

Legislative Journal

TUESDAY, FEBRUARY 27, 1979

Session of 1979

163rd of the General Assembly

Vol. 1, No. 10

SENATE

TUESDAY, February 27, 1979.

The Senate met at 1:00 p.m., Eastern Standard Time.

The PRESIDENT (William W. Scranton III) in the Chair.

PRAYER

The Chaplain, The Reverend Father EDWARD W. COLEMAN, Principal of Cardinal Brennan High School, Ashland, offered the following prayer:

In the Name of the Father and of the Son and of the Holy Spirit. Amen.

Let us pray:

Direct, we beseech You, O Lord, all our actions by Your holy inspiration and carry them on by Your gracious assistance that every prayer and good work of ours may begin always from You and by You be happily ended.

We ask this through Christ our Lord. Amen.

In the Name of the Father and of the Son and of the Holy Spirit. Amen.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator ZEMPRELLI, further reading was dispensed with, and the Journal was approved.

SENATOR HAGER TO VOTE FOR SENATOR HOLL

Senator HAGER. Mr. President, I would request a legislative leave of absence for Senator Holl who is attending a meeting involving the Department of Environmental Resources and the Environmental Protection Agency concerning an oil spill in Montgomery County. I will be voting him.

The PRESIDENT. The Chair hears no objection and the leave is granted.

APPOINTMENT OF MEMBERS TO THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE

The PRESIDENT. The Chair lays before the Senate the communication from the President pro tempore of the Senate to the Secretary of the Senate:

As President pro tempore of the Senate of Pennsylvania, I hereby appoint the following Senators to serve as members of the Legislative Budget and Finance Committee: the gentleman from Lehigh, Senator Henry C. Messinger; the gentleman from Indiana, Senator Patrick J. Stapleton; the gentleman from Delaware, Senator Clarence D. Bell; the gentleman from Perry, Senator William J. Moore; and the gentleman from Luzerne, Senator Frank O'Connell. I will also continue to serve as a member of this committee.

APPOINTMENT OF MEMBERS TO THE LEGISLATIVE DATA PROCESSING COMMITTEE

The PRESIDENT. The Chair lays before the Senate the communication from the President pro tempore of the Senate to the Secretary of the Senate:

As President pro tempore of the Senate of Pennsylvania, I hereby appoint the following Senators to serve as members of the Legislative Data Processing Committee: the gentleman from Fayette, Senator J. William Lincoln; the gentleman from Allegheny, Senator Eugene F. Scanlon; the gentleman from York, Senator Ralph Hess; and the gentleman from Chester, Senator John Stauffer.

ANNOUNCEMENT BY THE SECRETARY

The SECRETARY. I have been asked to announce that the Committee on State Government will hold a meeting off the floor during today's Session to consider Senate Bill No. 208 and Senate Bill No. 297. Permission has been granted for this meeting by the Majority and Minority Leaders.

RECESS

Senator ZEMPRELLI. Mr. President, at this point in time I would ask that the Senate recess for approximately five minutes for the purpose of a very short meeting of the Committee on Rules and Executive Nominations to commence immediately in the Rules Committee room at the rear of the Chamber.

The PRESIDENT. Senator Zemprelli requests that the Senate recess for a very short meeting of the Committee on Rules and Executive Nominations at the rear of the Chamber.

The Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time of recess having elapsed, the Senate will be in order.

REPORTS FROM COMMITTEES

Senator LYNCH, from the Committee on Transportation, reported, as committed, **SB 11**.

Senator ROMANELLI, from the Committee on Urban Affairs and Housing, reported, as committed, **SB 223, 224 and 225**.

Senator ZEMPRELLI, from the Committee on Rules and Executive Nominations, reported, as committed, **SB 274**.

RESOLUTIONS REPORTED FROM COMMITTEE

Senator LYNCH, from the Committee on Transportation, reported without amendment, Senate Resolution, **Serial No. 18**, entitled:

Establishing an Interagency Task Force within the Governor's office to study problem of preventable child fatalities and injuries on highways.

Senator ROMANELLI, from the Committee on Urban Affairs and Housing, reported without amendment, Senate Concurrent Resolution, **Serial No. 205**, entitled:

Urging state and local agencies to assist all Pennsylvanians in meeting housing needs.

The PRESIDENT. The resolutions will be placed on the Calendar.

BILLS INTRODUCED AND REFERRED

Senators REIBMAN, DWYER and LINCOLN presented to the Chair **SB 302**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," providing that commissioned officers be given a reason in event of nonrenewal of employment and extending time for notification of retention or nonrenewal.

Which was committed to the Committee on Education.

They also presented to the Chair **SB 303**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," providing for the determination of a teacher's salary while on sabbatical leave.

Which was committed to the Committee on Education.

They also presented to the Chair **SB 304**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," further providing for authority of school officials over pupils and providing penalties for certain interference therewith.

Which was committed to the Committee on Education.

Senators REIBMAN, O'PAKE and MESSINGER presented to the Chair **SB 305**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," providing additional payments to districts offering educational programs throughout the entire year and making an appropriation.

Which was committed to the Committee on Education.

Senators REIBMAN, DWYER, MURRAY, COPPERSMITH,

BODACK, CORMAN, O'PAKE and MESSINGER presented to the Chair **SB 306**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," authorizing the provision of instruction by telecommunications system equipment for homebound children and further providing for payments on account of instruction of certain special education and homebound children.

Which was committed to the Committee on Education.

Senators REIBMAN, COPPERSMITH and O'PAKE presented to the Chair **SB 307**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," requiring the establishment and maintenance of kindergartens.

Which was committed to the Committee on Education.

Senators REIBMAN, SNYDER, MESSINGER, COPPERSMITH and O'PAKE presented to the Chair **SB 308**, entitled:

An Act providing for the continuation, operation and administration of the school for indigent orphans known as the Thaddeus Stevens State School of Technology in Lancaster, Pennsylvania in which school instruction shall be given in all basic educational subjects and additional training given in elementary manual skills, elements of farming and other programs of similar nature.

Which was committed to the Committee on Education.

Senators EARLY and ROSS presented to the Chair **SB 309**, entitled:

An Act providing for an exemption from civil or criminal liability for volunteer fire companies and members engaged in fire prevention and safety activities.

Which was committed to the Committee on Judiciary.

Senators EARLY, ROSS and SCHAEFER presented to the Chair **SB 310**, entitled:

An Act amending the act of June 24, 1976 (P. L. 424, No. 101), entitled "An act providing for the payment of death benefits to the surviving spouse or children of firemen or law enforcement officers killed in the performance of their duties," extending the act to include volunteer firemen, changing the method of payment, and repealing the act.

Which was committed to the Committee on Local Government.

Senators EARLY, ROMANELLI, and MELLOW presented to the Chair **SB 311**, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, authorizing special tax provisions as a result of expenditures or improvements involving solar energy sources.

Which was committed to the Committee on Constitutional Changes and Federal Relations.

They also presented to the Chair **SB 312**, entitled:

An Act amending the act of March 4, 1971 (P. L. 6, No. 2), entitled "Tax Reform Code of 1971," providing for solar energy tax credits.

Which was committed to the Committee on Finance.

They also presented to the Chair **SB 313**, entitled:

An Act providing for solar easements.

Which was committed to the Committee on Environmental Resources.

They also presented to the Chair **SB 314**, entitled:

An Act amending the act of May 22, 1933 (P. L. 853, No. 155), entitled "The General County Assessment Law," excluding solar energy systems in determining the value of real estate.

Which was committed to the Committee on Local Government.

They also presented to the Chair **SB 315**, entitled:

An Act amending the act of May 21, 1943 (P. L. 571, No. 254), entitled, as amended, "The Fourth to Eighth Class County Assessment Law," excluding solar energy systems in determining the value of real estate.

Which was committed to the Committee on Local Government.

Senators McKINNEY, LYNCH, HANKINS and FUMO presented to the Chair **SB 319**, entitled:

An Act amending the act of July 7, 1947 (P. L. 1368, No. 542), entitled "Real Estate Tax Sale Law," further providing for notices prior to sales and confirmation of sales.

Which was committed to the Committee on Local Government.

They also presented to the Chair **SB 317**, entitled:

An Act amending the act of July 7, 1947 (P. L. 1368, No. 542), entitled "Real Estate Tax Sale Law," providing a limited right of redemption from a sale under certain circumstances.

Which was committed to the Committee on Local Government.

