give a brief explanation, now that we have confused everyone pretty thoroughly otherwise.

Mr. W. KELLER. And I cannot find any Kellers in my district or any relatives left that are named Keller.

Mr. Speaker, this is a reporting requirement on the educational improvement tax credit program, which has been very successful throughout the State, and we have been able to help a lot of students with it, and this just puts reporting requirements on that program.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Vitali, from Delaware County.

Mr. VITALI. Thanks, Mr. Speaker.

Will the maker of the amendment stand for brief interrogation?

The SPEAKER pro tempore. Mr. William Keller indicates that he will submit to interrogation.

Mr. VITALI. I am just reading the explanation, and it talks about your amendment limits the information the Commonwealth can collect with regard to this program.

Does your amendment reduce the amount of information the Commonwealth can collect or increase it?

Mr. W. KELLER. Right now the legislature has not put any requirements on. This puts requirements on the program that the legislature did not put on.

Mr. VITALI. Let me be clear. Does the bill itself—

Mr. W. KELLER. It increases reporting requirements now.

Mr. VITALI. So HB 586 increases reporting requirements, but your amendment reduces that increase?

Mr. W. KELLER. No; that is not correct.

Mr. VITALI. Okay.

Mr. W. KELLER. The amendment has nothing to do—HB 586 is not about the EITC program. My amendment increases reporting on the educational improvement tax credit.

Mr. VITALI. Okay. So this description is wrong when it says it limits the information you can collect?

Mr. W. KELLER. Yes. Mark Keller must have written that.

Mr. VITALI. Okay. I mean, what new information is required?

Mr. W. KELLER. It requires the amount of scholarships given and to which scholarship organization the scholarship was given, the amount and the average.

Mr. VITALI. Okay. Thank you.

The SPEAKER pro tempore. The Chair recognizes the lady from Luzerne County, Ms. Mundy.

Ms. MUNDY. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to the Keller amendment.

I would like to put on the record an editorial that was in the Patriot-News recently. The headline reads, "Patriot-News editorial asks PA House to make changes to school voucher program disguised as scholarship tax credit." And I will not read the entire editorial, but I think parts of it need to be examined by this legislature.

They talk about the fact that this school voucher program was passed as a sort of compromise because the Ridge administration could not get their full voucher program through the legislature, and it says, "Be that as it may, what is important now" – now that this program is in effect – "is that this program be no less accountable to state oversight than any other state-funded activity. Yet, advocates of the program have resisted efforts to make the dispensing of these funds transparent and fully documented. The bill sponsored by state Sen. Jeffrey Piccola, R-Dauphin County, that passed the Senate last month 46-1, ostensibly for the purpose of making more information available, is as concerned with preventing the state from asking for additional information as it is in requiring a

certain minimum level of reporting.” Well, the Keller amendment is the same amendment as the Piccola language.

Here is the deal: “The Rendell administration has sought to obtain information on the income of the families receiving the aid, something this legislation specifically would bar the state from seeking, even though the law limits scholarships to families with household incomes of \$50,000 or less in the case of one child.”

And I am reading excerpts. I am not reading the entire editorial. “The program’s proponents claim the administration’s efforts to seek additional information are an attempt to kill the program. But the reality is that the way this program is set up, with limited disclosure, is an invitation to mischief, abuse and fraud.”

Mr. Speaker, we will spend some 45 million taxpayer dollars, dollars that businesses would be paying to State government for the support of our public schools. We will lose \$45 million in revenue this year, and it will go to these private institutions, most of it anyway, and we do not know anything, really, about where the money is going, what it is being used for, if even it is being used in accordance with the law.

Every year this program grows in the number of dollars that we give it. It started out as a \$26 million scholarship program, and now it is \$45 million. Where is the accountability? Do not we owe some measure of accountability to the taxpayers whose money this really is? And if, as the proponents of these scholarships maintain, there is improved academic achievement as a result of this program, then what is it that they want to hide by not being willing to disclose anything to the legislature about who is getting the scholarships, what the income levels are, and what the academic results are?

It seems to me if you want State tax dollars, you should have to account for those dollars. We are certainly asking that of our public institutions. We have increased the standards for teacher certification. We require continuing professional development for teachers. We have implemented high-stakes testing to ensure academic progress. But this program that spends 45 million tax dollars, we do not want to ask for much of anything? There is something wrong with a program that spends this kind of money and there is no accountability to the taxpayers of the Commonwealth.

Now, for those of you who believe that public institutions should be held so accountable, let us see you stand up for the taxpayers of Pennsylvania and make this taxpayer-funded program accountable to the taxpayers that we represent.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Elk County, Mr. Surra.

Mr. SURRA. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition of the Keller amendment, and I am in support of the EITC program. I think it has done a lot of good. In my legislative district it has helped— We have a couple of different institutions. It helped both public and private schools. However, I believe if we are spending this kind of taxpayers’ dollars, we should, we should have some accountability and we should know how this money is being spent.

You know, if we are going to help people attend a school of their choice that need the money, then we should not be giving that money to someone who is making incomes of \$50,000, \$60,000, \$70,000, \$80,000, \$90,000 a year. We do not know. We do not have a clue because of the reporting requirements.

So while I believe that the Keller amendment is being put forward as some type of accountability, I think it pales in comparison to what we need to do.

**MOTION TO TABLE**

Mr. SURRA. I would ask that the Education Committee go out or the proper committee go out and have some hearings and really go to work on this issue. So for that reason I would like to make a motion to table the Keller amendment, so we can do our work on it.

The SPEAKER pro tempore. The gentleman, Mr. Surra, makes a motion to table this amendment. And, Mr. Surra, is it just the amendment only that you are tabling?

Mr. SURRA. Yes, sir.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question,  
Will the House agree to the motion?

The SPEAKER pro tempore. On the motion, the Chair recognizes the gentleman, Mr. Argall.

Mr. ARGALL. Thank you, Mr. Speaker.

Mr. Speaker, we would object to tabling. We would like to move ahead and vote on this issue today.

The SPEAKER pro tempore. Does the gentleman, Mr. DeWeese, wish to debate this or to defer to Mr. Surra? Neither.

The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

**YEAS—58**

Bebko-Jones	Fabrizio	Levdansky	Shaner
Belardi	Frankel	Manderino	Shapiro
Belfanti	Freeman	McCall	Siproth
Bishop	George	Mundy	Stetler
Blackwell	Gerber	Myers	Sturla
Buxton	Goodman	Petrarca	Surra
Casorio	Grucela	Petrone	Thomas
Cohen	Haluska	Preston	Veon
Corrigan	Hanna	Ramaley	Vitali
Cruz	Harhai	Roebuck	Walko
Curry	James	Rooney	Wansacz
Daley	Josephs	Ruffing	Waters
Dermody	Kirkland	Samuelson	Wheatley
DeWeese	LaGrotta	Santoni	Williams
Evans, D.	Leach		

**NAYS—140**

Adolph	Fichter	Maitland	Rieger
Allen	Fleagle	Major	Roberts
Argall	Flick	Mann	Rohrer
Armstrong	Forcier	Markosek	Ross
Baker	Gabig	Marsico	Rublely
Baldwin	Gannon	McGeehan	Sainato
Barrar	Geist	McGill	Saylor
Bastian	Gergely	McIlhattan	Scavello
Benninghoff	Gillespie	McIlhinney	Schroder
Biancucci	Gingrich	McNaughton	Semmel
Birmelin	Godshall	Melio	Smith, B.

Blaum	Good	Metcalf	Smith, S. H.
Boyd	Grell	Micozzie	Solobay
Bunt	Gruitza	Millard	Sonney
Butkovitz	Habay	Miller, R.	Staback
Caltagirone	Harhart	Miller, S.	Stairs
Cappelli	Harper	Mustio	Steil
Causer	Harris	Nailor	Stern
Cawley	Hasay	Nickol	Stevenson, R.
Civera	Hennessey	O'Brien	Stevenson, T.
Clymer	Herman	Oliver	Taylor, E. Z.
Cornell	Hershey	O'Neill	Taylor, J.
Costa	Hess	Pallone	Tigue
Crahalla	Hickernell	Payne	True
Creighton	Hutchinson	Petri	Turzai
Dally	Kauffman	Phillips	Watson
DeLuca	Keller, M.	Pickett	Wilt
Denlinger	Keller, W.	Pistella	Wright
DiGirolamo	Kenney	Pyle	Yewcic
Diven	Killion	Quigley	Youngblood
Donatucci	Kotik	Rapp	Yudichak
Eachus	Lederer	Raymond	Zug
Ellis	Leh	Readshaw	
Evans, J.	Lescovitz	Reed	
Fairchild	Mackereth	Reichley	Perzel,
Feese	Maher		Speaker

NOT VOTING—0

EXCUSED—3

Sather	Tangretti	Wojnaroski
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Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,  
Will the House agree to the amendment?

The SPEAKER pro tempore. The Chair recognizes for the second time the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the amendment, William Keller, again stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman agrees to do so, and you may begin.

Mr. VITALI. Thank you, Mr. Speaker.

I just wanted to follow up on my previous interrogation, and my question then was, does your amendment increase or limit the amount of information available about this program, and I believe your answer was it increases. That is what you said, but the program indicates it limits.

Now, in the intervening debate, I had a chance to speak with the gentlelady from Luzerne County, and it is my understanding now that if your amendment became law, it would limit the amount of information that the administration could get from institutions regarding this program. So now I am confused. I am getting conflicting information.

Is the assertion that this would limit the amount of information the administration could get, does this amendment limit the amount of information the administration could get about this program?

Mr. W. KELLER. When we passed the EITC program through the House and the Senate, the administration administratively put on reporting requirements. I believe we

should do that legislatively. So we are putting more requirements on than we did when we passed the EITC through the House and the Senate and turned it into law before. So it is more requirements than we had on the bill originally.

Mr. VITALI. Okay. That being the case, if your amendment becomes law, would that in fact prevent the administration from getting more information, more information, perhaps getting information they want?

Mr. W. KELLER. I believe the administration can ask for anything they want, but legislatively, I want to do my job. I want to put this amendment on which I believe provides the amount of information we need and helps the program and will move the program forward.

Mr. VITALI. Does this put a limit on the amount of the information the administration can get from groups?

Mr. W. KELLER. The administration can ask for any information they want, but they do not have statutory ability to get that information. This will give the administration statutory ability to get the information.

Mr. VITALI. Granted that, but will it also put a limit on the amount of information the administration can get?

Mr. W. KELLER. It gets them the information that is in the amendment. If they want to get more and they want to do it legislatively, they have to get somebody else to put an amendment in or try to do it through the administration requesting more information. But we are going to do it the way I think we should do it, legislatively, and that is what I am here trying to do today.

Mr. VITALI. But if this amendment passes, does this create a statutory bar beyond which the administration would have a legal right to ask for information?

Mr. W. KELLER. I do not believe so, no. I believe the administration can ask for any information they want.

Mr. VITALI. Have you spoken to the administration about this amendment?

Mr. W. KELLER. I have been trying to get a hold of the administration on many things, and I have not been able to. No, I have not spoken to the administration about this.

Mr. VITALI. Do they have a position one way or the other on this amendment?

Mr. W. KELLER. Nobody said anything to me.

Mr. VITALI. Thank you.

The SPEAKER pro tempore. The Chair recognizes the lady from Philadelphia County, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

I applaud the maker of the amendment for his intentions with this legislation, but I reluctantly ask for a “no” vote because I do think, as drafted, there is a fatal flaw in it.

The last interrogation I think actually got to the heart of it. In two places in this amendment, once when it talks about the obligations of the entity that is getting the tax credits and in the second place where it talks about the entity receiving the tax credits, there is language that says the department may not require any other information be provided other than what this amendment says can be provided.

When we passed the educational tax credit law, which I supported, that law says that there are family income limits of who can receive these grants. If you look at the only information the department is allowed to ask for under this amendment – because this amendment says you are allowed to ask for this information and you are not allowed to ask for any other information – income information is not included. So by

passing this amendment, we are saying that the Department of Education cannot properly audit the law as it was passed because they are precluded from asking for the exact information that the law says they have to ask for, for these organizations to be functioning legally.

So while I agree that it is a good move for us to say that there ought to be reporting requirements, I think it would be a mistake for us to say those reporting requirements cannot include the information you actually need to properly audit the program. So I think the way to fix it would be to vote “no” now and to come back with an amendment that either, A, allows the department to ask for the income information that would be able to audit this or, in the alternative, removes the language prohibiting the department to ask for anything else other than what is listed in the list right here.

I think that would be the best way to handle this, and so I reluctantly ask for a negative vote on this amendment as currently drafted.

The SPEAKER pro tempore. The Chair thanks the lady.

Are any other members seeking recognition on this amendment?

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—171

Adolph	Feese	Maher	Rohrer
Allen	Fichter	Maitland	Ross
Argall	Fleagle	Major	Rublely
Armstrong	Flick	Mann	Ruffing
Baker	Forcier	Markosek	Sainato
Baldwin	Gabig	Marsico	Santoni
Barrar	Gannon	McCall	Saylor
Bastian	Geist	McGeehan	Scavello
Belfanti	George	McGill	Schroder
Benninghoff	Gergely	McIlhattan	Semmel
Biancucci	Gillespie	McIlhinney	Shaner
Birmelin	Gingrich	McNaughton	Smith, B.
Bishop	Godshall	Melio	Smith, S. H.
Blackwell	Good	Metcalfe	Solobay
Blaum	Grell	Micozzie	Sonney
Boyd	Gruitza	Millard	Staback
Bunt	Habay	Miller, R.	Stairs
Butkovitz	Haluska	Miller, S.	Steil
Buxton	Harhai	Mustio	Stern
Caltagirone	Harhart	Myers	Stetler
Cappelli	Harper	Nailor	Stevenson, R.
Casorio	Harris	O'Brien	Stevenson, T.
Causser	Hasay	Oliver	Taylor, E. Z.
Cawley	Hennessey	O'Neill	Taylor, J.
Civera	Herman	Pallone	Thomas
Clymer	Hershey	Payne	Tigue
Cornell	Hess	Petrarca	True
Corrigan	Hickernell	Petri	Turzai
Costa	Hutchinson	Petrone	Walko
Crahalla	James	Phillips	Wansacz
Creighton	Kauffman	Pickett	Waters
Cruz	Keller, M.	Pistella	Watson
Dally	Keller, W.	Preston	Wheatley
DeLuca	Kenney	Pyle	Williams
Denlinger	Killion	Quigley	Wilt
Dermody	Kirkland	Ramaley	Wright
DiGirolamo	Kotik	Rapp	Yewcic
Diven	LaGrotta	Raymond	Youngblood
Donatucci	Lederer	Readshaw	Yudichak
Ellis	Leh	Reed	Zug
Evans, D.	Lescovitz	Reichley	

Evans, J.	Levdansky	Rieger	Perzel,
Fabrizio	Mackereth	Roberts	Speaker
Fairchild			

NAYS—27

Bebko-Jones	Frankel	Leach	Shapiro
Belardi	Freeman	Manderino	Siproth
Cohen	Gerber	Mundy	Sturla
Curry	Goodman	Nickol	Surra
Daley	Grucela	Roebuck	Veon
DeWeese	Hanna	Rooney	Vitali
Eachus	Josephs	Samuelson	

NOT VOTING—0

EXCUSED—3

Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Mr. **GEORGE** offered the following amendment No. **A01639**:

Amend Title, page 1, line 5, by removing the period after “definitions” and inserting

; and providing for free and reduced-price school lunches in certain circumstances.

Amend Bill, page 2, by inserting between lines 13 and 14

Section 2. The act is amended by adding a section to read:

Section 2505.2. Supplemental Funding for School Lunches.—Notwithstanding Federal funding of school lunches for individuals who qualify for free or reduced-price lunches, there shall be a supplement from the General Fund annually to achieve the following:

(1) Individuals who live at or under one hundred eighty-five per centum (185%) of the Federal poverty guideline shall receive free school lunch each school day.

(2) Individuals who live between one hundred eighty-five per centum (185%) and two hundred fifty per centum (250%) of the Federal poverty guideline shall receive school lunch each school day at the reduced price specified under Federal guidelines.

Amend Sec. 2, page 2, line 14, by striking out “2” and inserting

3

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. Does the gentleman, Mr. George, wish to speak on his amendment? The gentleman passes over.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:



YEAS-198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causar	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **KENNEY** offered the following amendment No. **A01853**:

Amend Title, page 1, line 5, by removing the period after "definitions" and inserting  
and for distress in school districts of the first class.

Amend Bill, page 2, line 14, by striking out all of said line and inserting

Section 2. Section 696(i)(3) of the act, amended October 30, 2001 (P.L.828, No.83), is amended to read:

Section 696. Distress in School Districts of the First Class.—\* \* \*

(i) In addition to all powers granted to the superintendent by law and a special board of control under section 693 and notwithstanding any other law to the contrary, the School Reform Commission shall have the following powers:

\* \* \*

(3) To suspend the requirements of this act and regulations of the State Board of Education except that the school district shall remain subject to those provisions of this act set forth in section 1361, 1732-A(a), (b) and (c) and section 1714-B and regulations under those sections.

\* \* \*

Section 3. This act shall take effect as follows:

(1) The amendment of section 696 of the act shall take effect immediately.

(2) The remainder of this act shall take effect in 60 days.

On the question,

Will the House agree to the amendment?

The **SPEAKER** pro tempore. The Chair recognizes the gentleman, Mr. Kenney. The gentleman passes over.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS-198

Adolph	Fairchild	Levdansky	Rooney
Allen	Feese	Mackereth	Ross
Argall	Fichter	Maher	Rubley
Armstrong	Fleagle	Maitland	Ruffing
Baker	Flick	Major	Sainato
Baldwin	Forcier	Manderino	Samuelson
Barrar	Frankel	Mann	Santoni
Bastian	Freeman	Markosek	Saylor
Bebko-Jones	Gabig	Marsico	Scavello
Belardi	Gannon	McCall	Schroder
Belfanti	Geist	McGeehan	Semmel
Benninghoff	George	McGill	Shaner
Biancucci	Gerber	McIlhattan	Shapiro
Birmelin	Gergely	McIlhinney	Siptroth
Bishop	Gillespie	McNaughton	Smith, B.
Blackwell	Gingrich	Melio	Smith, S. H.
Blaum	Godshall	Metcalfe	Solobay
Boyd	Good	Micozzie	Sonney
Bunt	Goodman	Millard	Staback
Butkovitz	Grell	Miller, R.	Stairs
Buxton	Grucela	Miller, S.	Steil
Caltagirone	Gruitza	Mundy	Stern
Cappelli	Habay	Mustio	Stetler
Casorio	Haluska	Myers	Stevenson, R.
Causar	Hanna	Nailor	Stevenson, T.
Cawley	Harhai	Nickol	Sturla
Civera	Harhart	O'Brien	Surra
Clymer	Harper	Oliver	Taylor, E. Z.
Cohen	Harris	O'Neill	Taylor, J.

Cornell	Hasay	Pallone	Thomas
Corrigan	Hennessey	Payne	Tigue
Costa	Herman	Petrarca	True
Crahalla	Hershey	Petri	Turzai
Creighton	Hess	Petrone	Veon
Cruz	Hickernell	Phillips	Vitali
Curry	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	Perzel,
Fabrizio	Lescovitz	Rohrer	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?  
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-197

Adolph	Feese	Mackereth	Ross
Allen	Fichter	Maher	Rubley
Argall	Fleagle	Maitland	Ruffing
Armstrong	Flick	Major	Sainato
Baker	Forcier	Manderino	Samuelson
Baldwin	Frankel	Mann	Santoni
Barrar	Freeman	Markosek	Saylor
Bastian	Gabig	Marsico	Scavello
Bebko-Jones	Gannon	McCall	Schroder
Belardi	Geist	McGeehan	Semmel
Belfanti	George	McGill	Shaner
Benninghoff	Gerber	McIlhattan	Shapiro
Bianucci	Gergely	McIlhinney	Siptroth
Birmelin	Gillespie	McNaughton	Smith, B.
Bishop	Gingrich	Melio	Smith, S. H.
Blackwell	Godshall	Metcalfe	Solobay
Blaum	Good	Micozzie	Sonney
Boyd	Goodman	Millard	Stabay
Bunt	Grell	Miller, R.	Stairs

Butkovitz	Grucela	Miller, S.	Steil
Buxton	Gruitza	Mundy	Stern
Caltagirone	Habay	Mustio	Stetler
Cappelli	Haluska	Myers	Stevenson, R.
Casorio	Hanna	Nailor	Stevenson, T.
Causar	Harhai	Nickol	Sturla
Cawley	Harhart	O'Brien	Surra
Civera	Harper	Oliver	Taylor, E. Z.
Clymer	Harris	O'Neill	Taylor, J.
Cohen	Hasay	Pallone	Thomas
Cornell	Hennessey	Payne	Tigue
Corrigan	Herman	Petrarca	True
Costa	Hershey	Petri	Turzai
Crahalla	Hess	Petrone	Veon
Creighton	Hickernell	Phillips	Vitali
Cruz	Hutchinson	Pickett	Walko
Daley	James	Pistella	Wansacz
Dally	Josephs	Preston	Waters
DeLuca	Kauffman	Pyle	Watson
Denlinger	Keller, M.	Quigley	Wheatley
Dermody	Keller, W.	Ramaley	Williams
DeWeese	Kenney	Rapp	Wilt
DiGirolamo	Killion	Raymond	Wright
Diven	Kirkland	Readshaw	Yewcic
Donatucci	Kotik	Reed	Youngblood
Eachus	LaGrotta	Reichley	Yudichak
Ellis	Leach	Rieger	Zug
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Roebuck	
Fabrizio	Lescovitz	Rohrer	Perzel,
Fairchild	Levdansky	Rooney	Speaker

NAYS-1

Curry
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NOT VOTING-0

EXCUSED-3

Sather	Tangretti	Wojnaroski
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

The SPEAKER pro tempore. I want to alert the members that we are now going to have a condolence resolution. Members should all be in their seats. Staff should be out of the aisles.

CONDOLENCE RESOLUTION

The SPEAKER pro tempore We are about to take up a condolence resolution on the death of a former member of the House.

Sergeants at Arms will close the doors of the House. Members will take their seats. Please, gentlemen, ladies, take your seats.

The clerk will read the resolution.

The following resolution was read:

COMMONWEALTH OF PENNSYLVANIA  
THE HOUSE OF REPRESENTATIVES

CONDOLENCE RESOLUTION

WHEREAS, The House of Representatives of Pennsylvania wishes to honor the memory of the Honorable Frank Williamson Jenkins, a former member of this august body who served with honor and distinction and who passed away on April 28, 2005, at the age of seventy-eight; and

WHEREAS, Born in Philadelphia to Harry L. and Caroline K. Williamson Jenkins on May 8, 1926, Representative Jenkins was a 1944 graduate of Germantown High School; he was a 1947 graduate of the University of Pennsylvania with a bachelor of science degree in mathematics; he earned a law degree from the University of Pennsylvania School of Law in 1949; and he was a member of the United States Navy Reserve for two years during World War II, from which he received an honorable discharge at the rank of Lieutenant (Junior Grade). Upon receiving his law degree, Representative Jenkins worked in his father's Philadelphia law firm and served on the staff of the Legal Aid Society in Philadelphia, then later joined his brother's law firm in Ambler. He practiced law for almost forty years and was a specialist in real estate and zoning law for Jenkins, Siergiej and Smith. Elected to serve the citizens of the 2nd Legislative District, which later was eliminated during the reapportionment process, Representative Jenkins was a member of the House of Representatives during the 1965-1966 legislative session and was a member of the Judiciary Committee and its Subcommittee on Special Law and Order. He went on to serve as a Montgomery County Commissioner for thirteen years and as Montgomery County Sheriff in 1985. A former Sunday School teacher at the Baptist Temple in Blue Bell, Representative Jenkins also served as a Republican Committeeman from 1968 until 2002, as a SEPTA Board member from 1977 until 1991, as Chairman of the Montgomery County Republican Committee in the 1980s, as an Amtrak Board member from 1984 until 1988 and as a member and Director of the Lions Club of Oreland; now therefore be it

RESOLVED, That the House of Representatives of the Commonwealth of Pennsylvania proclaim with enduring sorrow the passing of the Honorable Frank Williamson Jenkins; and extend heartfelt condolences to his wife, Edith Witte Jenkins; son, Walter Jenkins; daughters, Gwen Barrett, Lori Giaquinto and Caroline Jenkins; and six grandchildren; and be it further

RESOLVED, That a copy of this resolution, sponsored by the Honorable Raymond Bunt, Jr., on June 10, 2005, be transmitted to Edith Witte Jenkins.

(SEAL) Raymond Bunt, Jr., Sponsor  
John M. Perzel, Speaker of the House  
ATTEST:  
Ted Mazia, Chief Clerk of the House

On the question,  
Will the House adopt the resolution?

The SPEAKER pro tempore. Those in favor of the resolution will rise and remain standing as a mark of respect for the deceased former member. Guests will also please rise.

(Whereupon, the members of the House and all visitors stood in a moment of silence in solemn respect to the memory of the Honorable Frank Williamson Jenkins.)

The SPEAKER pro tempore. The resolution has been unanimously adopted.

The Sergeants at Arms will please open the doors of the House.

SENATE MESSAGE

AMENDED HOUSE BILL RETURNED  
FOR CONCURRENCE AND  
REFERRED TO COMMITTEE ON RULES

The clerk of the Senate, being introduced, returned **HB 815, PN 2282**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

SENATE MESSAGE

HOUSE BILL  
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, returned **HB 1110, PN 1317**, with information that the Senate has passed the same without amendment.

SENATE MESSAGE

HOUSE RESOLUTION  
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, informed that the Senate has concurred in **HR 243, PN 1708**.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. DeWeese, for the purpose of making an announcement.

Mr. DeWEESE. Thank you, Mr. Speaker.

Just an announcement. The gentleman, Mr. ROEBUCK, from Philadelphia on leave for the rest of the day, please.

The SPEAKER pro tempore. Without objection, the leave is granted.

Now, members are instructed that we still have a number of votes, so please remain seated.

BILL REMOVED FROM TABLE

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that SB 158 be taken off the table.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

BILL ON SECOND CONSIDERATION

The following bill, having been called up, was considered for the second time and agreed to, and ordered transcribed for third consideration:

**SB 158, PN 704.**

**BILL RECOMMITTED**

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that SB 158 be recommitted to the Appropriations Committee.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

**BILLS REPORTED FROM COMMITTEES,  
CONSIDERED FIRST TIME, AND  
RECOMMITTED TO COMMITTEE ON RULES**

**HB 1031, PN 2308** (Amended) By Rep. CLYMER

An Act amending the act of June 29, 1953 (P.L.304, No.66), known as the Vital Statistics Law of 1953, providing for certificate of stillbirth.

STATE GOVERNMENT.

**HB 1528, PN 1877** By Rep. B. SMITH

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for licenses and fees relating to taxidermists.

GAME AND FISHERIES.

**HB 1602, PN 2306** (Amended) By Rep. CLYMER

An Act authorizing and directing the Department of General Services, with the approval of the Governor, to grant and convey to Basalt Trap Rock Company, a Maryland for-profit corporation, or their assigns, certain lands, situate in Morgan and Franklin Townships, Greene County, Pennsylvania.

STATE GOVERNMENT.

**HB 1688, PN 2150** By Rep. CLYMER

An Act amending the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, further providing for canvassing of official absentee ballots.

STATE GOVERNMENT.

**HB 1689, PN 2151** By Rep. B. SMITH

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for unlawful devices and methods.

GAME AND FISHERIES.

**HB 1690, PN 2305** (Amended) By Rep. B. SMITH

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for unlawful devices and methods.

GAME AND FISHERIES.

**HB 1745, PN 2307** (Amended) By Rep. CLYMER

An Act authorizing and directing the Department of General Services, with the approval of the Governor, to convey tracts of land and buildings, consisting of a portion of the former Laurelton Center, located in Hartley Township, Union County, Pennsylvania; and making a related repeal.

STATE GOVERNMENT.

**BILLS REPORTED FROM COMMITTEE,  
CONSIDERED FIRST TIME, AND Tabled**

**SB 1, PN 1000** (Amended) By Rep. CLYMER

An Act providing for lobbying registration, regulation and disclosure; conferring powers and imposing duties on the Department of State, the Office of Attorney General and the State Ethics Commission; imposing penalties; establishing the Lobbying Accountability Fund; and making a related repeal.

STATE GOVERNMENT.

**SB 62, PN 774** By Rep. CLYMER

An Act amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, further providing for application of part; and providing for electronic bidding by local government units.

STATE GOVERNMENT.

The SPEAKER pro tempore. The House will be at ease temporarily, but there are more votes to be taken.

