

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

WEDNESDAY, DECEMBER 7, 2005

SESSION OF 2005

189TH OF THE GENERAL ASSEMBLY

No. 75

HOUSE OF REPRESENTATIVES

The House convened at 12:32 p.m., e.s.t.

THE SPEAKER (JOHN M. PERZEL) PRESIDING

PRAYER

The SPEAKER. The prayer today will be offered by our Guest Chaplain, the Reverend Donald Lindman.

REVEREND LINDMAN. Good afternoon. It is good to be here. I appreciate the privilege of being with you and the privilege of being able to pray with you this day. In part of the prayer, we will be remembering those who lost their lives 64 years ago at Pearl Harbor and remembering the families who continue to remember their losses.

REV. DONALD LINDMAN, Guest Chaplain of the House of Representatives, offered the following prayer:

So let us join together in prayer:

Eternal God, our Father and creator, we call upon You this day that You may hear our praise and thanks for the gifts of love and the many blessings that You give to us as Your people. We appreciate the fact that we can gather this day to be concerned about the workings of this Commonwealth and ask that You bless these members of the House with Your wisdom. Grant them courage that in all their endeavors they may be aware of the needs of Your people. We thank them for their work.

And indeed, O Lord, this day we call upon You to remember those who lost their lives at Pearl Harbor, that You will remember the families of those who remember their losses, that You be with them. And we ask that You continue to be with all who work for peace in the world; strengthen them. The members of the military who continue to serve and their families, bless them and strengthen them. And, Father, we pray that there will be peace in the world, that it comes soon. We ask that You bless these people who have been elected to serve our Commonwealth. Indeed, we ask that You be with all who have been elected to serve and govern in our country, that Your blessings are with them now and always.

Hear our prayer, O gracious Lord, and know again that we are thankful for the gifts that You give to us, for it is in Your holy name that we pray. 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, December 6, 2005, will be postponed until printed.

HOUSE BILLS INTRODUCED AND REFERRED

No. 1958 By Representatives REED, ALLEN, ARMSTRONG, BAKER, BALDWIN, BASTIAN, BEBKO-JONES, BELARDI, BELFANTI, BENNINGHOFF, BEYER, BIANCUCCI, BUNT, CALTAGIRONE, CAPPELLI, CAUSER, CAWLEY, CRAHALLA, CREIGHTON, CURRY, DALLY, DENLINGER, FABRIZIO, FICHTER, FLEAGLE, GEIST, GINGRICH, GOOD, GOODMAN, GRUCELA, HALUSKA, HANNA, HARHAI, HARRIS, HENNESSEY, HERMAN, HESS, HUTCHINSON, JAMES, JOSEPHS, KAUFFMAN, M. KELLER, KILLION, KOTIK, LEH, MAITLAND, MARKOSEK, MARSICO, MCGILL, McILHATTAN, S. MILLER, MUNDY, MUSTIO, O'NEILL, PETRARCA, PICKETT, PYLE, QUIGLEY, RAMALEY, RAPP, RAYMOND, READSHAW, ROBERTS, RUBLEY, SANTONI, SCAVELLO, SCHRODER, SEMMEL, SIPTROTH, B. SMITH, SOLOBAY, SONNEY, STABACK, STERN, R. STEVENSON, T. STEVENSON, TANGRETTI, E. Z. TAYLOR, J. TAYLOR, THOMAS, TIGUE, TRUE, WANSACZ, WILT, WOJNAROSKI, YOUNGBLOOD and YUDICHAK

An Act amending Titles 24 (Education) and 71 (State Government) of the Pennsylvania Consolidated Statutes, providing for special supplemental annuities for certain annuitants.

Referred to Committee on STATE GOVERNMENT, December 7, 2005.

No. 2305 By Representatives GODSHALL, BENNINGHOFF, BEYER, BUNT, CLYMER, CORRIGAN, CRAHALLA, FICHTER, HARPER, HERSHEY, HESS, METCALFE, MICOZZIE, R. MILLER, S. MILLER, MUSTIO, RAPP, SONNEY and E. Z. TAYLOR

An Act amending the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, further providing for affidavits of candidates, for examination of nomination petitions, certificates and papers, for filing of certain vacancies in public office by means of nomination certificates and nomination papers, for substituted nominations to fill certain vacancies for a November election and for form of ballots.

Referred to Committee on STATE GOVERNMENT, December 7, 2005.

No. 2306 By Representatives GODSHALL, BENNINGHOFF, BEYER, BUNT, CLYMER, CORRIGAN, CRAHALLA, FICHTER, HERSHEY, METCALFE, R. MILLER, S. MILLER, MUSTIO, RAPP, SONNEY and E. Z. TAYLOR

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 filling of vacancies.

Referred to Committee on EDUCATION, December 7, 2005.

No. 2307 By Representatives CAPPELLI, BAKER, BENNINGHOFF, BLACKWELL, BUNT, CALTAGIRONE, CRAHALLA, FEESE, FRANKEL, FREEMAN, GEORGE, GILLESPIE, HARPER, KOTIK, LEACH, MACKERETH, MANDERINO, MANN, MILLARD, MUSTIO, NICKOL, O'NEILL, PETRARCA, PICKETT, RAPP, REICHLEY, SATHER, SIPTROTH, SURRA, E. Z. TAYLOR, TIGUE, WALKO, WATSON, YOUNGBLOOD, PISTELLA and STABACK

An Act amending the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, providing for patients' visitation rights.

Referred to Committee on HEALTH AND HUMAN SERVICES, December 7, 2005.

No. 2308 By Representatives M. KELLER, TIGUE, GINGRICH, CALTAGIRONE, SAYLOR, BARRAR, BEYER, GRELL, HARRIS, HENNESSEY, KAUFFMAN, PAYNE, PYLE, QUIGLEY, RAPP, REED, SONNEY, E. Z. TAYLOR, TURZAI and YUDICHAK

An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, further providing for collection of earned income taxes.

Referred to Committee on FINANCE, December 7, 2005.

No. 2309 By Representatives HERMAN, CREIGHTON, CURRY, O'NEILL, GRUCELA, BEYER, YUDICHAK, CALTAGIRONE, COSTA, DeWEESE, FABRIZIO, FAIRCHILD, GEIST, GEORGE, HENNESSEY, HERSHEY, KILLION, LEACH, PYLE, READSHAW, SCHRODER, SEMMEL, SIPTROTH, B. SMITH, E. Z. TAYLOR, THOMAS and YOUNGBLOOD

An Act establishing a grant program to fund civic engagement projects; providing for powers and duties of the Department of Education; and making an appropriation.

Referred to Committee on APPROPRIATIONS, December 7, 2005.

No. 2310 By Representatives PHILLIPS, GEIST, FAIRCHILD, GEORGE, ARGALL, BLACKWELL, BOYD, CALTAGIRONE, CAWLEY, COHEN, DENLINGER, DeWEESE, FABRIZIO, FREEMAN, GINGRICH, GRUCELA, HALUSKA, HARRIS, HASAY, HERSHEY, HESS, JOSEPHS, PISTELLA, RAPP, RAYMOND, READSHAW, REICHLEY, SCAVELLO, SEMMEL, SIPTROTH, SONNEY, E. Z. TAYLOR, THOMAS and YOUNGBLOOD

An Act amending the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, further providing for proper notification of intention to cancel.

Referred to Committee on INSURANCE, December 7, 2005.

No. 2311 By Representatives KIRKLAND, STERN, DeWEESE, MANN, McILHATTAN, BEBKO-JONES, BLACKWELL, CURRY, MYERS, PARKER and SIPTROTH

An Act amending the act of September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act, further providing for unlawful acts.

Referred to Committee on PROFESSIONAL LICENSURE, December 7, 2005.

No. 2312 By Representatives SATHER, TIGUE, SEMMEL, BALDWIN, BARRAR, BEBKO-JONES, BUNT, CALTAGIRONE, CLYMER, CRAHALLA, CURRY, DeLUCA, DeWEESE, FLICK, GRUCELA, HERMAN, LEDERER, MARKOSEK, R. MILLER, O'NEILL, SAYLOR, SIPTROTH, SOLOBAY, STERN, E. Z. TAYLOR, THOMAS, YOUNGBLOOD and PAYNE

An Act amending the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, providing for specific powers of boroughs relating to emergency services.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, December 7, 2005.

No. 2313 By Representatives SATHER, TIGUE, SEMMEL, BALDWIN, BARRAR, BEBKO-JONES, BUNT, CALTAGIRONE, CLYMER, CRAHALLA, CURRY, DeLUCA, DeWEESE, FLICK, GRUCELA, HERMAN, LEDERER, MARKOSEK, R. MILLER, O'NEILL, SAYLOR, SIPTROTH, SOLOBAY, STERN, E. Z. TAYLOR, THOMAS, YOUNGBLOOD and PAYNE

An Act amending the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, providing for specific powers relating to emergency services.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, December 7, 2005.

No. 2314 By Representatives SATHER, TIGUE, SEMMEL, BALDWIN, BARRAR, BEBKO-JONES, BUNT, CALTAGIRONE, CLYMER, CRAHALLA, CURRY, DeLUCA, DeWEESE, FLICK, GRUCELA, HERMAN,

LEDERER, MARKOSEK, R. MILLER, O'NEILL, SAYLOR, SIPTROTH, SOLOBAY, STERN, E. Z. TAYLOR, THOMAS, YOUNGBLOOD and PAYNE

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, providing for the establishment of police, fire and emergency medical services.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, December 7, 2005.

No. 2315 By Representatives ARMSTRONG, CALTAGIRONE, CREIGHTON, FAIRCHILD, GEIST, HARPER, HARRIS, HENNESSEY, ROHRER and E. Z. TAYLOR

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, further providing for the Aviation Advisory Committee.

Referred to Committee on TRANSPORTATION, December 7, 2005.

No. 2316 By Representatives ARMSTRONG, SEMMEL, ADOLPH, BALDWIN, BEBKO-JONES, BOYD, CALTAGIRONE, CAPPELLI, CREIGHTON, DeWEESE, GEORGE, GINGRICH, GOODMAN, HARPER, HENNESSEY, HERMAN, HICKERNELL, LEDERER, MARSICO, MUSTIO, PHILLIPS, PYLE, RAPP, READSHAW, SATHER, SCAVELLO, E. Z. TAYLOR, THOMAS, TIGUE and YOUNGBLOOD

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for the composition of the State Veterans' Commission.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, December 7, 2005.

HOUSE RESOLUTION INTRODUCED AND REFERRED

No. 534 By Representatives KIRKLAND, BUNT, RUBLEY, BEYER, EACHUS, HERMAN, SAYLOR, TIGUE, CALTAGIRONE, WOJNAROSKI, BALDWIN, BARRAR, BEBKO-JONES, COHEN, CURRY, FRANKEL, HENNESSEY, MARKOSEK, MYERS, PARKER, READSHAW, THOMAS, E. Z. TAYLOR, CAUSER, CLYMER, CRAHALLA, WALKO, GRUCELA, HERSHEY, McGEEHAN, PALLONE, PHILLIPS, SATHER and SIPTROTH

A Resolution addressing asthma health disparities.

Referred to Committee on INSURANCE, December 7, 2005.

SENATE BILLS FOR CONCURRENCE

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

SB 394, PN 1400

Referred to Committee on STATE GOVERNMENT, December 7, 2005.

SB 895, PN 1403

Referred to Committee on JUDICIARY, December 7, 2005.

BILLS REMOVED FROM TABLE

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

HB 1071;
HB 1311;
HB 1327;
HB 1705; and
HB 2202.

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

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 1071, PN 1969; HB 1311, PN 1559; HB 1327, PN 1575; HB 1705, PN 2281; and HB 2202, PN 3070.

BILLS RECOMMITTED

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

HB 1071;
HB 1311;
HB 1327;
HB 1705; and
HB 2202.

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 the following bills be taken off the table:

HB 1051;
SB 410; and
SB 509.

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 the following bills be placed back upon the table:

HB 1051;
SB 410; and
SB 509.

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 2067, PN 2917**, entitled:

A Joint Resolution proposing integrated and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for legislative power, for appropriations and for surpluses.

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

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 2067 be placed upon the table.

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 HB 2067 be taken off the table.

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

* * *

The House proceeded to third consideration of **SB 607, PN 766**, entitled:

An Act providing for the capital budget for the fiscal year 2005-2006.

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

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that SB 607 be placed upon the table.

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 607 be taken off the table.

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

* * *

The House proceeded to third consideration of **HB 472, PN 511**, 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 a tax credit for donation of used computers; and further defining "taxable income" relating to the corporate net income tax.

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

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 472 be placed upon the table.

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 HB 472 be taken off the table.