Senators McKINNEY, ARLENE, SMITH, LYNCH and FUMO presented to the Chair **SB 318**, entitled:

An Act authorizing the establishment of gambling casinos in the Commonwealth, providing for the licensing, regulation and taxation thereof, creating the Commonwealth Casino Control Commission and the Bureau of Gaming Enforcement, prescribing the powers, duties and functions of the commission and bureau and making an appropriation.

Which was committed to the Committee on State Government.

Senators McKINNEY, LYNCH, HANKINS and FUNO presented to the Chair **SB 319**, entitled:

An Act changing the name of the "Penrose Avenue Bridge" in the City of Philadelphia, County of Philadelphia and Commonwealth of Pennsylvania to the "George C. Platt Memorial Bridge."

Which was committed to the Committee on Transportation.

They also presented to the Chair **SB 320**, entitled:

An Act relating to amygdalin (laetrile).

Which was committed to the Committee on Public Health and Welfare.

Senators McKINNEY, HANKINS, FUMO and PRICE presented to the Chair **SB 321**, entitled:

An Act amending the act of October 27, 1955 (P. L. 744, No. 222), entitled, as amended, "Pennsylvania Human Relations Act," further providing for the payment of reasonable expenses, hearing examiners and making editorial changes.

Which was committed to the Committee on State Government.

Senators KURY, MESSINGER, ZEMPRELLI, PECORA and STAPLETON presented to the Chair **SB 322**, entitled:

An Act amending the act of June 3, 1937 (P. L. 1333, No. 320), entitled "Pennsylvania Election Code," providing for certain changes in the nomination process relating to the offices of Governor and Lieutenant Governor.

Which was committed to the Committee on State Government.

Senators KURY and HAGER presented to the Chair **SB 323**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for costs and expenses involving extradition of certain persons and making an appropriation.

Which was committed to the Committee on Judiciary.

Senators SCHAEFER, ZEMPRELLI, SCANLON and O'PAKE presented to the Chair **SB 324**, entitled:

An Act providing for protective services for infirm or incapacitated adults; providing for boards for protective services and establishing their powers and duties; providing for the confidentiality of records and granting immunity from civil and criminal liability.

Which was committed to the Committee on Aging and Youth.

Senator GEKAS presented to the Chair **SB 325**, entitled:

An Act naming a highway in Dauphin County the William B. Lentz Highway.

Which was committed to the Committee on Transportation.

Senators GEKAS, COPPERSMITH, MANBECK, PECORA and LOEPER presented to the Chair **SB 326**, entitled:

An Act amending the act of November 9, 1965 (P. L. 657, No. 323), entitled "Hazardous Substances Transportation Act," providing for supervision in the event of an accident involving a carrier of hazardous substances.

Which was committed to the Committee on Environmental Resources.

Senators GEKAS, COPPERSMITH, MANBECK, PECORA, LOEPER and HAGER presented to the Chair **SB 327**, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for reports of certain accidents involving public utilities.

Which was committed to the Committee on Environmental Resources.

Senators O'PAKE, MELLOW, ZEMPRELLI, PECORA, O'CONNELL, HESS and HOWARD presented to the Chair **SB 328**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing judicial sales.

Which was committed to the Committee on Judiciary.

They also presented to the Chair **SB 329**, entitled:

An Act amending the act of July 7, 1947 (P. L. 1368, No. 542), entitled "Real Estate Tax Sale Law," further providing for personal service of sale notices and providing a one year redemption period after the sale.

Which was committed to the Committee on Local Government.

Senators SNYDER, COPPERSMITH, PRICE and STAUFFER presented to the Chair **SB 330**, entitled:

An Act amending the act of October 15, 1975 (P. L. 390, No. 111), entitled "Health Care Services Malpractice Act," providing that the act shall be inapplicable to causes of action arising before the effective date.

Which was committed to the Committee on Public Health and Welfare.

Senators HESS, ANDREWS, DWYER, STAPLETON and KUSSE presented to the Chair **SB 331**, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing maximum sentences for certain offenders.

Which was committed to the Committee on Judiciary.

Senator TILGHMAN presented to the Chair **SB 332**, entitled:

An Act declaring and adopting the song "Pennsylvania — Geel It's Great!" music by Lou Leggieri and lyrics by Henry and Roberta Shaffner, as the State song of the Commonwealth.

Which was committed to the Committee on State Government.

Senators EARLY and SCHAEFER presented to the Chair **SB 333**, entitled:

An Act amending Titles 42 (Judiciary and Judicial Procedure) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, providing for the disposition of fines and forfeitures for certain speeding offenses.

Which was committed to the Committee on Transportation.

Senators EARLY and HANKINS presented to the Chair **SB 334**, entitled:

An Act amending the act of July 19, 1974 (P. L. 489, No. 176), entitled "Pennsylvania No-fault Motor Vehicle Insurance Act," authorizing certain persons to treat their no-fault insurance as primary.

Which was committed to the Committee on Insurance.

Senators EARLY, SCANLON, LYNCH, STAUFFER, O'CONNELL and ZEMPRELLI presented to the Chair **SB 335**, entitled:

An Act naming a portion of Highway Route No. 1-279 in Allegheny County, the "Raymond E. Wilt Memorial Highway."

Which was committed to the Committee on Transportation.

Senators SMITH, LYNCH and ORLANDO presented to the Chair **SB 336**, entitled:

An Act creating a State Board of Sprinkler Fitter Examiners and providing a penalty.

Which was committed to the Committee on Professional Licensure.

Senator SCANLON presented to the Chair **SB 337**, entitled:

An Act amending the act of May 13, 1915 (P. L. 286, No. 177), entitled, as amended, "Child Labor Law," authorizing certified nurse practitioners to administer certain physicals.

Which was committed to the Committee on Labor and Industry.

Senator MELLOW (By Request) presented to the Chair **SB 338**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, allowing certain inspection exemptions.

Which was committed to the Committee on Transportation.

Senator MELLOW (By Request) presented to the Chair **SB 339**, entitled:

An Act amending the act of June 19, 1931 (P. L. 589, No. 202), entitled, as amended, "Barbers' License Law," further providing for teachers of barbers schools.

Which was committed to the Committee on Professional Licensure.

GUEST OF SENATOR GEORGE W. GEKAS PRESENTED TO SENATE

Senator GEKAS. Mr. President, I have somewhat of a pleasant duty to perform. In the gallery is a young man who participated very recently in the Youth and Government Process of the Presbytery of Pennsylvania. He is a resident of Dauphin County and is here in person to observe the process of legislative doings here in the Senate of Pennsylvania. I would ask the Senate to give its applause to young Carl Mueller of Dauphin County.

The PRESIDENT. If this young man would please rise, we would like to welcome him to the Senate of Pennsylvania.

(Applause.)

GUESTS OF SENATOR EDWARD P. ZEMPRELLI PRESENTED TO SENATE

Senator ZEMPRELLI. Mr. President, it was my honor today to have in my office six young ladies associated with the Elizabeth Forward Township High School and also the West Jefferson Hills High School of Allegheny County located in the

Forty-fifth Senatorial District. Not only were they very attractive, but I must also say they asked certain salient questions which overwhelmed me and to which I could not give them answers.

At this time I would ask that they be recognized and the Senate extend a warm welcome and also indicate to them that we in the Senate will endeavor to find the kind of answers they want to the questions they asked.

The PRESIDENT. Would these guests of Senator Zemprelli please rise so that we may extend to them the usual warm welcome of the Senate?

(Applause.)

GUESTS OF SENATOR JOSEPH F. SMITH PRESENTED TO SENATE

Senator SMITH. Mr. President, we have in the gallery some friends of mine from the Fourth Senatorial District. They are Miss Irene Schmidt, treasurer of the Polish American Congress and National Director; Alfreda Polcha, National Vice President, together with other officers and members of the Polish American Congress. Would the Senate please extend its usual warm welcome to these guests?

The PRESIDENT. If these guests of Senator Smith will please rise, the Senate would like to welcome them to the Senate of Pennsylvania.

(Applause.)

Senator ROMANELLI. Mr. President, on behalf of my Polish wife and as a representative of the greater portion of the Polish section of the City of Pittsburgh, I personally want to welcome the Polish delegation.

Senator BODACK. Mr. President, as another representative of a great Polish section of Pittsburgh, I would also like to welcome them.

The PRESIDENT. Thank you, Senator.

(Applause.)

Senator ZEMPRELLI. Mr. President, with special instructions from the Pope, I would also like to welcome the Polish delegation.

(Applause.)