**VOTE CORRECTIONS**

The SPEAKER pro tempore. Does the gentleman, Mr. McGeehan, seek recognition?

Mr. McGEEHAN. I do, Mr. Speaker.

The SPEAKER pro tempore. For what purpose does the gentleman rise?

Mr. McGEEHAN. Is it an appropriate time to correct the record, Mr. Speaker?

The SPEAKER pro tempore. I think now would be an appropriate time.

Mr. McGEEHAN. Thank you for your sartorial admonition as well.

On final passage of HB 1478, I was recorded in the affirmative. I would like it to be spread upon the record that my vote be cast in the negative.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

Is the gentleman, Mr. Donatucci, seeking recognition?

Mr. DONATUCCI. Yes, Mr. Speaker. I would like to correct the record.

The SPEAKER pro tempore. You may proceed.

Mr. DONATUCCI. On HB 1478 I would like to be recorded in the negative.

The SPEAKER pro tempore. The gentleman's remarks will be spread upon the record.

Mr. DONATUCCI. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

Any other corrections of the record while we are temporarily at ease?

### COMMITTEE MEETING POSTPONED

The SPEAKER pro tempore. The Chair recognizes the gentleman from Chester County, Mr. Hershey.

Mr. HERSHEY. Is it proper to make an announcement at this time, Mr. Speaker?

The SPEAKER pro tempore. This would be an excellent time, Mr. Hershey.

Mr. HERSHEY. I want to make an announcement.

The Agriculture information meeting for tomorrow morning has been postponed to a later date. We needed to do a little more work on that, and we will postpone that meeting tomorrow to a later date.

Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Agriculture meeting for tomorrow has been postponed to a later date.

### THE SPEAKER (JOHN M. PERZEL) PRESIDING

### BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 797, PN 1863**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for imposition of the corporate net income tax.

On the question,

Will the House agree to the bill on third consideration?

Mr. YUDICHAK offered the following amendment No. **A01036**:

Amend Title, page 1, line 10, by inserting after “providing” for the definition of “manufacture” and

Amend Bill, page 1, lines 14 through 16, by striking out all of said lines and inserting

Section 1. Section 201(c) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

\*\*\*

(c) “Manufacture.” The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to—

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another[;]. For purposes of this clause “operation” shall include

clean rooms and their component systems, including: environmental control systems, antistatic vertical walls and manufacturing platforms, and floors, which are independent of the real estate; process piping systems; specialized lighting systems; deionized water systems; process vacuum and compressed air systems; process and specialty gases; and alarm or warning devices specifically designed to warn of threats to the integrity of the product and/or people. For purposes of this clause a “clean room” is a location with a self-contained, sealed environment with a controlled closed air system independent from the facility’s general environmental control system.

(2) The publishing of books, newspapers, magazines and other periodicals and printing[;].

(3) Refining, blasting, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stock piles or from pits or banks any natural resources, minerals and mineral aggregates including blast furnace slag[;].

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of fifty tons or more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner[;].

(5) Research having as its objective the production of a new or an improved (i) product or utility service, or (ii) method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least fifty thousand dollars (\$50,000). Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this clause, the following terms or phrases have the following meanings:

(i) “aircraft” means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) “armored vehicles” means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) “other defense-related vehicles” means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

The term “manufacture” shall not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

\*\*\*

Section 2. Section 402 of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Amend Sec. 2, page 3, line 13, by striking out “2” and inserting

3

On the question,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—196

Adolph	Fairchild	Levdansky	Ross
Allen	Feese	Mackereth	Rubley
Argall	Fichter	Maher	Ruffing
Armstrong	Fleagle	Maitland	Sainato
Baker	Flick	Major	Samuelson
Baldwin	Forcier	Manderino	Santoni
Barrar	Frankel	Mann	Saylor
Bastian	Freeman	Markosek	Scavello
Bebko-Jones	Gabig	Marsico	Schroder
Belardi	Gannon	McCall	Semmel
Belfanti	Geist	McGeehan	Shaner
Benninghoff	George	McGill	Shapiro
Bianucci	Gerber	McIlhinney	Siptroth
Birmelin	Gergely	McNaughton	Smith, B.
Bishop	Gillespie	Melio	Smith, S. H.
Blackwell	Gingrich	Metcalfe	Solobay
Blaum	Godshall	Micozzie	Sonney
Boyd	Good	Millard	Staback
Bunt	Goodman	Miller, R.	Stairs
Butkovitz	Grell	Miller, S.	Steil
Buxton	Grucela	Mundy	Stern
Caltagirone	Gruitza	Mustio	Stetler
Capelli	Habay	Myers	Stevenson, R.
Casorio	Haluska	Nailor	Stevenson, T.
Causar	Hanna	Nickol	Sturla
Cawley	Harhai	O'Brien	Surra
Civera	Harhart	Oliver	Taylor, E. Z.
Clymer	Harper	O'Neill	Taylor, J.
Cohen	Harris	Pallone	Thomas
Cornell	Hasay	Payne	Tigue
Corrigan	Hennessey	Petrarca	True
Costa	Herman	Petri	Turzai
Crahalla	Hershey	Petrone	Veon
Creighton	Hess	Phillips	Vitali
Cruz	Hickernell	Pickett	Walko
Curry	Hutchinson	Pistella	Wansacz
Daley	James	Preston	Waters
Dally	Josephs	Pyle	Watson
DeLuca	Kauffman	Quigley	Wheatley
Denlinger	Keller, M.	Ramaley	Williams
Dermody	Keller, W.	Rapp	Wilt
DeWeese	Kenney	Raymond	Wright
DiGirolamo	Killion	Readshaw	Yewcic
Diven	Kirkland	Reed	Youngblood
Donatucci	Kotik	Reichley	Yudichak
Eachus	LaGrotta	Rieger	Zug
Ellis	Leach	Roberts	
Evans, D.	Lederer	Rohrer	
Evans, J.	Leh	Rooney	Perzel,
Fabrizio	Lescovitz		Speaker

NAYS—0

NOT VOTING—1

McIlhattan

EXCUSED—4

Roebuck            Sather            Tangretti            Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,  
Will the House agree to the bill on third consideration as amended?

Mr. TANGRETTI offered the following amendment No. **A01056:**

Amend Title, page 1, line 10, by inserting after "for" sales and use tax definitions, for sales and use tax exclusions, for personal income tax definitions and for classes of personal income; providing for a credit against personal income tax; further providing for Amend Title, page 1, line 11, by removing the period after "tax" and inserting  
, for realty transfer tax definitions, for realty transfer tax exclusions and for penalties for failing to fulfill a historic covenant; and conferring powers and duties on the Pennsylvania Historical and Museum Commission.

Amend Bill, page 1, lines 14 through 16, by striking out all of said lines and inserting

Section 1. Sections 201, 204 and 301 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended by adding clauses to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

(eee) "Historic homesite." A building which complies with all of the following:

(1) The building is divided into no more than four units, one of which is used as the owner's principal residence. The requirements of this subclause shall be satisfied if the purchaser of a building has entered into a covenant with the Pennsylvania Historical and Museum Commission to divide the building into no more than four units, one of which will be used as the purchaser's principal residence beginning no later than four months after the date of the transfer of title to the real property.

(2) The building:

(i) has been designated by Federal or State Government as a historic property;

(ii) is located in an area designated by Federal or State Government as a historic district;

(iii) is located in an area designated as a historic district under section 2 of the act of June 13, 1961 (P.L.282, No.167), entitled "An act authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts";

(iv) has been designated as a historic property or is located in an area designated as a historic district pursuant to the Historic Preservation Ordinance, Section 14-2007 of the Philadelphia City Code; or

(v) has been designated as a historic property or is located in an area designated as a historic district pursuant to Title 11 of the Pittsburgh City Code, chapter 1, section 3, as amended by City Council on July 22, 1997.

(3) The owner or purchaser of the building has entered into a covenant with the Pennsylvania Historical and Museum Commission providing that:

(i) rehabilitation or restoration work, with a total cost of rehabilitation or restoration valued in excess of one thousand dollars (\$1,000), will be completed to the satisfaction of the commission in accordance with 36 CFR 67.7 (relating to standards for rehabilitation) within five years of the date the covenant was entered into with the commission; and

(ii) the building:

(A) has been or will be occupied as the principal residence of the owner or, for good cause consented to by the Pennsylvania Historical

and Museum Commission, of a successor in interest for at least five consecutive years, including the date the covenant was entered into with the commission; or

(B) will be occupied as the principal residence of the purchaser or, for good cause consented to by the Pennsylvania Historical and Museum Commission, of a successor in interest for at least five consecutive years, beginning no later than four months after the date of transfer of title to the real property.

(fff) “Cost of rehabilitation or restoration.” Costs attributed to the rehabilitation or restoration of a historic homesite, including historic decorative elements; upgrading of the structural, mechanical, electrical and plumbing systems to applicable code; architectural fees; and alterations associated with the conversion of the building to residential use. The term shall not include costs attributable to the acquisition of the real property; the enlargement of an existing building; landscaping, driveways and other site features; outbuildings or garages which do not meet the requirements of clause (eee)(2); and personal labor performed by the owner.

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon any of the following:

\*\*\*

(65) The sale at retail or use of tangible personal property or services which are costs of rehabilitation or restoration of a historic homesite. The purchaser shall furnish to the vendor a certificate substantially in the form as the Pennsylvania Historical and Museum Commission, in conjunction with the department, shall prescribe stating that the sale is exempt from tax pursuant to this clause.

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning. Unless specifically provided otherwise, any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997:

\*\*\*

(i.3) “Historic homesite” means a historic homesite as defined in section 201(eee).

\*\*\*

Section 2. Section 303(a)(3) of the act is amended by adding a subparagraph to read:

Section 303. Classes of Income.—(a) The classes of income referred to above are as follows:

\*\*\*

(3) Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real property, tangible personal property, intangible personal property or obligations issued on or after the effective date of this amendatory act by the Commonwealth; any public authority, commission, board or other agency created by the Commonwealth; any political subdivision of the Commonwealth or any public authority created by any such political subdivision; or by the Federal Government as determined in accordance with accepted accounting principles and practices. For the purpose of this article:

\*\*\*

(viii) The term “net gains or income” shall not include the net gain on the sale of a historic homesite site. No later than the date of transfer of title to the real property, the purchaser shall provide a copy of the covenant with the Pennsylvania Historical and Museum Commission to the seller.

\*\*\*

Section 3. The act is amended by adding a section to read:

Section 314.1. Historic Rehabilitation Credit.—(a) An individual shall be allowed a credit against the tax otherwise due under this article for the rehabilitation or restoration of a historic homesite upon certification by the Pennsylvania Historical and Museum Commission that rehabilitation or restoration work, with a total cost of rehabilitation or restoration valued in excess of one thousand dollars (\$1,000) for a

historic homesite, has been completed to the satisfaction of the commission in accordance with 36 CFR 67.7 (relating to standards for rehabilitation).

(b) The credit authorized under this section shall be twenty per cent of the amount expended by the individual during the taxable year on tangible personal property or services that qualify for a sales and use tax exclusion under section 204(65) as certified by the commission.

(c) If the taxpayer cannot use the entire amount of the historic rehabilitation credit for the taxable year in which the expenditures are first certified, then the excess may be carried over to succeeding taxable years. Each time that the historic rehabilitation credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The credit may be carried over and applied to succeeding taxable years for no more than five taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(d) The aggregate of historic rehabilitation credits in a fiscal year shall not exceed five million dollars (\$5,000,000).

Section 4. Section 402 of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Amend Bill, page 3, line 13, by striking out all of said line and inserting

Section 5. Section 1101-C of the act is amended by adding a definition to read:

Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section:

\*\*\*

“Historic homesite.” A historic homesite as defined in section 201(eee).

\*\*\*

Section 6. Section 1102-C.3 of the act, amended or added July 2, 1986 (P.L.318, No.77), July 1, 1989 (P.L.95, No.21), June 16, 1994 (P.L.279, No.48) and May 7, 1997 (P.L.85, No.7), is amended to read:

Section 1102-C.3. Excluded Transactions.—The tax imposed by section 1102-C shall not be imposed upon:

(1) A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation.

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States.

(3) A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

(4) A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.

(5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.

(6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.

(7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.

(8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries that are entitled to receive the property or proceeds from the sale of the property under the trust, whether or not such beneficiaries are contingent or specifically named. A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

(8.1) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the living trust instrument.

(9) A transfer for no or nominal actual consideration from a trustee of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor's lifetime shall be considered for the purposes of this article as if such transfer were made directly from the settlor to the grantee.

(9.1) A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.

(9.2) A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor.

(10) A transfer for no or nominal actual consideration from trustee to successor trustee.

(11) A transfer:

(i) for no or nominal actual consideration between principal and agent or straw party; or

(ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

(12) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.

(13) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.

(14) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.

(15) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:

(i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing,

publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and

(ii) the agency or authority has the full ownership interest in the real estate transferred.

(16) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

(17) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.

(18) A transfer to a conservancy which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions; or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law," and such conservancy has owned the real estate for at least two years immediately prior to the transfer.

(19) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five per cent of each class of the stock thereof.

(19.1) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least seventy-five per cent of the interests in the partnership.

(20) A transfer between members of the same family of an ownership interest in a real estate company, family farm corporation or family farm partnership which owns real estate.

(21) A transaction wherein the tax due is one dollar (\$1) or less.

(22) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this article.

(23) A transfer of a historic homesite. No later than the date of transfer of title to the real property, the purchaser shall provide a copy of the covenant with the Pennsylvania Historical and Museum Commission to the seller.

Section 7. The act is amended by adding a section to read:

Section 3003.16. Failure to Fulfill Historic Homesite Covenant.—

(a) The Pennsylvania Historical and Museum Commission shall notify the department when an individual who has entered into a covenant to rehabilitate or restore a historic homesite under section 201(eee), 301(i.3) or 1101-C fails to abide by the terms of the covenant.

(b) Upon notification by the Pennsylvania Historical and Museum Commission that the individual has failed to abide by the terms of the covenant, the department shall levy a penalty against that individual equal to one hundred per cent of the tax benefits granted under sections 204(65), 303(a)(3)(viii), 314.1 and 1102-C.3 with respect to the historic homesite to which the covenant applied.

(c) The penalty provided by subsection (b), or any portion thereof, may be abated if the failure to abide by the terms of the covenant is justified by reason of change in employment, health or, to the extent provided in regulation, unforeseen circumstances. The department and the Pennsylvania Historical and Museum Commission shall promulgate regulations to implement this subsection.



Section 8. This act shall apply to covenants with the Pennsylvania Historical and Museum Commission which are entered into after June 30, 2005.

Section 9. This act shall be known and may be cited as the Historic Home and Neighborhood Preservation Act.

Section 10. This act shall take effect as follows:

(1) The amendment of section 402 of the act shall take effect in 60 days.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect July 1, 2005, or immediately, whichever is later.

On the question,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—197

Adolph	Fairchild	Levdansky	Ross
Allen	Feese	Mackereth	Rubley
Argall	Fichter	Maier	Ruffing
Armstrong	Fleagle	Maitland	Sainato
Baker	Flick	Major	Samuelson
Baldwin	Forcier	Manderino	Santoni
Barrar	Frankel	Mann	Saylor
Bastian	Freeman	Markosek	Scavello
Bebko-Jones	Gabig	Marsico	Schroder
Belardi	Gannon	McCall	Semmel
Belfanti	Geist	McGeehan	Shaner
Benninghoff	George	McGill	Shapiro
Bianucci	Gerber	McIlhattan	Siptroth
Birmelin	Gergely	McIlhinney	Smith, B.
Bishop	Gillespie	McNaughton	Smith, S. H.
Blackwell	Gingrich	Melio	Solobay
Blaum	Godshall	Metcalfe	Sonney
Boyd	Good	Micozzie	Staback
Bunt	Goodman	Millard	Stairs
Butkovitz	Grell	Miller, R.	Steil
Buxton	Grucela	Miller, S.	Stern
Caltagirone	Gruitza	Mundy	Stetler
Cappelli	Habay	Mustio	Stevenson, R.
Casorio	Haluska	Myers	Stevenson, T.
Causar	Hanna	Nailor	Sturla
Cawley	Harhai	Nickol	Surra
Civiera	Harhart	O'Brien	Taylor, E. Z.
Clymer	Harper	Oliver	Taylor, J.
Cohen	Harris	O'Neill	Thomas
Cornell	Hasay	Pallone	Tigue
Corrigan	Hennessey	Payne	True
Costa	Herman	Petrarca	Turzai
Crahalla	Hershey	Petri	Veon
Creighton	Hess	Petrone	Vitali
Cruz	Hickernell	Phillips	Walko
Curry	Hutchinson	Pickett	Wansacz
Daley	James	Pistella	Waters
Dally	Josephs	Preston	Watson
DeLuca	Kauffman	Pyle	Wheatley
Denlinger	Keller, M.	Quigley	Williams
Dermody	Keller, W.	Ramaley	Wilt
DeWeese	Kenney	Rapp	Wright
DiGirolamo	Killion	Raymond	Yewcic
Diven	Kirkland	Readshaw	Youngblood
Donatucci	Kotik	Reed	Yudichak
Eachus	LaGrotta	Reichley	Zug
Ellis	Leach	Rieger	
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Rohrer	Perzel,
Fabrizio	Lescovitz	Rooney	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—4

Roebuck	Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **GEORGE** offered the following amendment No. **A01880**:

Amend Title, page 1, line 10, by inserting after "for" special tax provisions for poverty and for Amend Bill, page 1, lines 14 through 16, by striking out all of said lines and inserting

Section 1. Section 304 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding subsections to read:

Section 304. Special Tax Provisions for Poverty.—\* \* \*

(e) Notwithstanding the other provisions of this section, any income of an infirm person that is spent on medical care that would qualify to be a deduction on a Federal income tax under section 213(d)(1)(A) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 213(d)(1)(A)) and that could be paid for from a health savings account shall be excluded from taxation under this article. The Department of Revenue shall adopt regulations and issue forms to implement this subsection.

(f) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Infirm person" means a person who qualifies for a Federal income tax deduction under section 213(d)(1)(A) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 213(d)(1)(A)) for expenses relating to medical care.

"Medical care" means the same as defined in section 213(d)(1)(A) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 213(d)(1)(A)).

Section 2. Section 402 of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Amend Sec. 2, page 3, line 13, by striking out "2" and inserting

3

On the question,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—197

Adolph	Fairchild	Levdansky	Ross
Allen	Feese	Mackereth	Rubley
Argall	Fichter	Maier	Ruffing
Armstrong	Fleagle	Maitland	Sainato
Baker	Flick	Major	Samuelson
Baldwin	Forcier	Manderino	Santoni
Barrar	Frankel	Mann	Saylor
Bastian	Freeman	Markosek	Scavello
Bebko-Jones	Gabig	Marsico	Schroder
Belardi	Gannon	McCall	Semmel
Belfanti	Geist	McGeehan	Shaner
Benninghoff	George	McGill	Shapiro
Bianucci	Gerber	McIlhattan	Siptroth
Birmelin	Gergely	McIlhinney	Smith, B.

Bishop	Gillespie	McNaughton	Smith, S. H.
Blackwell	Gingrich	Melio	Solobay
Blaum	Godshall	Metcalfe	Sonney
Boyd	Good	Micozzie	Staback
Bunt	Goodman	Millard	Stairs
Butkovitz	Grell	Miller, R.	Steil
Buxton	Grucela	Miller, S.	Stern
Caltagirone	Gruitza	Mundy	Stetler
Cappelli	Habay	Mustio	Stevenson, R.
Casorio	Haluska	Myers	Stevenson, T.
Causer	Hanna	Nailor	Sturla
Cawley	Harhai	Nickol	Surra
Civera	Harhart	O'Brien	Taylor, E. Z.
Clymer	Harper	Oliver	Taylor, J.
Cohen	Harris	O'Neill	Thomas
Cornell	Hasay	Pallone	Tigue
Corrigan	Hennessey	Payne	True
Costa	Herman	Petrarca	Turzai
Crahalla	Hershey	Petri	Veon
Creighton	Hess	Petrone	Vitali
Cruz	Hickernell	Phillips	Walko
Curry	Hutchinson	Pickett	Wansacz
Daley	James	Pistella	Waters
Dally	Josephs	Preston	Watson
DeLuca	Kauffman	Pyle	Wheatley
Denlinger	Keller, M.	Quigley	Williams
Dermody	Keller, W.	Ramaley	Wilt
DeWeese	Kenney	Rapp	Wright
DiGirolamo	Killion	Raymond	Yewcic
Diven	Kirkland	Readshaw	Youngblood
Donatucci	Kotik	Reed	Yudichak
Eachus	LaGrotta	Reichley	Zug
Ellis	Leach	Rieger	
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Rohrer	Perzel,
Fabrizio	Lescovitz	Rooney	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-4

Roebuck	Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Mr. **SOLOBAY** offered the following amendment No. **A01441**:

Amend Title, page 1, line 10, by inserting after "penalties," " providing for contributions to the Lupus Foundation of Pennsylvania of refunds by checkoff; and

Amend Bill, page 1, lines 14 through 16, by striking out all of said lines and inserting

Section 1. The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a section to read:

Section 315.8. Contributions for Lupus Foundation of Pennsylvania.—(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the Lupus Foundation of Pennsylvania.

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such

individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The department shall determine annually the total amount designated pursuant to this section, less reasonable administrative costs, and shall report such amount to the State Treasurer, who shall transfer such amount from the General Fund to the Lupus Foundation of Pennsylvania.

Section 2. Section 402 of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Amend Sec. 2, page 3, line 13, by striking out "2" and inserting

3

On the question,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS-197

Adolph	Fairchild	Levdansky	Ross
Allen	Feese	Mackereth	Rubleby
Argall	Fichter	Maher	Ruffing
Armstrong	Fleagle	Maitland	Sainato
Baker	Flick	Major	Samuelson
Baldwin	Forcier	Manderino	Santoni
Barrar	Frankel	Mann	Saylor
Bastian	Freeman	Markosek	Scavello
Bebko-Jones	Gabig	Marsico	Schroder
Belardi	Gannon	McCall	Semmel
Belfanti	Geist	McGeehan	Shaner
Benninghoff	George	McGill	Shapiro
Bianucci	Gerber	McIlhattan	Siproth
Birmelin	Gergely	McIlhinney	Smith, B.
Bishop	Gillespie	McNaughton	Smith, S. H.
Blackwell	Gingrich	Melio	Solobay
Blaum	Godshall	Metcalfe	Sonney
Boyd	Good	Micozzie	Staback
Bunt	Goodman	Millard	Stairs
Butkovitz	Grell	Miller, R.	Steil
Buxton	Grucela	Miller, S.	Stern
Caltagirone	Gruitza	Mundy	Stetler
Cappelli	Habay	Mustio	Stevenson, R.
Casorio	Haluska	Myers	Stevenson, T.
Causer	Hanna	Nailor	Sturla
Cawley	Harhai	Nickol	Surra
Civera	Harhart	O'Brien	Taylor, E. Z.
Clymer	Harper	Oliver	Taylor, J.
Cohen	Harris	O'Neill	Thomas
Cornell	Hasay	Pallone	Tigue
Corrigan	Hennessey	Payne	True
Costa	Herman	Petrarca	Turzai
Crahalla	Hershey	Petri	Veon
Creighton	Hess	Petrone	Vitali
Cruz	Hickernell	Phillips	Walko
Curry	Hutchinson	Pickett	Wansacz
Daley	James	Pistella	Waters
Dally	Josephs	Preston	Watson
DeLuca	Kauffman	Pyle	Wheatley
Denlinger	Keller, M.	Quigley	Williams
Dermody	Keller, W.	Ramaley	Wilt
DeWeese	Kenney	Rapp	Wright
DiGirolamo	Killion	Raymond	Yewcic
Diven	Kirkland	Readshaw	Youngblood
Donatucci	Kotik	Reed	Yudichak
Eachus	LaGrotta	Reichley	Zug
Ellis	Leach	Rieger	
Evans, D.	Lederer	Roberts	
Evans, J.	Leh	Rohrer	Perzel,
Fabrizio	Lescovitz	Rooney	Speaker

NAYS-0

NOT VOTING-0

## EXCUSED—4

Roebuck Sather Tangretti Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. **LEVDANSKY** offered the following amendment No. **A01046**:

Amend Title, page 2, lines 10 and 11, by striking out all of said lines and inserting  
penalties,” further providing, in sales and use tax, for assessment and for reassessment; deleting provisions relating to review by Board of Finance and Revenue; further providing for refund of sales tax attributed to bad debt; deleting provisions relating to refund or credit for overpayment and to restriction on refunds; further providing, in sales and use tax, for refunds, for refund petition and for extended time for filing special petition for refund; further providing, in personal income tax, for definitions and for classes of income; providing for withholding tax on early distributions; further providing, in personal income tax, for assessment, for jeopardy assessments, for procedure for reassessment, for restrictions on refunds and for limitations on refund or credit; further providing, in corporate net income tax, for definitions, for imposition, for reports and payment, for consolidated reports and for changes by Federal Government; providing, in corporate net income tax, for assessments, for jeopardy assessments, for limitations on assessments and for extension of limitation period; further providing for enforcement relating to corporate net income tax; providing, in corporate net income tax, for collection and for actions to collect and defenses; further providing, in gross receipts tax, for imposition; further providing, in realty transfer tax, for assessment, for lien and for refunds; further providing for mutual thrift institutions tax assessment; further providing, in malt beverage tax, for assessment and for refund of tax; further providing for inheritance tax refund; providing for petition procedure and administration; establishing the Tax Review Tribunal and providing for its powers and duties; providing for tax clearance for renewals of licenses, permits and registrations; deleting provisions relating to petitions for refunds; further providing for estimated tax and for underpayment of estimated tax, for refund petitions and for timely filing; providing for assessments by the Department of Revenue; and making related repeals.

Amend Bill, page 1, lines 14 through 18; page 2, lines 1 through 30; page 3, lines 1 through 13, by striking out all of said lines on said pages and inserting

Section 1. Sections 230 and 232 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended to read:

Section 230. Assessment.—The department is authorized and required to make the inquiries, determinations and assessments of the tax (including interest, additions and penalties) imposed by this article. A notice of assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment.

Section 232. Reassessment.—Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII. [Notice of an intention to file such a petition shall be given to the department within thirty days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept such notice within ninety days of the date the notice of assessment was mailed. The department by

registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within thirty days after receipt of the taxpayer’s notice of intention to file a petition for reassessment. A petition for reassessment shall thereafter be filed within thirty days after such basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained therein are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall such extension exceed one hundred twenty days. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly filed such petition for reassessment shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by such petition and mail notice of the department’s decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.]

Section 2. Section 234 of the act is repealed.

Section 3. Section 247.1(a) of the act, amended June 22, 2001 (P.L.353, No.23), is amended to read:

Section 247.1. Refund of Sales Tax Attributed to Bad Debt.—(a) A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

(1) The purchaser fails to pay the vendor the total purchase price.

(2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor’s books and records.

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166).

The petition shall be filed with the department within the time limitations prescribed by section [3003.1 of this act.] 2703 of this act and shall be governed by the procedure of Article XXVII.

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Section 4. Sections 250 and 251 of the act are repealed.

Section 5. Section 252 of the act, amended April 23, 1998 (P.L.239, No.45), is amended to read:

Section 252. Refunds.—The department shall, pursuant to the provisions of [sections 253 and 254] Article XXVII, refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this article and to which the Commonwealth is not rightfully entitled. Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That no refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section [232 of this article] 2702 of Article XXVII to the extent that said petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal: Provided further, That nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

Section 6. Section 253 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 253. Refund Petition.—(a) Except as provided for in section 256 and in subsection (b) [and (d)] of this section, the refund or credit of tax, interest or penalty provided for by section 252 shall be made only where the person who has actually paid the tax files a petition for refund with the department under [section 3003.1. Such petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be

accompanied by an affidavit affirming that the facts contained therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.] Article XXVII.

(b) A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 231, shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under [section 3003.1(d)] Article XXVII. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition, and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

(d) Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this article subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.]

Section 7. Section 254 of the act is repealed.

Section 8. Section 256 of the act is amended to read:

Section 256. Extended Time for Filing Special Petition for Refund.—Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to [file a regular petition within three years of the payment.] timely file a petition pursuant to section 2703 of Article XXVII. The provisions of [sections 253, 254 and 255] Article XXVII shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax (without consideration of interest and penalties) paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction and, as such, this section shall be construed as extending right beyond that provided for by section [253] 2703, and not to limit such other section.