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

RESOLUTION

Mr. S. SMITH called up **SR 160, PN 1112**, entitled:

A Concurrent Resolution directing the Joint State Government Commission to establish a bipartisan task force with an advisory committee to conduct a comprehensive review of the current status of alternative dispute resolution (ADR) services within the panoply of methods of conflict resolution available in this Commonwealth, to identify relevant best practices in the delivery of ADR services locally and nationally and how to improve conflict resolution in this Commonwealth by incorporating these best practices, to develop a plan for educating the citizens of this Commonwealth about conflict resolution in general and the use of ADR services in particular, as well as ensuring access to all needed ADR services, utilizing best practices and to propose legislation as may be required to implement the proposed plan and advance the use of innovative conflict resolution methods Statewide in the civil courts and in schools, businesses, government, criminal and juvenile justice systems and other community settings.

On the question,
Will the House concur in the resolution of the Senate?

RESOLUTION TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that SR 160 be placed upon the table.

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

RESOLUTION REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that SR 160 be taken off the table.

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

LEAVES OF ABSENCE

The SPEAKER. The Chair recognizes the majority whip, who moves for a leave of absence for the day for the gentledady from Lehigh, Mrs. BEYER; the gentleman from Allegheny, Mr. HABAY; the gentleman from Philadelphia, Mr. KENNEY; and the gentledady from Chester, Mrs. TAYLOR. Without objection, those leaves will be granted.

The Chair recognizes the minority whip, who moves for a leave of absence for the day for the gentleman from Washington, Mr. DALEY; the gentleman from Northampton, Mr. ROONEY; the gentleman from Cambria, Mr. YEWIC; and the gentleman from Delaware, Mr. VITALI. Without objection, those leaves will be granted.

MASTER ROLL CALL

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

The following roll call was recorded:

PRESENT—190

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

ADDITIONS—0

NOT VOTING—0

EXCUSED—13

| | | | |
|--------|------------|--------|---------------|
| Beyer | Habay | Rieger | Taylor, E. Z. |
| Bunt | Keller, W. | Rooney | Vitali |
| Daley | Kenney | Shaner | Yewcic |
| DeLuca | | | |

LEAVES ADDED—3

| | | |
|----------|-----------|-----------|
| Corrigan | Evans, J. | Smith, B. |
|----------|-----------|-----------|

HARRISBURG LEGISLATIVE LEAVE

The SPEAKER. The Chair returns to leaves of absence. The gentleman, Mr. GEIST, and the gentleman, Mr. GABIG, have asked for Capitol leave for the remainder of the day. Without objection, Capitol leave will be granted.

And the gentleman, Mr. TANGRETTI, has requested Capitol leave. Without objection, that will also be granted.

SENATE MESSAGE

**AMENDED HOUSE BILL RETURNED
FOR CONCURRENCE AND
REFERRED TO COMMITTEE ON RULES**

The clerk of the Senate, being introduced, returned **HB 111, PN 3237**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

GUESTS INTRODUCED

The SPEAKER. The Chair would like to welcome to the hall of the House Johanna Bussiek, a 12th grade German exchange student from the Gettysburg Area School District. Also we have Craig Lindsley, a sixth grade Gettysburg Area School District student, who is the host family for Johanna. Those guests are to the left of the rostrum in the first row. Would those guests please rise and be recognized. They are guests of Representative Stephen Maitland.

ANNOUNCEMENT BY SPEAKER

The SPEAKER. For the information of the members, the husband of Lori Lochetto, one of the finest employees we have in the House, Freddy, it is his 50th birthday today. So, Fred, congratulations. You look every day of those 50 years, Fred.

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1326, PN 3105**, entitled:

An Act establishing the At-Risk Elderly Wireless Emergency Telephone Program; conferring powers and duties on the Department of Aging; and providing additional powers to the Area Agencies on Aging.

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—190

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

NAYS—0

NOT VOTING—0

EXCUSED—13

| | | | |
|--------|------------|--------|---------------|
| Beyer | Habay | Rieger | Taylor, E. Z. |
| Bunt | Keller, W. | Rooney | Vitali |
| Daley | Kenney | Shaner | Yewcic |
| DeLuca | | | |

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 1826, PN 2440**, entitled:

An Act amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, further providing for escrow of deposits or posting of surety bond or letter of credit.

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?

The Chair recognizes the gentlelady from Philadelphia, Ms. Manderino.
Ms. MANDERINO. Thank you, Mr. Speaker.
I would like to interrogate the maker of the legislation.
The SPEAKER. The gentlelady is in order.

POINT OF ORDER

The SPEAKER. For what purpose does the gentleman, Mr. Markosek, rise?

Mr. MARKOSEK. Thank you, Mr. Speaker.

A point of order. I believe there is an amendment being drafted to this bill at this point in time. Perhaps the Chair did not get word of that, and I would ask that we put this over temporarily, if that is possible.

BILL PASSED OVER TEMPORARILY

The SPEAKER. We will do that, but we were not aware of the amendment, but temporarily we are over HB 1826.

Mr. MARKOSEK. Thank you, Mr. Speaker.

* * *

The House proceeded to third consideration of **HB 338, PN 2209**, 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, in gross receipts tax, for the imposition of tax; and making a related repeal.

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

Mr. LEVDANSKY offered the following amendment No. **A02033**:

Amend Title, page 1, lines 10 and 11, by striking out “providing, in gross receipts tax, for the” in line 10, all of line 11 and inserting 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; and further providing 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, line 14; pages 2 through 5, lines 1 through 30; page 6, lines 1 through 10, by striking out all of said lines on said pages 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:

* * *

(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 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?

AMENDMENT WITHDRAWN

The SPEAKER. On that question— It is the indication of the Chair the gentleman withdrew the amendment.

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

Mr. SOLOBAY offered the following amendment No. A04048:

Amend Title, page 1, line 10, by inserting after "penalties," " providing for contributions to the Lupus Foundation of Pennsylvania of refunds by checkoff;

Amend Bill, page 1, line 14; page 2, lines 1 through 3, by striking out all of said lines on said pages 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 315.10. 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 1101(a), (a.1) and (j) of the act, amended or added December 23, 2003 (P.L.250, No.46), are amended to read:

Amend Sec. 2, page 5, line 3, by striking out "2" and inserting 3

Amend Bill, page 6, by inserting between lines 9 and 10

Section 4. The addition of section 315.10 of the act shall apply to tax returns filed for taxable years commencing after December 31, 2005.

Amend Sec. 3, page 6, line 10, by striking out "3" and inserting 5

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

(Members proceeded to vote.)

LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence. The gentleman, Mr. John EVANS, requests a leave of absence for the remainder of the day. Without objection, that leave will be granted.

CONSIDERATION OF HB 338 CONTINUED

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

The following roll call was recorded:

YEAS—189

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

NAYS—0

NOT VOTING—0

EXCUSED—14

| | | | |
|--------|------------|--------|---------------|
| Beyer | Evans, J. | Rieger | Taylor, E. Z. |
| Bunt | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |
| DeLuca | Kenney | | |

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. **A04168**:

Amend Title, page 1, line 10, by inserting after “penalties,” ” providing for contributions for the Low Income Home Energy Assistance Program (LIHEAP) fund;

Amend Bill, page 1, line 14; page 2, lines 1 through 3, by striking out all of said lines on said pages 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 315.10. Contributions for the Low Income Home Energy Assistance Program (LIHEAP) Fund.—(a) Beginning with taxable years ending after December 31, 2004, the department shall provide a space on the face of the Pennsylvania individual income tax return form whereby an individual may contribute to the Low Income Home Energy Assistance Program, known as LIHEAP. Persons may do so by stating the amount of the contribution, not less than one dollar (\$1), on the return and that the contribution will reduce the taxpayer’s refund or increase the amount of payment to accompany the return. Failure to remit any amount of increased payment shall reduce the contribution accordingly. This section shall not apply to any amended return.

(b) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Public Welfare pursuant to 55 Pa. Code Ch. 601 (relating to Low Income Home Energy Assistance Program).

(c) The department shall provide adequate information concerning the checkoff for the LIHEAP fund in its instructions that accompany the Pennsylvania individual income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Public Welfare to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(d) The Department of Public Welfare shall report annually to the respective committees of the Senate and the House of Representatives that have jurisdiction over the administration of LIHEAP on the amount received via the checkoff plan and how the funds were utilized.

Section 2. Section 1101(a), (a.1) and (j) of the act, amended or added December 23, 2003 (P.L.250, No.46), are amended to read:

Amend Sec. 2, page 5, line 3, by striking out “2” and inserting
3

Amend Sec. 3, page 6, line 10, by striking out “3” and inserting
4

On the question,

Will the House agree to the amendment?

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

Mr. **GEORGE**. Mr. Speaker, this allows an exception for State supplemental for the LIHEAP (Low-Income Home Energy Assistance Program). Mr. Speaker, I was glad to see that recently proposed Republican legislation was seeking to provide State funding to supplement the Federal appropriation that Pennsylvania receives to administer LIHEAP. We all, each and all, recognize that we must do something for some of those that cannot afford today’s rising energy costs. Just today the newspapers advised that there will be an additional 7-percent increase. It is therefore difficult for me to understand why we would not support this write-off to help these people, and this money will go to the LIHEAP entity.

I ask that we all support it, Mr. Speaker.

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

Does the gentleman, Mr. Scavello, wish recognition? The gentleman waives off.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—188

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

NAYS—0

NOT VOTING—1

Miller, S.

EXCUSED—14

| | | | |
|--------|------------|--------|---------------|
| Beyer | Evans, J. | Rieger | Taylor, E. Z. |
| Bunt | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |
| DeLuca | Kenney | | |

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?

Ms. JOSEPHS offered the following amendment No. A04851:

Amend Bill, page 6, by inserting between lines 9 and 10 Section 3. The amendment of sections 1101(a), (a.1) and (j) of the act shall only apply to a taxpayer that can demonstrate to the Department of Revenue the passing of the tax savings under the amendment to the consumers of the taxpayer's service.

Amend Sec. 3, page 6, line 10, by striking out "3" and inserting
4

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

The SPEAKER. On that question, the Chair recognizes the gentlelady.

Ms. JOSEPHS. Mr. Speaker, I do not have the hard copy. I am willing to go ahead with this if that comports with your procedure here.

The SPEAKER. We have it up here, Ms. Josephs. Would you like us to send it down to you?

Ms. JOSEPHS. Thank you.
May I go ahead?

The SPEAKER. It is the understanding of the Chair you wanted to see a hard copy of the amendment, which is being brought to you right this moment.

Ms. JOSEPHS. I was more concerned that the other members did not have it. I know what the hard copy is myself. I did not bring it up. I did not give it to the clerk. I apologize for that, and I will go ahead.

The SPEAKER. For the information of the gentlelady, it has been circulated.

Ms. JOSEPHS. Thank you.

This amendment would ensure that the savings that would accrue because the tax was lifted would go to the individual cell phone owners and not to the businesses. They have been selling this bill as a— They have been selling tax relief as a relief to the individual cell phone owner, and I want to make sure that that happens. If it does happen, I will be for this bill. If this amendment does not pass and if the industry is allowed to accrue this money and use it for their own expansion, I will not be for the bill.

Thank you, Mr. Speaker.
The SPEAKER. The Chair thanks the gentlelady.
The Chair recognizes the gentleman, Mr. Scavello.
Mr. SCAVELLO. Thank you, Mr. Speaker.

Although I applaud what the gentlelady is planning with her amendment, I find it, it is almost unconscionable how we can be able to have that occur. Right now it is approximately \$9.52 for every \$50 in wireless services that is paid for by the user. So I am going to ask for a "no" vote on the amendment.