Senator KURY. Mr. President, as Helena Witkowski's oldest son I am pleased to be here, too.

I want to say to our Polish friends that we are delighted to welcome them to the Senate of Pennsylvania.

(Applause.)

CALENDAR

THIRD CONSIDERATION CALENDAR

PREFERRED APPROPRIATION BILL ON THIRD CONSIDERATION AMENDED

HB 56 (Pr. No. 352)—Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

MOTION TO REVERT TO PRIOR PRINTER'S NUMBER

Senator HAGER. Mr. President, it is my understanding that

there will be, perhaps, some amendments offered. Before that happens, I would move that we revert to House Bill No. 56, Printer's No. 251, the purpose of which would be to revert to the bill as it came from the House of Representatives, thereby stripping out all of the Senate amendments, none of which were planned by the Department of the Budget.

On the question,

Will the Senate agree to the motion?

Senator TILGHMAN. Mr. President, it would also allow this bill, if we could revert to the prior printer's number, to go directly to the Governor for his signature.

If we stay at the present printer's number, as before us on the Calendar, this legislation will have to wait until some time next week to reach the Governor because the House will not be back until Monday. It will have to be put on their concurrence Calendar and be worked on over there, so it might cause a delay of two weeks.

Senator KELLEY. Mr. President, I speak in opposition to the motion. I am a little concerned about the change of signals coming from the other side of the aisle within the last two months. It seems to me we would be renegeing on our responsibility to say that we should adopt something because the other Body did and should not make any changes because one of our committees sought to make a change. It seems to me that the full Senate should consider what a committee of the Senate did.

Likewise, to advance any argument that the matter could go straight to the Governor would again be renegeing on our responsibility since we have the sole function of serving as one equal Body of the General Assembly.

Mr. President, either of those reasons is unpersuasive to me.

Senator HAGER. Mr. President, while I would do nothing to ever attack the institution of the Senate or the fact that it is a co-equal Body with the House of Representatives—in fact I have been accused by many Members of the House of Representatives for acting as though the Senate were some superior Body—the fact is that there is here an opportunity to get to the Governor, while it is very necessary, a bill which will allow the deficiency appropriation to be paid to the county administration of welfare, whose offices will be out of business come March 6th unless we do it, and, at the same time we will be preserving the right to deal with all of the matters which have been added by the Committee on Appropriations of the Senate. It is not a request on my part to say that we forever defeat those measures but that they be dealt with separately.

It just seems to me, Mr. President, that one of the ways we can get this thing and get it done expeditiously and, at the same time, not add to the bill in the normal way one decorates a Christmas tree, the other matters which can be dealt with separately at a later time. I would ask for an affirmative vote on the motion.

Senator SMITH. Mr. President, I rise to oppose the motion to revert to the prior printer's number. I believe the Minority Leader said the importance of the county administration could be served by simply passing the bill as it reads in the reverted form.

Mr. President, let me say that the Senate version, as

amended by the Committee on Appropriations, has just as many important and probably more important matters to us—meaning the people of Pennsylvania—dealing with our roads, which are of primary concern at this moment in time. There is also the renal dialysis which we are now considering.

Mr. President, I would ask the Members on this side of the aisle not to revert to the prior printer's number and to vote "no" on the motion.

Senator ZEMPRELLI. Mr. President, I desire to interrogate the gentleman from Lycoming, Senator Hager.

The PRESIDENT. Will the gentleman from Lycoming, Senator Hager, permit himself to be interrogated?

Senator HAGER. I will, Mr. President.

Senator ZEMPRELLI. Mr. President, is the Minority Leader suggesting that, if we were to adopt the reversion to the prior printer's number, this bill could go directly to the Governor without the signature of the Speaker of the House.

Senator HAGER. Mr. President, I believe that statement was made by the gentleman from Montgomery, Senator Tilghman, not by the Minority Leader. If the gentleman would like to interrogate him on that procedure, it would be all right with me.

Senator ZEMPRELLI. Mr. President, I understood that the Minority Leader was making supportive arguments in support of the position of the gentleman from Montgomery, Senator Tilghman. That is why I asked the question.

Mr. President, I would be happy to ask the gentleman from Montgomery, Senator Tilghman, if he wishes to stand for interrogation.

The PRESIDENT. Will the gentleman from Montgomery, Senator Tilghman, permit himself to be interrogated?

Senator TILGHMAN. I will, Mr. President.

I believe I understand the question, Mr. President, asked of the gentleman from Lycoming, Senator Hager. Of course the Speaker would have to sign the legislation and it would have to be signed by the President of the Senate before it could go to the Governor. I did not mean to imply that it could be done without being signed.

What I was simply stating was that there would not have to be protracted argument in the House as to all of the amendments put in by the Committee on Appropriations of the Senate.

Senator ZEMPRELLI. Mr. President, the only suggestion I would make is that it is just as easy to await Monday, when the Speaker of the House returns and to sign the bill as it would be, to consider the amendments, so there would not be any delay in time as far as the day was concerned.

At this time, Mr. President, I ask if the Minority Leader would submit to interrogation again?

The PRESIDENT. Will the gentleman from Lycoming, Senator Hager, permit himself to be interrogated?

Senator HAGER. I will, Mr. President.

If I might, as though that last statement of the Majority Leader were interrogation, I might point out to the gentleman that there is a Speaker pro tempore of the House of Representatives and there is no need to wait until the Speaker returns on Monday. The Speaker pro tempore could perform the function.

Senator ZEMPRELLI. Mr. President, it is my understanding

that the House is in recess until Monday and, in order for the bill to be considered, it would have to go across the desk.

PARLIAMENTARY INQUIRY

Senator ZEMPRELLI. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Allegheny, Senator Zemprelli, will state it.

Senator ZEMPRELLI. Mr. President, my inquiry is: Is it not in fact necessary for the House to be in Session in order for the Speaker of the House to sign the bill?

The PRESIDENT. If the procedure is the same as in the Senate, he would have to call the House into Session.

Senator ZEMPRELLI. Therefore, Mr. President, the ruling is that if the House is now in recess that the House would have to be in Session?

The PRESIDENT. That is correct, Senator.

Senator HAGER. Mr. President, I might add this just to amplify the answer: As they did last week, they were called back in Session for the particular purpose of signing a bill and they did it just like that.

Senator ZEMPRELLI. Mr. President, I desire to interrogate the gentleman from Lycoming, Senator Hager.

The PRESIDENT. Will the gentleman from Lycoming, Senator Hager, permit himself to be interrogated?

Senator HAGER. I will, Mr. President.

Senator ZEMPRELLI. Mr. President, does the gentleman know whether or not, regardless of the outcome of this present motion, there will be additional amendments proposed to House Bill No. 56 from his caucus?

Senator HAGER. Mr. President, I believe that depends very much on the outcome of this vote.

Senator ZEMPRELLI. I understand, Mr. President.

Senator KELLEY. Mr. President, I desire to interrogate the gentleman from Lycoming, Senator Hager.

The PRESIDENT. Will the gentleman from Lycoming, Senator Hager, permit himself to be interrogated?

Senator HAGER. I will, Mr. President.

Senator KELLEY. Mr. President, I wonder if the Minority Leader would, for clarification, indicate which prior printer's number he is speaking of. There are three.

Senator HAGER. Mr. President, the motion very clearly was to Printer's No. 251, not the prior printer's number.

Senator KELLEY. I thank the gentleman, Mr. President. I apologize.

Senator STAUFFER. Mr. President, during the debate regarding the parliamentary procedures in getting the bill to the Governor, I believe one very important aspect has been overlooked and that is the very real possibility that if we do not revert, the House of Representatives may very well nonconcur in the Senate amendments forcing the formation of a Conference Committee which could engage in prolonged debate and would delay the passage of legislation and thereby, perhaps, force the closing of the county assistance offices which we all recognize is a very vital problem.

Senator HAGER. Mr. President, in further answer to the Democrat caucus parliamentarian, the gentleman from West-

moreland, Senator Kelley, I might point out that there is only one prior printer's number to which we could revert and that is the one as it came from the House. The other two were those in the House before amendment and we cannot revert to something which did not come from the House.

Senator ZEMPRELLI. Mr. President, I would ask that all Members, including the Members on my side of the aisle, vote in the negative on the issue of reversion.