Section 9. Section 301(a), (d) and (q) of the act, amended December 23, 1983 (P.L.370, No.90), April 23, 1998 (P.L.239, No.45) and June 29, 2002 (P.L.559, No.89), are amended and the section is amended by adding clauses to read:

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning, and, unless specifically provided otherwise, any reference in this article to the Internal Revenue Code of 1986 shall

mean the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997:

(a) “Accepted accounting principles and practices” means [those]:

(i) The requirements of sections 451 and 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 451 and 457), as amended to January 1, 2005; (ii) those accounting principles, systems or practices, including the installment sales method of reporting, which are acceptable by standards of the accounting profession and which are not inconsistent with the regulations of the department setting forth such principles and practices or the requirements described in subclause (i).

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(d) “Compensation” means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.

The term “compensation” shall not mean or include: (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as [old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment] Social Security or Tier 1 railroad retirement benefits or government or church pension plan payments; or (iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits: Provided, That the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits; or (vii) any compensation received by United States servicemen serving in a combat zone; or (viii) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1954 which is licensed by the Commonwealth or a political subdivision thereof as a placement agency; or (ix) payments made by employers or labor unions for employee benefit programs covering social security or [retirement] railroad retirement benefits; or (x) personal use of an employer's owned or leased property or of employer-provided services[.]; or (xi) payments received under an eligible retirement plan or funded eligible excess benefit plan by an employee after separation from covered service after attainment of retirement age or service; or (xii) payments received by an employee under an eligible supplemental executive retirement plan or unfunded eligible excess benefit plan after separation from covered service after attainment of retirement age or service as part of a series of substantially equal periodic payments, not less frequently than annually, made for: (A) the life or life expectancy of the recipient or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient; or (B) a period of not less than ten years; or (xiii) any distribution under an employee welfare or pension benefit plan that is made to a plan beneficiary or to the estate of the employee by reason of the death of the employee; or (xiv) payments made under eligible retirement plans, eligible excess benefit plans or eligible supplemental executive retirement plans that are contingent upon the employee's being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than twelve months; or (xv) retired or retainer pay of a member or former member of a uniform service computed under 10 U.S.C. Ch. 71.

\* \* \*

(h.1) “Eligible excess benefit plan” means any nonelective plan, program or arrangement that meets the requirements of paragraphs (2), (3) and (4) of subsection (a) of section 409A of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A), as amended to January 1, 2005, is operated in accordance with such requirements and is maintained solely for the purpose of providing retirement benefits for employes in excess of the limitations imposed by one or more of sections 401(a)(17), (k) or (m), 402(g), 403(b), 408(k) or 415 of the Internal Revenue Code of 1986, as amended, or any other limitation on contributions or benefits in such code on plans to which any of such sections apply.

(h.2) “Eligible retirement plan” means any qualified retirement plan as defined in section 4974(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 4974(c)), as amended to January 1, 2005, simplified employe pension plan as defined in section 408(k) of the Internal Revenue Code of 1986, simple retirement account as defined in section 408(p) of the Internal Revenue Code of 1986, Roth IRA as defined in section 408A of the Internal Revenue Code of 1986, or eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986 that is in compliance, by design and in operation, with Federal requirements.

(h.3) “Eligible supplemental executive retirement plan” means any nonelective nonqualified deferred compensation plan that meets the requirements of section 409A(a)(2), (3) and (4) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A(a)(2), (3) and (4)), as amended to January 1, 2005, is operated in accordance with such requirements, and is maintained solely to provide supplemental retirement benefits.

\* \* \*

(q) (1) “Received” for the purpose of computation of income subject to tax under this article means “received, earned or acquired” [and];

(2) the phrase “received, earned or acquired” shall be construed according to the method of accounting required by the department under this article for computing and reporting income subject to the tax[.];

(3) with respect to eligible retirement plans, the phrase shall be construed, as applicable, according to the provisions of sections 72(a), (b), (c) and (d), 83, 402, 403, 404, 404A, 406, 407, 408, 408A, 451 and 457 of the Internal Revenue Code of 1986 (Public Law 99-514, U.S.C. §§ 72(a), (b), (c) and (d), 83, 402, 403, 404, 404A, 406, 407, 408, 408A, 451 and 457), as amended to January 1, 2005, except that, for purposes of computing tax under this article:

(i) Amounts lawfully deducted and withheld from the compensation of employes shall be considered to have been received by the employe as compensation at the time the deduction is made.

(ii) Contributions to an employes’ trust, pooled fund, custodial account or contract or annuity made by an employer pursuant to a cash or deferred arrangement or salary reduction agreement shall be deemed to have been received by the employe as compensation at the time the contribution is made, regardless of when the election is made or a payment is received.

(iii) Any compensation deferred at a plan participant’s election shall be deemed to have been received as compensation at the time the compensated service is performed, regardless of when the election is made or a payment is received.

(iv) Any contribution to a plan by, on behalf of or attributable to a self-employed person shall be deemed to have been received at the time the contribution is made.

(v) Employer contributions to a Roth IRA custodial account or annuity shall be deemed received, earned or acquired only when distributed or the plan fails to meet the requirements of section 408A of the Internal Revenue Code of 1986 or is not operated in accordance with such requirements.

(vi) No deduction or exclusion shall be allowed for employe contributions to an employes’ trust or pooled fund or custodial account or contract or annuity;

(4) with respect to eligible excess benefit or supplemental executive retirement plans, the phrase shall be construed according to the provisions of sections 72(a), (b), (c) and (d), 83, 409A and 671 of the Internal Revenue Code of 1986, as amended to January 1, 2005, except that:

(i) Any compensation contributed in cash or in other assets at a plan participant’s election shall be deemed to have been received as remuneration at the time the compensated service is performed, regardless of when the election or payment is made and no deduction or exclusion shall be allowed for employe contributions to an employes’ trust or pooled fund or custodial account or contract or annuity.

(ii) Notwithstanding subsection (d)(xi) and (xii), any unfunded eligible excess benefit plan or eligible supplemental executive retirement plan distribution of remuneration deferred at a plan participant’s election which was not includable in the income of the participant shall be taxable as compensation when distributed; and

(5) with respect to nonqualified deferred compensation plans other than eligible excess benefit plans, the phrase shall be construed according to the provisions of sections 72(a), (b), (c) and (d), 83, 409A and 671 of the Internal Revenue Code of 1986, as amended to January 1, 2005, except that no deduction or exclusion shall be allowed for employe contributions to an employes’ trust or pooled fund or custodial account or contract or annuity.

\* \* \*

(s.3) “Retirement age or service” means the earliest of:

(1) The earliest time specified in the employes’ plan at which all plan participants who are not disabled acquire the right to separate from employment by retirement without the consent of the employer and the right immediately to begin receiving retirement benefits without reduction due to early retirement.

(2) The earliest time specified in the employes’ plan at which all plan participants who are not disabled acquire the right to separate from employment by retirement without the consent of the employer and the right immediately to begin receiving the benefit to which they would be entitled at the normal retirement time actuarially reduced due to age.

(3) Where a plan does not specify retirement age or service, the date on which the employe attains fifty-nine and a half years of age.

Section 10. Section 303 of the act is amended by adding subsections to read:

Section 303. Classes of Income.—\* \* \*

(a.4) Applicable Federal limitations on State income taxation are incorporated by reference.

(a.5) Except as provided in this article and without regard to section 409A(a)(1)(B)(i)(II) of the Internal Revenue Code of 1986 (26 U.S.C. § 409A(a)(1)(B)(i)(II)), the requirements of Subtitle A, Ch. 1 Subch. D, Pt. 1, Subpt. A of the Internal Revenue Code of 1986 (26 U.S.C. § 401 et seq.), as amended to January 1, 2005, and sections 72(a), (b), (c) and (d), 83 and 457 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 72(a), (b), (c) and (d), 83 and 457), as amended to January 1, 2005, shall be applicable.

(a.6) Any benefit provided under the Railroad Retirement Act of 1974 (Public Law 93-445, 88 Stat. 1305), as amended, other than a Tier 1 railroad retirement benefit, and amounts described in section 1402(a)(10) of the Internal Revenue Code of 1986 (26 U.S.C. § 1402(a)(10)), as amended to January 1, 2005, shall be treated for purposes of this article as a benefit provided under an eligible retirement plan.

\* \* \*

Section 11. Article III of the act is amended by adding a part to read:

#### PART VII-B

##### WITHHOLDING TAX ON EARLY DISTRIBUTIONS

Section 324.8. Withholding Tax on Early Distributions.—(a) Except as provided in this section, all provisions of this article that are applicable to an employer shall be applicable to any payor of any distribution or payment from or under an employe benefit plan,

individual retirement plan as defined in section 7701(a)(37) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7701(a)(37)) or commercial annuity. Any such payor shall withhold from such distribution or payment the amount that would be required to be withheld therefrom if it were a payment of wages by an employer to an employee.

(b) Subsection (a) shall not apply to:

(1) Any nonperiodic distribution that is an eligible rollover distribution as defined by section 402(f)(2)(A) of the Internal Revenue Code of 1986, as amended to January 1, 2005, if the distributee elects under section 401(a)(31)(A) of the Internal Revenue Code of 1986 to have such distribution paid directly to an eligible retirement plan.

(2) Any amount that is wages for Federal income tax purposes without regard to this section.

(3) Any portion of a distribution or payment which it is reasonable to believe is excludable from tax under this article.

(4) Any amount paid on employer securities that is paid to a plan and reinvested in employer securities and allowed as a deduction under section 404(k) of the Internal Revenue Code of 1986, as amended to January 1, 2005.

(c) The plan administrator shall withhold and be liable for payment of the tax required to be withheld under this section unless the plan administrator directs the payor to withhold such tax and provides the payor with such information as the department may require by regulations.

Section 12. Sections 338, 339 and 340 of the act, added August 31, 1971 (P.L.362, No.93), are amended to read:

Section 338. Assessment.—(a) The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this article.

(b) If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(c) In the event that any taxpayer fails to file a return required by this article, the department may make an estimated assessment (based on information available) of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within ninety days after a notice of such estimated assessment has been mailed to the taxpayer, unless within such period the taxpayer has filed a petition for reassessment in the manner prescribed by [section 340 of this article.] **Article XXVII.**

(d) A notice of assessment issued by the department pursuant to this article shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment.

Section 339. Jeopardy Assessments.—(a) Jeopardy Assessments, Filing and Notice. If the department believes that the assessment or the collection of a deficiency will be jeopardized in whole or in part by delay, it may mail or issue notice of its finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy including interest and penalties and additions thereto, if any.

(b) Closing of Taxable Year. If the department believes that a taxpayer designs quickly to depart from the State or to remove his property therefrom or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the department shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(c) Jeopardy Assessments, Collection. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and

prevent the jeopardy assessment from becoming final by filing, within ten days after the date of the notice of jeopardy assessment, a petition for reassessment, notwithstanding the provisions of section [340] 2702 to the contrary, accompanied by a bond or other security in such amounts as the department may deem necessary, not exceeding double the amount (including interest and penalties and additions thereto) as to which the stay is desired.

(d) Jeopardy Assessment, When Final. If a petition for reassessment, accompanied by bond or other security is not filed within the ten-day period, the assessment becomes final.

(e) Jeopardy Assessments, Hearing. If the taxpayer has so requested in his petition, the department shall grant him or his authorized representative an oral hearing.

(f) Jeopardy Assessments, Action on Petition for Reassessment. The department shall consider the petition for reassessment and notify the taxpayer of its decision thereon. Its decision as to the validity of the jeopardy assessment shall be final, unless the taxpayer within ninety days after notification of the department's decision files a petition for review authorized under section [341] 2705.

(g) Jeopardy Assessments, Presumptive Evidence of Jeopardy. In any proceeding brought to enforce payment of taxes made due and payable by this section, the belief of the department under subsection (a) whether made after notice to the taxpayer or not, is for all purposes presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy. A certificate of the department of the mailing or issuing of the notices specified in this section is presumptive evidence that the notices were mailed or issued.

Section 340. Procedure for Reassessment.—[Promptly after the date of an assessment by the department, the department shall send by mail a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such tax. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitled him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of such petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.] Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.

Section 13. Section 341 of the act is repealed.

Section 14. Section 347 of the act, amended July 1, 1985 (P.L.78, No.29), is amended to read:

Section 347. Restrictions on Refunds.—[No] A credit or refund [shall] may be made under section 346 [without the approval of the Board of Finance and Revenue, except such credits or refunds as arise]:

(1) By reason of the overpayment of an installment of estimated tax;

(2) Upon reassessment [or upon];

(3) Upon the filing of a final return or amended final return showing any overpayment of tax.

Section 15. Section 350 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 350. Limitations on Refund or Credit.—Any application for refund must be filed with the department under section [3003.1] 2703.

Section 16. Section 401(3)1(a) and (b), 2(a) and 4(c) and (5) of the act, amended or added December 23, 1983 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97, No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353, No.23) and June 29, 2002 (P.L.559, No.89) are amended, clause (3)2 is amended by adding a phrase and the section is amended by adding clauses to read:

Section 401. Definitions.—The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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(3) "Taxable income." 1. (a) In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, taxable income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government or that is not required to file a return with the Federal Government, the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government.

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government. For tax years beginning on or after January 1, 1991, additional deductions shall only be allowed for amounts included, under section 78 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned to and ascertained by the Federal Government and for the amount of any dividends received from a foreign corporation included in taxable income to the extent such dividends would be deductible in arriving at Federal taxable income if received from a domestic corporation. For taxable years beginning on or after January 1, 2007, if not otherwise allowed as a deduction, an additional deduction is allowed for all dividends paid by one to another of the included corporations of a unitary business to the extent those dividends are included in business income of a corporation that is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause (2).

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2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1986, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

(1) As used in this definition, unless the context otherwise requires:

(A) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if either the acquisition, the management or the disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. The term includes all income which is apportionable under the Constitution of the United States.

(B) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(C) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

(D) "Nonbusiness income" means all income other than business income. The term does not include income which is apportionable under the Constitution of the United States.

(E) "Sales" means all gross receipts of the taxpayer not allocated under this definition other than dividends received, interest on United States, state or political subdivision obligations and gross receipts heretofore or hereafter received from the sale, redemption, maturity or exchange of securities, except those held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(F) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(G) "This state" means the Commonwealth of Pennsylvania or, in the case of application of this definition to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this State other than activity as a corporation whose allocation and apportionment of income is specifically provided for in section 401(3)2(b)(c) and (d) shall allocate and apportion taxable income as provided in this definition.

(3) For purposes of allocation and apportionment of income under this definition, a taxpayer is taxable in another state if in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or if that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, gains, interest, patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs (5) through (8).

(5) (A) Net rents and royalties from real property located in this State are allocable to this State.

(B) Net rents and royalties from tangible personal property are allocable to this State if and to the extent that the property is utilized in this State, or in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (A) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(B) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if the property had a situs in this State at the time of the sale, or the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(C) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(7) Interest is allocable to this State if the taxpayer's commercial domicile is in this State.

(8) (A) Patent and copyright royalties are allocable to this State if and to the extent that the patent or copyright is utilized by the payer in this State, or if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) (A) Except as provided in [subparagraph (B)] subparagraphs (B) and (C), all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five.

(B) For purposes of apportionment of the capital stock - franchise tax as provided in section 602 of Article VI of this act, the apportionment fraction shall be the property factor plus the payroll factor plus the sales factor as the numerator, and the denominator shall be three.

(C) For taxable years that begin on or after January 1, 2007, all business income shall be apportioned to this State by a fraction, which is the sales factor. This includes any railroad, truck, bus, airline, pipeline, natural gas or water transportation company that is required to determine its business income pursuant to paragraph (1) of phrase (e) of this subclause.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period but shall not include the security interest of any corporation as seller or lessor in personal property sold or leased under a conditional sale, bailment lease, chattel mortgage or other contract providing for the retention of a lien or title as security for the sales price of the property.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this State if:

(A) The individual's service is performed entirely within the State;

(B) The individual's service is performed both within and without this State, but the service performed without the State is incidental to the individual's service within this State; or

(C) Some of the service is performed in this State and the base of operations or if there is no base of operations, the place from which the service is directed or controlled is in this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this State if the property is delivered or shipped to a purchaser, within this State regardless of the f.o.b. point or other conditions of the sale.

(17) Sales, other than sales of tangible personal property and sales set forth in paragraphs (17.1) and (17.2), are in this State if:

(A) The income-producing activity is performed in this State; or

(B) The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

(17.1) Sales of services are in this State if sales are derived from customers within this State. If part of the sales with respect to a specific

contract or other agreement to perform services is derived from customers from within this State, sales are in this State in proportion to the sales derived from customers within this State to total sales with respect to that contract or agreement.

(17.2) In order to determine sales in this State of any railroad, truck, bus, airline, pipeline, natural gas or water transportation company that is required to determine its business income pursuant to paragraph (1) of phrase (e) of this subclause such company must convert the relevant fraction set forth in phrase (b), (c) or (d) of this subclause to gross receipts. Sales in this State are the result of multiplying total gross receipts from relevant transportation activities by the decimal equivalent of the relevant fraction set forth in phrase (b), (c) or (d) of this subclause.

(18) If the allocation and apportionment provisions of this definition do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition the Secretary of Revenue or the Secretary of Revenue may require, in respect to all or any part of the taxpayer's business activity:

(A) Separate accounting;

(B) The exclusion of any one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. In determining the fairness of any allocation or apportionment, the Secretary of Revenue may give consideration to the taxpayer's previous reporting and its consistency with the requested relief.

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(e) Corporations That are Members of a Unitary Business.

(1) Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2007, business income of a corporation that is a member of a unitary business that consists of two or more corporations, at least one of which does not transact its entire business in this State, is determined by combining the business income of either all corporations, other than as set forth below, that are water's-edge basis members or all corporations, other than as set forth below, that are worldwide members of the unitary business. All transactions among included corporations of the unitary business are eliminated in determining the business income of a corporation that is a member of that unitary business. Business income of the following corporations is not included in the determination of combined business income:

(i) any corporation subject to taxation under Article VII, VIII, IX or XV;

(ii) any corporation specified in the definition of "institution" in section 701.5 that would be subject to taxation under Article VII were it located, as defined in section 701.5, in this State;

(iii) any corporation commonly known as a title insurance company that would be subject to taxation under Article VIII were it incorporated in this State;

(iv) any corporation specified as an insurance company, association or exchange in Article IX that would be subject to taxation under Article IX were its insurance business transacted in this State;

(v) any corporation specified in the definition of "institution" in section 1501 that would be subject to taxation under Article XV were it located, as defined in section 1501, in this State; or

(vi) any corporation that is a small corporation, as defined in section 301(s.2), or a qualified Subchapter S subsidiary, as defined in section 301(o.3).

(2) Notwithstanding any contrary provisions of this article, all corporations that are required to compute business income under paragraph (1) are entitled to apportion such business income when one corporation of the same unitary business is entitled to apportion such business income. Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2007, the denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1) shall be computed on a combined basis for all included corporations of the



unitary business. All transactions among included corporations of the unitary business are eliminated in computing the numerator and denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1). The apportionment fraction of the following corporations is not included in the determination of the combined apportionment fraction:

(i) any corporation subject to taxation under Article VII, VIII, IX or XV;

(ii) any corporation specified in the definition of “institution” in section 701.5 that would be subject to taxation under Article VII were it located, as defined in section 701.5, in this State;

(iii) any corporation commonly known as a title insurance company that would be subject to taxation under Article VIII were it incorporated in this State;

(iv) any corporation specified as an insurance company, association or exchange in Article IX that would be subject to taxation under Article IX were its insurance business transacted in this State;

(v) any corporation specified in the definition of “institution” in section 1501 that would be subject to taxation under Article XV were it located, as defined in section 1501, in this State;

(vi) any corporation that is a small corporation, as defined in section 301(s.2), or a qualified Subchapter S subsidiary, as defined in section 301(o.3).

(3) A corporation that is required to compute its business income under paragraph (1) shall apportion such combined business income by multiplying such combined business income by a fraction which is the combined apportionment fraction set forth in paragraph (2).

(4) Nonbusiness income of a corporation that is required to compute business income under paragraph (1) shall be allocated as provided in paragraphs (5) through (8) of phrase (a) of subclause 2 of the definition of “taxable income.”

(5) Each corporation that is a member of a unitary business that consists of two or more corporations determines its tax liability based on its apportioned share of the combined business income of the unitary business plus its nonbusiness income or loss allocated to this State, minus its net loss deduction.

(6) If any provision of this phrase operates so that an amount is added to or deducted from taxable income for a taxable year for any corporation of a unitary business that previously had been added to or deducted from taxable income of any corporation of the same unitary business, an appropriate adjustment shall be made for the taxable year in order to prevent double taxation or double deduction. If this adjustment is not made by the appropriate corporation of the unitary business, the Secretary of Revenue is authorized to make this adjustment.

(7) The Secretary of Revenue has the authority and responsibility to make adjustments to insure that a corporation does not incur an unfair penalty nor realize an unfair benefit because it is required to compute its business income under paragraph (1). Fairness shall be measured by whether the corporation’s income allocated and apportioned to this State fairly reflects the corporation’s share of the unitary business conducted in this State in the taxable year.

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(c) (1) The net loss deduction shall be the lesser of two million dollars (\$2,000,000) or the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2[,] for taxable years that begin on or prior to December 31, 2007. The net loss deduction for any taxable year that begins during calendar year 2007 is further limited by the provisions of paragraph (4). Except as set forth in paragraph (4), there is no maximum on the amount of the net loss deduction allowed for taxable years beginning on or after January 1, 2008. In no event shall the net loss deduction include more than five hundred thousand dollars (\$500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

(2) A net loss for a taxable year may only be carried over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
1983-1987	3 taxable years
1988	2 taxable years plus 1 taxable year starting with the 1995 taxable year
1989	1 taxable year plus 2 taxable years starting with the 1995 taxable year
1990-1993	3 taxable years starting with the 1995 taxable year
1994	1 taxable year
1995-1997	10 taxable years
1998 and thereafter	20 taxable years

The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. [The total net loss deduction allowed in any taxable year shall not exceed two million dollars (\$2,000,000).]

(3) The entire net loss for a taxable year that begins on or after January 1, 2007, is available to be carried over to a taxable year that begins on or after January 1, 2008, pursuant to the schedule set forth in paragraph (2) and shall be carried over to the earliest taxable year to which it may be carried pursuant to the schedule set forth in paragraph (2).

(4) The amount of unused net loss from all taxable years that begin prior to January 1, 2007, that may be carried over to any taxable year that begins on or after January 1, 2007, is limited to two million dollars (\$2,000,000) per taxable year and may only be used by the corporation that realized the net loss. If a corporation is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause 2, it may only use such loss in a year to the extent that it has taxable income before use of such loss determined as if it were a separate company.

(5) Any net loss realized for a taxable year that begins on or after January 1, 2007, by one corporation of a unitary business may be used by other corporations of the same unitary business, provided that the corporation that realized the net loss must first use the portion of such net loss to reduce its taxable income to zero. Other corporations of the same unitary business that have insufficient net losses of their own to reduce their tax liabilities to zero may then use the remainder of such net loss in proportion to their remaining taxable incomes before the application of such loss.

(6) Any net loss realized for a taxable year that begins on or after January 1, 2007, unused by a corporation which subsequently becomes a member of another unitary business may only be used by that corporation.

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(5) “Taxable year.” [The] 1. Except as set forth in subclause 2, the taxable year which the corporation, or any consolidated group with which the corporation participates in the filing of consolidated returns, actually uses in reporting taxable income to the Federal Government[.], or which the corporation would have used in reporting taxable income to the Federal Government had it been required to report its taxable income to the Federal Government. With regard to the tax imposed by Article IV of this act (relating to the Corporate Net Income Tax), the terms “annual year,” “fiscal year,” “annual or fiscal year,” “tax year” and “tax period” shall be the same as the corporation’s taxable year, as defined in this [paragraph.] subclause or subclause 2.

2. All corporations of a unitary business shall have a common taxable year for purposes of computing tax due under this article. The taxable year for such purposes is the common taxable year adopted, in a manner prescribed by the department, by all corporations of a unitary business. The common taxable year must be used by all corporations of

that unitary business in the year of adoption and all future years unless otherwise permitted by the department.

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(7) “Tax haven.” A jurisdiction that at the beginning of a taxable year is a tax haven as identified by the Organization for Economic Co-operation and Development, plus the sovereignties of Bermuda, the Cayman Islands, the Bailiwick of Jersey and the Grand Duchy of Luxembourg.

(8) “Unitary business.” A single economic enterprise that is made up of separate parts of a single corporation, of a commonly controlled group of corporations, or both, that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. A unitary business includes only those parts and corporations which may be included as a unitary business under the Constitution of the United States.

(9) “Water’s-edge basis.” A system of accounting that includes the business income and apportionment factor of certain corporations of a unitary business, described as follows:

1. The entire business income and apportionment factor of any member incorporated in the United States or formed under the laws of any state of the United States, the District of Columbia, any territory or possession of the United States or the Commonwealth of Puerto Rico.

2. The entire business income and apportionment factor of any member, regardless of the place incorporated or formed, if the average of its property, payroll and sales factors within the United States is twenty per cent or more.

3. The entire business income and apportionment factor of any member which is a domestic international sales corporation as described in sections 991, 992, 993 and 994 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992, 993 and 994); a foreign sales corporation as described in sections 921, 922, 923, 924, 925, 926 and 927 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 921, 922, 923, 924, 925, 926 and 927); or any member which is an export trade corporation, as described in sections 970 and 971 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).

4. Any member not described in subclauses 1, 2 and 3 shall include the portion of its business income derived from or attributable to sources within the United States, as determined under the Internal Revenue Code of 1986 without regard to Federal treaties, and its apportionment factor related thereto.

5. Any member that is a “controlled foreign corporation” as defined in section 957 of the Internal Revenue Code of 1986 (26 U.S.C. § 957), to the extent the business income of that member is income defined in section 952 of the Internal Revenue Code of 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-tier subsidiaries’ distributions of such income which were previously taxed, determined without regard to Federal treaties, and the apportionment factor related to that income; any item of income received by a controlled foreign corporation and the apportionment factor related to such income shall be excluded if the corporation establishes to the satisfaction of the Secretary of Revenue that such income was subject to an effective rate of income tax imposed by a foreign country greater than ninety per cent of the maximum rate of tax specified in section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11).

6. The entire business income and apportionment factor of any member that is not described in subclause 1, 2, 3, 4 and 5 and that is doing business in a tax haven. The business income and apportionment factor of a corporation doing business in a tax haven shall be excluded if the corporation establishes to the satisfaction of the Secretary of Revenue that its income was subject to an effective rate of income tax imposed by a country greater than ninety per cent of the maximum rate of tax specified in section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11).

(10) “Commonly controlled group.” For a corporation, the corporation is a member of a group of two or more corporations and more than fifty per cent of the voting stock of each member of the

group is directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, or by one or more of the member corporations of the group.

(11) “Separate company.” A corporation that is not a member of a unitary business that consists of two or more corporations.

(12) “Tax.” Includes interest, penalties and additions to tax unless a more limited meaning is disclosed by the context.

Section 17. Section 402(b) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 402. Imposition of Tax.—\* \* \*

(b) The annual rate of tax on corporate net income imposed by subsection (a) for taxable years beginning for the calendar year or fiscal year on or after the dates set forth shall be as follows:

Taxable Year	Tax Rate
January 1, 1995, [and each taxable year thereafter] through taxable years beginning December 31, 2006	9.99%
January 1, 2007, and each taxable year thereafter	7.90%

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Section 18. Section 403 of the act, amended September 9, 1971 (P.L.437, No.105), June 23, 1982 (P.L.610, No.172), July 1, 1985 (P.L.78, No.29) and August 4, 1991 (P.L.97, No.22) and repealed in part December 19, 1990 (P.L.834, No.198) is amended to read:

Section 403. Reports and Payment of Tax.—(a) [For the purpose of ascertaining the amount of tax payable under this article, it] It shall be the duty of every corporation, liable to pay tax under this article, on or before April 15, 1972, and each year thereafter, to transmit to the department, upon a form prescribed[, prepared and furnished] by the department, an annual report under oath or affirmation of its president, vice-president [or other principal officer, and of its], treasurer [or] , assistant treasurer or other authorized officer, of net income taxable under the provisions of this article. Such report shall set forth:

(1) A true copy of its return to the Federal Government of the annual taxable income arising or accruing in the calendar or fiscal year next preceding, or such part or portions of said return, as the department may designate;

(2) If no return was filed with the Federal Government the report made to the department shall show such information as would have been contained in a return to the Federal Government had one been made; and

(3) Such other information as the department may require. Upon receipt of the report, the department shall promptly forward to the Department of State, the names of the president, vice-president, secretary and treasurer of the corporation and the complete street address of the principal office of the corporation for inclusion in the records of the Department of State relating to corporation.