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

The following roll call was recorded:

YEAS—82

| | | | |
|-------------|-----------|-----------|------------|
| Bebko-Jones | Evans, D. | Levdansky | Ruffing |
| Belardi | Fabrizio | Manderino | Samuelson |
| Belfanti | Frankel | Mann | Santoni |
| Biancucci | Freeman | Markosek | Siptroth |
| Bishop | George | McCall | Solobay |
| Blackwell | Gerber | McGeehan | Staback |
| Blaum | Gergely | Melio | Stetler |
| Butkovitz | Goodman | Mundy | Sturla |
| Buxton | Grucela | Myers | Surra |
| Caltagirone | Gruitza | Oliver | Tangretti |
| Casorio | Haluska | Pallone | Thomas |
| Cawley | Hanna | Parker | Tigue |
| Cohen | Harhai | Petrarca | Veon |
| Corrigan | Harper | Petrone | Walko |
| Costa | James | Pistella | Waters |
| Cruz | Josephs | Preston | Wheatley |
| Curry | Kirkland | Ramaley | Williams |
| Dermody | Kotik | Readshaw | Wojnaroski |
| DeWeese | Leach | Roberts | Youngblood |
| Donatucci | Lederer | Roebuck | Yudichak |
| Eachus | Lescovitz | | |

NAYS—107

| | | | |
|-------------|------------|------------|---------------|
| Adolph | Forcier | Marsico | Rubley |
| Allen | Gabig | McGill | Sainato |
| Argall | Gannon | McIlhattan | Sather |
| Armstrong | Geist | McIlhinney | Saylor |
| Baker | Gillespie | McNaughton | Scavello |
| Baldwin | Gingrich | Metcalfe | Schroder |
| Barrar | Godshall | Micozzie | Semmel |
| Bastian | Good | Millard | Shapiro |
| Benninghoff | Grell | Miller, R. | Smith, B. |
| Birmelin | Harhart | Miller, S. | Smith, S. H. |
| Boyd | Harris | Mustio | Sonney |
| Cappelli | Hasay | Nailor | Stairs |
| Causer | Hennessey | Nickol | Steil |
| Civera | Herman | O'Brien | Stern |
| Clymer | Hershey | O'Neill | Stevenson, R. |
| Cornell | Hess | Payne | Stevenson, T. |
| Crahalla | Hickernell | Petri | Taylor, J. |
| Creighton | Hutchinson | Phillips | True |
| Dally | Kauffman | Pickett | Turzai |
| Denlinger | Keller, M. | Pyle | Wansacz |
| DiGirolamo | Killion | Quigley | Watson |
| Diven | LaGrotta | Rapp | Wilt |
| Ellis | Leh | Raymond | Wright |
| Fairchild | Mackereth | Reed | Zug |
| Feese | Maher | Reichley | |
| Fichter | Maitland | Rohrer | Perzel, |
| Fleagle | Major | Ross | Speaker |
| Flick | | | |

NOT VOTING—0

EXCUSED—14

| | | | |
|--------|------------|--------|---------------|
| Beyer | Evans, J. | Rieger | Taylor, E. Z. |
| Bunt | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |
| DeLuca | Kenney | | |

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. 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 gentlelady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to HB 338. This past week and probably including today I will have voted on a number of bills to appropriate more money to very worthy causes or to spend more money on needed health and human services issues and health-care issues and direct-care provider issues, in very worthy and needy causes, and I cannot in good conscience tell the workers in those industries, the families that are served by those services, the patients who desperately need that help from the Commonwealth, that I am on their side with one hand, with the same hand on the same day I am voting to cut millions of dollars of revenue out of our State budget.

The fiscal impact of HB 338, if I am remembering the numbers, is about \$302 million this fiscal year, \$350-some million next fiscal year, and I assume it grows from there. I think it is irresponsible, number one, to vote to cut that without any replacement revenue.

Secondly, when we instituted this tax, which HB 338 is now trying to repeal, we did it with uniformity in mind. We removed from the wireless industry a tax that they had been paying on equipment because the land lines were not paying that tax. We removed that tax from them and we included the tax on the sales, just like land lines were, to make the two types of telephone systems equivalent in terms of the type of taxation.

So I supported that uniformity when we passed it a year or two ago. I think that is a fair public policy, but today I cannot stand here and in good conscience cut \$300, \$350 million from our State budget and then go home and tell my constituents, who have very important services that they look to State government to provide, that I did that knowing how I was going to help provide those services. And in a day when we are being asked to consider reestablishing necessary funding for other human services, I quite frankly find it unconscionable that we are going to cut such a big chunk out of our budget at the same time.

Please vote "no" on 338.

GUESTS INTRODUCED

The SPEAKER. We have some special guests here today. They are the fourth graders and teachers from the Octorara Elementary School, and they are the guests of Representative Art Hershey. Would those guests please rise – they are in the balcony – and be welcomed.

CONSIDERATION OF HB 338 CONTINUED

The SPEAKER. The gentleman, Mr. Levdansky. The gentleman from Allegheny, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, before we cast a final vote on this bill, sometimes I think we need a little perspective, a little reality check, so we understand exactly what we are voting on. You know, there are in this country over 194 million cell phone subscribers. Probably most of us in this chamber walk around with one of these in our pockets, and we have to pay for this. Okay? This is a tool. It is not a toy. It is a tool for a lot of people for work, and it is probably not one of the most necessary things in life, but it is certainly a convenience. And like the other 194 million people that have cell phones, we get a bill every month, and I would suspect that my bill was probably about the average. A couple months ago here I got a bill for \$67.77 for the use of this for that particular month. Let me break that down; let me break that down so you understand what this bill would do.

My basic monthly service is \$53.78. Usage charges are another \$3.96. Then we get into the Federal and State surcharges and how much they are. Total Federal and State surcharges, in addition to that \$55 and a couple other dollars for the regulatory charge, the breakdown on the taxes is this: I pay \$1 a month for the 911 service that we all benefit from; the Federal tax is \$1.72 a month; the Pennsylvania sales tax on my usage is \$3.45, for a grand total of \$6.17 for those taxes. Then there are the Verizon Wireless surcharges, including the universal service charge of 93 cents, a nickel for a regulatory charge, and the Pennsylvania gross receipts tax of \$2.88. So my bill of \$67.77, of that total, \$2.88 is the gross receipts tax that I pay for the benefit of being able to use a cell phone.

Typically, Mr. Speaker, when we talk about cutting taxes, there is some larger public policy objective that we are trying to achieve. Typically with reducing business taxes and other taxes, we want to spur investment. We want to cause some good public policy things to happen. But think about this industry for a minute. I mentioned there are 194 1/2 million cell phone users in this country. Over 65 percent of our nation's population uses cell phones. Six percent of all households in this country use only cell phones. They do not use land lines.

There are more than 180 facility-based carriers in this country. Total wireless revenue is \$55 1/2 billion for the first 6 months of 2005, and that is up 13 percent over the first 6 months of 2004, so gross revenues are increasing at a double-digit rate in this industry. Total capital investment in 2004 in the industry was \$174 billion, and there was another \$13 billion in capital invested in the first 6 months of 2005 alone.

Mr. Speaker, this is not an industry that is hurting. This is an industry that is growing by leaps and bounds every month, every year, and yet, and yet we feel the necessity to lower my monthly cell phone bill by \$2.88. Now, one can only imagine what would happen if this tax was reduced by \$2.88. I will bet you it will not be too much longer that I find out that I have another option that I could spend that money on to my cell phone carrier.

About \$365 million will be lost in the General Fund if we do this, and understand, a couple of years ago when we passed this tax, we did so because we were facing a budget deficit and we had the mandates of No Child Left Behind. The administration and this General Assembly decided we wanted to help our school districts, provide them with some revenue with the block grant program to fund the education programs to come in compliance with No Child Left Behind. We passed this tax to

make those investments in education and to be able to deal with our deficit.

One important thing we did when we passed this tax, however, that this bill does not undo, we decided to put a gross receipts tax in place, but we decided to exempt the equipment, the cell phone towers, from the sales tax. So while we extended a gross receipts tax to the users of cell phones, we exempted the equipment purchases, the towers. Those billions of dollars of investment I talked about, they do not have to pay the sales tax on that, the companies. So we exchanged a gross receipts tax paid for by consumers in exchange for exempting the companies from having to pay sales tax on their equipment purchases. So that is what we did. We put one tax in place; we exempted something else, and what we did is, we treated land lines and cell phones equally.

What this bill would do if adopted, it would create a disparity in how we tax the cell phone industry, and I do not think that that is appropriate. I think there is already enough of a consumer trend moving towards the use of cell phones all the time and not having a land line. If we pass this bill, we are going to put land-line carriers at a competitive disadvantage with cell phone companies, and I do not think that is appropriate. And we have already given the cell phone companies as part of the legislation where we put this tax in place, we exempted them from the sales tax for their towers and their equipment purchases.

I think it is grossly unfair to treat one telephone carrier different from another. It is going to create inequities in telecommunications, and I do not think that that is wise public policy or wise tax policy.

And one final thing, \$345 million that was used to fund the block grant program for education for our school districts and to deal with the deficit. Three hundred and forty-five million dollars is a lot of revenue that will be lost to the State General Fund. And we keep talking about, well, we are just going to cut this tax and cut that tax and cut another tax, but when are we going to ante up and say, we are going to cut? Where are we going to make the cuts? Are we going to make our medical assistance families pay higher copays? Are we going to cut assistance to mass transit, to libraries, to our school districts? Where are we going to cut \$345 million in our budget?

This is wrong in terms of public policy for tax policy. It treats land-line companies different from cell phone companies; that is not fair, and it creates a huge, a huge hole in our budget for next year.

This is the ultimate special interest legislation that one could find. Do you think that that is a good way to go about making public policy? Then go right ahead and do it, but I, for one, am going to have nothing to do with this. This is fiscally irresponsible. It is wrong in terms of tax policy, and I would urge a negative vote.

HARRISBURG LEGISLATIVE LEAVE CANCELED

The SPEAKER. The Chair notes the presence on the floor of the House of the gentleman, Mr. Tangretti. He is back from Capitol leave.

CONSIDERATION OF HB 338 CONTINUED

The SPEAKER. The gentlelady from Luzerne, Ms. Mundy. Ms. MUNDY. Thank you, Mr. Speaker.

May I interrogate Mr. Scavello, please?

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentlelady is in order and may proceed.

Ms. MUNDY. Mr. Speaker, when would this tax decrease take effect?

Mr. SCAVELLO. January 1, 2007.

Ms. MUNDY. So basically right in the middle of this fiscal year.

Thank you, Mr. Speaker.

May I speak on the amendment?

The SPEAKER. The gentlelady is in order.

Ms. MUNDY. No; the fiscal year is July 1 to July 1. So if this takes place— Excuse me; may I again ask Mr. Scavello. Maybe I misunderstood what he said.

The SPEAKER. The gentlelady is in order.

Mr. Scavello.

Ms. MUNDY. Mr. Speaker, is it January of 2006 or January of 2007?

Mr. SCAVELLO. January 2006.

Ms. MUNDY. All right. I was correct.

Thank you.

May I again speak on the amendment?

The SPEAKER. The gentlelady is in order.

Ms. MUNDY. Mr. Speaker, this tax cut takes effect 6 months into our fiscal year. We have no idea at this moment in time how much money we will have to fund the services that we have already committed for from January to June 30 of 2006. This could produce serious consequences to the Commonwealth's cash flow. How are we going to pay our bills? We have already made commitments for the money that we have coming in, and this money is included in that.

This may be good PR, but this is a terrible way to do a budget. A budget should be done with a list of priorities and sources of funding to pay for them, and frankly, it is getting very frustrating and very aggravating to continually see spending proposals from that side of the aisle at the same time that we continue to see tax cut proposals from that side of the aisle – personal income tax cuts, this tax cut. You cannot have it both ways. Stop speaking out of both sides of your mouth. Either you want to cut taxes and cut services or you want to maintain what is currently in this year's budget and pay for it. You cannot have it both ways.

This is a bad way to do budgeting. It leaves the Commonwealth at risk from 2006 January to 2006 June 30. This is the wrong idea. If you want to vote to cut this tax in next year's budget, then that certainly would be an option; you control the majority, but for heaven's sake, do not leave all of us in the situation of not having enough money to pay our bills from January to June of 2006.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentlelady.

The gentleman, Mr. Levdansky.

Ms. Josephs; I believe Ms. Josephs was up first.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I could not agree more with the lady from Philadelphia, the lady from Luzerne, the gentleman from Allegheny. As a matter of fact, I think we really ought to have a rules change here so that not only during appropriations season but with every bill

that cuts taxes, the maker of the bill would be required to tell us what services were going to be cut to make up the deficit.

As I said when I spoke the first time on my amendment or the only time on my amendment, if it were possible for me to believe that this, for instance, \$2.88 that the gentleman from Allegheny was going to save under this bill was actually going to go to the gentleman from Allegheny, I could vote for it. After all, I have voted over and over again to protect the taxpayer from sales tax on water, on food, on clothing, on caskets, and if it were actually going to go to the taxpayer, I would have a different thought, but not only is this not going to go to the taxpayer, it is going to go to an industry that does not need any help. It is going to cut vital services for a device which is convenient and makes us all feel sort of that we are part of a moving scene, but it is not at all a necessity for anybody, really, not the way medical care is, not the way that all of the vital services that people can actually depend upon.

I think for all of the reasons that have been articulated and because my amendment did not, unfortunately, pass, that I would ask for a “no” vote on this bill also.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Scavello.

Mr. SCAVELLO. Thank you, Mr. Speaker.

I rise again to support this legislation. Many of the previous speakers actually strengthen my will here. For example, when we talk about the cost of job creation, we talk about what the industry has spent in the past few years. By embracing and encouraging cell phone investment, Pennsylvania can build a high-tech infrastructure that helps create thousands of additional jobs while continuing to improve our economic productivity for all Pennsylvania companies and our citizens. In fact, repealing the cell phone tax will help jump-start a new Pennsylvania.