And the question concurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator HAGER and were as follows, viz:

YEAS—21

Andrews,	Hager,	Jubelirer,	O'Connell,
Bell,	Hess,	Kusse,	Price,
Corman,	Holl,	Loeper,	Snyder,
Dwyer,	Hopper,	Manbeck,	Stauffer,
Gekas,	Howard,	Moore,	Tilghman,
Greenleaf,			

NAYS—28

Arlene,	Kelley,	Messinger,	Ross,
Bodack,	Kury,	Murray,	Scanlon,
Coppersmith,	Lewis,	O'Pake,	Schaefer,
Early,	Lincoln,	Orlando,	Smith,
Fumo,	Lynch,	Pecora,	Stapleton,
Gurzenda,	McKinney,	Reibman,	Stout,
Hankins,	Mellow,	Romanelli,	Zemprelli,

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?

TILGHMAN AMENDMENT

Senator TILGHMAN, by unanimous consent, offered the following amendment:

Amend Sec. 2, page 2, line 19, by striking out "\$2,497,000" and inserting: \$2,402,000

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

Senator TILGHMAN. Mr. President, I appreciate the opportunity to speak on the amendment and would like to delete from this bill \$95,000. The money we are deleting from the bill was put into this legislation for an audit of the Auditor General's office. I am not opposed to the audit because the law states that the Auditor General's office shall be audited by the Governor's office. The last audit of the Auditor General's office ended June 30, 1975. We must do it but I believe that the firm that is doing it in this particular situation should not have the contract written on their behalf. The firm hired to perform the audit is the firm of Touche Ross & Company. I have no connection with the firm. I know nothing about the firm. I know none of the people in the firm. I am sure they are a first-class group of certified public accountants. However, they also had a contract last year with the Auditor General's office in the amount

of \$35,000 to set up a cost control, fleet operations, records management, personnel administration and clerical support systems. They were hired to put this into effect in the Auditor General's office. Now, they are getting a contract to audit the very system they installed in that office last year.

Mr. President, I believe it is improper that one firm set up the system and the very same firm audit the system. I hasten to add again I have nothing against the firm, I know nothing about them, I would not care who the firm was. I do not think they should get a contract to review the operation they set into effect for the very simple reason that, other than the mathematical accounting of the dollars, they will obviously have to come back and say, "We think the system is very good because, indeed, we set it up on a contract last year." This would delete the funds for the contract and the Governor's office would then have to solve the problem as to who will audit the Auditor General's office. I believe the amount of money is fair. It would essentially be a three-year audit which is roughly \$30,000 to \$35,000 a year. I have no argument with that. I just do not think the judge and the jury should be the very same person.

For that reason, Mr. President, I would appreciate it if we could get the support of the Members of the Senate to delete this money from this piece of legislation.

Senator SMITH. Mr. President, I rise to oppose the amendments offered by the gentleman from Montgomery, Senator Tilghman.

On first hearing of the situation I could certainly agree with the gentleman, but when your thinking is extended and you look at the total picture here, we must appropriate the money for the audit given in the law. The gentleman is afraid that the same people, the Touche Ross & Company, who set up the system will do the audit. I am simply saying that it is a certified public accounting firm who sells their services as accountants and also sell integrity. I do believe that any certified public accounting firm would not jeopardize its standing under any circumstances.

Then let me assure the gentleman that this is going to be truly an honorable transaction because the audit report, signed under the previous Administration, is going to be looked at under a more inquisitive Body, the new Governor's office.

For that reason, Mr. President, I would ask the Members to defeat the amendment. We have no concern in that the accounting firm is qualified and I am sure they will do an outstanding job.

Senator ZEMPRELLI. Mr. President, I support the gentleman from Philadelphia, Senator Smith, in his expression as to what occurs with the amendment.

The logic of the gentleman's argument escapes me entirely. It is somewhat definitive of the expression of "you cut the face off to spite the nose," so to speak. His concern is Touche Ross & Company, an accounting firm and the matter of resentment then attacks the appropriation for a service that could conceivably be performed by any certified accounting firm.

Mr. President, I call attention to one other factor since we have become constitutional experts in this Chamber and that is Section 17 of the Constitution of Pennsylvania, which clearly says, "No ex post facto law, nor any law impairing the obliga-

tion of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed." Although the reaction of the gentleman from Montgomery, Senator Tilghman, would be a negative approach to the problem, it necessarily is one which would be construed as being prohibited by that section. For that reason, I respectfully request a negative vote on the Tilghman amendment.

Senator TILGHMAN. Mr. President, I did not mention it but I simply want to point out to my colleagues that this was not a bid contract. This was a negotiated contract.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator TILGHMAN and were as follows, viz;

YEAS—22

Andrews,	Hager,	Kusse,	Pecora,
Bell,	Hess,	Loeper,	Price,
Corman,	Holl,	Manbeck,	Snyder,
Dwyer,	Hopper,	Moore,	Stauffer,
Gekas,	Howard,	O'Connell,	Tilghman,
Greenleaf,	Jubelirer,		

NAYS—27

Arlene,	Kelley,	Messinger,	Scanlon,
Bodack,	Kury,	Murray,	Schaefer,
Coppersmith,	Lewis,	O'Pake,	Smith,
Early,	Lincoln,	Orlando,	Stapleton,
Fumo,	Lynch,	Reibman,	Stout,
Gurzenda,	McKinney,	Romanelli,	Zemprelli,
Hankins,	Mellow,	Ross,	

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?

DWYER AMENDMENTS

Senator DWYER, by unanimous consent, offered the following amendments:

Amend Sec. 2, page 4, by inserting between lines 16 and 17:

For the salaries, wages and all necessary expenses for the operation of the highway and safety construction programs, including planning and research, design, engineering, right-of-way acquisition and the operation of the engineering district facilities and liaison services with communities on local road engineering and construction activities \$1,500,000

Amend Sec. 2, page 4, by inserting between lines 19 and 20:

For the salaries, wages and all necessary expenses for the administration and operation of the maintenance program for State roads, bridges, tunnels and structures, including the operation of the county maintenance district facilities. 9,600,000

It is the intent of the General Assembly that the additional \$9,600,000 and any other funds not

immediately required for ordinary maintenance or construction be used to make all necessary repairs or rehabilitation of road damages caused by the severe winter of 1978-1979.

On the question,
Will the Senate agree to the amendments?

Senator DWYER. Mr. President, I would briefly like to explain the amendments and the reason for their being offered.

Those of my colleagues who drive to Harrisburg have noticed, I am sure, that this year we have an even larger crop of potholes than ever before. They are so bad that, even down here in southern Pennsylvania, you have a few little potholes. They are horrible in the northern tier. When I was coming to Harrisburg on Sunday between northern Pennsylvania and here I was fortunate that I only lost one hubcap. Many cars I saw along the road had apparently been disabled by striking some of the very large potholes. I determined to try to do something about it.

Yesterday, I called Dr. Larson in order to get information to put in an amendment—incidentally, this is something we did last year—and learned that he also was working on the same type of proposal. I joined forces, more or less, with what he was attempting to do and these amendments have resulted from that.

These amendments would make two appropriations of lapsed funds within the Department of Transportation, the Motor License Fund. It does not require any new money. It would make a token appropriation of \$1.5 million to begin road engineering and construction activities under the twelve-year program and basically begin designing.

This is a token effort to demonstrate to the Federal government that we hope they will not lapse any more of our Federal matching funds and give Pennsylvania an opportunity to get its twelve-year program, a combination of State and Federal funds, on the road again.

The second and most immediate emergency, of course, is the potholes. The second phase of the amendments would appropriate \$9.6 million to make necessary repairs and rehabilitate the roads from damages caused by this severe winter of 1978-1979. It is an effort, as I said, to demonstrate to the Federal government that we do not want to lapse any more twelve-year funds and most immediately, it will put \$9.6 million into the potholes of this State. I know how bad they are in northwestern Pennsylvania. I received reports from the Pittsburgh media that they are worse than ever in that area. I have heard reports from Cambria County and, as I say, I have even seen the first potholes developing here in the Harrisburg area.

People are damaging their cars. They are running the risk of being injured and killed as a result of these potholes and I believe every effort should be extended as soon as possible to try to get emergency help to the roads so people can travel in safety.

I would reiterate, Mr. President, no new money is required and they do these two things: a token signal to the Federal government we are interested in the twelve-year program; they will help our motorists and signify to them that this General Assembly is responsive to the needs for highway improvement.

I would also indicate that the amendments have the support of Dr. Larson and the Department of Transportation.

Mr. President, I would urge a unanimous vote on these amendments.