(a.1) (1) Each corporation subject to tax under this article is required to file an annual report in accordance with this section. Each corporation that is a member of a unitary business that consists of two or more corporations, unless excluded by the provisions of this article, shall file as part of a combined annual report. The corporations of the unitary business shall designate one member that is subject to tax under this article to file the combined annual report and to act as agent on behalf of all other corporations that are members of the unitary business. Each corporation that is a member of a unitary business is responsible for its tax liability under this article.

(2) The oath or affirmation of the designated member’s president, vice president or other principal officer, and of its treasurer or assistant treasurer shall constitute the oath or affirmation of each corporation that is a member of that unitary business.

(3) The designated member shall transmit to the department upon a form prescribed by the department, an annual combined report under oath or affirmation of its president, vice president or other

principal officer, and of its treasurer or assistant treasurer. Such report shall set forth:

(i) All corporations included in the unitary business.

(ii) All necessary data, both in the aggregate and for each corporation of the unitary business, that sets forth the determination of tax liability for each corporation of the unitary business.

(iii) Any other information that the department may require.

(a.2) (1) Activities that evidence a significant flow of value among commonly controlled corporations, include, but are not limited to, the following:

(i) Assisting in the acquisition of equipment.

(ii) Assisting with filling personnel needs.

(iii) Lending funds or guaranteeing loans.

(iv) Interplay in the area of corporate expansion.

(v) Providing technical assistance.

(vi) Supervising.

(vii) Providing general operational guidance.

(viii) Providing overall operational strategic advice.

(ix) Common use of trade names and patents.

(2) Significant flow of value must be more than the flow of funds arising out of passive investment and consists of more than periodic financial oversight.

(a.3) (1) With respect to a commonly controlled group of corporations, the presence of any of these factors creates a presumption of a unitary business:

(i) Corporations engaged in the same type of business.

(ii) Corporations engaged in different steps in a vertically structured enterprise.

(iii) Strong centralized management of corporations.

(2) A corporation newly formed by a corporation that is a member of a unitary business is rebuttably presumed to be a member of the unitary business.

(3) A corporation that owns a controlling interest in two or more corporations of a unitary business is rebuttably presumed to be a member of the unitary business.

(4) A corporation that permits one or more other corporations of a unitary business to substantially use its patents, trademarks, service marks, logo-types, trade secrets, copyrights or other proprietary assets or that is principally engaged in loaning money to one or more other corporations of a unitary business is rebuttably presumed to be a member of the unitary business. This presumption only applies to a commonly controlled group of corporations.

(a.4) As far as applicable to a specific unitary business, unless there is a revision of applicable State law or unless a corporation is not included under the provisions of this article, there is a rebuttable presumption for all tax years that begin in years 2007 and 2008 that a unitary business of two or more corporations includes at least all corporations that are part of a unitary business under the law of any state of the United States for the same tax year.

(a.5) Unless an election is made to use a worldwide basis of accounting, a corporation that is a member of a unitary business of two or more corporations must determine its business income and apportionment factor upon a water's-edge basis. This basis applies to all corporations of the unitary business. If an election is made to use a worldwide basis of accounting, all corporations of the unitary business must make the election, upon a form, prescribed, prepared and furnished by the department. This election binds all corporations of the unitary business for the period of time that the election remains in effect. An initial election is binding for a period of seven years. Subsequent elections are binding for a period of five years.

(b) [For the purpose of ascertaining the amount of tax payable under this article for the taxable year 1971, and each taxable year thereafter, it shall be the duty of every corporation liable to pay tax under this article, on or before April 30, 1971, and on or before the end of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, and each year thereafter, to transmit in like form and manner an additional tentative report and make payment pursuant to the provisions of section 3003: Provided, That in making such report

and payment for the calendar year 1971 and each year thereafter and for fiscal years commencing during the calendar year 1971, and each year thereafter the tax base from the immediate prior year, upon which the tentative tax computation is to be made under said section 3003, shall be computed as if the tax base for such immediate prior year had been determined under the applicable provisions of the act of March 4, 1971 (Act No.2). For taxable years commencing with calendar year 1986 and for each taxable year through taxable year 1991, corporations shall not report and pay tentative tax on account of the corporate net income tax, but shall, on or before April 15 for calendar year taxpayers and on or before the fifteenth day of the fourth month of the fiscal year for fiscal year taxpayers, report and pay estimated corporate net income tax pursuant to section 3003.2 of this act: Provided, however, That tentative tax on account of any other tax which is imposed as the result of the adoption by reference of this part or section shall continue to be imposed. For taxable years commencing on or after January 1, 1992, corporations shall report and pay estimated tax pursuant to section 3003.2 on or before March 15 for calendar year taxpayers and on or before the fifteenth day of the third month for fiscal year taxpayers.] It shall be the duty of each corporation liable to pay tax under this article to pay estimated tax pursuant to section 3003.2 and to make final payment of the tax due for the taxable year with the annual report required by this section.

(c) The amount of all taxes, imposed under the provisions of this article, not paid on or before the times as above provided, shall bear interest as provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," from the date they are due and payable until paid, except that if the taxable income has been, or is increased by the Commissioner of Internal Revenue, or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty days after the corporation receives notice of the change of income until paid: Provided, however, That any corporation may pay the full amount of such tax, or any part thereof, together with interest due to the date of payment, without prejudice to its right to present and prosecute [a] an administrative petition [for resettlement, a petition for review.] or an appeal to court. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such corporation, which may be used by it in the manner prescribed by law.

(d) If the officers of any corporation shall neglect, or refuse to make any report as herein required, or shall knowingly make any false report, the following percentages of the amount of the tax shall be added by the department to the tax determined to be due on the first one thousand dollars (\$1,000) of tax ten per cent, on the next four thousand dollars (\$4,000) five per cent, and on everything in excess of five thousand dollars (\$5,000) one per cent, no such amounts added to the tax shall bear any interest whatsoever.

(e) If any corporation closes its fiscal year not upon December 31, but upon some other date, and reports to the Federal Government as of such other date, or would so report were it to make a return to the Federal Government, such corporation shall certify such fact to the department, and shall make the annual report, herein required, within thirty days after the return to the Federal Government is due, or would be due were it to be required of such corporation, subject in all other respects to the provisions of this article. [The tentative report required of such corporation shall be due not later than four months after the end of the next preceding fiscal year.]

(f) If the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the taxable income, taxable under this article, and the basis of such claim of inaccuracy, shall be fully specified.

Section 19. Section 404 of the act is amended to read:

Section 404. Consolidated Reports.—(a) The department shall not permit any corporation owning or controlling, directly or indirectly, any of the voting capital stock of another corporation or of other corporations, subject to the provisions of this article, to make a consolidated report, showing the combined net income.

(b) This section applies to taxable years beginning prior to January 1, 2007.

Section 20. Section 406 of the act, amended September 9, 1971 (P.L.437, No.105), is amended to read:

Section 406. Changes Made by Federal Government.—(a) If the amount of the taxable income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commission of Internal Revenue or by any other agency or court of the United States, such corporation, within thirty days after the receipt of such final change or correction, shall make a corrected report, under oath or affirmation, to the department showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of such correction, which results in an increase in taxable income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, there should be any change made in the amount of the taxable income of any corporation upon which tax is imposed by this article, the department shall have the power, and its duty shall be to [resettle such taxes. Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law, and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made. The resettlement shall be subject to audit and approval by the Department of the Auditor General, as in the case of original settlements, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue, as in the case of original settlements.] determine and assess the taxpayer's unpaid or unreported liability for tax due the Commonwealth, or to credit the taxpayer's account as appropriate.

(c) Where a report of change, correction, or redetermination of Federal income, or Federal tax, has been filed after [a petition for review, or] an administrative or a judicial appeal has been taken, such report shall be deemed a part of the original annual report upon petition of the taxpayer at any subsequent proceeding as though it had been filed with such original report, and no separate [petition for review or] appeal from [the resettlement] an assessment resulting from [such] the report of change, correction, or redetermination shall be necessary to the extent the identical issues for the taxable year have been raised in the appeal.

(d) The provisions of this section shall not be construed so as to permit [a resettlement] an assessment based upon the allowance of any deduction on account of net operating losses, sustained in other fiscal or calendar years, that are not allowed as deductions under the definition of "taxable income" as contained in this article.

(e) The provisions of this section shall apply to every corporation which was doing business in Pennsylvania in the year for which the Federal income has been changed, irrespective of whether or not such corporation has thereafter merged, consolidated, withdrawn or dissolved. Any clearance certificate issued by the department shall be conditioned upon the requirement that in the event of a change in Federal income for any year for which taxes have been paid to the Commonwealth, the corporation or its successor or its officers or its directors shall file with the department a report of change and pay any additional State tax resulting therefrom.

Section 21. The heading of Part IV of Article IV of the act is amended to read:

PART IV  
[SETTLEMENT AND RESETTLEMENT]  
ASSESSMENT AND COLLECTION OF TAX

Section 22. Section 407 of the act is amended by adding a subsection to read:

Section 407. Settlement and Resettlement.—\* \* \*

(e.1) This section applies to taxable years beginning prior to January 1, 2007.

\* \* \*

Section 23. The act is amended by adding sections to read:

Section 407.1. Assessments.—(a) If the department determines that unpaid or unreported tax is due the Commonwealth, the department shall issue an assessment.

(b) A notice of assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the assessment shall be without prejudice to the right of the taxpayer to file a petition for reassessment in the manner prescribed by Article XXVII.

(c) In the event that a taxpayer fails to file a report for a tax governed by this article, the department may issue an estimated assessment, based upon the records and information available or that may come into the department's possession. If prior to the filing of a report the department estimates that additional unpaid or unreported tax is due the Commonwealth, the department may issue additional estimated assessments.

(d) A notice of estimated assessment and demand for payment shall be mailed by certified mail to the taxpayer. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the estimated assessment does not eliminate the taxpayer's obligation to file a report.

(e) A taxpayer shall have no right to petition for reassessment, petition for refund or otherwise appeal a notice of estimated assessment except as provided in subsection (f).

(f) The department shall remove an estimated assessment within ninety days of the filing of a report and other information required to determine the tax due the Commonwealth whereupon the department may issue an assessment as provided in subsection (a). Any tax due the Commonwealth that is included in an estimated assessment shall retain its lien priority as of the date of the estimated assessment to the extent such amount is included with an assessment issued upon the review of the filed report.

Section 407.2. Jeopardy Assessments.—(a) If the department believes that the assessment or the collection of unpaid or unreported tax will be jeopardized in whole or in part by delay, it shall issue a jeopardy assessment.

(b) If the department believes that a taxpayer intends to depart from the Commonwealth, remove the taxpayer's property from the Commonwealth, conceal himself or property of the taxpayer from the Commonwealth, or to do any other act that may prejudice or render wholly or partly ineffectual any action to collect any tax for the prior or current tax periods unless the action is brought without delay, the department shall declare the current tax period of the taxpayer immediately terminated. In this case, the department shall issue a jeopardy assessment for the tax period declared terminated and for all prior tax periods, whether or not the time otherwise allowed by law for filing a report or paying the tax has expired.

(c) A notice of jeopardy assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice of jeopardy assessment shall include the amount of the bond or other security required to stay collection of the assessment.

(d) The jeopardy assessment shall be paid to the department upon receipt of the notice of jeopardy assessment. Payment of the jeopardy assessment does not eliminate the taxpayer's obligation to file a report. If prior to the filing of a report the department estimates that additional unpaid tax is due the Commonwealth, the department may issue additional jeopardy assessments or estimated assessments pursuant to section 407.1.

(e) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The following apply:

(1) The collection of the whole or any amount of a jeopardy assessment may be stayed, at any time before the assessment becomes final, by filing with the department a bond or other security in such amounts as the department may deem necessary not exceeding one hundred twenty per cent of the tax for which the stay is desired.

(2) Upon the filing of the bond or other security the collection of the amount assessed that is covered by the bond or other security shall be stayed. The taxpayer shall have the right to waive the stay at any time in respect of the whole or any part of the amount covered by the bond or other security. If the taxpayer waives any part of the amount covered by the bond or other security, then the bond or other security shall be proportionately reduced upon payment of the amount waived. If any portion of the jeopardy assessment is abated, the bond or other security shall be proportionately reduced at the request of the taxpayer.

(f) (1) A taxpayer may prevent a jeopardy assessment from becoming final by filing a petition for reassessment with the department within thirty days after the mailing date of the notice of jeopardy assessment. The issues to be addressed in the review of the petition shall include:

(i) Whether the making of the jeopardy assessment is reasonable under the circumstances.

(ii) Whether the amount assessed as a result of the jeopardy assessment is appropriate under the circumstances.

(2) The department shall issue a decision and order disposing of a petition filed under paragraph (1) within sixty days after receipt of the petition. Notice of the department's decision and order disposing of the petition shall be mailed to the petitioner.

(3) A taxpayer may file a petition for review of the department's decision and order under paragraph (2) in Commonwealth Court within 30 days after the following:

(i) The mailing date of the department's notice of decision and order on a petition for reassessment of a jeopardy assessment.

(ii) If the petition is not disposed of by the department within sixty days after receipt, the sixtieth day following the date the petition was received by the department.

(4) If it is determined that the making of the jeopardy assessment is unreasonable or that the amount assessed is inappropriate, the assessment may be abated, the assessment may be redetermined in whole or in part, or the department or the taxpayer may be directed to take such other actions as may be appropriate.

(g) Any determination made pursuant to a petition for reassessment under this section shall be final and conclusive upon exhaustion of the appeal rights provided in this section and shall not be reviewed in any other proceeding.

(h) (1) In an action under this section involving the issue of whether the making of a jeopardy assessment is reasonable under the circumstances, the burden of proof in respect to such issue shall be upon the department.

(2) In an action under this section involving the issue of whether an amount assessed as a result of jeopardy assessment is appropriate under the circumstances, the burden of proof in respect of such issue shall be upon the taxpayer.

Section 407.3. Limitations on Assessments.—(a) Tax may be assessed within three years after the date the report is filed.

(b) Tax may be assessed at any time if a taxpayer fails to file a report required by law.

(c) Tax may be assessed at any time if the taxpayer files a false or fraudulent report with intent to evade tax imposed by the tax laws of this Commonwealth.

(d) If at any time within the time limitations specified in this section the department is not satisfied with its determination of the taxpayer's liability, the department may strike all, or any part of, a previously issued assessment or may issue additional assessments of tax.

(e) The department may, within three years of the granting of any refund or credit or within the period in which an assessment could have been filed by the department with respect to the taxable period for which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

(f) For purposes of this section, a report filed before the last day prescribed for filing shall be deemed to have been filed on the last day.

Section 407.4. Extension of Limitation Period.—Notwithstanding section 407.3, where, before the expiration of the period prescribed in section 407.3, a taxpayer has consented in writing that such period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

Section 24. Section 408(b) of the act, amended June 23, 1982 (P.L.610, No.172), is amended to read:

Section 408. Enforcement; Rules and Regulations; Inquisitorial Powers of the Department.—\* \* \*

(b) The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records, and to investigate the character of the business of any corporation in order to verify the accuracy of any report made, or if no report was made by such corporation, to ascertain and [settle] assess the tax imposed by this article. Every such corporation is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities, and opportunity for such examinations and investigations, as are hereby provided and authorized. Any information gained by the department, as a result of any returns, investigations, or verifications required to be made by this article, shall be confidential, except for official purposes, and any person divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than six months, or both. Nothing in this section shall preclude the department from providing public information, as defined in section 403(a)(3), to other government units. Any identification number provided by the department to another governmental unit for governmental purposes shall continue to be confidential information.

\* \* \*

Section 25. The act is amended by adding sections to read:

Section 408.1. Collection of Tax.—The department shall collect the taxes imposed by this article in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

Section 408.2. Actions to Collect Taxes; Defenses.—(a) The department may initiate actions to collect any tax:

(1) Immediately, in the case of any amount related to tax reported as due the Commonwealth by the taxpayer that is not paid by the due date for payment of the tax.

(2) After ninety days from the mailing date of a notice of assessment, if no petition for reassessment has been filed.

(3) After ninety days from the mailing date of the department's decision and order disposing of a petition for reassessment, if no petition for review has been filed.

(4) After thirty days from the mailing date of the decision and order of the Pennsylvania Tax Review Tribunal upon a petition for review or from the expiration of the tribunal's time for acting upon such petition, if no decision has been made.

(5) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

(6) Immediately, in the case of jeopardy assessments as provided by section 407.2.

(b) A taxpayer shall not be permitted to raise any defense to the department's collection action that might have been determined by the department, the Pennsylvania Tax Review Tribunal or the courts if the taxpayer had properly pursued its administrative remedies under this article.

Section 26. Section 1101(e) of the act, amended December 11, 1979 (P.L.499, No.107), is amended to read:

Section 1101. Imposition of Tax.—\* \* \*

(e) Time to File Reports.—The time for filing annual reports may be extended, estimated [settlements] assessments may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the taxes imposed under subsections (a) and (b) shall be as prescribed by the laws defining the powers and

duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed under subsections (a) and (b) shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership, person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable for any tax imposed under subsections (a) and (b) upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

\* \* \*

Section 27. Sections 1111-C and 1112-C of the act, amended July 2, 1986 (P.L.318, No.77), are amended to read:

Section 1111-C. [Determination] Assessment and Notice of Tax; Review.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make [a determination] an assessment of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such [determinations] assessments shall be made within three years after the date of the recording of the document.

(b) Promptly after the date of such [determination] assessment, the department shall send by certified mail a copy thereof, including the basis of the assessment, to the person against whom it was made. [Within ninety days after the date upon which the copy of any such determination was mailed, such person may file with the department a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department within six months after the date of filing of any petition for redetermination to dispose of the petition. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

(c) Any person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.] Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.

Section 1112-C. Lien.—(a) Any tax determined to be due by the department and remaining unpaid after demand for the same, and all penalties and interest thereon, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after said lien has been entered and docketed of record by the prothonotary of the county where such property is situated.

(a.1) At any time after it makes [a determination] an assessment of additional tax, penalty or interest, the department may transmit to the prothonotaries of the respective counties certified copies of all liens for such taxes, penalties and interest, and it shall be the duty of each prothonotary receiving the lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. After the department's [determination] assessment becomes final, a writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before issuance of any execution

on the lien, notice shall be sent by certified mail to the taxpayer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens, the payment of any costs incident thereto.

(b) The lien imposed hereunder shall have priority from the date of its recording as aforesaid, and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto before any other obligation, judgment, claim, lien or estate to which said property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property subject to a lien imposed hereunder upon a lien or claim over which the lien imposed hereunder has priority, as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only that the proceeds are applied to its payment, and such lien shall continue in full force and effect as to the balance remaining unpaid.

(c) The lien imposed hereunder shall continue for five years from the date of its entry of record, and may be renewed and continued in the manner now or hereafter provided for the renewal of judgments, or as may be provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 28. Section 1113-C of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 1113-C. Refunds.—(a) Whenever the amount due upon [determination, redetermination] assessment or review is less than the amount paid to the department on account thereof, the department shall enter a credit in the amount of such difference to the account of the person who paid the tax.

(b) Where there has been no [determination] assessment of unpaid tax, the department shall have the power, and its duty shall be, to hear and decide any application for refund and, upon the allowance of such application, to enter a credit in the amount of the overpayment to the account of the person who paid the tax. Such application must be filed under [section 3003.1] Article XXVII.

Section 29. Section 1502(f) of the act, amended October 14, 1988 (P.L.737, No.106), is amended to read:

Section 1502. Imposition; Report and Payment of Tax; Exemptions.—\* \* \*

(f) If any institution shall neglect or refuse to make any report required by this article, such institution shall be liable to a penalty of five thousand dollars (\$5,000), which shall be [settled] assessed in the same manner as the tax imposed by this article is [settled] assessed.

Section 30. Section 2005 of the act, added December 22, 1989 (P.L.775, No.110), is amended to read:

Section 2005. Assessment by Department.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax due by such person, based upon any information within its possession, or that shall come into its possession.

(b) Promptly after the date of such assessment, the department shall send by [registered] certified mail a copy of the assessment, including the basis of the assessment, to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such taxes. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitle him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay, and that the facts set forth therein are true. It shall be the duty of the department, within six months after the date of any assessment, to dispose of any petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly after the date of reassessment by the department.

(c) Within [sixty] ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment was made, may,

by petition, request the [Board of Finance and Revenue] Tax Review Tribunal to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-stock association or limited partnership, the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing, as hereinafter provided. The [Board of Finance and Revenue] Tax Review Tribunal shall act finally in disposition of such petitions filed with it within six months after they have been received, and, in the event of the failure of said [board] tribunal to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The [Board of Finance and Revenue] Tax Review Tribunal may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the [Board of Finance and Revenue] Tax Review Tribunal shall be given by mail, or otherwise, to the department and to the petitioner.

(d) In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

(e) Whenever any assessment of additional tax is not paid within ninety days after the date of the assessment, if no petition for reassessment has been filed, or within [sixty] ninety days from the date of reassessment, if no petition for review has been filed, or within [sixty] thirty days from the date of the decision of the [Board of Finance and Revenue] Tax Review Tribunal upon a petition for review, or the expiration of the [board's] tribunal's time for acting upon such petition, if no appeal has been made, and in all cases of judicial sales, receiverships, assignments or bankruptcies, the department may call upon the Office of Attorney General to collect such assessment. In such event, in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the [Board of Finance and Revenue] Tax Review Tribunal or the courts. The department may also certify to the Liquor Control Board, for such action as the board may deem proper, the fact that any person has failed to pay or duly appeal from such assessment of additional tax. The department may also provide, adopt, promulgate and enforce such rules and regulations, as may be appropriate, to prevent further shipment or transportation of malt or brewed beverages into this Commonwealth by any person against whom such unpaid assessment shall have been made.

Section 31. Sections 2009(f) and 2181 of the act, amended May 7, 1997 (P.L.85, No.7), are amended to read:

Section 2009. Refund of Tax.—\* \* \*

(f) In each of the above cases the department shall pay or issue to the manufacturer credits of sufficient value to cover the refund. Such credits may be used by the manufacturer for the payment of any taxes due by him to the Commonwealth. The procedure for refund in any case shall be completed by the department within sixty days after the proper affidavits have been filed with the department under section [3003.1] 2703.

Section 2181. Refund of Tax.—(a) A refund shall be made of any tax to which the Commonwealth is not rightfully or equitably entitled provided the Commonwealth determines the refund is due or [application] a petition for refund is made [within the appropriate time limit as set forth in subsection (d)] pursuant to section 2703.

(b) Interest shall be paid on refundable tax at the same rate as the interest rate on deficiencies provided for in section 2143.

(c) Refund shall be made in cash to the party who paid the tax or to his assignee or as directed by the court.

(d) Application for refund of tax shall be made within three years after:

(1) the court has rescinded its order and adjudication of presumed death when the refund is claimed for tax paid on the transfer of the estate of a presumed decedent who is later determined to be alive;

(2) termination of litigation establishing a right to a refund; no application for refund shall be necessary when the litigation has been with the Commonwealth over liability for the tax or the amount of tax due;

(3) it has been finally determined that the whole or any part of an alleged deficiency tax, asserted by the Federal Government beyond that admitted to be payable, and in consequence of which an estate tax was paid under section 2117 was not payable;

(4) a final judgment holding that a provision of this article under which tax has been paid is unconstitutional or that the interpretation of a provision of this article under which tax has been paid was erroneous; or

(5) the date of payment, or the date of the notice of the assessment of the tax, or the date the tax becomes delinquent, whichever occurs later, in all other cases.

(e) An application for refund of tax shall be made to the department.

(e.1) A petition to review the decision and order of the department on a petition for refund may be made to the Board of Finance and Revenue under this article.

(f) The action of the Board of Finance and Revenue on all applications for refund of tax may be appealed as provided for in 42 Pa.C.S. § 933 (relating to appeals from government agencies).]

(g) As much of the moneys received as payment of tax under this article as shall be necessary for the payment of the refunds provided for in this article with interest is appropriated for the payment of such refunds.

Section 32. The act is amended by adding articles to read:

#### ARTICLE XXVII

#### PROCEDURE AND ADMINISTRATION

##### Section 2701. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Department.” The Department of Revenue of the Commonwealth.

##### Section 2702. Petition for reassessment.

(a) General rule.—A taxpayer may file a petition for reassessment with the department within 90 days after the mailing date of the notice of assessment.

(b) Special rule for shares taxes.—Notwithstanding any provision of law to the contrary, section 2703(e) (relating to petition for refund) shall constitute the exclusive method by which an appeal from the assessment of the tax imposed by Article VII (relating to bank and trust company shares tax) or VIII (relating to title insurance companies shares tax) may be made.

(c) Application to inheritance and estate taxes.—This section shall not apply to the taxes imposed by Article XXI (relating to inheritance tax). Part XI (relating to disputed tax) of Article XXI shall provide the exclusive procedure for protesting the appraisal and assessment of taxes imposed by Article XXI.

##### Section 2703. Petition for refund.

(a) General rule.—A taxpayer may file a petition for refund of tax with the department within three years after the report was filed or within two years after payment, whichever is later. Except as provided by section 407.1 (relating to assessments), if no report is filed by the taxpayer, a taxpayer may file a petition for refund of tax with the department within two years after payment. If tax is required to be paid by means of a stamp, a taxpayer may file a petition for refund of tax with the department within three years after payment.

(b) Limit on amount of refund.—

(1) If a petition for refund is filed by the taxpayer during the three-year period prescribed in subsection (a), the amount of the refund shall not exceed the portion of the tax paid within the

period immediately preceding the filing of the petition, equal to three years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the petition.

(2) If the petition was not filed within the three-year period prescribed in subsection (a), the amount of the refund shall not exceed the portion of the tax paid within the two years immediately preceding the filing of the petition.

(3) If no report was filed by the taxpayer, the amount of the refund shall not exceed the portion of the tax paid within the two years immediately preceding the filing of the petition.

(c) Special rules applicable in case of extension agreements.—If an agreement under the provisions of section 261 (relating to extension of limitation period), 349 (relating to extension of limitation period) or 407.4 (relating to extension of limitation period) extending the period for assessment of tax is made within the period prescribed in subsection (a) for the filing of a petition for refund, the following rules shall apply:

(1) The period for filing a petition for refund provided in subsections (a) and (b)(1), shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under the provisions of section 261, 349 or 407.4.

(2) If a petition is filed after the execution of the agreement and within six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed.

(3) This subsection shall not apply in the case of a petition filed if no claim is filed, either:

(i) prior to the execution of the extension agreement; or

(ii) more than six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) Refund of inheritance and estate tax.—A taxpayer may file a petition for refund of tax imposed by Article XXI (relating to inheritance tax) with the department within three years after any of the following:

(1) The court has rescinded its order and adjudication of presumed death when the refund is claimed for tax paid on the transfer of the estate of a presumed decedent who is later determined to be alive.

(2) Termination of litigation establishing a right to a refund. A petition for refund shall not be necessary when the litigation has been with the Commonwealth over liability for the tax or the amount of tax due.

(3) It has been finally determined that the whole or any part of an alleged deficiency tax, asserted by the Federal Government beyond that admitted to be payable, and in consequence of which an estate tax was paid under section 2117 (relating to estate tax) was not payable.

(4) The date of payment, or the date of the notice of the assessment of the tax, or the date the tax becomes delinquent, whichever occurs later, in all other cases.

(e) Special rule for shares taxes.—Upon sufficient cause shown by a taxpayer that the payment of tax assessed under Article VII (relating to bank and trust company shares tax) or VIII (relating to title insurance companies shares tax) would irreparably harm the taxpayer, the department may take jurisdiction of a petition for refund

challenging the assessed tax without the tax being paid if the petition is filed within two years after the mailing date of the assessment.

(f) Payment date.—For purposes of this section, any payment of estimated tax, withholding of tax or other payment of tax made prior to the due date for payment of the tax shall be deemed to have been made on the due date for payment of the tax.

(g) Liquid fuels and fuels tax claims.—This section shall not apply to claims for refund or reimbursement of liquid fuels and fuels tax required to be submitted to the Board of Finance and Revenue under 75 Pa.C.S. Ch. 90 (relating to liquid fuels and fuels tax). The provisions of 75 Pa.C.S. § 9017 (relating to refunds) shall provide the exclusive procedure for those claims.

(h) Construction.—For purposes of this section, the term “report” shall be interpreted to include a tax return.

Section 2704. Petition procedure.

(a) Content of petition.—

(1) A petition for reassessment shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been erroneously assessed.

(iii) The basis upon which the taxpayer claims that the assessment is erroneous.

(2) A petition for refund shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been overpaid.

(iii) The basis of the taxpayer’s claim for refund.

(3) The petition shall be supported by an affidavit by the petitioner or the petitioner’s authorized representative that the petition is not made for the purpose of delay and that the facts set forth in the petition are true.