The gentleman spoke about his cell phone bill. It is \$34.46 what it is going to cost him per year that he is going to save; almost enough to pay his emergency \$52 tax. We are already paying a 6-percent sales tax, and with that 5-percent gross receipts tax, we are paying two State taxes on the same service, a burden that is extraordinarily unfair and excessive.

If you go back to the beginning of the last century with the steel industry, the manufacturing and the coal industries, should we have taxed those industries in their growth periods doubly, what would we have created? It is our opinion that while this service should be treated like many other goods and services in Pennsylvania for which consumers are not taxed twice, it is time to make Pennsylvania law more fair and to keep us from having to give up more than our fair share of our hard-earned money.

The Pennsylvania gross receipts tax is harming our State economy. Taxing the fast-growing industry is not a smart policy. This tax impedes job growth, and I repeat, this tax impedes job growth. It reduces capital available for investment, and it hampers the Commonwealth's ability to attract cutting-edge technology. We want to encourage wireless business in Pennsylvania, not discourage it. We need to be promoting wireless growth in every region of Pennsylvania, and we need to be expanding wireless coverage in rural areas. We need to be taking aggressive steps to promote the construction of cell towers in areas not adequately covered, and I would like to point out, those cell towers are an improvement on the properties where they are, and they pay property tax. The 5-percent gross receipts tax, combined with other taxes and fees, gives Pennsylvania the eighth highest cell phone taxes in the nation; the eighth highest, with a total of 19.05 percent.

To repeal this tax costs the consumer an estimated \$225 million in the first half year. There is a total of \$9.52 for every \$50 in wire service you use.

Please, let us work together to repeal this unfair duplicate tax. Let us work together to promote the wireless technology investments in Pennsylvania, not tax it.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

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

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, when we pass these bills to cut taxes, what we do not do in this chamber is identify what spending cuts one would propose in order to balance the revenue loss from the tax cuts. I just want to put this in perspective, and a lot of members would say, well, you know, we will deal with that at budget time or we could pass this tax cut right now because, you know, we have a State budget surplus.

As we stand here today, the revenue surplus is about \$90 million. So we are \$90 million to the good in terms of the revenue we are taking in the State at this particular point in time; \$90 million. The cost of this on an annual basis is \$345 million. That means we are going to be about \$260, \$250, \$260 million short, and we will have to find things to cut in the budget. Now, what is \$250 or \$260 million? It does not sound like— It is a lot of money. That is about what a 2-percent increase in the budget for our basic education is.

So if you want to cut the cell phone tax, to balance things out in the State budget, we would give our school districts a zero-percent increase in State assistance next year, and all our school districts have become pretty acclimated to getting about a 2-percent, at least a 2-percent increase in aid from the State every year. We would not be able to do that if this passes, or you would have to find more severe areas in the budget to cut.

I also want to deal with this argument that, you know, that we need to cut this because we need to help this industry. Well, with the existing gross receipts tax and the existing tax structure for cell phones, they have already invested over \$172 billion in this country, and there is no lack of investment in cell phone distribution systems throughout Pennsylvania. So the existing gross receipts tax has not been an impediment to the growth of this industry in Pennsylvania.

And just saying something does not necessarily make it so. That investment has occurred, and even if you want to believe that, understand that this is a tax that is passed on to consumers. The wireless companies do not pay it. So this does not affect their research and development or investment decisionmaking process because they do not pay this tax. It is simply a pass-through tax on to consumers.

Mr. Speaker, another reason why it is bad policy is this: If this were to pass, our land lines, we are still going to have to pay the gross receipts tax on our land telephone lines. That is inequitable. If you think that the gross receipts tax is an unfair tax for people, why do you not propose then to eliminate it for land lines as well as cell phones if that is your case?

One other comparison I want to make. I would submit to you that this is a luxury in my life, not a necessity. Electricity is a necessity. I know, people need electricity for light, for heat, to run appliances in their homes, but we have to pay the gross receipts tax on electric consumption in this State. I would submit to you that if you are looking for a gross receipts tax that you want to eliminate, it ought to be the one on electricity and

not on cell phones, because we all need electricity. For lighting purposes, for heating purposes, for running appliances, and to run our economy, you need electricity. This is not, this is not a necessity in life; electricity is. So if you want to get rid of a gross receipts tax, I would submit that the gross receipts tax on electricity is far more unfair than the gross receipts tax that you pay on cell phones.

Again, if we are going to lose \$345 million in revenue, I am going to be asking the people that are supporting this come budget time, where is the \$345 million in spending cuts that you want as well? All this is about is pandering, political pandering to a special interest. It is fiscally irresponsible to be doing this tax cut in the middle, in the middle of a budget year.

For all those reasons, I would urge a negative vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Speaker.

Mr. Speaker, I stand to support this bill and to ask for the repeal of this unfair gross receipts tax.

Mr. Speaker, I am sick and tired of driving through the rural areas of Pennsylvania and the thing that is on my cell phone is, no cell service. That has happened because we do not have the investment in new towers throughout Pennsylvania. Maybe the urban areas of our State have enough cell service and have the towers, but we in the rural areas are still waiting for a significant investment in cell service. By eliminating the gross receipts tax, we will free up capital that the cell phone companies can use to extend this critical new technology to the rural areas of Pennsylvania. I think it is imperative that we pass this bill, roll back this unfair tax, and give the rural areas of this State the ability to move into the 21st century.

Thank you, Mr. Speaker.

The SPEAKER. Mr. Scavello. Does the gentleman wish to wait till last, or would you like to use your time now?

Mr. SCAVELLO. Okay. I will wait till last.

The SPEAKER. The gentleman from Berks, Mr. Leh.

Mr. LEH. Mr. Speaker, to speak on the bill.

Mr. Speaker, I would like to rise to speak for an affirmative vote.

I will not respond to some of the rhetorical comments that were made. However, I would like to assure everyone in this House that this bill is a bipartisan bill. It enjoys much bipartisan support. Just review the cosponsors. As chairman of the House Finance Committee, we brought this bill out of committee with ample bipartisan support, and I would hope to see a good bipartisan effort on the floor today to pass it.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Speaker.

I rise today in support of the Scavello bill.

It is time that we repeal the cell phone tax. For those who think that cell phones are not a necessity, all of us know who are members here that our cell phones are our mobile offices. We use them to stay in touch with our constituents; we use them to exchange e-mail, and so do tens of thousands of business men and women throughout this State.

There is a very simple principle here: Behavior that you tax, you discourage. If we want to move Pennsylvania forward, if we want to move Pennsylvania toward a 21st-century, high-tech economy, it is important that we not tax and not discourage the tools that we need to get us there.

To those who say that this tax cut comes at a bad time, I say to the overtaxed families and businesses of Pennsylvania, there is no bad time for a tax cut, and I urge support, an affirmative vote, for the Scavello bill.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Tigie.

Mr. TIGUE. Thank you, Mr. Speaker.

Mr. Speaker, I am amazed at some of the previous speakers and what I am hearing. We sat on this floor a little over a week ago and voted on a package that puts sales tax on everything. We voted on a package that would have extended sales tax to food, clothing, utilities, all of these services. Many of the same people who were supportive of this idea are standing up today telling us how bad it is to have a sales tax which in essence is a gross receipts tax on services like telecommunications. Something is amiss; something does not add up.

I agree with one of the previous speakers who said this is politically the thing to do, to offer; let us cut more taxes.

I was at a meeting like all of you were. I was at four meetings so far this week on tax reform. If we keep cutting taxes, revenues that are generated on a broad-based State tax, we have less of a chance to ever increase school funding. Forget about adding on taxes to services and goods to lower the property tax. This craziness must come to an end. We cannot continue doing this.

I do not know about anyone else, but I know I have not had one, one person call me and say, please remove my gross receipts tax. I have not had one person call me, and I will bet many of you have not. I will bet some of you, some of you, I will wager, received e-mails like I did, and when I talked to people in groups, when I talked to people on the street, I have not heard one person come up to me— E-mails I did receive, and do you know what? They all were the same verbiage, which tells me that somebody handed them a form and said, here; send this e-mail. Here is the address.

But the bottom line is, what are we going to tax? Let us take the tax off this so that next week we can put the tax back on it? I would suggest that we just defeat this bill as proposed and get on with the business of tax reform, whether we have to stay here for the next week and a half or 2 weeks or whatever we have to do, and find out what combination of taxes we need to increase revenue to lower property tax, not to get into these specious arguments about lowering taxes on things which are not as important as lowering property tax.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Cawley.

The gentleman does not wish to be recognized.

Mr. DeWeese, for now it appears that you are the last one, but as you know, whenever we start this, somebody else will stand.

Mr. DeWEESE. Thank you, Mr. Speaker.

“Sir William, he, snug as a flea, lay all this time a-snooring; nor dreamed of harm, as he lay warm in bed with Mrs. Loring.”

Gen. Sir William Howe had invested Philadelphia and the Colonial troops had, thank goodness, absconded to Valley Forge. The general took his eye off the prize, and the results are well known – he lost.

My opinion is that my honorable friend from the Pocono region is innocently taking his eye off the prize. The prize should be our fiduciary responsibility to our taxpayers.

For almost my entire career, Republican rhetoric put their official imprimatur on fiscal responsibility.

The gentledady from Luzerne a while ago made the comment that these hundreds of millions of dollars that will potentially be affected or will be affected by the Scavello effort cannot necessarily be replaced. We do not know what kind of economic agitations, permutations, molestations, or difficulties will take place in the next series of months. The time for the honorable gentleman's debate, the time for this whole forensic exercise would be next June when we are in the budget process.

To be, in my view, so irresponsible fiscally contravenes the very ethos of the Republican Party's heritage and ostensible comments in their campaign brochures. Even if everything, Mr. Speaker, everything the honorable gentleman is saying is true, why do we not do it within the context of the budget?

The previous speaker, the gentleman from Luzerne, said it all and it bears repeating. Within the last few days, several weeks, we have debated ways to eliminate or drastically reduce property taxes in Pennsylvania. If we are going to reduce those taxes back home, there has to be a broad-based revenue stream coming out of the State Treasury, something that 12 million people can help out with.

Now, we are talking about under \$3 a month, approximately \$2.88 a year. That is easy to add up, but you take that times the millions of people that pay it, and it becomes a substantial revenue flow.

So this whole process is surfeited with politics. All of my Republican pals will be cock-a-hoop when the votes go up, and those of us who are going to be fiscally responsible are outnumbered.

In my view, in my view, this is a bad time to do this. It should be done in the budget. Number two, it is hundreds and hundreds of millions of dollars that might potentially be helpful in the property tax debate that will ensue next week, and notwithstanding the honorable gentleman's commentaries to the contrary, the people of the State are not achingly anxious for this particular modulation in a tax structure to take place. What we need to do, Mr. Speaker, what we need to do is figure out property tax. This is ancillary; this is marginal; this is peripheral, and these dollars could potentially be used for a better cause.

So I again, after many years in this room, can speculate that the vote will go against the gentledady, Mundy; the gentleman, Mr. Tigues; Mr. Levdansky; myself; Mr. Veon, et cetera, et cetera, but I think that a prudent vote would be a negative vote. I think that pellucid recollections and retrospections 6 months from now or 6 years from now will say that this day was heavily punctuated with political grandstanding. That is not an alien phenomenon. That is part of our dynamic in a democracy. But the fiscal responsibility that the Republican Party has evinced since time immemorial is seriously marred when you are going to take \$300 to \$400 million and rip it out of our revenue stream and not, and not tell me where that \$300 or \$400 million is going to be replaced.

My request, as I exit the microphone or leave the podium, would be for the honorable gentleman to tell me what \$350 million specifically, specifically, or even \$200 million; give me the libraries that he is going to cut; give me the fire company dollars that may be jeopardized in the General Fund; give me the programs for senior citizens that he wants to cut. What does the honorable gentleman want to cut? What does he want to cut? And even if he does give enlightened,

enlightened commentaries about the interrogatories I have just offered him, it would be better suited, Mr. Speaker, better suited in the context of the budget.

This is a ramshackle, harum-scarum effort taking place in December that should take place in June. The honorable gentleman is my friend, and this time I am going to disagree with my friend. I would ask for his efforts to be rejected.

The SPEAKER. Mr. Scavello.

Mr. SCAVELLO. Thank you, Mr. Speaker.

First let me say it is never, never the wrong time for a tax reduction of any type to our citizens, never.

It was mentioned earlier that the gentleman from Allegheny would invite a gross receipts tax on electricity to be removed. If the legislation is out there, please place me as number two on that legislation. I will gladly sponsor the legislation.

We talked earlier about taxing other items, but what was not mentioned there was we were talking about eliminating school property taxes. It was a shift. We were not just going to tax another commodity. We were going to take those dollars and eliminate school property taxes.