Senator SMITH. Mr. President, I rise to oppose the amendments offered. I feel the amendments could possibly be considered good amendments. If the Members will recall, last year we appropriated \$10 million and I do not know where one pothole was filled. Now we are going to appropriate approximately \$9 million and no other potholes will be filled. I am against these amendments because, at best, they represent a band-aid, no more.

I will give some statistics from PennDOT to show what the Commonwealth is all about today. There are 45,000 miles of highway in our State system. PennDOT estimates that ninety per cent of the system requires some pothole repair. If we were to break this \$9 million down into sixty-seven counties, I would guess we would be receiving approximately \$180,000 per county. Ten miles of highway could not be repaired in any county and ninety per cent of the 45,000 miles of highway need pothole repair.

I feel it is time the new Administration comes forward with an affirmative plan. I am calling on the new Administration not to band-aid the potholes and do not pass this \$9 million appropriation and tell the people we are doing something. We are doing absolutely nothing.

The proof of it is when we appropriated \$10 million last year nothing was done. Cosmetics is only good for votes. What we need is the potholes repaired.

Again, I am calling on the new Administration to come forward with an overall plan to fill the potholes of the 45,000 miles of which ninety per cent are in disrepair. Come in with a new plan. What the plan is must be made known by the leaders. Do not give us band-aids; they do not work.

Senator BELL. Mr. President, I would like the gentleman from Philadelphia, Senator Smith, to drive over some of the roads in Philadelphia County and see the potholes which are developing into tank traps. I have a suggestion to the Administration which apparently does not listen to me. That suggestion is contained in a letter which I sent today to Secretary Larson. I suggested that he get some of the holdovers who work in the Central Office of PennDOT and put them out into the various counties and do what I did Friday, Saturday and Sunday of this past week. I drove over 100 miles of highways in my District. I found very few potholes, the reason being that former Senator John Sweeney of Delaware County stood up to Pulakos and the other people whom Shapp had and told them to get rid of politics in PennDOT in Delaware County. John Sweeney, a Democrat, insisted that a merit selection be made and a fine young Civil Service engineer, Democrat registered, be put in charge of the highways of Delaware County.

I am not completely satisfied with the maintenance, but I have been out there on this man's tail. I told him if I find things wrong I will chew him out. He, in turn, has told his assistants that if Bell chews him out, he will chew them out. He is riding herd on them. I suggested to Dr. Larson, for the Thornburgh Administration, to put his own men out in these counties and

where a county superintendent is not maintaining the roads, fire him.

I know the Democrats on the other side will get up and say they will not vote for this and they will not vote for that, they will cover up for all their friends who are holding these jobs. I say the motorists of Pennsylvania are more important than some of these political hacks given to Governor Thornburgh. I believe Governor Thornburgh is completely wrong with the merit selection system, which he calls a merit selection system, where in many of the Democratic-controlled counties the same old gang will be in control.

I came down Front Street this morning. Some of the Members who were attending a hearing of the Committee on Transportation concerning Dr. Larson heard me tell him that he had been in office for three weeks and he could not even get a pothole fixed in front of the Governor's Mansion. I repeated this to him in the Republican caucus. As of this morning when the snows receded—this is the first time in two weeks—the potholes are there on Front Street in front of the Governor's Mansion and now I will call on Dr. Larson and Governor Thornburgh to fire the superintendent of maintenance of Dauphin County because that man is so incompetent he cannot even see potholes in front of the Governor's Mansion.

Here is how potholes are controlled: For years I have been called "Pothole Bell" in my county because I insist that they be repaired. Ride the roads in the Senatorial Districts and count how many PennDOT trucks are seen fixing them. There is a new cold patch material that can be used that will stick. It is being used in Delaware County. I drove for approximately seventy miles this morning around Harrisburg just looking at the highways and I did not see one PennDOT truck out there fixing potholes. I do not want to see any of the Democrats smile because they are still the Democratic superintendents. The Democrats are running the Department right now and it is their duty as well as mine to get these damn roads fixed for the motorists.

Mr. President, again I will suggest that the Members go into their Districts and when the PennDOT people are not seen working, back me up and put a bipartisan demand on Governor Thornburgh and Dr. Larson to fire the superintendents in the counties in which the potholes are located.

Senator ZEMPRELLI. Mr. President, I really thought the election was over, but apparently it is not. I am not sure that I understand what the gentleman said. I may be wrong in what I am saying now, but if I gather what the Senator has said, he said, first of all, that all the potholes were the responsibility of the prior Administration and, most certainly, those same potholes are the responsibility of that same Administration even though there has been a change in Administrations.

The irony of it is that none of us has accused anybody, including Governor Thornburgh, for being responsible for the situation which now is before us and we resent very deeply the innuendo, at least, that we, as Democrats, are responsible for the potholes in the Commonwealth of Pennsylvania. I think the gentleman knows better than that.

Going to the root of the subject before us, and that is the matter of the amendments, I believe the gentleman from Philadel-

phia, Senator Smith, has put the matter completely in perspective. That which is being offered as a reassignment of funds within the Department is, at most, miniscule to the problem. Nobody in this Chamber would begin to believe that \$14.5 million would resolve the pothole problem in Pennsylvania because, as anyone here in this Chamber can articulate, it is a situation that is uniform throughout the Commonwealth and every one of us has the problem.

The tragedy of what we are doing—and frankly I do not have the courage to vote against the amendments and I will vote for them and that is the only place where the gentleman from Philadelphia, Senator Smith, and I differ in this matter—is, one, we are suggesting to the people of Pennsylvania that we have a formidable solution to a problem when first we must recognize it is impossible from in-force forces of PennDOT, whether they be Republicans, Democrats or Communists, that they can adequately deal with the problem in time for the people to believe that we have done something.

Secondly, are we not telling the people, had we not led them to believe that we have an immediate solution, because they are looking for those potholes to be filled today, not July, not August, not September. I wish to assure every Member of this Chamber that the most salient and most important consideration for anybody who has any political awareness is to be able to resolve the pothole problem in his neighborhood because that is the closest problem to the hearts of the people.

We will have a program which we believe addresses itself to that problem which is more than simply an appropriation of moneys. The gentleman from Delaware, Senator Bell, like myself, would like very much for those in the administrative level of government to listen to these proposals so that we can jointly come to a resolution of the problem without trying to assign guilt on a political system as to whether we are Republicans or Democrats. I resent very much that they are referred to as Democratic potholes. I assure the Members that I will not call them Thornburgh potholes. I hope that we get the problem solved.

The PRESIDENT. Before recognizing the next Senator, the Chair would request that the Members keep the debate to the substance of the amendments.

Senator HAGER. Mr. President, that was the purpose of my rising to speak.

Senator KURY. Mr. President, I am going to vote in favor of the amendments even though I recognize it is, as characterized by the gentleman from Philadelphia, Senator Smith, really a band-aid to be placed on a problem which requires a great deal more financial commitment from this Legislature. I will vote for these amendments because even if they correct but a mile of potholes in my six counties, it is a mile of progress which has not been made.

I will vote for almost any program which is going to improve our highways and, particularly, potholes, because it is a very serious problem all over Pennsylvania, particularly in rural counties such as I and others represent.

However, I do feel, as the gentleman from Philadelphia, Senator Smith, and the gentleman from Allegheny, Senator Zemprelli, has indicated, that we should recognize exactly what

we are doing. We are, in effect, giving token support to a problem which is very serious and which is not going to be solved on a partisan basis. These potholes are not Democratic potholes, nor are they Republican potholes. They are potholes which exist because this Legislature, both parties, has failed to face up to its responsibilities by putting the kind of financial commitment behind PennDOT that it needs if we are going to solve the problem. That is the question we must get to, but it is not here with these amendments or this bill.

Senator SCHAEFER. Mr. President, I, too, rise to support these amendments. I am somewhat surprised at the partisan politics which has entered into this debate.

I do not see the positions of the gentleman from Philadelphia, Senator Smith, or the gentleman from Allegheny, Senator Zemprelli, or the gentleman from Crawford, Senator Dwyer, as mutually exclusive. I believe, if anything, this debate brings into focus that we must deal with the problem now. Anybody who travels our roads—especially in my District, Allegheny County—when I see this I am almost embarrassed; I cannot help but take it personally. The situation needs immediate solutions, immediate attempts, but we cannot turn our backs on the fact that we must look at the long-range solution.

Mr. President, I do not see the issues as mutually exclusive. I hope my colleagues in the Senate will support these amendments.