(b) Request for hearing.—Upon written request of the petitioner or when deemed necessary by the department, the department shall schedule a hearing to review a petition. The petitioner shall be notified by the department of the date, time and place where the hearing will be held.

(c) Decision and order.—The department shall issue a decision and order disposing of a petition on such basis as it deems to be in accordance with law.

(d) Time limit for decision and order.—The department shall issue a decision and order disposing of a petition within six months after receipt of the petition. The petitioner and the department may agree to extend the time period for the department to dispose of the petition for one additional six-month period. Notice of the department’s decision and order disposing of the petition shall be mailed to the petitioner.

(e) Exception to time limit for decision and order.—If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction or at the Pennsylvania Tax Review Tribunal wherein any claim made in the petition may be established, the department, upon the written request of the petitioner, may defer consideration of the petition until the final judgment determining the question or questions involved in the petition has been decided. If consideration of the petition is deferred, the department shall issue a decision and order disposing of the petition within six months after the final judgment.

(f) Failure of department to take action.—The failure of the department to dispose of the petition within the time period provided for by subsection (d) or (e) shall act as a denial of the petition. Notice of the department’s failure to take action and the denial of the petition shall be mailed to the petitioner.

Section 2705. Review by Pennsylvania Tax Review Tribunal.

(a) Petition for review of a decision and order.—Within 90 days after the mailing date of the department’s notice of decision and order on a petition filed with it, a taxpayer may petition the Pennsylvania Tax Review Tribunal to review the decision and order of the department.



(b) Petition for review of denial by department's failure to act.—A petition for review may be filed with the Pennsylvania Tax Review Tribunal within 90 days after the mailing date of the department's notice to the petitioner of its failure to dispose of the petition within the time periods prescribed by section 2704(d) or (e) (relating to petition procedure).

Section 2706. Burden of proof.

In all cases of petitions filed pursuant to this article, the burden of proof shall be upon the petitioner or appellant, as the case may be.

Section 2707. Compromise of tax appeals.

(a) Compromise of tax.—The department, with the approval of the Attorney General, shall have the authority to compromise the liability for tax disputed in any petition on terms as it determines to be in the best interests of the Commonwealth.

(b) Compromise of penalties.—The department shall have the authority to compromise the liability for interest or penalties disputed in any petition on the terms as it determines to be in the best interests of the Commonwealth.

#### ARTICLE XXVIII

#### TAX REVIEW TRIBUNAL

Section 2801. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Revenue of the Commonwealth.

"Judge." An administrative law judge appointed to the Pennsylvania Tax Review Tribunal pursuant to section 2802 (relating to Tax Review Tribunal; establishment).

"Tribunal." The Tax Review Tribunal established in section 2802 (relating to Tax Review Tribunal; establishment).

Section 2802. Tax Review Tribunal; establishment.

(a) Establishment.—The Tax Review Tribunal is hereby established as an administrative board in the Treasury Department and independent from the department.

(b) Appointment of judges.—The tribunal shall consist of no less than five qualified and competent administrative law judges, including a chief administrative law judge. The administrative law judges shall be appointed by the State Treasurer, with the approval of the Board of Finance and Revenue. The State Treasurer, with the approval of the Board of Finance and Revenue, shall have the power to appoint as many additional qualified and competent administrative law judges as may be necessary to fulfill the duties of the tribunal.

(c) Temporary appointees.—If the docket of the tribunal is congested or any judge of the tribunal is absent or unable to perform the duties of the office, the State Treasurer, with the approval of the Board of Finance and Revenue, may appoint qualified and competent persons who meet the minimum standards established by this article to temporarily serve as administrative law judges until the docket is no longer congested or the judge returns to the judge's official duties.

(d) Term of office.—Administrative law judges shall be appointed for terms of five years. The administrative law judges initially appointed upon the establishment of the tribunal shall be given terms of varying lengths so that all judges' terms do not expire in the same year. However, no appointment shall be for less than three years nor more than five years. Administrative law judges may be reappointed upon the expiration of their terms.

(e) Chief administrative law judge.—The State Treasurer, with the approval of the Board of Finance and Revenue, shall designate one of the administrative law judges as chief administrative law judge. The chief administrative law judge shall be responsible for assigning a hearing judge to every cause, matter and proceeding coming before the tribunal. The chief administrative law judge shall receive remuneration above that of any other administrative law judge.

(f) Continuation in office.—Once appointed each judge shall continue in office until the judge's term expires and until a successor has been appointed and qualified.

(g) Vacancy.—A vacancy in the tribunal occurring otherwise than by expiration of a term shall be filled for the unexpired term.

(h) Removal.—The State Treasurer, with approval of the Board of Finance and Revenue, may remove an administrative law judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties or malfeasance in office.

(i) Location of offices.—The offices of the tribunal shall be located separate and apart from the department.

Section 2803. Qualifications of judges and prohibition.

(a) Requirements.—Each judge of the tribunal must meet and maintain the following minimum requirements:

(1) Be a citizen of the United States.

(2) Be a resident of this Commonwealth.

(3) Be an attorney in good standing before the Supreme Court of Pennsylvania.

(4) Have at least five years experience in a position requiring substantial knowledge of Pennsylvania tax law and the tax appeal process.

(b) Oath of office.—Before entering upon the duties of office, a judge shall take and subscribe to an oath or affirmation to faithfully discharge the duties of the office.

(c) Prohibition.—Each judge shall be devoted full time during business hours to the duties of the office. No person, while a judge, shall engage in any other gainful employment or business nor hold another office or position of profit in a government of this Commonwealth, any other state or the United States.

Section 2804. Administration.

(a) Executive administrator.—The State Treasurer, with approval of the Board of Finance and Revenue, shall appoint an executive administrator who shall be responsible for the day-to-day administration and operation of the tribunal.

(b) Chief clerk.—The State Treasurer, with approval of the Board of Finance and Revenue, shall appoint a chief clerk who shall be responsible for recording all filings and maintaining a record of all proceedings before the tribunal. The chief clerk shall be responsible for certifying the record established at the tribunal in the event of an appeal to Commonwealth Court.

(c) Expenditures.—The chief administrative law judge or his designee may appoint and fix the compensation of accountants, attorneys, stenographers and other employees and make other expenditures, including expenditures for library, publications and equipment, as necessary to permit the tribunal to efficiently execute its functions.

(d) Limitation.—No employee of the tribunal shall act as attorney, representative or accountant for others in a matter involving any tax imposed or levied by the Commonwealth.

Section 2805. Jurisdiction of tribunal.

(a) Exclusive and final authority.—Except as permitted by section 2817 (relating to appeals), the tribunal shall be the sole, exclusive and final authority for the hearing, review and determination of questions of law and fact arising under a decision and order of the department pursuant to Article XXVII (relating to procedure and administration). Notwithstanding any other provision of law, the tribunal shall have jurisdiction over all matters relating to decisions of the department mailed after December 31, 2006, regarding reassessment, redetermination, resettlement or refund.

(b) Improper commencement.—Except as permitted by section 2817, no person shall contest any matter within the jurisdiction of the tribunal in any action, suit or proceeding in Commonwealth Court or any other court of the Commonwealth. If a person attempts to do so, then the action, suit or proceeding shall be transferred to the tribunal.

(c) Amounts asserted as due.—The taxpayer shall have the right to have the taxpayer's case heard by the tribunal prior to the payment of any of the amounts asserted as due by the department and prior to the posting of any bond except in any case:

(1) Involving the denial of a claim for refund.

(2) Where a bond is required by statute.

(d) Characterization of certain petitions.—If the taxpayer pays all or part of the tax or other amount at issue before the tribunal has rendered a decision, the tribunal shall treat the taxpayer's petition as a protest of a denial of a claim for refund of the amount paid without further action on the part of the taxpayer.

(e) Constitutionality issues.—The tribunal shall decide questions regarding the constitutionality of the application of statutes to the taxpayer and the constitutionality of regulations promulgated by the department but shall not have the power to declare a statute unconstitutional on its face. A taxpayer desiring to challenge the constitutionality of a statute on its face may file a petition with the tribunal with respect to all issues other than the constitutional challenge and preserving the constitutional challenge until the entire matter, including the constitutional issue, is presented to the Commonwealth Court.

Section 2806. Filing fees.

(a) Fees.—Upon filing a petition pursuant to Article XXVII (relating to procedure and administration), the taxpayer shall pay to the chief clerk a fee in the amount of \$100, except that, in case of a petition filed in the small claims division as provided for in section 2816 (relating to small claims division), the fee shall be \$50. A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

(b) Records related fees.—The tribunal may fix a fee, not in excess of the fees charged and collected by the clerks of the Commonwealth Court, for comparing or for preparing and comparing a transcript of the record, or for copying any record, entry or other paper and the comparison and certification thereof.

(c) Disposition of fees.—All fees and other moneys received or collected by the tribunal shall be paid over to the State Treasurer and shall be held in the General Fund as miscellaneous receipts.

Section 2807. Pleadings.

(a) Commencement of proceeding.—A taxpayer may commence a proceeding in the tribunal by filing a petition for review as provided in Article XXVII (relating to procedure and administration).

(b) Taxpayer election.—A taxpayer may elect to proceed in the small claims division of the tribunal by filing a petition in the form prescribed by the tribunal for small claims. A taxpayer may not revoke an election to proceed in the small claims division and shall not have any further right to appeal or bring suit.

(c) Answer.—The department shall file its answer with the tribunal no later than 75 days after its receipt of the tribunal's notification that the taxpayer has filed a petition. Upon written request, the tribunal may grant up to 15 additional days to file an answer. If the petitioner files an amended petition as set forth in the preceding section, the department's time period for filing its responsive pleading shall run from the filing date of the amendment. The department shall serve a copy on the taxpayer's representative or, if the taxpayer is not represented, on the taxpayer, and shall file proof of service with the answer. Material facts alleged in the petition, if not expressly admitted or denied in the answer, shall be deemed admitted. If the department fails to answer within the prescribed time, all material facts alleged in the petition shall be deemed admitted.

(d) Reply.—The taxpayer may file a reply in the tribunal within 30 days after receipt of the answer. The taxpayer shall serve a copy on the authorized representative of the department and shall file proof of service with the reply. Material facts alleged in the answer, if not expressly admitted or denied in the reply, shall be deemed admitted. If the taxpayer does not file a reply, all material facts alleged in the answer shall be deemed denied. Upon the filing of a reply or 30 days after the filing of the answer if no reply is filed, the controversy shall be deemed at issue and scheduled for hearing.

(e) Amendment of pleading.—Either party may amend a pleading once without leave at any time before the period for responding to it expires. After expiration of the response period, a pleading may be amended only with the written consent of the adverse party or with the permission of the tribunal. The tribunal shall freely grant consent to

amend upon such terms as may be just. Except as otherwise ordered by the tribunal, there shall be an answer or reply to an amended pleading if an answer or reply is required to the pleading being amended. Filing of the answer, or, if the answer has already been filed, the amended answer, shall be made no later than 75 days after filing of the amended petition. Filing of the reply or, if the reply has already been filed, the amended reply, shall be made within 30 days after filing of the amended answer. The taxpayer may not amend a petition after expiration of the time for filing a petition, if the amendment would have the effect of conferring jurisdiction on the tribunal over a matter which otherwise would not come within its jurisdiction. An amendment of a pleading shall relate back to the time of filing of the original pleading unless the tribunal shall order otherwise either on motion of a party or on the tribunal's own initiative.

Section 2808. Presiding judge.

(a) Requirements for presiding judge.—There shall preside at the taking of evidence and conduct of all hearings one or more administrative law judges assigned by the chief administrative law judge as provided in section 2802 (relating to Tax Review Tribunal: establishment). The functions of all presiding judges shall be conducted in an impartial manner. Any judge may at any time withdraw from a proceeding if the judge deems himself disqualified, and the chief administrative law judge may require a withdrawal upon the appeal of any party from a decision of the presiding judge not to withdraw. Upon disqualification of any judge, the chief administrative law judge shall assign the matter to another judge.

(b) Authority of presiding judge.—The presiding judge shall have authority, subject to the provisions of this article and the published rules of the tribunal, to:

(1) Administer oaths and affirmations.

(2) Issue subpoenas authorized by law.

(3) Rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken whenever the ends of justice would be served thereby.

(4) Regulate the course of the hearing.

(5) Hold conferences for settlement or simplification of the issues by consent of the parties.

(6) Dispose of procedural requests or similar matters.

(7) Make decisions or recommend decisions in conformity within this article.

(8) Take any other action authorized by law or the rules of the tribunal.

(c) Presiding judge to decide.—The same presiding judge shall to the fullest extent possible preside at the reception of all evidence in a particular case to which the judge has been assigned. The same presiding judge who presides at the reception of evidence shall issue the proposed decision and order on the petition except where the presiding judge becomes unavailable to the tribunal.

Section 2809. Procedures in general.

(a) Admissibility of evidence.—Any oral or documentary evidence may be received, but the tribunal shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.

(b) Submission of evidence.—A party is entitled to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The tribunal may adopt rules for the submission of all or part of the evidence in written form.

(c) Record, briefs and argument.—The transcript of a hearing, the transcript of testimony and exhibits, together with all papers and motions filed in the proceeding, constitutes the exclusive record for decision. Briefing and oral argument shall be held in accordance with rules established by the tribunal.

(d) Official notice of facts.—When the tribunal's decision rests on official notice of a material fact not appearing in the evidence in the record, upon notification that facts are about to be or have been noticed, any party adversely affected shall have the opportunity upon

timely request to show that the facts are not properly noticed or that alternative facts should be noticed. The tribunal in its discretion shall determine whether written presentations suffice or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances. Nothing in this subsection shall affect the application by the tribunal in appropriate circumstances of the doctrine of judicial notice.

(e) Actions of parties and counsel.—A party who fails to be represented at a scheduled conference or hearing after being notified of the conference or hearing, shall be deemed to have waived the opportunity to participate in the conference or hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished at the conference or hearing, or to recall for further examination of witnesses who were excused, unless the presiding judge shall determine that failure to be represented was unavoidable and that the interests of the other parties would not be prejudiced by permitting the reopening or further examination. If the actions of a party or counsel in a proceeding shall be determined by a panel of administrative law judges assigned by the chief administrative law judge, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the panel may reject any claim for relief or dismiss any proceeding and, with respect to counsel, may impose sanctions upon counsel or a party as appropriate or bar further participation by that counsel in any proceedings before the tribunal.

(f) Interlocutory appeals.—An interlocutory appeal from a ruling of a presiding judge shall be allowed to a panel of administrative law judges assigned by the chief administrative law judge upon certification by the presiding judge that the ruling involves a material question which should be resolved at that time. Notwithstanding the presiding judge's certification, the panel shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding judge or the panel that extraordinary circumstances exist.

Section 2810. Prehearing procedures.

(a) Conferences.—The presiding judge shall have the authority to hold one or more prehearing conferences during the course of the proceeding on the judge's motion or at the request of a party to the proceeding. The presiding judge may direct the parties to exchange their evidentiary exhibits and witness lists at a prehearing conference. Where good cause exists, the parties may at any time amend, by deletion or supplementation, their evidentiary exhibits and witness lists.

(b) Disclosure of information on witnesses.—At the prehearing conference or at some other reasonable time prior to the hearing as determined by rule of the tribunal or order of the president judge, each party to the proceeding shall make available to the other parties to the proceeding the names of the witnesses the party expects to call and the subject matter of the witnesses' expected testimony. Where good cause exists, the parties shall have the right at any time to amend, by deletion or supplementation, the list of names of the witnesses the parties plan to call and the subject matter of the expected testimony of those witnesses.

(c) Scheduling.—The presiding judge shall have the authority to impose schedules on the parties to the proceeding specifying the periods of time during which the parties may pursue discovery. The schedules and time periods shall be set with a view to accelerating disposition of the case to the fullest extent consistent with fairness.

Section 2811. Oaths and subpoenas.

(a) Oaths.—Any employee of the tribunal designated in writing for the purpose by the chief administrative law judge may administer oaths.

(b) Subpoenas.—A judge or the chief clerk of the tribunal, on the request of any party to the proceeding, shall have the power to issue subpoenas requiring the attendance of witnesses and giving of testimony and subpoenas duces tecum requiring the production of any returns, books, papers, documents and correspondence and other

evidence pertaining to the matter under inquiry in the manner prescribed by the Pennsylvania Rules of Civil Procedure.

Section 2812. Discovery.

(a) Informal discovery preferred.—The parties to a proceeding shall make reasonable effort in good faith to achieve discovery by informal means before invoking the formal discovery mechanisms authorized by this article.

(b) Depositions.—Any party to the proceeding shall be able to take depositions of witnesses upon oral examination or written questions for purposes of discovering relevant, unprivileged information. To that end, a party may obtain subpoenas requiring the attendance of witnesses and the production of returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry.

(c) Interrogatories.—Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering relevant, unprivileged information. A party served with interrogatories may, before the time prescribed by the tribunal for answering the interrogatories, apply to the presiding judge for the holding of a prehearing conference for the mutual exchange of evidence exhibits and other information. Each interrogatory which requests information not previously supplied at a prehearing conference or hearing shall be answered separately and fully in writing under oath unless it is objected to, in which event the reasons for the objections shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time prescribed by the tribunal unless otherwise specified, upon the party submitting the interrogatories. The party submitting the interrogatories may petition the presiding officer for an order compelling an answer to an interrogatory or interrogatories to which there has been an objection or other failure to answer.

(d) Requests for admissions.—A party to a proceeding may serve upon any other party a written request for the admission of any relevant, unprivileged, undisputed facts, the genuineness of any document described in the request, the admissibility of evidence, the order of proof and other similar matters. The parties shall stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the proceeding.

(e) Protective orders.—The presiding judge shall have the authority, upon motion by a party or by the person from whom discovery is sought, and for good cause shown, to make any order which justice requires to protect the party or person.

(f) Fees and mileage costs.—Any witness subpoenaed or whose deposition is taken shall receive fees and mileage costs.

(g) Other discovery.—The tribunal may provide for other forms of discovery.

(h) Enforcement.—The tribunal may enforce its orders on discovery and other procedural issues, among other means, by deciding issues wholly or partly against the offending party.

Section 2813. Hearings.

(a) Proceedings.—Proceedings before the tribunal shall be tried de novo and, to the extent permissible under the Constitution of the United States and the Constitution of Pennsylvania, without a jury.

(b) Role of tribunal.—Except as set forth in this article or otherwise precluded by law, the tribunal shall take evidence, conduct hearings and issue final and interlocutory decisions.

(c) Hearings to be public; exceptions.—

(1) Except as set forth in paragraph (2), all hearings of the tribunal shall be transcribed and open to the public.

(2) On motion of either party the tribunal shall issue a protective order or an order closing part or all of the hearing from the public when the party opposing disclosure of certain information shows good cause to protect the information from being disclosed to the public.

(d) Evidence.—The tribunal shall admit relevant evidence if it is probative of a material fact in controversy. The tribunal shall exclude

irrelevant and unduly repetitious evidence. A rule of privilege recognized by law applies.

(e) Testimony.—Testimony may be given only on oath or affirmation.

(f) Pleadings to conform to proof.—The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing unless a party satisfies the tribunal that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction on the tribunal over a matter that would not otherwise come within its jurisdiction.

(g) Official reporting.—Proceedings before the tribunal, except those before the small claims division as provided for in section 2816 (relating to small claims division) shall be officially reported. The Commonwealth shall pay the expense of reporting from the appropriation for the tribunal.

Section 2814. Decisions.

(a) Decision in writing.—The tribunal shall render its decision in writing, including a concise statement of the facts found and the conclusions of law reached. The tribunal's decision shall, subject to law, grant the relief, invoke the remedies and issue the orders as it deems appropriate to carry out its decision.

(b) Failure to render decision.—If the tribunal fails to render a decision within the prescribed time period, either party may institute an action in mandamus to compel the issuance of a decision.

(c) Precedent.—Except as provided in section 2816(k) (relating to small claims division), the tribunal's interpretation of a taxing statute subject to contest in one case shall be followed by the tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the tribunal in subsequent cases involving the same material facts unless the tribunal's interpretation or application conflicts with that of an appellate court or the tribunal provides satisfactory reasons for reversing prior precedent, provided:

(1) It is necessarily involved and essential to the determination of the case.

(2) There is a full consideration of the question by the tribunal.

(3) The decision is a professed deliberate determination of the question.

Section 2815. Proposed decision; review by panel.

(a) Proposed decision and order.—The presiding judge shall issue a proposed decision and order, including proposed findings of fact and conclusions of law, within six months after submission of the last brief filed subsequent to completion of the hearing or, if briefs are not submitted, then no later than six months after completion of the hearing.

(b) Final order; submission to panel.—The proposed decision and order shall be subject to review by a panel of administrative law judges assigned by the chief administrative law judge upon the filing of exceptions pursuant to subsection (c). The panel shall include the presiding judge that issued the proposed decision and order. If no exceptions are filed, the proposed decision and order shall become final, without further action.

(c) Exceptions procedure.—

(1) Within 15 days of the issuance of the proposed decision and order, a party may file exceptions to the proposed decision and order including:

(i) alternative proposed findings of fact or conclusions of law, if appropriate; and

(ii) the supporting reasons for the exceptions and any alternative proposed findings of fact or conclusions of law.

(2) Within 30 days of the filing of exceptions to the proposed decision and order, the panel shall either:

(i) issue an order adopting the proposed decision and order as the final decision and order of the tribunal; or

(ii) issue an alternative decision and order, including findings of fact and conclusions of law, as the final decision and order of the tribunal.

(d) Record.—The record shall show the ruling on each finding of fact, conclusion of law or exception presented. All decisions and orders, including proposed decisions and orders, are a part of the record and shall include a statement of:

(1) Findings and conclusions, and the reasons or basis for the findings and conclusions, on all material issues of fact, law or discretion presented on the record.

(2) The appropriate rule, order, relief or denial thereof.

(e) Decision final.—A final decision and order shall finally decide the matters in controversy unless any party to the matter timely appeals the decision as provided for in section 2817 (relating to appeals).

(f) Effect.—A final decision and order shall have the same effect and shall be enforced in the same manner as a judgment of any court of competent jurisdiction.

Section 2816. Small claims division.

(a) Establishment.—There is hereby established a small claims division of the tribunal.

(b) Judge to preside.—An administrative law judge assigned by the chief administrative law judge as provided in section 2802 (relating to Tax Review Tribunal; establishment) shall preside over proceedings within the jurisdiction of the small claims division.

(c) Amounts in controversy.—If the taxpayer elects in its petition for review filed pursuant to Article XXVII (relating to procedure and administration) the small claims division shall have jurisdiction over any proceeding with respect to any calendar year for which the net amount of the tax deficiencies and claimed refunds in controversy does not exceed \$25,000, exclusive of interest and penalties.

(d) Jurisdiction.—If the taxpayer elects in its petition for review filed pursuant to Article XXVII and the department agrees in its answer to the taxpayer's petition, the small claims division shall have jurisdiction over any proceeding regardless of the amount in controversy.

(e) Answer.—No later than 30 days after receipt of notice that the taxpayer has filed a petition in proper form or at other times as the tribunal may order, the department shall file with the tribunal an answer similar to that required by section 2807 (relating to pleadings).

(f) Withdrawal.—At any time prior to entry of judgment, a taxpayer may withdraw a proceeding in the small claims division by notifying the chief clerk of the tribunal in writing. A withdrawal shall be with prejudice and shall not have the effect of revoking the election to proceed in the small claims division.

(g) Hearings informal.—Hearings in the small claims division shall be informal, and the judge may receive evidence as the judge deems appropriate for determination of the case. Testimony shall be given under oath or affirmation.

(h) Time frame.—The presiding judge shall issue a final decision and order, including findings of fact and conclusions of law, within 90 days after the closing of the record.

(i) Record.—The record shall show the ruling on each finding of fact and conclusion of law. All decisions and orders are a part of the record and shall include a statement of:

(1) Findings and conclusions, and the reasons or basis for the findings and conclusions, on all material issues of fact, law or discretion presented on the record.

(2) The appropriate rule, order, relief or denial thereof.

(j) Decision final.—A final decision and order of the small claims division shall be conclusive upon all parties and may not be appealed. A decision and order of the small claims division shall not be considered as precedent in any other case, hearing or proceeding.

(k) Inapplicability.—Sections 2815 (relating to proposed decision; review by panel), 2818 (relating to representation),

2819 (relating to publication of decisions) and this section shall not apply to proceedings in the small claims division.

Section 2817. Appeals.

(a) Individual review.—The taxpayer or the department shall be entitled to judicial review of a final decision of the tribunal, except a final decision of the small claims division, in accordance with the procedure for judicial review of governmental determinations set forth in Pa.R.C.P. No. 1501 (relating to scope of chapter) through No. 1561 (relating to disposition of petition for review).

(b) Review of interlocutory decision.—The taxpayer or the department may obtain judicial review of an interlocutory decision of the tribunal by filing a petition as provided in Pa.R.A.P. Ch. 13 (relating to interlocutory appeals by petition).

(c) Record.—The record on judicial review shall include the decision and order of the tribunal, the stenographic transcript of the hearing before the tribunal, the pleadings, exhibits, documents and other items admitted into evidence.

Section 2818. Representation.

(a) Taxpayer.—Appearances in proceedings conducted by the tribunal may be by the taxpayer or by an attorney admitted to practice in this Commonwealth. Parties may also be represented by an attorney who is a member of or is employed by an accounting or other professional services firm, by an accountant licensed in this Commonwealth or by an enrolled agent authorized to practice before the Internal Revenue Service provided the representation does not constitute the unauthorized practice of law as determined by the Supreme Court of this Commonwealth.

(b) Department.—The department shall be represented by its authorized representative in all proceedings before the tribunal.

Section 2819. Publication of decisions.

Except for decisions issued by the small claims division, the chief clerk shall cause the final decisions of the tribunal to be indexed and published in print or electronic format as it deems best adapted for public convenience. Publications shall be made permanently available and constitute the official reports of the tribunal.

Section 2820. Service of process.

(a) Personal service.—The mailing by first class mail, postage prepaid, to the address of the taxpayer, as given on the taxpayer's petition, or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the department, or its representative of record, shall constitute personal service on the other party. The tribunal may by rule prescribe that notice by other means shall constitute personal service and may in any individual case order that notice be given to additional persons or by other means.

(b) Date.—Mailing by registered or certified mail and delivery by a private delivery service approved by the Internal Revenue Service in accordance with section 7502(f) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7502(f)), of any pleading, decision, order, notice or other document in respect to proceedings before the tribunal shall be deemed to have occurred on the date of mailing or the date of submission to the private delivery service.

Section 2821. Code of ethics.

(a) General rule.—The administrative law judges and the officers and employees of the tribunal shall conform to the following code of ethics. An administrative law judge, officer or employee of the tribunal must:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform all duties impartially and diligently.

(3) Not participate in any ex parte communications regarding matters before the tribunal.

(4) Abstain publicly from expressing, other than in public session, personal views on the merits of a matter pending before the tribunal.

(5) Observe the standards of fidelity and diligence that apply to the position of judge, officer or employee.

(6) Disqualify himself from proceedings in which impartiality might be reasonably questioned.

(7) Regulate extracurricular activities to minimize the risk of conflict with official duties. An administrative law judge, officer or employee of the tribunal may speak, write or lecture, and any reimbursed expenses, honoraria, royalties or other moneys received in connection therewith shall be disclosed annually. Disclosure statements shall be filed with the executive administrator of the tribunal and shall be open to public inspection during the normal business hours of the tribunal during the tenure of the administrative law judge, officer or employee.

(8) Conform to additional rules as the tribunal may prescribe.

(b) Ex parte communications.—Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any administrative law judge, officer or employee of the tribunal regarding the merits or any fact in issue of any matter pending before the tribunal.

(c) Removal for violation.—An administrative law judge, officer or employee of the tribunal who violates the provisions of subsection (a) shall be subject to removal from office after notice and an opportunity to be heard.

(d) Construction.—Nothing in this act shall be interpreted to prohibit the administrative law judges, officers and employees of the tribunal from serving in the Pennsylvania National Guard and the reserves of the armed forces of the United States while appointed to or employed by the tribunal.

Section 2822. Rules and forms.

The tribunal is authorized to promulgate and adopt all reasonable rules, regulations and forms as may be necessary or appropriate to carry out the intent and purposes of this article.

Section 2823. Application of rules of administrative practice and procedure.

Except where inconsistent with this article and the rules and regulations adopted by the tribunal, the provisions of 2 Pa.C.S. (relating to administrative law and procedure) and the rules and regulations adopted under 2 Pa.C.S. are hereby incorporated by reference and shall apply to all actions and proceedings before the tribunal.