What we did also, the gentleman from Allegheny mentioned that the cell phone is a tool, a tool to survive, and I agree with him, and I think that it is so important that it is a tool, that if there is any way that we can help our citizens and take \$35 a year off their bill— This is an industry that is taxed twice. We are taxing it with a 6-percent sales tax, and we are taxing it with a 5-percent gross receipts tax. No other industry in Pennsylvania goes through that, and I am asking to repeal this unfair tax.

By the way, our budget last year, we had an over \$600 million surplus. We are going to have that surplus again this year, and we are talking about \$200 million, and I can tell you that no one is talking about the jobs that are going to be created when this tax goes away, and those jobs can pay for some of those taxes.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

HARRISBURG LEGISLATIVE LEAVE

The SPEAKER. The Chair returns to leaves of absence and recognizes the majority whip, who moves for a Capitol leave for the remainder of the day for the gentleman from York, Mr. SMITH. Without objection, that leave will be granted.

CONSIDERATION OF HB 338 CONTINUED

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—152

| | | | |
|-----------|-----------|------------|-----------|
| Adolph | Forcier | Major | Rohrer |
| Allen | Gabig | Mann | Ross |
| Argall | Gannon | Markosek | Rubley |
| Armstrong | Geist | Marsico | Ruffing |
| Baker | George | McCall | Sainato |
| Baldwin | Gerber | McGeehan | Samuelson |
| Barrar | Gergely | McGill | Santoni |
| Bastian | Gillespie | McIlhattan | Sather |

| | | | |
|-------------|------------|------------|---------------|
| Belardi | Gingrich | McIlhinney | Saylor |
| Belfanti | Godshall | McNaughton | Scavello |
| Benninghoff | Good | Metcalf | Schroder |
| Birmelin | Goodman | Micozzie | Semmel |
| Boyd | Grell | Millard | Shapiro |
| Butkovitz | Grucela | Miller, R. | Siptroth |
| Buxton | Gruitza | Miller, S. | Smith, B. |
| Caltagirone | Haluska | Mustio | Smith, S. H. |
| Cappelli | Hanna | Nailor | Solobay |
| Casorio | Harhai | Nickol | Sonney |
| Causer | Harhart | O'Brien | Stairs |
| Cawley | Harper | O'Neill | Steil |
| Civera | Harris | Pallone | Stern |
| Clymer | Hasay | Payne | Stevenson, R. |
| Cornell | Hennessey | Petrarca | Stevenson, T. |
| Costa | Herman | Petri | Surra |
| Crahalla | Hershey | Petrone | Tangretti |
| Creighton | Hess | Phillips | Taylor, J. |
| Dally | Hickernell | Pickett | True |
| Denlinger | Hutchinson | Pistella | Turzai |
| Dermody | Kauffman | Preston | Wansacz |
| DiGirolamo | Keller, M. | Pyle | Watson |
| Diven | Killion | Quigley | Wilt |
| Donatucci | Kotik | Ramaley | Wojnaroski |
| Eachus | LaGrotta | Rapp | Wright |
| Ellis | Lederer | Raymond | Yudichak |
| Fairchild | Leh | Readshaw | Zug |
| Feese | Lescovitz | Reed | |
| Fichter | Mackereth | Reichley | |
| Fleagle | Maher | Roberts | Perzel, |
| Flick | Maitland | | Speaker |

NAYS—37

| | | | |
|-------------|-----------|-----------|------------|
| Becko-Jones | Evans, D. | Manderino | Sturla |
| Bianucci | Fabrizio | Melio | Thomas |
| Bishop | Frankel | Mundy | Tigue |
| Blackwell | Freeman | Myers | Veon |
| Blaum | James | Oliver | Walko |
| Cohen | Josephs | Parker | Waters |
| Corrigan | Kirkland | Roebuck | Wheatley |
| Cruz | Leach | Staback | Williams |
| Curry | Levdansky | Stetler | Youngblood |
| DeWeese | | | |

NOT VOTING—0

EXCUSED—14

| | | | |
|--------|------------|--------|---------------|
| Beyer | Evans, J. | Rieger | Taylor, E. Z. |
| Bunt | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |
| DeLuca | Kenney | | |

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.

LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence, and the majority whip requests a leave of absence for the remainder of the day for the gentleman from York, Mr. SMITH. Without objection, that leave will be granted.

SUPPLEMENTAL CALENDAR A

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 2243, PN 3170**, entitled:

An Act amending the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, providing for autism spectrum disorders coverage.

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?

The Chair recognizes the gentleman, Mr. Micozzie.
Mr. MICOZZIE. Thank you, Mr. Speaker.

Mr. Speaker, I rise to support HB 2243. I rise to support it because the bill has come before us, but I rise to make several important points about HB 2243.

First let me state that I can only imagine the incredible strain placed on the parents of children suffering from autism spectrum disorder. These are special children, special kids, with special needs, and the medical, rehabilitation, respite, and therapeutic care of these special kids most certainly needs to be readily available.

The point I would like to raise about this bill is not aimed at the needs of autistic children or the parents who commit so much of their time and their lives in caring for them. Instead, it is about the process which has brought this bill before us.

Mr. Speaker, this is a health insurance mandate bill, and health insurance mandate bills, regardless of what they—
Mr. Speaker, could I have some—

The SPEAKER. The gentleman is correct.

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

Mr. MICOZZIE. The point I would like to raise about the bill, again, is not aimed at the needs of autistic children or the parents who commit so much of their lives caring for them. Instead, it is about the process which has brought this bill before us.

Mr. Speaker, this is a health insurance mandate bill, and health insurance mandate bills, regardless of what they propose to cover or their significance, they all work to drive up the cost of health insurance premiums to the State. At a time when business communities and our constituents are crying out for this legislature to find ways to control health care and health insurance premiums, this bill, mandate bill, will drive up the cost of insurance and continue to make its way through this body.

Make no mistake, HB 2243 represents an important mandate issue and one we should definitely deliberate at some point. However, can anyone in this chamber tell me factually the potential cost impact of this mandate on the cost of insurance throughout the State? I think it is important information to know because all employers have an insurance coverage for their employees and all individual insurance consumers will be forced to buy this coverage mandated in this bill even if they

will never use the benefit. It is a bill that will increase premiums for businesses and all other insurance consumers in Pennsylvania. It is the dilemma we face whenever we are asked to vote on insurance mandate bills.

Mr. Speaker, we have an agency, the Health Care Cost Containment Council, that was set up to fiscally evaluate the impact of health insurance mandates so that the legislature could be better informed when considering mandate bills. This bill was not sent to the Insurance Committee.

Mr. Speaker, could I have some quiet?

The SPEAKER. The gentleman, Mr. Micozzie, would like some order. Please.

Mr. MICOZZIE. Mr. Speaker, we have a standing committee called the Insurance Committee that is made up of 27 members of the House and has the responsibility to evaluate the merits of all insurance legislation introduced in the House of Representatives. This bill was not, like many other bills recently, not sent to the Insurance Committee.

Mr. Speaker, again, since this bill has found its way to the House floor, I am going to support it. I am going to vote in support of HB 2243 today out of respect for the 10,000 families in this State that are dedicated to caring for their autistic children. However, I will do so with not enough information. Hopefully during the legislative process, the costs of this mandate will be addressed and hopefully the end result is that HB 2243 becomes law.

Thank you, Mr. Speaker.

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—187

| | | | |
|-------------|-----------|------------|---------------|
| Adolph | Fleagle | Maitland | Ross |
| Allen | Flick | Major | Rubley |
| Argall | Forcier | Manderino | Ruffing |
| Armstrong | Frankel | Mann | Sainato |
| Baker | Freeman | Markosek | Samuelson |
| Baldwin | Gabig | Marsico | Santoni |
| Barrar | Gannon | McCall | Sather |
| Bastian | Geist | McGeehan | Saylor |
| Bebko-Jones | George | McGill | Scavello |
| Belardi | Gerber | McIlhattan | Schroder |
| Belfanti | Gergely | McIlhinney | Semmel |
| Benninghoff | Gillespie | McNaughton | Shapiro |
| Biancucci | Gingrich | Melio | Siproth |
| Birmelin | Godshall | Metcalfe | Smith, S. H. |
| Bishop | Good | Micozzie | Solobay |
| Blackwell | Goodman | Millard | Sonney |
| Blaum | Grell | Miller, R. | Staback |
| Boyd | Grucela | Miller, S. | Stairs |
| Butkovitz | Gruitza | Mundy | Steil |
| Buxton | Haluska | Mustio | Stern |
| Caltagirone | Hanna | Myers | Stetler |
| Cappelli | Harhai | Nailor | Stevenson, R. |
| Casorio | Harhart | Nickol | Stevenson, T. |
| Causar | Harper | O'Brien | Sturla |
| Cawley | Harris | Oliver | Surra |
| Civera | Hasay | O'Neill | Tangretti |
| Clymer | Hennessey | Pallone | Taylor, J. |
| Cohen | Herman | Parker | Thomas |
| Cornell | Hershey | Payne | Tigue |
| Costa | Hess | Petrarca | True |

| | | | |
|------------|------------|----------|------------|
| Crahalla | Hickernell | Petri | Turzai |
| Creighton | Hutchinson | Petrone | Veon |
| Cruz | James | Phillips | Walko |
| Curry | Josephs | Pickett | Wansacz |
| Dally | Kauffman | Pistella | Waters |
| Denlinger | Keller, M. | Preston | Watson |
| Dermody | Killion | Pyle | Wheatley |
| DeWeese | Kirkland | Quigley | Williams |
| DiGirolamo | Kotik | Ramaley | Wilt |
| Diven | LaGrotta | Rapp | Wojnaroski |
| Donatucci | Leach | Raymond | Wright |
| Eachus | Lederer | Readshaw | Youngblood |
| Ellis | Leh | Reed | Yudichak |
| Evans, D. | Lescovitz | Reichley | Zug |
| Fabrizio | Levdansky | Roberts | |
| Fairchild | Mackereth | Roebuck | Perzel, |
| Feeze | Maher | Rohrer | Speaker |
| Fichter | | | |

NAYS—0

NOT VOTING—0

EXCUSED—16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

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 2244, PN 3171**, entitled:

An Act amending the act of July 7, 2005 (P.L. , No.1A), known as the General Appropriation Act of 2005, reducing the state appropriations for general government operations of the various departments and increasing the Federal and state appropriations for medical assistance - outpatient.

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—187

| | | | |
|-----------|---------|-----------|-----------|
| Adolph | Fleagle | Maitland | Ross |
| Allen | Flick | Major | Rubley |
| Argall | Forcier | Manderino | Ruffing |
| Armstrong | Frankel | Mann | Sainato |
| Baker | Freeman | Markosek | Samuelson |
| Baldwin | Gabig | Marsico | Santoni |
| Barrar | Gannon | McCall | Sather |

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

NAYS-0

NOT VOTING-0

EXCUSED-16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

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 2245, PN 3172**, entitled:

An Act amending the act of July 7, 2005 (P.L. , No.1A), entitled "An act to provide from the General Fund for the expenses of the Executive, Legislative and Judicial Departments of the Commonwealth, the public debt and for the public schools for the fiscal year July 1, 2005, to June 30, 2006, for certain institutions and organizations, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2005; to provide

appropriations from the State Lottery Fund, the Energy Conservation and Assistance Fund, the Hazardous Material Response Fund, The State Stores Fund, the Milk Marketing Fund, the Home Investment Trust Fund, the Emergency Medical Services Operating Fund, the Tuition Payment Fund, the Banking Department Fund, the Firearm Records Check Fund, the Ben Franklin Technology Development Authority Fund, the Tobacco Settlement Fund, the Health Care Provider Retention Account and the Community Health Reinvestment Restricted Account to the Executive Department; to provide appropriations from the Judicial Computer System Augmentation Account to the Judicial Department for the fiscal year July 1, 2005, to June 30, 2006; to provide appropriations from the Motor License Fund for the fiscal year July 1, 2005, to June 30, 2006, for the proper operation of the several departments of the Commonwealth and the Pennsylvania State Police authorized to spend Motor License Fund moneys; to provide for the appropriation of Federal funds to the Executive Department of the Commonwealth and for the establishment of restricted receipt accounts for the fiscal year July 1, 2005, to June 30, 2006, and for the payment of bills remaining unpaid at the close of the fiscal year ending June 30, 2005; to provide for the additional appropriation of Federal and State funds from the General Fund and the Motor License Fund, for the Executive and Legislative Departments of the Commonwealth for the fiscal year July 1, 2004, to June 30, 2005, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2004." reducing the State appropriation for education assistance and increasing the Federal and State appropriations for medical assistance - outpatient.

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 gentlelady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.
Will the maker of the bill stand for a brief interrogation?