Senator FUMO. Mr. President, I would like to inform the gentleman from Delaware, Senator Bell, that I do drive the roads in Philadelphia. In fact, on my way to Harrisburg yesterday I hit a pothole at the corner of Broad and South Streets, lost my hubcap and probably knocked my front end out of alignment.

I feel the issue of potholes, although it does not seem to be important in some areas and is a laughable subject, is an extremely important issue to the citizens of this Commonwealth. However, I must echo the sentiments of the gentleman from Philadelphia, Senator Smith, in the fact that to give this kind of miniscule money for this program is really attempting to con the public. They are going to say, "Gee, the Senate acted and gave money to fix potholes." Then, a year from now they are still going to hit the same holes in the same places.

Assuming that Governor Thornburgh changes every employee in PennDOT, this \$9 million is not going to do the job. This is exactly the kind of legislation we are hounded about at a later time by our constituents when they want to know what we are doing about these problems.

Can we responsibly go back and say we appropriated \$9 million or \$10 million or \$14 million to solve the issue when we know it will cost twenty times that? The answer is to deal with the problem responsibly and only in that manner, not to put a band-aid or attempt to con the public by saying we are doing something we are really not doing. We are only kidding ourselves. Our constituents will not care how we did it, but if those potholes are still there, they are still angry. They will not be concerned that we voted for a little bit of money to try to solve a problem. If they hit a pothole, they are going to be just as angry.

Mr. President, I ask for a "no" vote on these amendments and

then I ask further that we really begin to consider this thing in a proper, responsible and courageous method so that we can get to the heart of the issue.

Senator LINCOLN. Mr. President, I desire to interrogate the gentleman from Crawford, Senator Dwyer.

The PRESIDENT. Will the gentleman from Crawford, Senator Dwyer, permit himself to be interrogated?

Senator DWYER. I will, Mr. President.

Senator LINCOLN. Mr. President, in the gentleman's conversation with Secretary Larson concerning this \$14.5 million and its ultimate use to repair potholes, did he discuss any manner for the distribution of the money after it is appropriated?

Senator DWYER. No, Mr. President.

Senator LINCOLN. Mr. President, we have no guarantee from Secretary Larson that this money would be used for potholes?

Senator DWYER. Mr. President, it is spelled out in the amendments that this appropriation will be used to make all necessary repairs or rehabilitation of road damages caused by the severe winter of 1978 and 1979; not only this \$9.6 million but also any other funds not immediately required for ordinary maintenance or construction.

Senator LINCOLN. Mr. President, could the gentleman tell me if there is a possibility that the Secretary could, in his discretion, take this \$9.5 million and place it in one county or two counties or whatever? We have no assurances that every one of the sixty-seven counties will get some of this money.

Senator DWYER. Mr. President, we have eleven transportation districts in the Commonwealth. The current maintenance moneys are divided according to formulas, as they have always been, and these funds will be also. I assure the gentleman the funds will not be limited to one county. The intent is to use it statewide. I can assure the gentleman of that.

Senator LINCOLN. Mr. President, the gentleman indicated when he responded to my first question that he did not discuss that with the Secretary and that is why I asked the gentleman if he had a commitment from Secretary Larson that the money will be equally divided throughout the Commonwealth?

Senator DWYER. Mr. President, the money will be divided according to the maintenance formula. All funds are distributed in accordance with complex formulas regarding highway mileage, bridge mileage, terrain, population, and motor vehicle registration. They plug land miles, lane miles; they plug a whole number of factors into the distribution of all maintenance funds.

Senator LINCOLN. Then, Mr. President, I can be assured that that formula which has been in place will be used for this particular appropriation?

Senator DWYER. Yes, Mr. President.

Senator KUSSE. Mr. President, I understand the concern of the gentleman from Fayette, Senator Lincoln, as to the division of the money and I believe I have an answer to that. I also agree with the gentleman from Philadelphia, Senator Smith, and the gentleman from Philadelphia, Senator Fumo, that \$9 million does not begin to take care of the problem of all the potholes.

Therefore, I feel we should pass these amendments and then let the Secretary of Transportation know that it is the sense of

the Senate that the money ought to be devoted strictly to potholes that are more than eighteen inches deep. In that case, the majority of the money will come to my District.

Senator ROMANELLI. Mr. President, in doing a little number work on our pads here, the amount of money being appropriated comes to about \$325 per mile. It is truly just a band-aid approach. I believe the money could be used on four miles in the City of Pittsburgh.

Senator BELL. Mr. President, I know that the learned Senators on the Democratic side know how much a ton of blacktop costs. I do not. I have not had access to all the secrets on that side of the aisle for eight years. I understand it is around \$40 a ton. I would suggest that forty be divided into \$8.5 million and it will amount to a great deal of blacktop. It does not take a ton of blacktop to fill one hole but the blacktop on those trucks could fill the holes in a good many miles of the Commonwealth of Pennsylvania.

Mr. President, my statement did not have an innuendo in it, it was a direct statement. I do not know of any county superintendent who was installed by the Shapp Administration—they all were—who has been fired by Governor Thornburgh. We still have the same people doing the same lousy job.

The PRESIDENT. Will the gentleman yield?

POINT OF ORDER

Senator LINCOLN. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Fayette, Senator Lincoln, will state it.

Senator LINCOLN. Mr. President, did I not hear the President, about five minutes ago, admonish the Senate and ask them to keep their remarks strictly within the confines of the amendments?

The PRESIDENT. Will the Senator please keep his remarks to the issue?

Senator BELL. I certainly will, Mr. President.

Potholes arise because they are caused. The cause comes from a break in the pavement. It then develops into what is known as a seed pothole. About two months later they develop into big ones when the thaws come. Going back two months, anybody can figure who was the Governor.

Potholes are caused. The purpose of these amendments is to fix potholes because people in charge of maintaining and fixing potholes do not fix them. That may be politics to Democrats, but the person driving those roads sees a cause and effect. The effect right now is, our roads are full of potholes. If the Chair says there will be no politics in any speech in this Senate, I suggest it would be something new in the Senate.

My message, which I tried to give to the Members on the other side of the aisle was this: if they ride the roads like I do in Delaware County and insist that the people receiving the State pay and who supervise the State trucks fix the potholes when they are little ones, you will not have the big ones. This is not being done and the people of Pennsylvania see this. I will make a pledge to my Democratic colleagues that if the superintendent in my county is changed by the present Governor, I will be on this floor raising hell if there are potholes in Delaware County.

Senator ROMANELLI. Mr. President, my learned colleague is quick to spend the money, but I can remember last year when we were trying to get him to vote for the budget to fix these potholes, he would not vote for it.

Senator McKINNEY. Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Smith.

The PRESIDENT. Will the gentleman from Philadelphia, Senator Smith, permit himself to be interrogated?

Senator SMITH. I will, Mr. President.

Senator McKINNEY. Mr. President, is it a fact that some members of the staff of the Committee on Appropriations, along with members of PennDOT, made a recent survey and can the gentleman tell us how much money they decided it would cost to adequately do the job of fixing potholes throughout the Commonwealth?

Senator SMITH. Mr. President, I will give one figure that will answer the gentleman from Delaware, Senator Bell, and also the gentleman from Philadelphia, Senator McKinney. The maintenance cost, per mile, average is \$2,435.41. If a reputable job is to be done on the potholes in Pennsylvania the best estimate is \$165 million.

Senator McKINNEY. Mr. President, did I understand the gentleman to say it would take \$200 million to adequately do the job on potholes in the sixty-seven counties?

Senator SMITH. That is correct, Mr. President, between \$165 million and \$200 million.

Senator McKINNEY. Then, Mr. President, with \$14 million we are something like \$186 million short?

Senator SMITH. Just about, Mr. President.

Senator ORLANDO. Mr. President, I listened with interest to some of the questioning and debate that has been going on here today on the pothole situation.

On direct examination my learned and esteemed colleague from my area mentioned the fact that he had not received a commitment from Secretary Larson relative to the use of the money for potholes, but he was assured it would be used to take care of the potholes as a result of the severe winter of 1978-1979.

We also had \$10 million a year ago which was supposed to take care of the severe winter of 1977-1978.

I would like to know since, as most of you know, we come from the snow belt and we do get extensive damage in Erie County, who is going to pay. We saw very little, if any, of that money last year, the \$10 million, which was supposed to go for pothole repair. We had our most severe winter in 1977 and 1978. I would like to know if this money would be used to repair the damage which still exists from the severe winter of 1977-1978 and how could they, additionally, repair some of the damage that has been done because of the winter of 1978-1979. We still have damage which has not been corrected from over a year ago.