ARTICLE XXIX-C

TAX CLEARANCE FOR RENEWALS OF LICENSES,  
PERMITS AND REGISTRATIONS

Section 2901-C. Statement of policy.

The public has a right to be protected from unscrupulous or fraudulent practices, and it depends on the licensing agencies within the Commonwealth to provide a measure of security that license applicants and licensees in good standing, as well as other professionals, will conduct business fairly, honestly and in compliance with applicable licensure requirements. Failure to comply with the tax laws of this Commonwealth is considered unprofessional conduct that is not in keeping with Commonwealth standards for licensing.

Section 2902-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Applicant.” A person or entity that applies to a licensing agency for a license or applies for renewal. In the case of the transfer of an existing license, the transferor or the transferee. The term includes a management company utilized by such person, entity, transferor or transferee.

“Department.” The Department of Revenue of the Commonwealth.

“Department of State.” The Department of State, and any licensing board, division or commission under the Bureau of Professional and Occupational Affairs, and the Bureau of Commissions and Legislation with respect to notaries public.

“Entity.” An association, business trust, corporation, estate, general partnership, government, joint venture partnership, limited

liability company, limited liability partnership, restricted professional company, sole proprietorship or trust.

“License.” A license, permit, certificate, commission or registration granted or issued by a licensing agency that confers benefits, privileges or rights to the licensee, permit holder or registrant to practice a trade, profession or occupation or to conduct a business activity within this Commonwealth.

“Licensing agency.” The Department of Revenue, the Department of Labor and Industry, the Department of Environmental Protection, the Department of Banking, the Department of State, the Insurance Department or the Pennsylvania Securities Commission.

“State tax.” A tax liability, including interest, penalty and additions of a taxpayer, licensee, employer or other person imposed under this act, the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, or 75 Pa.C.S. § 9014 (relating to collection of unpaid taxes).

“Tax delinquency.” The condition by which a State tax, when delinquent, is subject to collection action by the taxing agency or the Office of Attorney General and is not subject to a timely administrative or judicial appeal, a duly authorized deferred payment plan or the jurisdiction of a bankruptcy court.

“Tax identification number.” A Social Security number or employer identification number.

“Taxing agency.” The Department of Revenue or the Department of Labor and Industry.

#### Section 2903-C. Tax identity information.

(a) General rule.—An applicant for the grant, renewal or transfer of a license shall provide to the licensing agency, other than as provided for in subsection (b), the applicant’s or entity’s full name and tax identification number.

(b) Pennsylvania Securities Commission.—An applicant for the grant, renewal or transfer of a license issued by the Pennsylvania Securities Commission shall comply with any regulation or order adopted by the Pennsylvania Securities Commission for the implementation of this article.

#### Section 2904-C. Confidentiality.

(a) General rule.—Upon the filing of an application with a licensing agency for the grant, renewal or transfer of a license, the applicant waives any confidentiality with respect to State tax information regarding the applicant in the possession of the taxing agency or the Office of Attorney General, regardless of the source of that information, and consents to the provision of that information to the licensing agency by the taxing agency and the Office of Attorney General.

(b) Construction.—For the purpose of this section, licensing agencies shall be deemed to be performing an official tax purpose pursuant to the provisions of section 731 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

#### Section 2905-C. Request of tax status.

Upon receipt of an application for the grant, renewal or transfer of a license, the licensing agency shall forward the tax identity information provided by the applicant under section 2903-C (relating to tax identity information) to the department, the Office of Attorney General and the Department of Labor and Industry to determine the tax status of the applicant or licensee. The taxing agency and the Office of Attorney General may use reasonable parameters in determining whether an applicant has filed required State tax reports or paid State tax due. If there is a tax delinquency or a required report has not been filed, the taxing agency may issue a notice to the licensing agency and to the licensee or applicant as provided in section 2907-C (relating to notice requirements) specifying that the applicant or licensee has not filed a required return or paid a State tax.

#### Section 2906-C. Withholding of license.

Notwithstanding any law to the contrary, a license application shall be deemed incomplete and a licensing agency shall not approve any application for grant, renewal or transfer of any license if a notice of tax delinquency is issued. As a condition of licensure or continued licensure, unless otherwise provided in section 2912-C (relating to

exception for continued licensure only) an applicant or licensee shall cure any tax delinquency identified by a taxing agency by filing the appropriate report, paying the appropriate tax or entering into an agreement with the taxing agency for a periodic payment plan prior to obtaining a license or renewal from a licensing agency.

#### Section 2907-C. Notice requirements.

Notice to a licensee or applicant for license or transfer of license shall be as follows:

(1) Prior to the issuance of an order denying or suspending a license or refusing to renew a license the applicable taxing agency shall provide notice to the applicant or licensee that specifies:

(i) Any reports which must be filed and any amounts owed.

(ii) How, when and where the notice can be contested.

(iii) Where payment may be made in order to cure the tax delinquency or whom the individual may contact to attempt to establish a payment plan.

(iv) That the sole grounds for contesting the notice are limited to mistaken identity of the licensee.

(v) That an order to deny an application for license or to deny transfer of the license or to automatically suspend the license will be issued by the licensing agency 60 days after the issuance of the notice, unless the delinquent report is filed, the State tax is paid or a payment plan is approved by the applicable taxing agency.

(vi) The appropriate procedures and time requirements for requesting a hearing to which the applicant or licensee may otherwise be entitled under the licensing agency.

(vii) That further challenge following a license suspension as a result of failure to cure a tax delinquency shall require the applicant to post a bond as set forth under section 2909-C (relating to bond requirement on appeal).

(2) Any agreement providing for a periodic payment plan entered into between the taxing agency and the applicant or licensee shall specify that failure to comply with the schedule of payments may result in the immediate suspension, nonrenewal or denial of the license without further right to a hearing.

(3) To contest the notice or obtain a periodic payment plan, the licensee or applicant must contact the applicable taxing agency not later than 20 days after issuance of the notice. The grounds for contesting shall be limited to mistaken identity. If, as determined by the taxing agency, a mistake has occurred, the notice provided to the licensing agency under section 2905-C (relating to request of tax status) shall be modified accordingly within 20 days of the appropriate taxing agency being contacted.

(4) Any tax liability which has become final shall not be subject to collateral attack in a proceeding by a licensing agency.

#### Section 2908-C. Penalty for noncompliance.

A person that practices a trade, profession or occupation or conducts a business activity without a license under this section commits a misdemeanor. The penalty imposed under this section shall be in addition to any other penalty imposed by law.

#### Section 2909-C. Bond requirement on appeal.

If an applicant or licensee challenges any adverse action on a license application or renewal as a result of failure to cure a tax delinquency by appealing the matter to the Commonwealth Court, the applicant shall post a bond with the court in the amount of 120% of the liability at issue.

#### Section 2910-C. Ongoing enforcement.

If, during the effective period of any license, the licensee fails to file any required State tax report, fails to pay any collectible State tax due or defaults in a deferred payment plan, the taxing agency or the Office of Attorney General, after complying with section 2907-C

(relating to notice requirements), may notify the licensing agency which shall suspend or not renew any license issued to the licensee. Notwithstanding the provisions of any other statute, the license suspension or nonrenewal shall be for an indefinite period of time and shall remain in effect until the licensee files the required reports, pays the State tax due or cures the deferred payment plan default.

Section 2911-C. Stay of process.

The appropriate taxing agency may stay the process for suspension, nonrenewal or denial beyond the notice period specified in section 2907-C(1)(v)(relating to notice requirements) if additional time is required for it to process a case or reach a payment plan with the licensee. The taxing agency shall notify the licensing agency of the intent to stay the suspension, nonrenewal or denial at least five working days before the notice period has expired.

Section 2912-C. Exception for continued licensure only.

A licensing agency may make a determination that a license is vital to prevent an immediate threat to the health, safety and welfare of the public. The licensing agency shall notify the applicable taxing agency of the determination. If this determination is made, then notwithstanding the requirements of this article, the licensing agency may use its discretion to renew a license or to refrain from suspending a license but may not grant a license to a new applicant until the applicant files the required reports, pays the State tax due or cures the deferred payment plan default.

Section 33. Section 3003.1 of the act is repealed.

Section 34. Section 3003.2(b) and (i) of the act, amended June 29, 2002 (P.L.559, No.89) and December 23, 2003 (P.L.250, No.46), are amended to read:

Section 3003.2. Estimated Tax.—\*\*\*

(b) The following words, terms and phrases when used in this section and section 3003.3 shall have the following meanings ascribed to them:

(1) “Estimated tax.” Estimated corporate net income tax, estimated capital stock and franchise tax, estimated mutual thrift institution tax, estimated insurance premiums tax, estimated gross receipts tax or estimated public utility realty surcharge.

(2) “Estimated corporate net income tax.” The amount which the corporation estimates as the amount of tax imposed by section 402 of Article IV for the taxable year.

(3) “Estimated capital stock and franchise tax.” The amount which the corporation estimates as the amount of tax imposed by section 602 of Article VI for the taxable year.

(4) “Estimated mutual thrift institution tax.” The amount which the institution estimates as the amount of tax imposed by section 1502 of Article XV for the taxable year.

(4.1) “Estimated insurance premiums tax.” The amount which the insurance company estimates as the amount of tax imposed by section 902 of Article IX for the taxable year.

(4.2) “Estimated gross receipts tax.” The amount which the taxpayer estimates as the amount of tax imposed by section 1101 of Article XI for the taxable year.

(4.3) “Person.” Any natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth, its political subdivisions and instrumentalities and public authorities. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term “person,” as applied to an association, shall include the members thereof and, as applied to a corporation, the officers thereof.

(4.4) “Safe harbor base year.” The taxpayer’s second preceding taxable year. If the second preceding taxable year is less than twelve months, then the “safe harbor base year” shall mean the taxpayer’s annualized second preceding taxable year. If the taxpayer has filed only one previous report, the “safe harbor base year” shall mean the first preceding taxable year. If the first preceding taxable year is less than twelve months, then the “safe harbor base year” shall mean the taxpayer’s annualized first preceding taxable year.

(4.5) “Estimated public utility realty surcharge.” The amount which the taxpayer estimates as the amount of surcharge imposed by section 1111-A of Article XI-A for the taxable year.

(5) “Taxpayer.” Any person required to pay a tax imposed by Article IV, VI, IX, XI or XV of this act.

(6) “Total tax.” The total tax liability of the taxpayer for the tax period including the tax reported by the taxpayer and settled, resettled or assessed by the department.

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(i) Whenever the amount shown as due on the annual report, including any [settlement] assessment of the [annual report] tax period, is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund, at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as “The Fiscal Code,” or at the initiative of the department. If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon [settlement or resettlement] assessment, interest shall be calculated on the amount of the underpayment from the date credit was applied, assigned or refunded.

Section 35. Section 3003.3 of the act, amended May 7, 1997 (P.L.85, No.7) and December 23, 2003 (P.L.250, No.46), is amended to read:

Section 3003.3. Underpayment of Estimated Tax.—(a) In case of any underpayment of an installment of estimated tax by a taxpayer, there shall be imposed interest for the taxable year in an amount determined at the annual rate as provided by law upon the amount of the underpayment for the period of the underpayment, except that, in case of any substantial underpayment of estimated tax by a taxpayer, such interest for the taxable year shall be imposed in an amount determined at one hundred twenty per cent of the annual rate as provided by law upon the entire underpayment for the period of the substantial underpayment. For the purpose of this subsection, a substantial underpayment shall be deemed to exist for any period during which the amount of the underpayment equals or exceeds twenty-five per cent of the cumulative amount of installments of estimated tax which would be required to be paid if the estimated tax were equal to the amount as determined in subsection (b)(1).

(b) (1) For purposes of this section, the amount of the underpayment, if any, shall be the excess of:

(i) the cumulative amount of installments which would be required to be paid as of each installment date as defined in section 3003.2(c) if the estimated tax were equal to ninety per cent of the tax shown on the report for the taxable year, except that, if the [settled tax or, if the tax is resettled, the resettled] total tax exceeds the tax shown on the report by ten per cent or more, the amount of the underpayment shall be based on ninety per cent of the amount of [such settled or resettled] the total tax; over

(ii) the cumulative amount of installments paid on or before the last date prescribed for payment.

(2) If the [settled or resettled tax is used in calculating the amount of underpayment, the amount of tax as settled or resettled shall be utilized in determining] total tax is revised, the amount of underpayment shall be recalculated without the necessity of the filing of any petition by the department or by the taxpayer.

(c) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid.

(d) Notwithstanding the provisions of the preceding subsections, other than as set forth in subsection (d.1), interest with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before

the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year, including any minimum tax imposed, but otherwise on the basis of the facts shown on the report of the taxpayer for, and the law applicable to, the safe harbor base year, adjusted for any changes to sections 401, 601, 602 and 1101 enacted for the taxable year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year. If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid per the preceding sentence, but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid per the preceding sentence is paid. Provided, that if the [settled] total tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the [settled] total tax adjusted to reflect the current tax rate shall be used for purposes of this subsection. [ , except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any petition by the department or by the taxpayer.] In the event that the [settled or resettled] total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of such [settled or resettled] total tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of [such settlement or resettlement] each assessment, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to such [settled or resettled] total tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the [settled or resettled] total tax for the safe harbor base year, the tax will be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

(d.1) (1) Notwithstanding the provisions of subsections (a), (b) and (c), interest with respect to any underpayment of any installment of estimated corporate net income tax for any tax year that begins in year 2007 or 2008 shall not be imposed if the total amount of all payments of estimated corporate net income tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax shown on the report of the taxpayer for the safe harbor base year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year.

(2) If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid under paragraph (1), but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid under paragraph (1) is paid.

(3) If the total tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the total tax shall be used for purposes of this subsection. In the event that the total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of the total tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of a notice from the department increasing the total tax, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the total tax.

(4) In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the total tax for the safe harbor base year, the tax shall be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

(d.2) (1) If there is a substantial underpayment, as defined in subsection (a), of any installment of estimated corporate net income tax or estimated capital stock/franchise tax for any taxable year beginning in 2007 or 2008, there shall be imposed additional interest in an amount determined at one hundred twenty per cent of the annual rate as provided by law upon the entire underpayment for the period of the substantial underpayment.

(2) The additional interest imposed by this subsection is in addition to any other interest imposed on underpayments by this section.

Section 36. Sections 3003.5(a) and 3003.6 of the act, added June 16, 1994 (P.L.279, No.48), are amended to read:

Section 3003.5. Refund Petitions.—(a) Effective January 1, 1995, petitions for refund of taxes, penalties, fines, additions and other moneys collected by the Department of Revenue except those claims for refunds of liquid fuels taxes paid by political subdivisions, farmers, nonpublic schools not operated for profit, volunteer fire companies, volunteer rescue squads, volunteer ambulance services, users of liquid fuel in propeller-driven aircraft or engines and agencies of the Federal Government and of the Commonwealth and the Boat Fund of the Pennsylvania Fish and Boat Commission shall be heard and determined by the Department of Revenue as provided in the act of April 9, 1929 (P.L.343, No.176), known as “The Fiscal Code,” and the Department of Revenue shall thereafter have, except as set forth in Article XXVII, the powers and duties formerly granted to the Board of Finance and Revenue with respect to such refunds. Also effective January 1, 1995, the Board of Finance and Revenue shall no longer have the power and duty to hear and determine any petition for refund of taxes, penalties, fines, additions or other moneys collected by the Department of Revenue, except that thereafter the board may either hear and determine any such petitions filed with it prior to January 1, 1995, or it may transfer such petitions to the Department of Revenue.

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Section 3003.6. Timely Filing.—A taxpayer shall be deemed to have timely filed a [petition for resettlement, a] petition for reassessment[, a petition for redetermination] or any other protest relating to the assessment of tax or any other matter relating to any tax imposed by this act if the letter transmitting the petition is received by the Department of Revenue or is postmarked by the United States Postal Service on or prior to the final day on which the petition is required to be filed.

Section 37. The act is amended by adding a section to read:

Section 3003.16. Assessments to be Made by Department of Revenue.—(a) Parts IV, V, VI and VII of Article IV shall apply to:

(1) The tax imposed by the act of May 23, 1945 (P.L.893, No.360), known as the “Co-operative Agricultural Association Corporate Net Income Tax Act.” The reference to petition for resettlement in section 4 of the “Co-operative Agricultural Association Corporate Net Income Tax Act” shall be interpreted as petition for reassessment.

(2) The State admissions tax and the pari-mutuel wagering tax imposed by sections 208 and 222 of the act of December 17, 1981 (P.L.435, No.135), known as the “Race Horse Industry Reform Act.”

(3) All taxes, fees, additions, bonuses, costs, penalties or charges collected by the Department of Revenue either:

(i) subject to settlement or determination by the Department of Revenue prior to the effective date of this section; or

(ii) for which no other method for the establishment of the unpaid or unreported liability to be collected by the department is provided by law.



(b) The powers conferred upon the Department of Revenue by this section shall be in addition to, but not exclusive of, any powers heretofore or hereafter conferred upon the department by law.

(c) This section shall not apply to the following:

(1) The procedure for collection of moneys due the Commonwealth by county or city officers as provided by Article IX of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

(2) The taxes imposed by 75 Pa.C.S. Chs. 90 (relating to liquid fuels and fuels tax), 95 (relating to taxes for highway maintenance and construction) and 96 (relating to motor carriers road tax).

Section 38. The amendment of sections 301 and 303 of the act shall not be construed to extend the limitations of sections 348 and 3003.1 of the act.

Section 39. (a) Sections 6, 7, 8 and 9 of the act of May 23, 1945 (P.L.893, No.360), known as the Co-operative Agricultural Association Corporate Net Income Tax Act, are repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 40. This act shall apply as follows:

(1) The addition of Articles XXVII and XXVIII of the act shall apply to all decisions and orders of the Department of Revenue mailed after December 31, 2006, regarding a petition for reassessment, redetermination, resettlement or refund.

(2) Except as set forth in paragraph (3), the amendment or addition of sections 301(a), (d), (h.1), (h.2), (h.3), (q) and (s.3) and 303(a.4), (a.5) and (a.6) of the act shall apply to taxable years beginning after December 31, 2002.

(3) References to section 409A(a)(2), (3) and (4) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A(a)(2), (3) and (4)) in sections 301 and 303 of the act shall apply to taxable years beginning after December 31, 2004.

(4) The amendment or addition of the following provisions shall apply to taxable years beginning after December 31, 2006:

- (i) Section 401(3)1(a) and (b), 2 and 4(c)(5), (7), (8), (9), (10), (11) and (12) of the act.
- (ii) Section 402(b) of the act.
- (iii) Section 403 of the act.
- (iv) Section 406 of the act.
- (v) Section 407.1 of the act.
- (vi) Section 407.2 of the act.
- (vii) Section 407.3 of the act.
- (viii) Section 407.4 of the act.
- (ix) Section 408(b) of the act.
- (x) Section 408.1 of the act.
- (xi) Section 408.2 of the act.
- (xii) Section 1101(e) of the act.
- (xiii) Section 1502(f) of the act.
- (xiv) Section 3003.2(b) and (i) of the act.
- (xv) Section 3003.3 of the act.
- (xvi) Section 3003.6 of the act.
- (xvii) Section 3003.16 of the act.

(5) The repeal under section 39(a) of this act shall apply to taxable years beginning on or after January 1, 2007.

Section 41. This act shall take effect as follows:

(1) The addition of Article III Pt. VII-B of the act shall take effect January 1, 2006.

(2) The addition of Article XXVIII of the act shall take effect July 1, 2006.

(3) The amendment, addition or repeal of the following provisions shall take effect January 1, 2007:

- (i) Section 230 of the act.
- (ii) Section 232 of the act.
- (iii) Section 234 of the act.
- (iv) Section 247.1 of the act.
- (v) Section 250 of the act.
- (vi) Section 251 of the act.

- (vii) Section 252 of the act.
- (viii) Section 253 of the act.
- (ix) Section 254 of the act.
- (x) Section 256 of the act.
- (xi) Section 338 of the act.
- (xii) Section 339 of the act.
- (xiii) Section 340 of the act.
- (xiv) Section 341 of the act.
- (xv) Section 350 of the act.
- (xvi) Section 1111-C of the act.
- (xvii) Section 1112-C of the act.
- (xviii) Section 1113-C of the act.
- (xix) Section 2005 of the act.
- (xx) Section 2009 of the act.
- (xxi) Section 2181 of the act.
- (xxii) Article XXVII of the act.
- (xxiii) Section 3003.1 of the act.
- (xxiv) Section 3003.5 of the act.
- (xxv) Section 39(a) of this act.

(6) The remainder of this act shall take effect July 1, 2005, or immediately, whichever is later.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, this amendment is identical to language in HB 1557, which I have introduced, which parallels recommendations made by the Governor's Business Tax Reform Commission Report. That report was adopted by a unanimous vote of all the commission members, including representatives of the business community in Pennsylvania, I believe a couple in particular from the State Chamber of Business and Industry. That report was important because it basically put together in a comprehensive fashion how we can lower Pennsylvania's business taxes and pay for it by closing loopholes, so that it was in essence revenue-neutral.

Let me point out that this amendment and that bill, separate from that, separate from that, the Governor continues to propose and support a 1-mill reduction in the capital stock and franchise tax this year. That is a cost to the general budget of about \$200-and-some million.

What this amendment does is the following: It enables the corporate net income tax to be reduced from 9.99 to 7.90. It brings Pennsylvania from, I believe, the second highest CNI rate in the country down to about 25th or 26th in the nation.

In addition to that, the bill provides prospectively, prospectively, an uncapping of the net operating loss carry-forward, which presently, I believe, is capped at \$2 million; an individual company is capped at \$2 million. It would uncapped that.

So we would have a lower CNI, from 9.99 to 7.90; an uncapping of the net operating loss carry-forward.

Pennsylvania, under this amendment, would apportion the CNI based on a single sales factor. Right now CNI liability for C corporations is allocated 60 percent on sales, 20 percent on property, and 20 percent on payroll. It would move to a 100-percent sales factor formula for apportioning the CNI, which benefits in-state manufacturers vis-a-vis out-of-State corporations. Okay?

In addition to that, you know, those are significant issues that the business community in Pennsylvania has long requested, has long requested. And again, not included in the amendment but included in the Governor's budget proposal and in law is a continued 1-mill reduction in the capital stock and franchise tax.

Now, these business tax cuts cost significant revenue to the State budget, and in budget negotiations where we have Medicaid and medical assistance and a whole lot of other issues to deal with and we do not have much in terms of a surplus, what this amendment does is makes the business tax cuts revenue-neutral by incorporating something called combined reporting. Right now when corporations pay their Federal taxes, they file what is called consolidated reports. Pennsylvania would join 17 other States that have enacted combined reporting, whereby you must file your taxes looking at the income and losses and transactions between the parent company and all the subsidiary companies as well. Under combined reporting, we would close certain specific business tax loopholes that have heretofore been utilized by corporations to be able to either reduce their tax liability in Pennsylvania or to, in some cases, eliminate it altogether through mechanisms called the Delaware loophole.

So under this amendment, we lower the business tax structures and we pay for it by closing the loopholes. So in essence, it is revenue-neutral. Actually, this amendment is about a \$10 to \$15 million reduction overall in business tax cuts. Again, combined with the 1-mill reduction in the capital stock and franchise tax, the net impact to business this year is over a \$200 million tax cut to the business community.

This amendment is significant because it lowers business tax cuts and it promotes tax fairness and tax equity in the business community, and for those reasons and others, I would request an affirmative vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, I believe in introducing the amendment, the gentleman indicated that this embodied the report of the Governor's bipartisan tax commission. Our staff indicates that in reality this amendment is an embodiment of the Governor's version of the bipartisan tax commission's report. One little tidbit of that report was that it should be taken in total if it was to be considered at all. I just think that is kind of an interesting sidebar to the issue that is before us.

### AMENDMENT TABLED

Mr. S. SMITH. In reality, though, Mr. Speaker, as we are at this juncture of dealing with the budget and negotiating the issues that go along with it – and whether that involves tax cuts or tax shifts, I do not know; certainly it is something that we have on the table – I would like to ask the members to table this amendment at this time.

The SPEAKER. The gentleman, Mr. Smith, has moved to table amendment A1046.

On the question,

Will the House agree to the motion?

The SPEAKER. On that motion, only the majority and minority leaders will be recognized, unless the minority floor leader wishes to defer to the gentleman, Mr. Levdansky.

Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

So the honorable gentleman from Jefferson wants to table a chance to reduce business taxes just a few days before the budget finale. It does not make any sense. A couple years ago the honorable gentleman and Republican Party shoved a budget down Ed Rendell's throat in March. That was not too early for the honorable gentleman and his colleagues to engage in the budget process. It was specious, it was inane, wrong-headed, and eventually it was contravened, but we are on the lip, we are on the rim of the budget finale.

So the honorable gentleman from Allegheny County comes up with an idea to reduce business taxes. A Democrat from Allegheny County wants to reduce business taxes, and much of the meat of his proposal emanates from a bipartisan tax commission, including things that were signed off on by the Pennsylvania Chamber of Business and Industry, the good old-fashioned chamber of commerce.

So what the enterprising Chairman Levdansky from Allegheny County and his Finance Committee staff and members are trying to do with some bipartisan support is bring Pennsylvania's business taxes down in a slow, steady, methodical way by making sure that Pennsylvania's big corporations that are not paying CNI, corporate net income taxes, have to start paying their dues. It makes good sense.

So many times we have people parading around the floor with ideas about how to cut taxes, but they are not hardly ever revenue-neutral. In other words, they want to cut taxes but they are not going to tell us what programs they want to cut.

The gentleman, Mr. Levdansky, has an ingenious proposal. It comports itself perfectly with Governor Rendell's plan enunciated by his budget people and his Secretary of Revenue, and we are going to take the CNI, corporate net income tax, in Pennsylvania and lower it; the net loss carry-forward provision of the business tax code and make sure that entrepreneurs' farsighted investing, aggressive entrepreneurs are given a break in their taxes for future tax years.

Levdansky has a great idea. The budget is coming up in a few days. The worst-case scenario: We could lower business taxes in the House, send it to the Senate. This is all a percolation process, and my honorable colleague from Jefferson County, the majority leader, knows it.

This is probably the third or fourth inning of the budget game, and I say we put a few runs on the board, send this to the State Senate, and lower business taxes. I want to lower business taxes for my friends in the chamber of commerce.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

One little point of correction: That budget that we rammed down the Governor's throat, it was the Governor's budget 2 years ago, and the current Speaker was then majority leader. He was in charge of giving the Governor his full measure of budget. I would have been proud to do it, too.

Another little, just a minor detail relative to the comments by the minority leader. The implication that this proposal before us cuts business taxes is not quite accurate. I think he, in the course of his comments, admitted that it was revenue-neutral. It is like any of the tax reform proposals, the property tax reform

proposals that we have dealt with in this House over the years. Most of them mean we would reduce a real estate tax in exchange for increasing an income tax or a sales tax. Does that make it an increase in taxes if you are in fact reducing another tax?

This proposal, based on the Governor's own original directive to the tax commission, was that it had to be revenue-neutral within the business community. So this is not a tax cut. There are some winners and some losers in this bill, no doubt, but it is not a tax cut.

By voting to table this amendment, you are not voting against a tax cut. You are voting to take a closer look at what taxes we can really cut and what cuts in programs or other types of changes we would have to make in order to have a balanced budget.

So I would still urge the members to move to table this amendment, but keep in mind, you are not tabling a tax cut. It is simply a shift in the business taxes, and the implications and the ramifications that that would have on businesses in Pennsylvania and our ability to create and retain jobs are uncertain, and I think it would be a little rash for us to pull this trigger of this particular amendment. So I would urge the members to vote to table.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. DeWeese.

Mr. DeWEESE. Just one more time and very briefly.

If we start out at the end of our debate with a lower tax rate than when we commenced the debate, it is a tax cut. The big boys, Mr. Speaker, will have to pay more, but the vast amount of business enterprises in our State will pay fewer taxes. The good old boy at the local hardware store – and there are still a few of them up in Jefferson County and down in Greene County – they will pay fewer taxes if my good friends in the Commonwealth Caucus help me reduce business taxes today. They will pay fewer taxes, but some of the Goliaths of Pennsylvania business that have been avoiding corporate net income tax will have to pay more. But it is revenue-neutral. The same amount of money will flow in, but the tax rate will go down in Pennsylvania. People that have not been paying their taxes – one more time – people that have not been paying their taxes will pay more. They should be paying more. It is only fair that Pennsylvania businesses that have avoided paying their taxes pay, and even the chamber of commerce in Mr. Rendell's tax reform commission agreed to that general concept.