Mr. Speaker, I will withdraw my desire to interrogate and just make some comments.

The SPEAKER. The gentlelady is in order.
Ms. MANDERINO. Thank you.

This bill, HB 2245, is appropriating \$8 million to DPW's (Department of Public Welfare) budget in order to eliminate the monthly premium that was in last year's budget on families with special-needs, disabled children. If I am not mistaken and the question that I wanted clarification with on interrogation is that that \$8 million is coming from sources in the bill that we had just passed unanimously right before this one. And what I mean by that is, it was a 1-percent, 1.03-percent cut to departmental budgets across the board - at the State Police, at the Department of Aging, and at many of our other necessary departments - a 1-percent GGO (general government operations) cut to the departments, 12 different departments, in order to raise \$8 million, but 10 minutes ago we cut out of this same year's fiscal budget, assuming the prorated amount is half, more than \$150 million.

So while I support the gentleman's efforts to support the families of special-needs children, I just could not let the moment pass to point out to members, all of whom voted to cut \$350 million from our General Fund budget 5 minutes ago, what the real price tag is and who the real people you are hurting are.

The SPEAKER. The gentleman from Montgomery, Mr. Curry.

Mr. CURRY. Mr. Speaker, would the prime sponsor stand for interrogation?

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order and may proceed.

Mr. CURRY. Mr. Speaker, in the bill analysis it talks about \$7 million, \$7.3 million being taken from the Department of Education's fund for tutoring. Is that correct?

Mr. O'BRIEN. That is correct, Mr. Speaker.

Mr. CURRY. Thank you.

Mr. Speaker, I would like to make a statement.

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

Mr. CURRY. Thank you.

The fiscal note makes no reference to that depletion of money from a very vital program in the Department of Education. We need to get our kids up to speed under the No Child Left Behind so we do not face additional Federal penalties, and this tutoring program is vital to that, and yet we are taking \$7 million from it.

I recognize the need, and I think we really should be doing something about these children with autism, and I agree with all the previous speakers, including the prime sponsor of this bill, that we need to move in that direction, but not at the expense of other children and not at the expense of the school system in Pennsylvania.

And so reluctantly I urge a "no" vote until we find an alternative means of funding this program.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

I respect the gentleman's position, but I would like to inform the members very simply that in fiscal year '04-'05 there was an appropriation of \$38 million for this educational assistance program where I am asking the members to take the money.

In this year's budget the Governor requested \$76 million and the appropriation ended up being \$66 million, which is a 76-percent increase. Mr. Speaker, very simply, I do not think they are going to use all the money, and what I am saying is, if we take the \$7 million, they are still getting a \$20 million increase in this line item, and I respectfully ask your support for this bill.

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—181

| | | | |
|-------------|---------|------------|-----------|
| Adolph | Fleagle | Major | Ruffing |
| Allen | Flick | Mann | Sainato |
| Argall | Forcier | Markosek | Samuelson |
| Armstrong | Frankel | Marsico | Santoni |
| Baker | Freeman | McCall | Sather |
| Baldwin | Gabig | McGeehan | Saylor |
| Barrar | Gannon | McGill | Scavello |
| Bastian | Geist | McIlhattan | Schroder |
| Bebko-Jones | George | McIlhinney | Semmel |

| | | | |
|-------------|------------|------------|---------------|
| Belardi | Gerber | McNaughton | Shapiro |
| Belfanti | Gergely | Melio | Sipiroth |
| Benninghoff | Gillespie | Metcalfe | Smith, S. H. |
| Biancucci | Gingrich | Micozzie | Solobay |
| Birmelin | Godshall | Millard | Sonney |
| Blackwell | Good | Miller, R. | Staback |
| Blaum | Goodman | Miller, S. | Stairs |
| Boyd | Grell | Mundy | Steil |
| Butkovitz | Grucela | Mustio | Stern |
| Buxton | Gruitza | Myers | Stetler |
| Caltagirone | Haluska | Nailor | Stevenson, R. |
| Cappelli | Hanna | Nickol | Stevenson, T. |
| Casorio | Harhai | O'Brien | Sturla |
| Causar | Harhart | O'Neill | Surra |
| Cawley | Harper | Pallone | Tangretti |
| Civera | Harris | Parker | Taylor, J. |
| Clymer | Hasay | Payne | Thomas |
| Cohen | Hennessey | Petrarca | Tigue |
| Cornell | Herman | Petri | True |
| Costa | Hershey | Petrone | Turzai |
| Crahalla | Hess | Phillips | Veon |
| Creighton | Hickernell | Pickett | Walko |
| Cruz | Hutchinson | Pistella | Wansacz |
| Dally | James | Preston | Waters |
| Denlinger | Kauffman | Pyle | Watson |
| Dermody | Keller, M. | Quigley | Wheatley |
| DeWeese | Killion | Ramaley | Williams |
| DiGirolamo | Kirkland | Rapp | Wilt |
| Diven | Kotik | Raymond | Wojnaroski |
| Donatucci | LaGrotta | Readshaw | Wright |
| Eachus | Leach | Reed | Youngblood |
| Ellis | Lederer | Reichley | Yudichak |
| Evans, D. | Leh | Roberts | Zug |
| Fabrizio | Lescovitz | Roebuck | |
| Fairchild | Mackereth | Rohrer | |
| Feese | Maher | Ross | Perzel, |
| Fichter | Maitland | Rubley | Speaker |

NAYS—6

| | | | |
|--------|-----------|-----------|--------|
| Bishop | Josephs | Manderino | Oliver |
| Curry | Levdansky | | |

NOT VOTING—0

EXCUSED—16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

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 2246, PN 3175**, entitled:

An Act amending the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, further providing for medical assistance benefit packages, coverages, copayments and rates.

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—187

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

NAYS—0

NOT VOTING—0

EXCUSED—16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

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.

CALENDAR CONTINUED

CONSIDERATION OF HB 1826 CONTINUED

The SPEAKER. The Chair returns to page 2 of today's regular House calendar.

DECISION OF CHAIR RESCINDED

The SPEAKER. Without objection, the Chair rescinds its announcement that HB 1826, PN 2440, has been agreed to.

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

MOTION TO SUSPEND RULES

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

Mr. SIPTROTH. Mr. Speaker, I am asking for a suspension of the rules for immediate consideration of amendment A4924.

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

The SPEAKER. On the suspension of the rules, the gentleman, Mr. DeWeese, yields to the gentleman, Mr. Siptroth. Mr. Siptroth.

Mr. SIPTROTH. Thank you, Mr. Speaker.

Mr. Speaker, after reviewing the bill and serving on the Commerce Committee, I noticed just a couple of fallacies in the particular bill, one being that the particular developer need only host or supplement one particular bond to possibly support two or three, four or five, or an infinite number of developments, community developments. My particular amendment would make the funds nontransferable from one to the other.

I would ask that this amendment be supported if in fact I am permitted to suspend the rules. Therefore, Mr. Speaker, I am asking for a suspension on this particular issue.

The SPEAKER. The gentleman, Mr. Smith, defers to the gentleman, Mr. Stevenson. Mr. Stevenson.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

I would ask the members to vote "no" on this motion to suspend. Thank you.

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

The following roll call was recorded:

YEAS—90

| | | | |
|-------------|---------|----------|-----------|
| Barrar | Frankel | Mann | Sainato |
| Bebko-Jones | Freeman | Markosek | Samuelson |
| Belardi | Gabig | McCall | Santoni |

| | | | |
|-------------|-----------|------------|------------|
| Belfanti | George | McGeehan | Shapiro |
| Biancucci | Gerber | McIlhinney | Siptroth |
| Bishop | Gergely | Melio | Solobay |
| Blackwell | Goodman | Miller, S. | Staback |
| Blaum | Grucela | Mundy | Stetler |
| Butkovitz | Gruitza | Myers | Sturla |
| Buxton | Haluska | Oliver | Surra |
| Caltagirone | Hanna | Pallone | Tangretti |
| Casorio | Harhai | Parker | Thomas |
| Cawley | Harper | Petrarca | Tigue |
| Cohen | James | Petri | Veon |
| Costa | Josephs | Petrone | Walko |
| Cruz | Kirkland | Pistella | Wansacz |
| Curry | Kotik | Preston | Waters |
| Dermody | LaGrotta | Ramaley | Wheatley |
| DeWeese | Leach | Readshaw | Williams |
| Donatucci | Lederer | Roberts | Wojnaroski |
| Eachus | Lescovitz | Roebuck | Youngblood |
| Evans, D. | Levdansky | Ruffing | Yudichak |
| Fabrizio | Manderino | | |

NAYS—97

| | | | |
|-------------|------------|------------|---------------|
| Adolph | Fleagle | Maitland | Ross |
| Allen | Flick | Major | Rubley |
| Argall | Forcier | Marsico | Sather |
| Armstrong | Gannon | McGill | Saylor |
| Baker | Geist | McIlhattan | Scavello |
| Baldwin | Gillespie | McNaughton | Schroder |
| Bastian | Gingrich | Metcalfe | Semmel |
| Benninghoff | Godshall | Micozzie | Smith, S. H. |
| Birmelin | Good | Millard | Sonney |
| Boyd | Grell | Miller, R. | Stairs |
| Cappelli | Harhart | Mustio | Steil |
| Causer | Harris | Nailor | Stern |
| Civera | Hasay | Nickol | Stevenson, R. |
| Clymer | Hennessey | O'Brien | Stevenson, T. |
| Cornell | Herman | O'Neill | Taylor, J. |
| Crahalla | Hershey | Payne | True |
| Creighton | Hess | Phillips | Turzai |
| Dally | Hickernell | Pickett | Watson |
| Denlinger | Hutchinson | Pyle | Wilt |
| DiGirolo | Kauffman | Quigley | Wright |
| Diven | Keller, M. | Rapp | Zug |
| Ellis | Killion | Raymond | |
| Fairchild | Leh | Reed | |
| Feese | Mackereth | Reichley | Perzel, |
| Fichter | Maher | Rohrer | Speaker |

NOT VOTING—0

EXCUSED—16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

Less than a majority of the members required by the rules 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 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?

The Chair recognizes the gentlelady from Philadelphia, Ms. Manderino. Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to HB 1826.

I am not an expert on planned communities or escrows or surety bonds or lines of credit, but I know what is fair and what is not fair, and this bill is not fair to homeowners.

If I go to purchase a home in a planned community, of which the vast majority of new housing developments being built in our State and our nation are these days, a lot of them are, I know one thing: I put down my hard-earned money as an escrow to secure a particular house and property for me, my money, my money, my \$40,000 of money that is my escrow on my dream house that someone is building.

Mr. Speaker, do you need me to suspend? Do you have another amendment?

The SPEAKER. The Chair was informed that the gentleman, Mr. Siptroth, has an additional amendment. If the lady would just yield while we—

Ms. MANDERINO. I would love to talk about my money at a later point; go ahead.

The SPEAKER. Well, you are going to get plenty of time to talk about your money.

The gentleman, Mr. Siptroth.

Mr. SIPTROTH. Thank you, Mr. Speaker.

Mr. Speaker, at this time I would like to pull my second amendment.

Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

The gentlelady, Ms. Manderino, can now talk about her money again.

Ms. MANDERINO. Thank you, Mr. Speaker.

As I was saying, it is my money; it is the consumers' money; it is your constituents' money. Each and every person who puts a down payment in escrow on a hope to build their dream house, that money belongs to them. That is our law.

This bill proposes to— And by the way, it is my understanding under current law that while the developer is holding my money in escrow for his building my house, he has the use of the interest on my money, not me, but still the principal is mine, and it is not at risk. This bill puts my money and your money and your constituents' money and everybody who is building a home in a planned community, it puts their money at risk, because what it says is that we in the Commonwealth of Pennsylvania are no longer going to require these developers to keep my money in escrow and keep it safe for me; we are going to let them use my money to build this development, to build some other development, to use my money for their purposes and their benefit if they post a million-dollar bond or an irrevocable line of credit.

Now, here is my understanding of the bond requirement. It is a minimum of \$1 million – for the whole development. It does not matter if you are building 400 \$400,000 houses in that development so that you have collected, on average, \$40,000 from each consumer times the 400 houses you are developing. And you do the math, you could probably do it better than me, but it is more than \$1 million. It does not matter. You can use all of that money. You can put all of my money at risk, but you only have to post a bond so that if you go out of business, so that if you go bankrupt, so that if you lost my money, you are only at risk for \$1 million. I am going to get paid some percentage on the dollar of my escrow back, but I am

not getting 100 percent of my money back. That is just wrong. And a line of credit, to me, that is even worse. The whole risk that we are trying to protect against is that somebody does not go belly up and bankrupt, because I do not know about you, but I do not want my \$40,000 and me to have to get in line with creditors for whom this developer owes money for building material and labor and insurance and everything else that he might owe money for, because remember, it was not his money that he lost, it was my money.