Yesterday, Erie County received twenty-three inches more of snow. Fortunately, this covers a lot of the potholes so perhaps we will not be losing hub caps and breaking front ends and so forth.

My question a year ago was: How is this money going to be allocated to the different areas? They mentioned a formula. In-

terestingly, the formula is also based on population as well as bridges and everything else. In two or three instances, the same mileage of repair for different districts called for as much as two and three times more money for these other districts than Erie County, or District 1, as far as repairing the potholes. Yet, we had the same amount of mileage to be taken care of.

It would probably be politically futile to vote against these amendments. At this point I still do not know whether I would want to vote for them or not because I do not feel that the formula they are using—and I brought this up a year ago—does any justice to my particular District and also the District of the gentleman from Crawford, Senator Dwyer.

Senator DWYER. Mr. President, I would like to respond to several comments made by the previous speakers.

First of all, we have heard several Senators mention that this is a band-aid and what we need is a major program.

Using the medical analogy of the gentleman from Philadelphia, Senator Smith, I would point out to the gentleman that when there is a disaster, we normally send out ambulances and emergency equipment and they apply band-aids or splints or whatever emergency treatment is needed until they can get to a hospital and receive major care. That is exactly the purpose of this program. This is an emergency. It is a disaster in many areas as far as the pothole situation is concerned.

The Administration and, we have just learned this afternoon, the Majority Leader are both working on comprehensive plans to solve the really crucial, critical, highway needs in this Commonwealth. These plans take time. The Majority Leader has only been in office for a few months. This Administration has only been in office for seven weeks and it does take time. It is being worked on night and day and a comprehensive program will come forth from this Administration to resolve the highway crisis. In the meantime, this money is available. I believe it should be used. It is not my worry whether it is Democrats, Republicans, Independents or whoever caused the potholes. Everyone is hitting them. Everyone is damaging their cars. Looking at politics, there are probably more Democrats than Republicans hitting them because there are more Democrats than Republicans, but that is beside the point. Everyone is damaging their cars. I say to the gentleman from Philadelphia, Senator Smith, a comprehensive program will be coming.

Also, I would like to point out that there have been comments made about the \$10 million appropriated last year and no one saw it and no one will see the \$9.6 million this year. I would point out that this year is not last year. This is a new day in Pennsylvania. It is a new Administration. They sincerely want to do a good job. The gentleman from Allegheny, Senator Zemprelli, just mentioned he is also working on the program. I do believe we can be confident that this money will be used for that purpose.

As far as that goes, the \$10 million last year, you know better than I do whether it was used for pothole repair or not. I believe to some extent it was, and if we had not appropriated that \$10 million last year we would even be in worse shape than we are now.

A comprehensive program is coming. This Administration wants to do a good job. I suggest that we give them this addi-

tional \$9.6 million in addition to the money the gentleman from Philadelphia, Senator Smith, says has already been appropriated per mile, so they can begin to do that job and everyone in this Commonwealth, regardless of party registration, and those who are not registered, can travel safely on our roads.

Senator STAUFFER. Mr. President, just one thought to supplement the gentleman's remarks and that is, using the figures of the gentleman from Philadelphia, Senator Smith, he said, I believe, it costs about \$2,400 a mile to maintain the highways. I would say, dividing this \$9.6 million by \$2,400 the answer is 4,000 miles. If we here today can do something to help improve the situation for 4,000 miles of highways in Pennsylvania, we will have made, not a band-aid step, but a giant step forward in dealing with the problem.

I might also point out that this is in addition to whatever money is available in the maintenance program and I believe if we are every going to tackle this highway program, we must get started and here is a start. Rather than nit-pick and criticize this, the best thing we can do is support it and look forward to the program which will be coming to supplement it in a major way and maybe, within the next year, Pennsylvania can look forward to a revitalization of the highway program instead of the need to criticize it as we have been doing this afternoon.

And the question recurring,
Will the Senate agree to the amendments?

The yeas and nays were required by Senator DWYER and were as follows, viz:

YEAS—44

Andrews,	Hankins,	Lynch,	Reibman,
Bell,	Hess,	Manbeck,	Romanelli,
Bodack,	Holl,	Mellow,	Ross,
Coppersmith,	Hopper,	Messinger,	Scanlon,
Corman,	Howard,	Moore,	Schaefer,
Dwyer,	Jubelirer,	Murray,	Snyder,
Early,	Kelley,	O'Connell,	Stapleton,
Gekas,	Kury,	O'Pake,	Stauffer,
Greenleaf,	Kusse,	Orlando,	Stout,
Guزندا,	Lincoln,	Pecora,	Tilghman,
Hager,	Loeper,	Price,	Zemprelli,

NAYS—4

Fumo,	Lewis,	McKinney,	Smith,
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A majority of the Senators having voted "aye," the question was determined in the affirmative.

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

O'CONNELL AMENDMENTS

Senator O'CONNELL, by unanimous consent, offered the following amendments:

- Amend Sec. 2, page 2, line 25, by striking out "\$4,911,000" and inserting: \$4,261,000
- Amend Sec. 2, page 2, by inserting between lines 28 and 29:

For salaries, wages, and all necessary expenses for the proper administration of the Quality Assurance Program within the Department of Health which is designed to improve conditions and to assure appropriate care in health care facilities in Pennsylvania \$3,167,000

On the question,
Will the Senate agree to the amendments?
They were agreed to.

And the question recurring,
Will the Senate agree to the bill on third consideration, as amended?

CONSTITUTIONAL POINT OF ORDER

Senator KELLEY. Mr. President, I rise to a constitutional point of order.

The PRESIDENT. The gentleman from Westmoreland, Senator Kelley, will state it.

Senator KELLEY. Mr. President, House Bill No. 56 in its present form, in my opinion, specifically is in violation of Article III of the Constitution, Section 11.

House Bill No. 56 in its present form deals with three separate areas of appropriations. One is, as a general appropriation, it deals with the Legislative, Judicial and Executive branches of the government.

Secondly, it deals with the Motor License Fund.

Thirdly, it deals with Federal augmentation moneys.

Mr. President, Article III, Section 11, says specifically, "The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills each embracing but one subject."

Mr. President, my constitutional point of order is, that the specific language of Article III, Section 11, is violated by the present form of House Bill No. 56 because it purports to appropriate moneys to the Legislative and Judicial branches and, in addition thereto, to the Motor License Fund and Federal augmentation. Therefore, Mr. President, I make a constitutional point of order.

Senator ZEMPRELLI. Mr. President, if I am correct, the gentleman's remarks are questioning the constitutionality of the bill before us in its amended form.

The PRESIDENT. Will the gentleman yield while the Chair states the question?

The question before the Senate is a point of order raised by the gentleman from Westmoreland, Senator Kelley, that House Bill No. 56, Printer's No. 352 is unconstitutional and that it violates Article III, Section 11, of the Constitution of Pennsylvania, which provides:

"The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for the public schools. All other appropriations shall be made by separate bills each embracing but one subject."

POINT OF INFORMATION

Senator ZEMPRELLI. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Allegheny, Senator Zemprelli, will state it.

Senator ZEMPRELLI. Mr. President, as I understand the question before the Senate now is that the gentleman from Westmoreland, Senator Kelley, has raised the question as to the constitutionality of the bill before us in its amended form. Am I correct in assuming that the Chair will now submit the question of constitutionality of the bill to the Senate and that it is within the province of this Senate to determine whether or not the bill is constitutional?

The PRESIDENT. It is up to the Members of the Senate to determine a constitutional point of order.

Senator ZEMPRELLI. Mr. President, in defense of the constitutionality of the bill, I would suggest that, although the bill is not in fact a General Appropriations bill, it is, nonetheless, an appropriation bill and that there is great precedence for interpretation of this bill being totally constitutional.

Therefore, I would request, on the matter of the issue of constitutionality of the question depending upon how it is framed by the Chair, that the Senate do sustain the constitutionality for many reasons, including the expeditious nature of the subject matter of the bill itself.

Senator KELLEY. Mr. President, I realize that the reality of the situation and the timeliness of the contents of House Bill No. 56 may motivate some of the Members of this Body to vote to sustain its constitutionality. I raise this point and I will continue to raise the point. I have a grave difference of opinion with the distinguished Majority Leader where the expeditious care and attention may be necessitated under certain circumstances.

In the few short years I have been here, it has become too often the custom and practice of this Body to circumvent this particular provision of the Constitution. Because of the logic or illogic espoused by the gentleman from Allegheny County, he would want and say it is constitutional for any bill appropriating money to have an amendment which would be germane to consider any other expenditure on the part of the Commonwealth.