We are saying it is the fourth inning of the game. We are up to bat. We want to send a tax decrease, a tax decrease, a tax decrease, for business over to the Pennsylvania Senate. We are in the middle of a budget endeavor. For the honorable gentleman to say that it is a bit early, a bit premature, next week, June 30 midnight, the whole ball comes running down. We have got to get moving. The Levdansky amendment is a beautiful way to hit the ball out of the park and lower business taxes for our wonderful friends in the business community.

The SPEAKER. The Chair thanks the gentleman.

Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I am proud to see the minority leader can actually say that with a straight face. He really held the crackle back.

Look, I do not care how you want to characterize it; it is not a tax decrease. Like any tax reform plan before us, for whatever it may be, it is a tax shift. Somebody pays more; somebody

pays less. I guess real people do not work at big corporations. Yes, we have a lot of little businesses in my community, and that is important. Little businesses, small businesses, are very critical to our economy and to the jobs in Pennsylvania, but big businesses hire a lot of people, too. I mean, that is why they are big. There are a lot of families that work and get their livelihood out of those big businesses.

So at the end of the day, we still want to have a balanced approach to how we deal with the business tax structure. I hope that when we come back, if we are able to fashion a budget that might afford us the opportunity to cut some taxes in Pennsylvania, whether it is personal income taxes or corporate net income taxes or net operating loss carry-forwards or whatever they might be, I hope that the gentleman is equally interested on that day. On this day I would still urge the members to table the amendment.

The SPEAKER. The Chair thanks the gentleman.

Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

Thirty seconds, just 30 seconds.

The SPEAKER. The gentleman is in order.

Mr. DeWEESE. The Secretary of Revenue and the Secretary of the Budget, the Rendell administration, assert unequivocally, unambiguously that if this Levdansky amendment were to become law, 83 percent of Pennsylvania corporations would pay fewer taxes; 83 percent would pay fewer taxes. Now, if you can gainsay that data, fine; do it, but if you cannot, vote to reduce business taxes with the David Levdansky amendment.

Thank you.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

#### YEAS—108

Adolph	Fleagle	Maher	Reichley
Allen	Flick	Maitland	Rohrer
Argall	Forcier	Major	Ross
Armstrong	Gabig	Marsico	Rubley
Baker	Gannon	McGill	Saylor
Baldwin	Geist	McIlhattan	Scavello
Barrar	Gillespie	McIlhinney	Schroder
Bastian	Gingrich	McNaughton	Semmel
Benninghoff	Godshall	Metcalfe	Smith, B.
Birmelin	Good	Micozzie	Smith, S. H.
Boyd	Grell	Millard	Sonney
Bunt	Habay	Miller, R.	Stairs
Cappelli	Harhart	Miller, S.	Steil
Causar	Harper	Mustio	Stern
Civera	Harris	Nailor	Stevenson, R.
Clymer	Hasay	Nickol	Stevenson, T.
Cornell	Hennessey	O'Brien	Taylor, E. Z.
Crahalla	Herman	O'Neill	Taylor, J.
Creighton	Hershey	Payne	True
Dally	Hess	Petri	Turzai
Denlinger	Hickernell	Phillips	Watson
DiGirolamo	Hutchinson	Pickett	Wilt
Diven	Kauffman	Pyle	Wright
Ellis	Keller, M.	Quigley	Zug
Evans, J.	Kenney	Rapp	
Fairchild	Killion	Raymond	
Feese	Leh	Reed	Perzel,
Fichter	Mackereth		Speaker

NAYS-89

Bebko-Jones	Evans, D.	Levdansky	Samuelson
Belardi	Fabrizio	Manderino	Santoni
Belfanti	Frankel	Mann	Shaner
Biancucci	Freeman	Markosek	Shapiro
Bishop	George	McCall	Siptroth
Blackwell	Gerber	McGeehan	Solobay
Blaum	Gergely	Melio	Staback
Butkovitz	Goodman	Mundy	Stetler
Buxton	Grucela	Myers	Sturla
Caltagirone	Gruitza	Oliver	Surra
Casorio	Haluska	Pallone	Thomas
Cawley	Hanna	Petrarca	Tigue
Cohen	Harhai	Petrone	Veon
Corrigan	James	Pistella	Vitali
Costa	Josephs	Preston	Walko
Cruz	Keller, W.	Ramaley	Wansacz
Curry	Kirkland	Readshaw	Waters
Daley	Kotik	Rieger	Wheatley
DeLuca	LaGrotta	Roberts	Williams
Dermody	Leach	Rooney	Yewcic
DeWeese	Lederer	Ruffing	Youngblood
Donatucci	Lescovitz	Sainato	Yudichak
Eachus			

NOT VOTING-0

EXCUSED-4

Roebuck	Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. LEVDANSKY offered the following amendment No. A01047:

Amend Title, page 1, line 10, by inserting after "penalties," further providing for the imposition and rate of the sales and use tax and for transfers to the Public Transportation Assistance Fund; designating certain sales and use tax revenue for transfer to the Education Operating Fund;

Amend Title, page 1, line 11, by removing the period after "tax" and inserting

, for the imposition and rate of the State Real Estate Transfer Tax and for the disposition of certain moneys raised by the Local Real Estate Transfer Tax.

Amend Bill, page 1, lines 14 through 16, by striking out all of said lines and inserting

Section 1. Section 201(k)(4) and (o)(4) and (8) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7) and April 23, 1998 (P.L.239, No.45), are amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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(k) "Sale at retail."

\*\*\*

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or

cleaning tangible personal property [other than] including, but not limited to, wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property [except] including, but not limited to, wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means other than by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith[, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service.]

\*\*\*

(o) "Use."

\*\*\*

(4) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property [other than] including, but not limited to, wearing apparel or shoes or applying or installing tangible personal property [other than] including, but not limited to, wearing apparel or shoes, whether or not the services are performed directly or by any means other than by means of coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith[, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service: And provided further, That the]. The term "use" shall not include—

(A) Any tangible personal property acquired and kept, retained or over which power is exercised within this Commonwealth on which the taxing of the storage, use or other consumption thereof is expressly prohibited by the Constitution of the United States or which is excluded from tax under other provisions of this article.

(B) The use or consumption of tangible personal property, including but not limited to machinery and equipment and parts therefor, and supplies or the obtaining of the services described in subclauses (2), (3) and (4) of this clause directly in the operations of—

(i) The manufacture of tangible personal property.

(ii) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(iii) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering such service.

(iv) Processing as defined in subclause (d) of this section.

The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to any vehicle required to be registered under The Vehicle Code except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate. The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person

other than the person directly using the same in the operations described in subparagraphs (i), (ii), (iii) and (iv).

The exclusion provided in subparagraph (iii) shall not apply to (A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service or (B) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

The exclusion provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to the services enumerated in clauses (o)(9) through (16) and (w) through (kk), except that the exclusion provided in subparagraph (ii) for farming, dairying and agriculture shall apply to the service enumerated in clause (z).

\* \* \*

[(8) The term "use" shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by such a school for the sole purpose of driver education.]

\* \* \*

Section 2. Section 202 of the act, amended September 9, 1971 (P.L.437, No.105), October 4, 1978 (P.L.987, No.201), April 23, 1998 (P.L.239, No.45), May 24, 2000 (P.L.106, No.23) and June 29, 2002 (P.L.559, No.89), is amended to read:

Section 202. Imposition of Tax.—(a) There is hereby imposed upon each separate sale at retail of tangible personal property or services, as defined herein, within this Commonwealth a tax of [six] five per cent of the purchase price, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the Commonwealth as herein provided.

(b) There is hereby imposed upon the use[, on and after the effective date of this article,] within this Commonwealth of tangible personal property purchased at retail [on or after the effective date of this article,] and on those services described herein purchased at retail on and after [the effective date of this article] January 1, 2006, a tax of [six] five per cent of the purchase price, which tax shall be paid to the Commonwealth by the person who makes such use as herein provided, except that such tax shall not be paid to the Commonwealth by such person where he has paid the tax imposed by subsection (a) of this section or has paid the tax imposed by this subsection (b) to the vendor with respect to such use. [The tax at the rate of six per cent imposed by this subsection shall not be deemed applicable where the tax has been incurred under the provisions of the "Tax Act of 1963 for Education."]

(c) Notwithstanding any other provisions of this article, the tax with respect to telecommunications service within the meaning of clause (m) of section 201 of this article shall[, except for telegrams paid for in cash at telegraph offices,] be computed at the rate of [six] five per cent upon the total amount charged to customers for such services, irrespective of whether such charge is based upon a flat rate or upon a message unit charge[, but in no event shall charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate be subject to this tax]. A telecommunications service provider shall have no responsibility or liability to the Commonwealth for billing, collecting or remitting taxes that apply to services, products or other commerce sold over telecommunications lines by third-party vendors. To prevent actual multistate taxation of interstate telecommunications service, any taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of such tax properly due and paid to such other state.

(d) Notwithstanding any other provisions of this article, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of [six] five per cent of the receipts collected from any such machine which dispenses food and beverages heretofore taxable.

(e) (1) Notwithstanding any provisions of this article, the sale or use of prepaid telecommunications evidenced by the transfer of

tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid telecommunications not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser's billing address.

(3) Notwithstanding clause (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of [six] five per cent of the receipts collected on each sale if the service provider elects to collect the tax imposed by this article on receipts of each sale. The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(e.1) (1) Notwithstanding any other provision of this article, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser's billing address or the location associated with the mobile telephone number or the point of sale, whichever is applicable.

(3) Notwithstanding clause (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of [six] five per cent of the receipts collected on each sale if the service provider elects to collect the tax imposed by this article on receipts of each sale. The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(f) Notwithstanding any other provision of this article, tax with respect to sales of prebuilt housing shall be imposed on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this article: Provided, however, That a manufacturer of prebuilt housing may, at its option, precollect the tax from the prebuilt housing builder at the time of sale to the prebuilt housing builder. In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Notwithstanding any other provisions of this article and in accordance with the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117(a) and (b) of the Mobile Telecommunications Sourcing Act shall be subject to the tax of [six] five per cent of the purchase price, which tax shall be collected by the home service provider from the customer, and shall be paid over to the Commonwealth as herein provided if the customer's place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. For purposes of this subsection, words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

Section 3. Section 203 of the act is amended to read:

Section 203. Computation of Tax.—The amount of tax imposed by section 202 of this article shall be computed as follows:

[(a) If the purchase price is ten cents (10¢) or less, no tax shall be collected.

(b) If the purchase price is eleven cents (11¢) or more but less than eighteen cents (18¢), one cent (1¢) shall be collected.

(c) If the purchase price is eighteen cents (18¢) or more but less than thirty-five cents (35¢), two cents (2¢) shall be collected.

(d) If the purchase price is thirty-five cents (35¢) or more but less than fifty-one cents (51¢), three cents (3¢) shall be collected.

(e) If the purchase price is fifty-one cents (51¢) or more but less than sixty-eight cents (68¢), four cents (4¢) shall be collected.

(f) If the purchase price is sixty-eight cents (68¢) or more but less than eighty-five cents (85¢), five cents (5¢) shall be collected.

(g) If the purchase price is eighty-five cents (85¢) or more but less than one dollar and one cent (\$1.01), six cents (6¢) shall be collected.

(h) If the purchase price is more than one dollar (\$1.00), six per centum of each dollar of purchase price plus the above bracket charges upon any fractional part of a dollar in excess of even dollars shall be collected.]

(a) If the purchase price is seventeen cents (17¢) or less, no tax shall be collected.

(b) If the purchase price is eighteen cents (18¢) or more but less than thirty-three cents (33¢), one cent (1¢) shall be collected.

(c) If the purchase price is thirty-three cents (33¢) or more but less than forty-nine cents (49¢), two cents (2¢) shall be collected.

(d) If the purchase price is forty-nine cents (49¢) or more but less than sixty-five cents (65¢), three cents (3¢) shall be collected.

(e) If the purchase price is sixty-five cents (65¢) or more but less than eighty-one cents (81¢), four cents (4¢) shall be collected.

(f) If the purchase price is more than eighty-one cents (81¢) but less than one dollar and one cent (\$1.01), five per cent shall be collected.

(g) If the purchase price is more than one dollar (\$1.00), five per cent of each dollar of purchase price plus the above bracket charges upon any fractional part of a dollar in excess of even dollars shall be collected.

(h) The tax collected under section 202 shall be deposited into the Education Operating Fund.

Section 4. Section 204 of the act, amended or repealed August 31, 1971 (P.L.362, No.93), July 20, 1974 (P.L.535, No.183), October 17, 1974 (P.L.756, No.255), December 14, 1977 (P.L.322, No.93), October 27, 1979 (P.L.242, No.79), December 8, 1980 (P.L.1117, No.195), December 16, 1980 (P.L.1240, No.223), October 22, 1981 (P.L.314, No.109), June 23, 1982 (P.L.610, No.172), December 9, 1982 (P.L.1047, No.246), July 21, 1983 (P.L.63, No.29), December 19, 1985 (P.L.354, No.100), July 13, 1987 (P.L.317, No.58), August 4, 1991 (P.L.97, No.22), December 13, 1991 (P.L.373, No.40), June 16, 1994 (P.L.279, No.48), June 30, 1995 (P.L.139, No.21), May 7, 1997 (P.L.85, No.7), April 23, 1998 (P.L.239, No.45), May 12, 1999 (P.L.26, No.4), May 24, 2000 (P.L.106, No.23), December 20, 2000 (P.L.841, No.119), June 22, 2001 (P.L.353, No.23), June 29, 2002 (P.L.559, No.89) and December 23, 2003 (P.L.250, No.46), is amended to read:

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property (other than motor vehicles, trailers, semi-trailers, motor boats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed) or services sold by or purchased from a person not a vendor in an isolated transaction or sold by or purchased from a person who is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in such transaction: Provided, That inventory and stock in trade so sold or purchased, shall not be excluded from the tax by the provisions of this subsection.

(2) The use of tangible personal property purchased by a nonresident person outside of, and brought into this Commonwealth for use therein for a period not to exceed seven days, or for any period of time when such nonresident is a tourist or vacationer and, in either case not consumed within the Commonwealth.

(3) The use of tangible personal property purchased outside this Commonwealth for use outside this Commonwealth by a then nonresident natural person or a business entity not actually doing business within this Commonwealth, who later brings such tangible

personal property into this Commonwealth in connection with his establishment of a permanent business or residence in this Commonwealth: Provided, That such property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment of such business or residence, whichever first occurs. This exclusion shall not apply to tangible personal property temporarily brought into Pennsylvania for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

[(4) The sale at retail or use of disposable diapers; pre-moistened wipes; incontinence products; colostomy deodorants; toilet paper; sanitary napkins, tampons or similar items used for feminine hygiene; or toothpaste, toothbrushes or dental floss.

(5) The sale at retail or use of steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate subscriber line charges, basic local telephone service or telegraph service when purchased directly by the user thereof solely for his own residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate.]

(10) The sale at retail [to or use] by (i) any charitable organization, volunteer firemen's organization or nonprofit educational institution, or (ii) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract: Provided, however, That the exclusion of this clause shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to such organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

(11) The sale at retail, or use of gasoline and other motor fuels, the sales of which are otherwise subject to excise taxes under [the act of May 21, 1931 (P.L.194), known as the "Liquid Fuels Tax Act," and the act of January 14, 1952 (P.L.1965), known as the "Fuel Use Tax Act."] 75 Pa.C.S. Ch. 90 (relating to Liquid Fuels and Fuels Tax).

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions or private schools or parochial schools of tangible personal property or services. The clause includes the sale at retail to persons who operate a home education program of tangible personal property or services exclusively for the home education program.

[(13) The sale at retail, or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, when such use is incidental to the delivery of any personal property, except that any charge for wrapping or packaging shall be subject to tax at the rate imposed by section 202.

(14) Sale at retail or use of vessels designed for commercial use of registered tonnage of fifty tons or more when produced by the builders thereof upon special order of the purchaser.

(15) Sale at retail of tangible personal property or services used or consumed in building, rebuilding, repairing and making additions to or replacements in and upon vessels designed for commercial use of registered tonnage of fifty tons or more upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of or for the account of the owner.

(16) The sale at retail or use of tangible personal property or services to be used or consumed for ship cleaning or maintenance or as fuel, supplies, ships' equipment, ships' stores or sea stores on vessels designed for commercial use of registered tonnage of fifty tons or more to be operated principally outside the limits of the Commonwealth.]

(17) The sale at retail or use of prescription [or non-prescription] medicines, [drugs or medical supplies, crutches and wheelchairs for the use of cripples and invalids, artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user, false teeth and materials used by a dentist in dental treatment, eyeglasses when especially designed or prescribed by

an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser and artificial braces and supports designed solely for the use of crippled persons or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including but not limited to hospital beds, iron lungs, and kidney machines.

(18) The sale at retail or use of coal.

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis thereof, sold to a nonresident of Pennsylvania to be used outside of Pennsylvania and which are registered in a state other than Pennsylvania within twenty days after delivery to the vendee.

(25) The sale at retail or use of water.

(26) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body but all accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports shall not be excluded from the tax.

(28) The sale at retail or use of religious publications sold by religious groups and Bibles and religious articles.

(29) The sale at retail or use of food and beverages for human consumption, except that this exclusion shall not apply with respect to—

(i) Soft drinks;

(ii) Malt and brewed beverages and spirituous and vinous liquors;

(iii) Food or beverages, whether sold for consumption on or off the premises or on a “take-out” or “to go” basis or delivered to the purchaser or consumer, when purchased (A) from persons engaged in the business of catering; or (B) from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employe cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile. For purposes of this clause, a bakery, a pastry shop, a donut shop, a delicatessen, a grocery store, a supermarket, a farmer’s market, a convenience store or a vending machine shall not be considered an establishment from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served iced based products including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages. For purposes of this subclause, beverages shall not include malt and brewed beverages and spirituous and vinous liquors but shall include soft drinks.]

(29) The sale at retail of food and beverages at or from a school, whether public or private, or church in the ordinary course of the activities of such organization is not subject to tax.

(30) The sale at retail or use of [newspapers. For purposes of this section, the term “newspaper” shall mean a “legal newspaper” or a publication containing matters of general interest and reports of current events which qualifies as a “newspaper of general circulation” qualified to carry a “legal advertisement” as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines. This exclusion shall also include] any printed or other form of advertising materials [circulated with such newspaper] regardless of where or by whom such [printed] advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth of Pennsylvania.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private when purchased in behalf of or through such schools, colleges or universities provided such institutions of learning are recognized by the Department of Education.

(34) The sale at retail, or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.

(35) The sale at retail or use of mail order catalogs and direct mail advertising literature or materials, including electoral literature or materials, such as envelopes, address labels and a one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, including electoral literature or materials, through the United States Postal Service.]

(36) The sale at retail or use of rail transportation equipment used in the movement of personalty.

[(37) The sale at retail of buses to be used under contract with school districts that are replacements for buses destroyed or lost in the flood of 1977 for a period ending December 31, 1977 in the counties of Armstrong, Bedford, Cambria, Indiana, Jefferson, Somerset and Westmoreland, or the use of such buses.

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser; the seller shall obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been shipped. The seller shall execute a “Certificate of Delivery to Destination Outside of the Commonwealth” for each bill of lading reflecting out-of-State delivery. The seller shall be required to retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates.

In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the “Certificate of Delivery to Destination Outside of the Commonwealth” form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

(39) The sale at retail or use of fish feed purchased by or on behalf of sportsmen’s clubs, fish cooperatives or nurseries approved by the Pennsylvania Fish Commission.

(40) The sale at retail of supplies and materials to tourist promotion agencies, which receive grants from the Commonwealth, for distribution to the public as promotional material or the use of such supplies and materials by said agencies for said purposes.

(41) The sale at retail of supplies and materials to tourist promotion agencies, which receive grants from the Commonwealth, for distribution to the public as promotional material or the use of such supplies and materials by said agencies for said purposes.

(42) The sale or use of brook trout (*salvelinus fontinalis*), brown trout (*Salmo trutta*) or rainbow trout (*Salmo gairdneri*).

(43) The sale at retail or use of buses to be used exclusively for the transportation of children for school purposes.

(44) The sale at retail or use of firewood. For the purpose of this clause, firewood shall mean the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.]

(46) The sale at retail or use of tangible personal property purchased in accordance with the Food Stamp Act of 1977, as amended (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

[(47) The net purchase price of the sale at retail or use of electric vehicles, hybrid electric vehicles and zero emission vehicles as defined

in 75 Pa.C.S. § 102 (relating to definitions). “Net purchase price” shall mean the difference between the purchase price of an electric vehicle, hybrid electric vehicle or zero emission vehicle and the average retail list price of a comparable vehicle. “Comparable vehicle” shall mean, in the case of a passenger car, the overall average list price of a passenger car in the United States; in the case of a passenger truck, the overall average list price of a passenger truck in the United States; and, in the case of a van, the overall average retail list price of a van in the United States. The Department of Revenue shall promulgate rules and regulations to enforce this exemption and determine the average retail list price as defined under “comparable vehicle” on an annual basis. In the event that a qualified motor vehicle is something other than a passenger car, passenger truck or van, the Department of Revenue shall determine the average list price of a comparable vehicle classification. This clause shall expire December 31, 1999.

(48) The sale at retail or use of power units for vehicles that are exempt under clause (47). This clause shall expire December 31, 1999.]

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this clause, the phrases:

(i) “nonprofit association” means an entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis;

(iv) “sports program” means baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes and whose activities are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical handicaps or persons with mental retardation;

(v) “support” means the funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

[(50) The sale at retail or use of subscriptions for magazines. The term “magazine” refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This exclusion shall also include any printed advertising material circulated with the periodical or publication regardless of where or by whom the printed advertising material was produced.

(51) The sale at retail or use of interior office building cleaning services but only as relates to the costs of the supplied employe, which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements, and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vender or supplying entity.

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the

production of a feature-length commercial motion picture distributed to a national audience: Provided, however, That the production of any motion picture for which the property will be used does not violate any Federal or State law; and Provided further That the purchaser shall furnish to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax pursuant to this clause.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

(56) The sale at retail or use of tangible personal property or services used, transferred or consumed in installing or repairing equipment or devices designed to assist persons in ascending or descending a stairway when:

(i) The equipment or devices are used by a person who, by virtue of a physical disability, is unable to ascend or descend stairs without the aid of such equipment or device.

(ii) The equipment or device is installed or used in such person’s place of residence.

(iii) A physician has certified the physical disability of the person in whose residence the equipment or device is installed or used.

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) transferred pursuant to a construction contract for any charitable organization, volunteer firemen’s organization, nonprofit educational institution or religious organization for religious purposes, provided that the building machinery and equipment and services thereto are not used in any unrelated trade or business;

(ii) transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions; or

(58) The sale at retail or use of a personal computer, a peripheral device or an Internet access device, or a service contract or single-user licensed software purchased in conjunction with a personal computer, peripheral device or Internet access device, during the exclusion period by an individual purchaser for nonbusiness use. The exclusion does not include a sale at retail or use of, leasing, rental or repair of a personal computer, peripheral device or Internet access device; mainframe computers; network servers; local area network hubs; routers and network cabling; network operating systems; multiple-user licensed software; minicomputers; hand-held computers; personal digital assistants without Internet access; hardware word processors; graphical calculators; video game consoles; telephones; digital cameras; pagers; compact discs encoded with music or movies; and digital versatile discs encoded with music or movies. For purposes of this clause, the phrase “exclusion period” means the period of time from August 5, 2001, to and including August 12, 2001, and from February 17, 2002, to and including February 24, 2002. For purposes of this clause, “purchaser” means an individual who places an order and pays the purchase price by cash or credit during the exclusion period even if delivery takes place after the exclusion period.]

(59) The sale at retail or use of molds and related mold equipment used directly and predominantly in the manufacture of products, regardless of whether the person that holds title to the equipment manufactures a product.

[(60) The sale or use of used prebuilt housing.

(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or nonalcoholic beverages to passengers in connection with the rendering of the airline service.]

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.



[(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).]

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

(i) is necessitated by a disaster emergency, as defined in 35 Pa.C.S. § 7102 (relating to definitions); and

(ii) takes place during the period when there is a declaration of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).

(65) The sale at retail of medical goods or services by a hospital.

(66) The sale at retail of medical or dental services, including charges for office visits.

(67) The sale at retail or use of goods or services involving Medicare Part B transactions.

(68) The sale at retail or use of transportation provided or funded by the Federal, State or local government.

(69) The sale at retail or use of cigarettes.

(70) The sale at retail of insurance premiums.

Section 5. Section 205 of the act, amended June 9, 1978 (P.L.463, No.62) and August 4, 1991 (P.L.97, No.22), is amended to read:

Section 205. Alternate Imposition of Tax; Credits.—(a) If any person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semi-trailers, and registered with the department in the “dealer’s class,” acquires a motor vehicle, trailer or semi-trailer for the purpose of resale, and prior to such resale, uses the motor vehicle, trailer or semi-trailer for a taxable use under this act during a period not exceeding one year from the date of acquisition to the date of resale, such person may within ten days of the commencement of such use, elect to pay a tax equal to [six] five per cent of the fair rental value of the motor vehicle, trailer or semi-trailer during such use. Should such motor vehicle, trailer or semi-trailer be used for a taxable use after a period of one year, the taxpayer shall be liable for a tax on the fair market value of such motor vehicle, trailer or semi-trailer at the time of acquisition, but shall be allowed a credit equal to the tax paid pursuant to the election provided for in this section. This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

(b) A commercial aircraft operator who acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase, and subsequent to such purchase, periodically uses the same aircraft for a taxable use under this act, may elect to pay a tax equal to [six] five per cent of the fair rental value of the aircraft during such use.

Section 6. Section 281.2 of the act, amended December 23, 2003 (P.L.250, No.46), is amended to read:

Section 281.2. Transfers to Public Transportation Assistance Fund.—(a) All revenues received on or after July 1, 1992, from the imposition of the tax on periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Within 30 days of the close of any calendar month, [.44 per cent (.0044)] .36 per cent (.0036) of the taxes received in the previous month under this article, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Assistance Transportation Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

(c) In fiscal year 1991-1992, the Secretary of Revenue will ensure that ten million dollars (\$10,000,000) is deposited in the Public Assistance Transportation Fund from the combination of revenues received under former 74 Pa.C.S. § 1314(d) and transfers of periodical taxes received under this article.]

(d) Within 30 days of the close of any calendar month, [.09 per cent (.0009)] .075 per cent (.00075) of the taxes received in the

previous month under this article shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

(e) Within 30 days of the close of a calendar month, .417 per cent (.00417) of the taxes received in the previous month under this article shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

Section 7. The act is amended by adding a section to read:

Section 281.3. Transfers to Education Operating Fund.—(a) It is the intent of the General Assembly to broaden the sales and use tax base and reduce the rate of that tax in order to provide funds for the operating expenses of school districts.

(b) All revenues received on or after January 1, 2006, from the tax imposed by this article shall be transferred to the Education Operating Fund.

Section 7.1. Section 402 of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Amend Bill, page 3, line 13, by striking out all of said line and inserting

Section 8. Section 1102-C of the act, amended July 2, 1986 (P.L.318, No.77), is amended to read:

Section 1102-C. Imposition of Tax.—Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, or for or in respect of the vellum parchment or paper upon which such document is written or printed, a State tax [at the rate of one per cent of] based on the value of the real estate represented by such document, which State tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document or within thirty days of becoming an acquired company. The rate of the State tax shall be as follows:

(1) One per cent on all transactions under this section.

(2) After December 31, 2005, an additional two per cent on all transactions under this section.

Section 9. Section 1106-C(c) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 1106-C. Stamps, Commissions, Payments and Transfers.—\* \* \*

(c) [All] (1) Except as provided in clause (2), all moneys paid in accordance with this article shall be credited to the General Fund.

(2) All moneys paid in accordance with section 1102-C(2) shall be credited to and deposited into the Education Operating Fund.

\* \* \*

Section 10. The act is amended by adding a section to read:

Section 1103-D. Disposition of Revenue Raised by School Districts.—Notwithstanding any law to the contrary, all moneys paid under this article to school districts imposing the Local Real Estate Transfer Tax after December 31, 2005, shall be forwarded to the Department of Revenue and shall be credited to and deposited into the Education Operating Fund.

Section 11. This act shall take effect July 1, 2005, or immediately, whichever is later.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, this amendment is essentially the language contained in HB 120, commonly referred to as the Commonwealth Caucus proposal or also known as the 5-percent solution to property tax relief.

Under this amendment, Mr. Speaker, all school property taxes would be eliminated for businesses and individuals and instead would be replaced with revenues from a 5-percent sales

and use tax and an increase in the State's share in the realty transfer tax from 1 to 3 percent.