We should not be putting consumers and home buyers of Pennsylvania at risk for this. If the legislation was drafted such that the bond money required to equal the amount of escrow money that you were putting at risk, that might be a different scenario, but that is not what this bill requires, and without those kinds of safeguards for our consumers, this is not a good piece of legislation.

I ask for a "no" vote.

The SPEAKER. The Chair thanks the gentlelady.

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

Mr. BARRAR. Thank you, Mr. Speaker.

Can I interrogate the maker of this bill?

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order.

Mr. BARRAR. Mr. Speaker, can you explain to me the benefit in this piece of legislation to the consumer, how it benefits the consumer?

Mr. T. STEVENSON. Yes. Very simply, currently in any builder/seller situation, the builder/seller does not have to escrow any down payment moneys he has received. Only under the Uniform Planned Community Act is he required to escrow moneys. In order for the builder to free up those moneys for use by him or her or it, and in order to reduce their administrative costs in administering the escrow fund, we now ask that through this bill the builder/seller be treated equally in a uniform planned community situation as well as a nonuniform planned community situation, where the moneys are not required to be escrowed. In this situation, however, under this bill, the proconsumer part is to require a letter of credit or a bond in a minimum amount of \$1 million to cover repayment of any escrow moneys that eventually are not repaid or spent on a sales price.

Mr. BARRAR. If the minimum amount required would be \$1 million, what is the maximum amount? Would it be equal to the total deposits taken in on all developments by that developer/builder?

Mr. T. STEVENSON. The minimum amount is \$1 million at any time that escrows are held. Whether it is \$1 in escrow or \$10 or \$1.1 million, it would be up to the builder at that point to increase his bond or letter of credit over \$1 million to cover the escrows. Any prudent businessman would be doing that.

Mr. BARRAR. So technically the developer/builder could be holding \$1 1/2 million in deposits – he could have taken that in – and still only have had a surety bond for \$1 million, leaving a half a million dollars at risk.

Mr. T. STEVENSON. Generally, that situation you just described does not happen in Pennsylvania, because not enough units are built in one project to equal \$1 million being held in escrow at any one time. So the consumer is being protected by this bill.

Mr. BARRAR. Mr. Speaker, is there any provision – you said this is a new change in Pennsylvania because of the current

Municipalities Planning Code – is there a provision in this legislation that would notify the consumer, the person putting the deposit down? Would they be notified of this change, and do they have to give permission for this to take place?

Mr. T. STEVENSON. No; they do not, because their moneys are collateralized and secured.

Mr. BARRAR. So the person who puts up maybe a \$30,000, \$40,000, \$50,000 deposit would have no idea of what is happening with their deposit at this time?

Mr. T. STEVENSON. No, but they can rest assured under the law that it is safe and secure through a letter of credit or a bond.

Mr. BARRAR. Mr. Speaker, can a surety bond or letter of credit be issued by the same corporation that is taking the deposit?

Mr. T. STEVENSON. No.

Mr. BARRAR. Like if the corporation was large enough to finance it, is there anything, like being self-insured, is there any type of that situation happening here?

Mr. T. STEVENSON. No. I believe insurance regulations would prohibit that. That is a direct conflict of interest.

Mr. BARRAR. This legislation requires the involvement of the Attorney General. Has the Attorney General looked at this legislation? Have you consulted with him and gotten his opinion on this?

Mr. T. STEVENSON. Actually, yes. I just spoke with the Attorney General's Office this morning at the latest time and they are in favor of this.

Mr. BARRAR. If I put a deposit down on a new home under these circumstances and I give a developer a \$50,000 deposit, and let us say the developer, we have an agreement with the developer to finish my home by April 1 and the developer then fails to meet that requirement, and I choose now, because he is in violation of the contract, to get my deposit back. How is that handled?

Mr. T. STEVENSON. Naturally he would, like in any other situation, whether there was a bond or a letter of credit or not, you would have to send him a letter demanding repayment. If the builder does not repay, obviously you have the option of going to court to get your money.

Mr. BARRAR. So again, I mean, you know, if I give you \$50,000, if I give the developer \$50,000, I am not necessarily going to come away with \$50,000. I could end up coming away \$50,000 minus my legal fees at that point.

Mr. T. STEVENSON. That is always the situation, Mr. Speaker, in this Commonwealth under our current judicial system.

Mr. BARRAR. So there is really no consumer protection here for the person putting up the deposit. I see the benefit for the builder/developer, but I really do not see a benefit for the consumer here.

MOTION TO RECOMMIT

Mr. BARRAR. Mr. Speaker, for the purpose of making a motion.

The SPEAKER. The gentleman is in order.

Mr. BARRAR. I would like to move that this legislation be recommitted to Consumer Affairs. I think there is a need to add additional amendments to this.

The SPEAKER. It has been moved by the gentleman that the bill be recommitted to the Committee on Consumer Affairs.

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

The SPEAKER. That motion is debatable by the floor, by anyone in the chamber.

On that motion, Mr. Stevenson.

Mr. T. STEVENSON. I would ask that the members oppose the motion to recommit. This bill has been considered by the House Commerce Committee and is ready to move on the House floor. Thank you.

And the bill was unanimously reported from the Commerce Committee.

The SPEAKER. Mr. Freeman.

Mr. FREEMAN. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of the motion by the gentleman, Mr. Barrar, to recommit this bill to the Consumer Affairs Committee. In his interrogation Mr. Barrar has raised some very valid points, points that deserve more study on this proposal and require us to build in more safeguards to this legislation. As it is currently drafted, I see the flaws that he was pointing out in terms of the kind of impact it would have on consumers. The lady, Ms. Manderino, also pointed up some very real shortcomings in this legislation, and I think it is incumbent upon us to produce a quality product when it comes to legislation.

This bill would benefit by being sent to the Consumer Affairs Committee, where a consumer perspective would be given to the legislation, and I do not think we should be hasty about rushing into a piece of legislation which has such obvious flaws on its face. So I would urge the House to join the gentleman, Mr. Barrar, in recommitting this bill to the Consumer Affairs Committee.

The SPEAKER. The gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I would ask the members to oppose the motion to recommit. I believe that the efforts by the sponsor of the bill to move the bill through the process have been straightforward and forthright. Obviously, if there are other concerns that were brought up late, that can be considered at a future time, and I would ask the members to allow us to proceed with a vote of final passage on HB 1826 and oppose the motion to recommit.

Thank you, Mr. Speaker.

The SPEAKER. Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

I, too, rise in support of recommitment. During the last interrogation the maker of the amendment did acknowledge through the interrogation that the bond to be posted was a minimum of a million and it was up to the builder at his choice, not under the law, whether or not that amount had to be greater, even if the amount of escrow being used was greater, and in response to the interrogator's further questioning, he said, well, it would not really matter much in Pennsylvania because there are not that many developments that would fit that bill. I just want to beg to differ with some real math here.

I have a development that is being built right now in my neighborhood in the city of Philadelphia, and if they can find enough land to do this in the city of Philadelphia, I know they are doing it in the suburbs. It is 250 units. They are selling between \$200,000 and \$250,000 – I am sorry – between

\$300,000 and \$350,000, depending on how the individual homeowner added options on. Assuming a 10-percent escrow, that planned community, that one little development in my neighborhood in Roxborough, will have an escrow at risk of \$8,750,000. That is more than eight times the amount of bond that would be required. If, God forbid, that would go belly up and there would be nothing to distribute back to the homeowners except for that million dollars, that would be less than 20 cents on the dollar per constituent.

Thank you. A good reason for recommitment so that that can be fixed.

The SPEAKER. The Chair thanks the gentlelady.

The gentleman, Mr. Markosek.

Mr. MARKOSEK. Thank you, Mr. Speaker.

Mr. Speaker, I rise to oppose the recommitment motion made. It is time that we run this bill. This came out of committee unanimously, the Commerce Committee, and for the first time we will have for these planned communities the Attorney General being involved. That is a huge consumer safeguard, and I think this bill, while I am sure there will still be some work in the Senate, it is time for it to move over there. We have considered some other issues here today relative to this bill, and I would suggest to the members on both sides of the aisle that we move this bill forward and vote against the recommitment motion.

Thank you very much, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Mustio.

Mr. MUSTIO. Thank you, Mr. Speaker.

I rise in opposition to recommitment.

The significant consumer protection here – think about it – when you go out now and you try to build or buy a home, do you ever ask your builder for their financial statements? No. We never have a third party look at those statements, and what the bonding requirement is doing here or the letter of credit is doing, you are either having a surety company or a bank independently look at the contractor's financial statements, and obviously the bond or the letter of credit will not be issued by the bank or the surety company unless they feel that the contractor has the financial wherewithal to stick around. Let us face it, insurance companies, bonding companies, and banks are not in business to lose money. So I think there is a significant consumer protection, and to follow up on the comments made by the gentleman from Westmoreland, I think the fact that the Attorney General is now involved is also a significant factor.

So I would like to support the passage of the bill this evening and not go for recommitment. Thank you.

The SPEAKER. The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I am rising to oppose recommitment.

Before coming into the legislature, I was a surety attorney for an insurance company, so I have a little understanding of what is going on here, and I would not necessarily characterize this bill as a proconsumer bill, but it is not an anticonsumer bill either. And as the prior speaker said, it does have some protections implicit in it that are not in the current state of affairs, and that is that in order to get a bond of the nature that is set out in this bill or required under this bill, the contractor or builder is going to have to have the financial worthiness of a surety company to provide that bond, because once they sign off on that bond, they are the ones that are going to be liable to the consumer for the amount of the escrow if the contractor goes belly up or if he runs off with the money or it just disappears.

So I think, if anything, that would be a protection. Now you will know a little bit more about this contractor if you know he can get a bond.

But, I mean, the whole purpose, I think, of this legislation is to free up that capital for the builder to get his project completed in a timely fashion and not have a substantial amount of money sitting in a bank that ultimately will go to that contractor when he completes his work. So I do not think it is a bad idea. I think this bill has a lot of merit to it, and I think some of the questions which were raised, I think the folks that were raising them were sincere in their questions.

But I think everything is answered by a fair reading of the bill. For example, the bond amount is a minimum of \$1 million, and if you read the bill and put it together, it could very well be that if a project was going to have over \$1 million in escrow deposits – now, this is not the amount of money that you are going to have to spend to complete the whole building but just the escrow, just the deposit, which will be only a fraction of the total cost – if those escrows are going to go over \$1 million, you could argue, by looking at the language in the bill, that in fact the bond would have to exceed \$1 million or equal whatever those deposits would potentially be, because it does provide that the amount of the bond will decline as the escrows are paid out, and if you reconcile the new language that they want to insert in this act with the old language, which requires all deposits to be escrowed, arguably and I think legally you could stand on good ground by saying that the bond has to equal the amount of those deposits, and the language itself says that the minimum is \$1 million. It does not say it is just \$1 million and that is it.

So I think it is a fair bill. I would not necessarily characterize it as proconsumer, but it certainly is not anticonsumer, and it does have some good points, some additional protections and additional knowledge that a consumer can have about the person he is doing business with. So I think it is a good bill, and I urge a “no” vote on the motion to recommit.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Barrar.

Mr. BARRAR. Thank you, Mr. Speaker.

Mr. Speaker, I am asking for recommitment because I would like to introduce an amendment for this, but I do not think I would get the suspension of the rules. But I think that what this bill is missing more than anything is some type of consumer notification and permission by the consumer to use their money in this purpose. So for that reason I am supporting recommitment and hope to get a majority vote on that.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Sturla.

Mr. STURLA. Thank you, Mr. Speaker.

I rise in support of recommitment of this bill, as requested by Representative Barrar.

There are numerous questions about this legislation. In fact, we got rushed back into caucus today to discuss it because it was on such a fast track. What is the hurry here? Is there some developer’s Christmas party we need to be invited to? There are some real concerns that have been raised about this legislation, legitimate concerns, and what we have been told by those people who have said, do not vote for recommitment; let us just get it sent over to the Senate and maybe they can fix it, or we will talk about it later. After final passage? What is the problem with putting this back in committee, looking at some of the problems that have been raised, and fixing them?

This bill as it stands right now does not help the small builder, the person that is doing the small development and has a few number of escrows set up. Why would he go out and do \$1 million worth of bond on that? It is just not worth it financially. But the guys that are doing the big megadevelopments only need to get \$1 million worth of surety, and so for them, it is a windfall, and it leaves the consumer at risk. We can fix that. We can guarantee that the Stevenson bill would require that the surety bond be equal to the amount that was held in escrow, unlike it currently does. We could make those types of requirements and make this bill worthwhile for everyone to vote for. What is the hurry? Let us send it back to committee, get some appropriate changes made, and bring it back, and then if you want to rush it through, fine, but let us recommit it now.