The following items which are presently excluded from the State sales tax would be taxed at 5 percent under the Commonwealth Caucus proposal: All clothing, food, beverages, candy, gum; household utility services, including water, natural gas, propane, fuel oil, electric, coal, firewood, basic electric service, basic telephone service; disposable diapers, wipes, personal hygiene products, toothbrushes; purchases by charitable, religious, nonprofit educational, or volunteer firemen's organizations. Textbooks used in schools, colleges, and universities would now be subject to the sales tax. The purchase of school buses; medical devices such as crutches, wheelchairs, artificial limbs and eyes, hearing aids, false teeth, prescription glasses, hospital beds, iron lungs, and kidney machines would now be subject to the sales tax. Stairway lift devices; nonprescription medicines; caskets, burial vaults, markers, and tombstones; supplies used by tourist promotion agencies; newspapers and magazines; dry cleaning services; coin-operated telephone call service; wrapping supplies; the sale, repair, or maintenance of commercial vessels of 50 tons or more; motor vehicles and trailers sold to nonresidents to be used outside of Pennsylvania; flags, flags of the United States and the Commonwealth of Pennsylvania would now be subject to the sales tax. Motion picture films that are rented or licensed from a distributor for commercial exhibition, racehorses and horses to be shipped out of State after the sale would be subject to the sales tax. Historical markers and Uniform Commercial Code fees would all be subject to the sales tax.

In addition, in addition, for some unknown reason, advertising would not be subject to taxation, and the present sales tax applied to the sale of cigarettes would be rescinded. So the sales tax on cigarettes that is presently in place would be removed.

When fully phased in, the General Fund impact of this plan will be the combination of moving all sales tax revenues into an Education Operating Fund along with moving the responsibility for expenditures for basic education into the Education Operating Fund.

According to the 2005-2006 executive budget, sales tax revenues in '05-'06 are estimated to be \$8.266 billion while total grants and subsidies in support of public schools are scheduled to be \$8.63 billion. So that is a revenue shortfall of about \$400 million that is built into this Commonwealth Caucus proposal.

Again, this proposal imposes the sales tax on food and clothing and water and a number of other things, which some would argue is in fact regressive. The plan also impacts funding for mass transit by creating conflicting language regarding the funds to which revenue is transferred. Presently there is a small piece of the sales tax that is allocated for mass transit, and that would no longer be available for mass transit. We have already got a mass transit funding crisis we have to deal with. This would just make it even bigger.

Again, the repeal of exemptions for purchases made by charitable, religious, and nonprofit educational and volunteer firemen's organizations will increase their cost of operation and force them to rely more heavily on grants, donation, and local fundraising.

Mr. Speaker, last summer the House Finance Committee, the House Finance Committee conducted, I believe, eight hearings across the State on this proposal. Many advocates of this plan

tout this as an alternative to property tax relief as passed by the legislature last year in Act 71 and Act 72. We have heard and we continue to hear advocates for this Commonwealth Caucus plan say that this plan is doable and is a real alternative to Act 72.

We have heard a lot of testimony on this plan. Last session bills were introduced similar to HB 120 and the language I have here in A1047. That legislation was introduced last session, and again this session it has been reintroduced, and we have had the public hearings.

Mr. Speaker, we have studied this plan. We have had plenty of opportunity for public input and public comment. I think it is now time that the members of this body make a decision whether or not they think the Commonwealth Caucus plan as embodied by this amendment is a real alternative to Act 72 and property tax relief.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Rohrer.

Mr. ROHRER. Thank you, Mr. Speaker.

I am really thrilled to see the minority chairman of the Finance Committee so interested in the plan for Pennsylvania's future, which in fact would eliminate school property taxes and would in fact move to a sales tax, but not at all very much like he just talked about, and there is a big difference. If the gentleman on that side in fact were serious and in fact had before us the exact language of the bills, five-bill package, which is in the Finance Committee at this point with Representative Leh, then the discussion that we may be having might in fact be a little bit more closer to fact.

However, many things that he has stated are in fact not correct. This amendment that he has does not reflect accurately the bill that is in committee. Number two, the bill that is before here right now, the amendment, does not cut and eliminate the property tax. That is in another bill that is in committee. This package must move as a package of five bills in order to work together, and that is how they ought to move, and so to do this in this fashion when a package in fact is in the committee, having had hearings and is now on the schedule for the committee chairman to deal with, it is out of order, in my opinion, to deal with it in this fashion, and number two, it is not accurate.

#### AMENDMENT TABLED

Mr. ROHRER. So therefore a vote of this House today, either "yea" or "nay" on this, would not reflect in any way the accuracy of what the plan for Pennsylvania's future is and therefore is not appropriate.

And so in a true sense, Mr. Speaker, I believe that the appropriate thing to do is to table this amendment at this time because it is not accurate, it is not accurate. No one in here can stand and say I do not want to deal with this issue. We do, because I believe I know how this thing is going to pass in this House. However, this is not accurate, and therefore any vote or discussion would not be accurate and therefore inappropriate.

So, Mr. Speaker, I move to table this bill, allowing it to be dealt with in committee as scheduled by the Finance Committee chairman – this amendment, I mean; this amendment.

The SPEAKER. The Chair thanks the gentleman for clarifying that.

It is moved by the gentleman, Mr. Rohrer, that the amendment, A1047, be tabled.

On the question,  
Will the House agree to the motion?

The SPEAKER. On that question, it is debatable by the floor leaders.

The gentleman, Mr. DeWeese.

Mr. DeWEESE. Mr. Speaker, we get so many letters that Mr. Rohrer has organized coming at us that we wanted a chance to vote it today, but anyway, I am going to allow the debate to be carried by the gentleman, Mr. Levdansky.

The SPEAKER. Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, in response to Representative Rohrer, let me raise a couple points.

This amendment represents the exact language in HB 120, of which he is the prime sponsor. Now, the Commonwealth Caucus proposal is an embodiment of five bills – one bill to raise revenue, another bill that amends an education code to distribute the funds – and just think when the State pays for 100 percent of public education, just think of all the mandates that we are going to be able to send to our local school districts. There is also a bill that sets up the State assuming the debt on all the school districts; another bill prohibits local school districts from raising local revenue. So there is a five-bill package, but this is the one important bill that raises the revenue. The other four bills deal with the distribution of the funds for public education and associated and related issues to that. Okay? I want to make that clear. So that is the only difference, is this is the one – this is the signature piece of legislation in the Commonwealth Caucus proposal.

Now, Mr. Speaker, I do this, I do this because we have had bills introduced in two consecutive sessions on this issue by the Commonwealth Caucus. We have had public hearings on it. There has been ample time for members to decide whether or not you think we ought to fund property tax relief this way. Should we pay for public education solely through the use of the sales tax? Okay? This is the decision that this body I think has had plenty enough time to make a decision on.

Also, Mr. Speaker, this five-bill package, of which this is the signature piece of legislation, has been in the Finance Committee and just as recently as I believe a week or two ago was scheduled for a vote in committee, and then the vote was not called on the bill. So, Mr. Speaker, the author of this legislation, HB 120, has been unable to get his bill out of a committee, the Finance Committee, controlled by his party. So he has not been able to get that out. I want to help him at least get a vote. If he cannot get a vote in committee, I want to help him get a vote at least on this floor to ascertain whether or not his proposal is supported by a majority of the members of this body or not.

So I think we have studied this in committee. You know, we have not been able to get a vote. He has not been able to get a vote through his committee, of which his party controls the majority, and that being the case, I think, I think his idea deserves consideration and a decision by this body.

I have never in my 21 years here – maybe this has happened – seen a member have his bill offered as an amendment and then argue to table my bill. If I introduce a bill, it is going to be because it is something that I believe in, and I will look for any

opportunity to get it passed on the floor of the House, and especially if I am in the majority. Okay?

You know, this is his bill. He has introduced it. He is very good at articulating his proposal. This is his proposal. He ought to today on this floor articulate reasons why members ought to vote for it if he believes that, and to table it I think sends a signal that maybe he himself has questions about his proposal.

But we have talked this issue long enough. It is time to make a decision. Tabling this bill just ducks the issue. It is our responsibility to study important matters of public policy, especially when it comes to eliminating property taxes and funding public education. We have had ample opportunity to study this proposal. I think voting to table is just a vote to duck the issue. I think it is an irresponsible action and one that I would never propose if I had a bill brought before this chamber.

I urge a “no” vote on the motion to table this amendment.

The SPEAKER. The Chair thanks the gentleman.

### HARRISBURG LEGISLATIVE LEAVE

The SPEAKER. The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, could we report to leaves of absence. The gentleman, Mr. GABIG, would like to be on Capitol leave.

The SPEAKER. The gentleman, Mr. Gabig, will be placed on Capitol leave.

### CONSIDERATION OF HB 797 CONTINUED

Mr. S. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, I would urge the members to support the motion to table.

The fact is that this amendment, while it is what was originally drafted and introduced, admittedly, by the maker of the original bill and the author of much of the language in this amendment, there have been some other changes made. I think the chairman of the Finance Committee has been working quite diligently with the members of the committee to further the embodiment of this legislation.

I would also suggest, Mr. Speaker, that to forward this particular amendment, which represents a real tax increase – as some of the literature and memos and such that come out of the Democratic side on their public relations machine often characterize this whole plan as an \$8 billion tax increase – again it seems they have mixed up the simple fact that if you increase one tax and decrease another tax and they correspond, that in itself is not a tax increase any more than the talk on the previous amendment represented a business tax cut.

This amendment in and of itself cannot achieve what is represented and embodied in the sales tax reform plan. Given the fact that while the committee has not voted any of these bills out of committee, I admit, but given the fact that they have had a lot of work on it, they have continued to make progress in the committee, the fact that this amendment in and of itself does not stand alone to carry the whole plan forward, none of us would want to move forward on a part of a tax reform plan, because I am sure nobody over there really wants to vote for a huge tax increase without a corresponding decrease in property taxes. That would not make sense.

So I again would ask the members to table the amendment.

The SPEAKER. Mr. Levdansky.

Mr. LEVDANSKY. Mr. Speaker, the majority leader has taken a position that I think reflects some concerns that he stated to the media a couple of weeks ago, and I do not have his quote from Capitol Wire in front of me, but with some question and answer with some reporters, I think he basically stated that he himself is unsure whether or not the Commonwealth Caucus proposal generates sufficient revenue to in fact enable the property tax elimination of the school property tax for both businesses and homeowners. I think he had some valid concerns about that, and he stated some concerns relative to the additional piece of legislation that would distribute the \$8-plus billion to the school district. He had some concerns relative to the distribution of those funds. I think that those concerns that he had are valid, and I think his statements this afternoon reflect that uncertainty that he has relative to this.

But let us make it clear: This bill is but a bill in a package. This bill does raise the \$8 billion-plus in revenue, and the other bills would eliminate the school property taxes and distribute the funding. So it is a package, and we cannot consider all—Because some of those bills amend the education code, I cannot offer that as an amendment to this bill, but if the majority leader or the Commonwealth Caucus want to engage in that next week, we can work on that, if you want to do that, but this is the signature piece, and we ought to be able to make a decision. Okay?

A motion to table, a vote to table is a vote to duck making a decision – okay? – and if you are against this proposal, if you are against HB 120, I would urge that you vote “no” on the motion to table so that we could have a serious discussion between Representative Rohrer, the other advocates of this plan and the Commonwealth Caucus, and those that are opposed to it. The members of this body ought to be able to engage in a full, honest public debate on the merits, the benefits, and the liabilities of HB 120. A vote to table will make that debate not happen. I think that is a debate which the advocates of the Commonwealth Caucus plan deserve to have an opportunity to have their proposal voted on today.

So whether you are for HB 120 or against it, I would hope that you would oppose the motion to table to give those that support the plan an opportunity to have that debate here in public and a decision to be made on that today here in this General Assembly. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

Real quickly, I actually think the gentleman made my case when he referred to some comments I made in an interview about some reservations I had relative to how this plan works. Does the tax side raise the right amount of taxes? Does the distribution of the moneys back out? There are all of those components, and I have stated those concerns from when this package of bills was first introduced. To suggest that because I have some reservations for it is some reason I ought to not be supporting a motion to table I think is absurd. I think the gentleman actually made the case.

I do have some concerns as to whether or not what is defined as “taxable,” how the money would be distributed, all of those components that make up this package of bills, I personally do have some concerns. That is the kind of work that is supposed

to be done in the committee. They are doing that work. They are not just sitting on their hands watching the clock go by.

So quite honestly, the package of bills and what is embodied in this amendment is where it should be at this point in time, by my judgment. You all do not have to agree with me. You all do not have to agree with me, but I think if you think through it, this package of bills has not quite met that level of scrutiny that makes it worthy to move forward. Therefore, it should remain in the committee, thus we move to table this bill, and when they get the whole package of bills to a point where it does pass that level of scrutiny, I am sure the committee with the help of the minority chairman will be glad to move those bills to the full House for a vote at a future date.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Those in favor of the motion to table will vote “aye”; those opposed will vote “no.”

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

YEAS—110

Adolph	Fleagle	Maher	Rohrer
Allen	Flick	Maitland	Ross
Argall	Forcier	Major	Rubley
Armstrong	Gabig	Marsico	Samuelson
Baker	Gannon	McGill	Saylor
Baldwin	Geist	McIlhattan	Scavello
Barrar	Gillespie	McIlhinney	Schroder
Bastian	Gingrich	McNaughton	Semmel
Benninghoff	Godshall	Metcalfe	Smith, B.
Birmelin	Good	Micozzie	Smith, S. H.
Boyd	Grell	Millard	Sonney
Bunt	Habay	Miller, R.	Stairs
Cappelli	Harhart	Miller, S.	Steil
Causar	Harper	Mustio	Stern
Civera	Harris	Nailor	Stevenson, R.
Clymer	Hasay	Nickol	Stevenson, T.
Cornell	Hennessey	O'Brien	Taylor, E. Z.
Crahalla	Herman	O'Neill	Taylor, J.
Creighton	Hershey	Payne	True
Dally	Hess	Petri	Turzai
Denlinger	Hickernell	Phillips	Watson
DiGirolamo	Hutchinson	Pickett	Wilt
Diven	Kauffman	Pyle	Wright
Ellis	Keller, M.	Quigley	Yewcic
Evans, J.	Kenney	Rapp	Zug
Fairchild	Killion	Raymond	
Feese	Leh	Reed	Perzel,
Fichter	Mackereth	Reichley	Speaker

NAYS—87

Bebko-Jones	Eachus	Lescovitz	Sainato
Belardi	Evans, D.	Levdansky	Santoni
Belfanti	Fabrizio	Manderino	Shaner
Biancucci	Frankel	Mann	Shapiro
Bishop	Freeman	Markosek	Siptroth
Blackwell	George	McCall	Solobay
Blaum	Gerber	McGeehan	Staback
Butkovitz	Gergely	Melio	Stetler
Buxton	Goodman	Mundy	Sturla
Caltagirone	Grucela	Myers	Surra
Casorio	Gruitza	Oliver	Thomas
Cawley	Haluska	Pallone	Tigue
Cohen	Hanna	Petrarca	Veon
Corrigan	Harhai	Petrone	Vitali
Costa	James	Pistella	Walko

Cruz	Josephs	Preston	Wansacz
Curry	Keller, W.	Ramaley	Waters
Daley	Kirkland	Readshaw	Wheatley
DeLuca	Kotik	Rieger	Williams
Dermody	LaGrotta	Roberts	Youngblood
DeWeese	Leach	Rooney	Yudichak
Donatucci	Lederer	Ruffing	

NOT VOTING—0

EXCUSED—4

Roebuck	Sather	Tangretti	Wojnaroski
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The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

### **THE SPEAKER PRO TEMPORE (RICHARD A. GEIST) PRESIDING**

The SPEAKER pro tempore. Would the gentleman, Mr. Levdansky, like to offer another amendment?

Mr. LEVDANSKY. No, Mr. Speaker, not to this bill.

The SPEAKER pro tempore. Thank you. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentleman, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, this bill as it stands before us would reduce the corporate net income tax rate by 1 percent for this year and in the ensuing years of '06, '07, '08, '09. This bill proposes to lower the CNI rate eventually down to 6.99 over a period of years through 2009. It has a significant fiscal impact. This year alone, the fiscal impact will be \$288 million in lost revenue to the State Treasury. That grows to \$415 million in lost revenue in fiscal year '06-07, \$507 million in '07-08, and \$587 million in '08-09. So this is a significant reduction in the CNI tax.

And there are no corresponding cuts in spending proposed here; I understand that. If we were really honest about passing this legislation, we should have considered this bill prior to our consideration of the State budget, and at that point in time, when we debated the budget, if a majority of members of this body believed that \$288 million in revenue should be allocated for a cut in the corporate net income tax, then we could have considered that and adopted it as an amendment back during the budget debate. But this is not fiscal honesty; this is not fiscal honesty, is what it is.

So in addition, when you are voting on this, let me remind you of this: Of all the corporations in Pennsylvania, 73 percent of corporations in Pennsylvania pay nothing in corporate net income tax. Another 13 percent of corporations pay less than \$1,000. So 85 percent of corporations in Pennsylvania pay less corporate net income tax than our constituents with a family income of \$36,000 pay in State personal income taxes. Let me repeat that: Our constituents with a household income of \$36,000 pay more in a PIT than 85 percent of corporations in Pennsylvania. And further, a little over 1 percent of all corporations pay an overwhelming majority of all the corporate net income tax collected. So whether you are comparing what corporations pay with individuals or if you just look within the corporate community itself, you will find tremendous inequity in the corporate net income tax structure in this Commonwealth, in large part because of the existence of loopholes that I was trying to close through a prior amendment relative to combined reporting. That is what I think we ought to do. I believe that we should lower the CNI and other business taxes, but we have got to pay for those corporate business taxes either through cuts in the budget or, or, by closing loopholes to raise revenue. So that is what we ought to be doing, is closing the loopholes in order to come up with the revenue.

This is not a bill that we can afford to pay for in this year's budget. We do not have an additional \$288 million sitting around. We have got a huge \$500 to \$600 million problem with Medicaid and medical assistance that we have got to deal with. We have got the mass transit issue that we have to deal with. We have got untold numbers of issues that have to be dealt with. We cannot afford the revenue loss that is incorporated in this legislation, and I would argue that to simply pass this bill as it is will continue inequality in the business tax structure in the Commonwealth of Pennsylvania. I do not think that is fair to our homeowners. I do not think it is fair to our small businesses. I do not think it is fair to the businesses that are shouldering their share and probably more than their share of the business taxes, because 73 percent of corporations in Pennsylvania do not pay anything.

So I think it is not affordable and it continues to promote inequality in the business tax structure, and for those reasons I would urge a negative vote on HB 797.

### **THE SPEAKER (JOHN M. PERZEL) PRESIDING**

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Reed.

Mr. REED. Mr. Speaker, when we first started talking about business tax cuts, especially business tax cuts in regard to the single sales factor proposal, all geared at helping Pennsylvania's manufacturing sector, our employers, and in essence our employees, I first made the statement that there are plenty of places that we do propose that the revenue come from, and I would just like to outline those real quickly for the minority chairman of the Finance Committee when he proposes that we cannot afford the \$288 million that this bill proposes to give back to folks who create jobs for factory workers and other workers across the State.

First off, we have got the State surplus issue. According to the Department of Revenue, we are running a \$444 million surplus. According to the Governor's Office, we have saved

\$121 million through his Strategic Sourcing Initiative. We have got \$101 million in new work force development programs. We have got \$360 million that is earmarked for the DCED (Department of Community and Economic Development), which personally, I believe we could cut back in the DCED given the fact that we passed a \$1.1 billion economic stimulus package just last year. That does not take into account the \$8.4 billion of the Department of Public Welfare, that if we got people off of our welfare rolls, perhaps back into the work force, then we could actually see some savings to the Commonwealth of Pennsylvania as well as increased revenues in the sales tax, the personal income tax, the real estate transfer tax, and actually the business taxes if people are actually working for a living instead of living off of our State government's coffers.

Now, secondly, I would like to just point out for the information of the members that HB 689 as proposed by Representative Gerber from Montgomery County actually proposes a much deeper cut in the corporate net income tax without the Governor's combined mandatory reporting side of it, and there are actually 35 members of the Democratic Party that are cosponsors of that bill, which, according to the fiscal estimate of that bill, would cost almost \$437 million to the State budget. So I think I have actually taken a much more reasonable approach by only proposing that in the first year we look after \$288 million in tax cuts to folks who create jobs instead of the much more aggressive \$437 million in year 1. My proposal would actually spread it out over 6 years instead of doing it in a lump sum all in year 1.

I would ask the members to support this bill to help create jobs for our working-class families in Pennsylvania. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

And now I need to make sure I understand this. My prior amendment that would have closed loopholes would have raised \$437 million to enable us to lower CNI, uncap the net operating losses, move to single sales factor. So we voted against, the majority here voted against my amendment that would have engendered \$437 million in business tax cuts, and you voted against that because, why? It did not provide— It provided too— I get it. It provided too much business tax cuts, and now you are going to vote for a bill that provides \$288 million of one reduction in the corporate net income taxes.

So I had an amendment that would have lowered three or four major business taxes. This bill only deals with one. So then the difference between my prior amendment and this bill is that my prior amendment had a means to pay for those business tax cuts through the adoption of combined reporting. This bill as it stands before us has no, there is no component to pay for it. There is no offsetting mechanism to raise \$288 million. So what the suggestion is, is that we have got to go now in the budget and find \$288 million to cut. And while I respect and appreciate the sponsor's ideas on where we ought to be cutting spending, again, the time to offer those proposals to cut spending was in the budget process. When we passed the budget in the House here several months ago, that is when that debate could have and should have occurred. If members felt so strongly about this business tax cut, they should have offered this bill then and paid for it by reducing line-item spending in various areas of the budget that you think are appropriate. Frankly, I do not think cutting job training – in large part, this is directed to try to get

people off of welfare and get them into gainful employment – is a good place to be cutting. But that notwithstanding, that debate could have and should have occurred during the budget process when we passed the bill in the House several months ago, the budget bill. So you know, kind of pointing out now, well, here are some ideas on where we ought to cut, is, in my judgment, too late, too little too late, not the appropriate time to be suggesting where we ought to be cutting spending.

And again, Mr. Speaker, just keep in mind how few businesses are actually going to benefit from this. Okay? Seventy-two to seventy-three percent of all corporations pay nothing in CNI. So roughly it is— And another 13 percent pay about \$1,000 or less. So you are looking at about 20 to 25 percent of the corporate community in Pennsylvania is going to benefit from this particular piece of legislation. I do not think that that is an appropriate way to do business tax reform in Pennsylvania. I think the Governor's Business Tax Reform Commission looked at all taxes, business taxes, comprehensively and laid out a good blueprint on how we could lower business taxes and pay for them by closing loopholes. I think that is the fair and appropriate way to pay for business tax cuts: get the corporations that are not paying their fair share to start paying their fair share. Do not cut job training programs that unemployed and dislocated workers and people on welfare need to get retrained to get into entry-level jobs in Pennsylvania's economy. That is not the way to do it. Close the loopholes and make corporations that are not paying their fair share pay their fair share. That is the right thing for all Pennsylvanians, and it is the right thing for Pennsylvania's corporate and business community as well.

I urge a negative vote on HB 797.

The SPEAKER. The gentleman, Mr. Reed, for the second time.

Mr. REED. Mr. Speaker, in all due respect to the minority chairman of the Finance Committee, he has railed time and again on this House floor about Republicans proposing proposals to cut taxes for our employers in Pennsylvania because we do not give proposed decreases in programs that would correspond to those cuts, and here I go and I offer over \$1 billion in areas that we could get some of that revenue from, and then he says it is too late to do it. I just think that that perhaps is a little bit hypocritical.

Secondly, the reason this bill should pass without the Governor's combined mandatory reporting is quite simple. Although only 20 to 25 percent of companies currently pay the corporate net income tax in Pennsylvania, I would venture to guess hundreds of thousands of employees are employed by those companies that do pay the corporate net income tax in Pennsylvania. And growing up in a family that experienced unemployment twice at the hands of a multinational corporation, you know, I can remember what it was like as an 8-year-old to stand in line at the food bank with my dad when he had to sit in the unemployment lines, and I am unwilling to condemn another family, another child, to doing the same with their parents merely because we believe that these 20 to 25 percent of companies should see an increase in their taxes and an increased burden upon their workers.

We need to cut taxes for all employees, for all employers are not in Pennsylvania. We need not pick winners and losers. We need to pick all Pennsylvania's workers as winners in this State. This bill attempts to do so. The Governor's combined mandatory reporting would just condemn more young people to

standing in line at the food bank with their fathers as they wait in line at the unemployment line.

I urge the passage of this bill.

On the question recurring,  
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

#### YEAS—162

Adolph	Fichter	Leh	Rieger
Allen	Fleagle	Mackereth	Roberts
Argall	Flick	Maher	Rohrer
Armstrong	Forcier	Maitland	Ross
Baker	Frankel	Major	Rubley
Baldwin	Gabig	Mann	Ruffing
Barrar	Gannon	Markosek	Sainato
Bastian	Geist	Marsico	Samuelson
Belardi	George	McCall	Santoni
Belfanti	Gerber	McGeehan	Saylor
Benninghoff	Gergely	McGill	Scavello
Bianucci	Gillespie	McIlhattan	Schroder
Birmelin	Gingrich	McIlhinney	Semmel
Boyd	Godshall	McNaughton	Shaner
Bunt	Good	Metcalfe	Shapiro
Buxton	Goodman	Micozzie	Smith, B.
Caltagirone	Grell	Millard	Smith, S. H.
Cappelli	Grucela	Miller, R.	Solobay
Casorio	Gruitza	Miller, S.	Sonney
Causar	Habay	Mustio	Stairs
Cawley	Haluska	Nailor	Steil
Civera	Hanna	Nickol	Stern
Clymer	Harhai	O'Brien	Stetler
Cornell	Harhart	O'Neill	Stevenson, R.
Costa	Harper	Pallone	Stevenson, T.
Crahalla	Harris	Payne	Taylor, E. Z.
Creighton	Hasay	Petrarca	Taylor, J.
Daley	Hennessey	Petri	Tigue
Dally	Herman	Petrone	True
DeLuca	Hershey	Phillips	Turzai
Denlinger	Hess	Pickett	Vitali
Dermody	Hickernell	Pistella	Wansacz
DiGirolamo	Hutchinson	Preston	Watson
Diven	Kauffman	Pyle	Wilt
Donatucci	Keller, M.	Quigley	Wright
Eachus	Keller, W.	Ramaley	Yewcic
Ellis	Kenney	Rapp	Yudichak
Evans, J.	Killion	Raymond	Zug
Fabrizio	Kotik	Readshaw	
Fairchild	LaGrotta	Reed	Perzel,
Feese	Leach	Reichley	Speaker

#### NAYS—35

Bebko-Jones	DeWeese	Manderino	Surra
Bishop	Evans, D.	Melio	Thomas
Blackwell	Freeman	Mundy	Veon
Blaum	James	Myers	Walko
Butkovitz	Josephs	Oliver	Waters
Cohen	Kirkland	Rooney	Wheatley
Corrigan	Lederer	Siptroth	Williams
Cruz	Lescovitz	Staback	Youngblood
Curry	Levdansky	Sturla	

#### NOT VOTING—0

#### EXCUSED—4

Roebuck	Sather	Tangretti	Wojnaroski
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

### JUDICIARY COMMITTEE MEETING

The SPEAKER. The Chair recognizes the gentleman, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

Immediately upon the break, I would like to call what I hope will be a brief meeting of the House Judiciary Committee in room 39, East Wing.

The SPEAKER. The Chair thanks the gentleman.

At the break there will be a brief meeting of the Judiciary Committee in room 39, East Wing.

There will be no further votes on the floor of the House today.

### BILL SIGNED BY SPEAKER

Bill numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the title was publicly read as follows:

#### HB 1110, PN 1317

An Act designating State Route 56 in Seward, Westmoreland County, as the Ricky Hafer Highway; and designating State Route 711 in Seward, Westmoreland County, as Aaron Rusin Boulevard.

Whereupon, the Speaker, in the presence of the House, signed the same.

### HOUSE SCHEDULE

The SPEAKER. The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, for the benefit of the members, could you let us know the schedule for Thursday and Friday? I believe Thursday will be a token session and Friday will not. Is that correct?

The SPEAKER. That is correct.

Mr. COHEN. Thank you, Mr. Speaker.

The SPEAKER. The Chair has just been informed that tomorrow will not be a token session.

Are there any other announcements?

There is no session whatsoever tomorrow, just for the information of the members.

### BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER. Without objection, any remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

**RECESS**

The SPEAKER. The Chair recognizes the gentleman, Mr. Gerber, from Montgomery County.

Mr. GERBER. Mr. Speaker, I move that this House do now recess until Monday, June 27, 2005, at 1 p.m., e.d.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 4:53 p.m., e.d.t., the House recessed.