Thank you.

The SPEAKER. The gentleman, Mr. Stevenson.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

I just want to remind the members that at any one time, one of these uniform planned communities is going to be in a staged development process, where you are going to have 5, 10, 15, 20 units in the closing process at any given time, and \$1 million is more than sufficient to cover the normal down payments involved in those situations.

Therefore, I ask for a negative vote on the motion to recommit.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—63

| | | | |
|-------------|-----------|------------|------------|
| Barrar | Freeman | McGeehan | Schroder |
| Bebko-Jones | George | McIlhinney | Siproth |
| Belardi | Goodman | Melio | Staback |
| Belfanti | Grucela | Mundy | Steil |
| Bishop | Gruitza | Myers | Stetler |
| Butkovitz | Haluska | O’Neill | Sturla |
| Cawley | Hanna | Parker | Surra |
| Cohen | Harper | Petri | Thomas |
| Crahalla | James | Pistella | Tigue |
| Cruz | Josephs | Ramaley | Walko |
| Curry | LaGrotta | Reichley | Waters |
| DiGirolamo | Leach | Roberts | Watson |
| Donatucci | Lederer | Roebuck | Wright |
| Eachus | Lescovitz | Ruffing | Youngblood |
| Evans, D. | Manderino | Samuelson | Yudichak |
| Fabrizio | McCall | Santoni | |

NAYS—124

| | | | |
|-------------|-----------|------------|--------------|
| Adolph | Fleagle | Maher | Reed |
| Allen | Flick | Maitland | Rohrer |
| Argall | Forcier | Major | Ross |
| Armstrong | Frankel | Mann | Rubley |
| Baker | Gabig | Markosek | Sainato |
| Baldwin | Gannon | Marsico | Sather |
| Bastian | Geist | McGill | Saylor |
| Benninghoff | Gerber | McIlhattan | Scavello |
| Bianucci | Gergely | McNaughton | Semmel |
| Birmelin | Gillespie | Metcalfe | Shapiro |
| Blackwell | Gingrich | Micozzie | Smith, S. H. |
| Blaum | Godshall | Millard | Solobay |
| Boyd | Good | Miller, R. | Sonney |
| Buxton | Grell | Miller, S. | Stairs |
| Caltagirone | Harhai | Mustio | Stern |

| | | | |
|-----------|------------|----------|--------------------|
| Cappelli | Harhart | Nailor | Stevenson, R. |
| Casorio | Harris | Nickol | Stevenson, T. |
| Causar | Hasay | O'Brien | Tangretti |
| Civera | Hennessey | Oliver | Taylor, J. |
| Clymer | Herman | Pallone | True |
| Cornell | Hershey | Payne | Turzai |
| Costa | Hess | Petrarca | Veon |
| Creighton | Hickernell | Petrone | Wansacz |
| Dally | Hutchinson | Phillips | Wheatley |
| Denlinger | Kauffman | Pickett | Williams |
| Dermody | Keller, M. | Preston | Wilt |
| DeWeese | Killion | Pyle | Wojnaroski |
| Diven | Kirkland | Quigley | Zug |
| Ellis | Kotik | Rapp | |
| Fairchild | Leh | Raymond | |
| Feese | Levdansky | Readshaw | Perzel, Speaker |
| Fichter | Mackereth | | |

NOT VOTING—0

EXCUSED—16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

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,
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—145

| | | | |
|-------------|------------|------------|---------------|
| Adolph | Fleagle | Mackereth | Roberts |
| Allen | Flick | Maher | Rohrer |
| Argall | Forcier | Maitland | Ross |
| Armstrong | Frankel | Major | Rubley |
| Baker | Gabig | Mann | Ruffing |
| Baldwin | Gannon | Markosek | Sainato |
| Bastian | Geist | Marsico | Santoni |
| Bebko-Jones | Gerber | McGeehan | Sather |
| Belardi | Gergely | McGill | Saylor |
| Benninghoff | Gillespie | McIlhattan | Scavello |
| Bianucci | Gingrich | McNaughton | Semmel |
| Birmelin | Godshall | Metcalfe | Shapiro |
| Bishop | Good | Micozzie | Siptroth |
| Blackwell | Goodman | Millard | Smith, S. H. |
| Blaum | Grell | Miller, R. | Solobay |
| Boyd | Gruitza | Mustio | Sonney |
| Buxton | Harhai | Myers | Staback |
| Caltagirone | Harhart | Nailor | Stairs |
| Cappelli | Harris | Nickol | Stevenson, R. |
| Casorio | Hasay | O'Brien | Stevenson, T. |
| Causar | Hennessey | Oliver | Tangretti |
| Civera | Herman | Pallone | Taylor, J. |
| Cornell | Hershey | Parker | True |
| Costa | Hess | Payne | Turzai |
| Creighton | Hickernell | Petrarca | Veon |
| Dally | Hutchinson | Petrone | Wansacz |
| Denlinger | James | Phillips | Waters |
| Dermody | Kauffman | Pickett | Wheatley |
| DeWeese | Keller, M. | Pistella | Williams |
| Diven | Killion | Preston | Wilt |
| Donatucci | Kirkland | Pyle | Wojnaroski |
| Ellis | Kotik | Quigley | Wright |

| | | | |
|-----------|-----------|----------|--------------------|
| Evans, D. | LaGrotta | Ramaley | Zug |
| Fabrizio | Lederer | Rapp | |
| Fairchild | Leh | Raymond | |
| Feese | Lescovitz | Readshaw | Perzel, Speaker |
| Fichter | Levdansky | Reed | |

NAYS—42

| | | | |
|------------|------------|------------|------------|
| Barrar | Freeman | Melio | Stern |
| Belfanti | George | Miller, S. | Stetler |
| Butkovitz | Grucela | Mundy | Sturla |
| Cawley | Haluska | O'Neill | Surra |
| Clymer | Hanna | Petri | Thomas |
| Cohen | Harper | Reichley | Tigue |
| Crahalla | Josephs | Roebuck | Walko |
| Cruz | Leach | Samuelson | Watson |
| Curry | Manderino | Schroder | Youngblood |
| DiGirolamo | McCall | Steil | Yudichak |
| Eachus | McIlhinney | | |

NOT VOTING—0

EXCUSED—16

| | | | |
|----------|------------|--------|---------------|
| Beyer | DeLuca | Kenney | Smith, B. |
| Bunt | Evans, J. | Rieger | Taylor, E. Z. |
| Corrigan | Habay | Rooney | Vitali |
| Daley | Keller, W. | Shaner | Yewcic |

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. Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

Immediately upon the declaration of final recess, we will have a meeting of the Judiciary Committee in room 302 of the Irvis Building; 302 of the Irvis Building.

The SPEAKER. The Chair thanks the gentleman.

The Judiciary Committee will meet in room 302 of the Irvis Building at the recess.

HOUSE BILLS
INTRODUCED AND REFERRED

No. 2317 By Representative FEESE

An Act providing for the capital budget for the fiscal year 2005-2006; itemizing public improvement projects, furniture and equipment projects, transportation assistance projects, redevelopment assistance capital projects, Keystone Recreation, Park and Conservation Fund projects, Environmental Stewardship Fund projects and Motor License Fund projects to be constructed or acquired or assisted by the Department of General Services, the Department of Community and Economic Development, the Department of Conservation and Natural Resources, the Department of Environmental Protection and the Department of Transportation, together with their estimated financial costs; authorizing the incurring of debt without the approval of the electors for the purpose of financing the projects to be constructed, acquired or assisted by the Department of General Services; stating the estimated useful life of the projects; providing an exemption; and making appropriations.

Referred to Committee on APPROPRIATIONS,
December 7, 2005.

No. 2319 By Representatives ALLEN, BELFANTI, ARGALL, GOODMAN, CAPPELLI, PHILLIPS, FAIRCHILD, BAKER, BOYD, CALTAGIRONE, CRAHALLA, DeWEESE, EACHUS, GEORGE, GOOD, HALUSKA, HERMAN, HICKERNELL, JAMES, LEDERER, LEH, MANN, MUSTIO, PALLONE, PETRARCA, PYLE, READSHAW, REICHLEY, SATHER, SAYLOR, SIPTROTH, STERN, SURRA, TANGRETTI, TIGUE, WILT, YOUNGBLOOD, ZUG and DALLY

An Act prohibiting the use of illegal immigrant labor on economic development projects; imposing powers and duties on the Department of Community and Economic Development; and providing for remedies.

Referred to Committee on LABOR RELATIONS,
December 7, 2005.

VOTE CORRECTION

The SPEAKER. The gentlelady, Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Speaker.

Would it be possible to correct the record?

The SPEAKER. The gentlelady is in order.

Mrs. MILLER. Mr. Speaker, on HB 338, amendment 4168, I wish to be recorded as having voted in the affirmative.

The SPEAKER. The Chair thanks the gentlelady. The gentlelady's remarks will be spread across the record.

STATE GOVERNMENT COMMITTEE MEETING

The SPEAKER. The gentleman, Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, upon the declaration of recess, the members of the State Government Committee will be meeting in the Ryan Building in room 205. Please meet us there.

The SPEAKER. The Chair thanks the gentleman.

The State Government Committee will meet in room 205 of the Ryan Building at the recess.

EDUCATION COMMITTEE MEETING

The SPEAKER. The gentleman, Mr. Stairs.

Mr. STAIRS. Thank you, Mr. Speaker.

At the recess, the Education Committee, we want to reconvene in room 60 in the East Wing to finish our meeting we started this morning. So Education members, room 60.

Thank you, Mr. Speaker.

The SPEAKER. The Education Committee will reconvene in room 60 of the East Wing at the recess.

VOTE CORRECTION

The SPEAKER. Mr. Kirkland.

Mr. KIRKLAND. Thank you, Mr. Speaker. I want to correct the record.

On HB 338 my switch malfunctioned. I would like to be recorded in the affirmative.

The SPEAKER. The gentleman's remarks will be spread across the record.

STATEMENT BY MR. GEORGE

The SPEAKER. At this time the Chair would like to recognize the gentleman, Mr. George, for a few remarks. As I am sure you are all aware, today is December 7.

Mr. George.

Mr. GEORGE. I thank you, Mr. Speaker, and I will not be long, but I believe we would be indeed remiss if we did not just for a moment remember what had happened 64 years ago today when Pearl Harbor was bombed.

On that given day that escalated into World War II, that soon became what President Roosevelt claimed a "day of infamy" and the Second World War "the war to end all wars." It was a time in this country when all Americans put forth. Whether they were in the military or in the factories or in the ammunition plants, we were all there.

Unfortunately, on that day the attack damaged 12 U.S. warships, destroyed 188 aircraft, and killed 2403 servicemen and 68 civilians. Yes, the war to end all wars, where eventually we had more than 3 1/2 million men and women fighting this war. It is unfortunate indeed, but it is life itself, where of the 3.5 million, we continue to lose 125 of these men and women veterans.

So America knows and so do you and I that regardless of what we do here or what we do on the outside, America is always first and our people are what make it the greatest country in the world. I do not think we ever ought to forget what our men and women did more than anyone else who was in the service to protect our freedoms.

Mr. Speaker, thank you for allowing me to have these couple of minutes. Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

There will be no further votes for the day.

THE SPEAKER PRO TEMPORE (MATTHEW E. BAKER) PRESIDING

BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND TABLED

SB 384, PN 1412 (Amended)

By Rep. STAIRS

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, further providing for definitions and for administrative duties of board.

EDUCATION.

RECESS

The SPEAKER pro tempore. This House stands in recess to the call of the Chair.

AFTER RECESS

The time of recess having expired, the House was called to order.

**THE SPEAKER PRO TEMPORE
(KERRY A. BENNINGHOFF) PRESIDING**

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

SB 63, PN 271 By Rep. O'BRIEN

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for, in child protective services, investigation of reports and for county agency requirements for general protective services.

JUDICIARY.

SB 618, PN 1359 By Rep. O'BRIEN

An Act providing for immunity for equine owners, possessors or handlers.

JUDICIARY.

SB 629, PN 1371 By Rep. O'BRIEN

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for aggravated assault.

JUDICIARY.

SB 798, PN 1360 By Rep. O'BRIEN

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for right to bail.

JUDICIARY.

RECESS

The SPEAKER pro tempore. This House stands in recess until the call of the Chair.

AFTER RECESS

The time of recess having expired, the House was called to order.

**THE SPEAKER PRO TEMPORE
(MATTHEW E. BAKER) PRESIDING**

BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER pro tempore. Without objection, any remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

RECESS

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Pyle, from Armstrong County.

Mr. PYLE. Mr. Speaker, I move that this House do now recess until Monday, December 12, 2005, at 1 p.m., e.s.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 12:59 p.m., e.s.t., Monday, December 12, 2005, the House recessed.