Mr. President, I say this specifically that the issue of this constitutional point of order, is whether or not we in our logic and the oath we took to defend this Constitution, whether or not in our logic, we want to say that the language of Article III, Section 11, would specifically provide only the three departments, those branches plus the education and public debt and here in this bill, in this form, we have not only appropriations there but to specifically three other funds. Part of the repealer language of this deals with three laws already on the books.

I say, Mr. President, it is this manner of conducting the public business that contributes, more than anything else, to the loss of confidence in our system. Therefore, I urge my colleagues to vote to declare the bill not in constitutional form.

The PRESIDENT. The question before the Senate is a constitutional point of order raised by Senator Kelley. Those voting "aye" will vote to sustain the point of order, thereby declaring

the bill unconstitutional. Those voting "no" will vote that the point of order is not well taken and thereby declare that the bill is constitutional.

POINT OF INFORMATION

Senator ZEMPRELLI. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Allegheny, Senator Zemprelli, will state it.

Senator ZEMPRELLI. Mr. President, in order to sustain the bill in its present form for final vote, a negative vote on behalf of the Members of the Senate would be required. Is that correct?

The PRESIDENT. That is correct, Senator.

The yeas and nays were required by Senator KELLEY and were as follows, viz:

YEAS—5

Kelley, Kury,	Lewis,	Messinger,	Reibman,
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NAYS—44

Andrews, Arlene, Bell, Bodack, Coppersmith, Corman, Dwyer, Early, Fumo, Gekas, Greenleaf,	Gurzenda, Hager, Hankins, Hess, Holl, Hopper, Howard, Jubelirer, Kusse, Lincoln, Loeper,	Lynch, Manbeck, McKinney, Mellow, Moore, Murray, O'Connell, O'Pake, Orlando, Pecora, Price,	Romanelli, Ross, Scanlon, Schaefer, Smith, Snyder, Stapleton, Stauffer, Stout, Tilghman, Zemprelli,
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Less than a majority of all the Senators having voted "aye," the question was determined in the negative.

The PRESIDENT. The point of order is not sustained and the bill is constitutional.

Are there further amendments?

Without objection, the bill, as amended, will go over in its order.

SENATOR HAGER TO VOTE FOR SENATOR HOPPER

Senator HAGER. Mr. President, Senator Hopper is leaving the floor on legislative business. He may be returning. I would like to be able to vote him while he is gone.

The PRESIDENT. The Chair hears no objection and the leave is granted.

THIRD CONSIDERATION CALENDAR RESUMED

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 10 (Pr. No. 291)—Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator JUBELIRER, by unanimous consent, offered the following amendments:

Amend Title, page 1, lines 2 and 3, by striking out "further providing for studded tires and providing penalties." and inserting: authorizing studded tires, prescribing fees and providing penalties.

Amend Sec. 1, page 1, line 6, by striking out "Section 4525 of"

Amend Sec. 1, page 1, line 8, by inserting after "amended": by adding a section

Amended Bill, by inserting between lines 8 and 9:

§ 1960. Ice grips and tire studs.

The fee for the purchase at retail of ice grips and tire studs or tires containing such devices pursuant to section 4525(c) (relating to fire equipment and traction surfaces) shall be \$10 per vehicle at the time of initial purchase and \$10 per vehicle each year thereafter. Such fee shall be paid annually in respect to any ice grips or tire studs or tires containing such devices.

Section 2. Section 4525 of Title 75 is amended to read:

Amend Sec. 1 (Sec. 4525), page 2, line 5, by striking out "Tires in" and inserting: (1) Tires in

Amend Sec. 1 (Sec. 4525, page 2, by inserting between lines 16 and 17:

(2) Every person purchasing tires at retail with ice grips or tire studs as authorized in paragraph (1) and every person purchasing such grips or studs at retail for insertion into tires shall pay the fee prescribed in section 1960 (relating to ice grips and tire studs) at the time of said purchase. The department shall provide by regulation for the collection of such fee and may allow persons selling such grips and studs at retail a commission for processing the collection of the fee. No person shall operate a vehicle on any highway with ice grips or tire studs unless such person has complied with the requirements of this paragraph. Failure to comply with this provision shall subject the individual to the same penalties provided for a violation of section 4703 (relating to operation of vehicle without official certificate of inspection). The department shall provide purchasers in compliance with this paragraph evidence of having paid the required fee. Such evidence shall be shown to any law enforcement officer upon request.

Amend Sec. 1 (Sec. 4525), page 3, by inserting between lines 10 and 11:

(f) Disposition of fees.

All fees collected pursuant to subsection (c) shall be placed in a restricted account in the Motor License Fund to be used solely for highway maintenance.

Amend Sec. 2, page 3, line 11, by striking out "2." and inserting: "3."

Amend Sec. 2, page 3, line 11, by striking out "immediately." and inserting: in 60 days and shall apply to all purchases at retail made thereafter. However, no purchases at retail of ice grips or tire studs or tires containing such devices shall be made prior to such date.

On the question,

Will the Senate agree to the amendments?

Senator JUBELIRER. Mr. President, these amendments are, of course, the amendments which would provide for a \$10 fee for those who want to use studded tires in Pennsylvania.

Since the ban on studded snow tires went into effect, Mr.

President, we have heard passionate protests from people who believe that studded tires are essential for driving on treacherous winter highways. The facts in that debate have generally been shunted aside and the studded tire issue has become an emotionally charged issue. We need only remember the action last November when the tide of popular public opinion narrowly missed carrying the day for studded tires.

In deliberating on this issue we must peel away the emotionalism and look at the hard, cold realities. Studded tires are no panacea, as has often been noted. Study after study indicates beyond contradiction that the use of studded tires plays a significant role in wearing away our highway pavement. Although the damage cannot be tabulated in precise dollars and cents, researchers estimate the yearly toll to be in the \$30 million to \$50 million range in Pennsylvania.

On the one hand, we have the discouraging weight of evidence. On the other hand, we have the heavy pressure from the people back home to lift the ban. My District, Mr. President, is no different than many others. Somerset County, for example, is home to some of the most vociferous supporters of studded tires. But they are also proponents of smooth, unbroken highways.

If we are to give these people their so-called freedom of choice, if we are to accept the consequences studded tires hold for our highways, we should responsibly make provisions for the additional highway maintenance burden we would create by lifting the ban.

Mr. President, I am proposing amendments that will require a modest annual fee to be paid by users of studded tires. The revenue generated would be earmarked solely for maintenance. These amendments call for a \$10 fee to be paid when the tires are originally purchased and a \$10 charge annually thereafter. I stress this is not per tire, Mr. President, as was erroneously reported in some accounts, but a total fee per vehicle.

Those persons paying the fee would receive a small sticker from either the dealer or their inspection station. Failure to comply would result in the same penalty as failure to have a vehicle inspected. As the procedures are similar to those of other PennDOT operations, this would not be difficult or costly to integrate into the system.

Mr. President, this is not a perfect situation. For example, I openly admit there is no way to impose the fee on out-of-state travelers who use Pennsylvania highways. But, while imperfect, it is reasonable and I believe a necessary compromise.

Under projections based on studded tire usage data from pre-ban days, imposition of these fees would generate roughly \$20 million specifically targeted for highway maintenance. If the number of expected users drops, so will the amount of damage to our highways.

Mr. President, I recognize that asking the taxpayers to pay another fee is never popular. But people appreciate even less driving on rutted, pothole-pocked highways, a condition we will be aggravating by lifting the ban on studded tires. I sense the mood of this Body is for reinstating studded tires, but that is only half the battle.

If we deal with the cause, we must also deal with the effect. If we do not pay for the maintenance now, Mr. President, it will

be doubly costly in the future. By not making provision for the increased maintenance cost we create, we would offer a political solution today and magnified highway woes tomorrow. Any new revenues we would approve for PennDOT would be swallowed by the ever-broadening highway maintenance needs. Construction, Mr. President, is vitally important to many parts of this State. Envisioned hopes for highway construction and reconstruction I am afraid would evaporate.

Moreover, Mr. President, I believe we must look at where we are heading in the highway realm. People across the State insisted that Governor Thornburgh select a highly qualified, highly professional individual to head PennDOT and straighten out the Department's myriad of woes. We were generally pleased when Dr. Thomas Larson was nominated and confirmed. In light of the fiscal problems he inherits, I maintain he does not need a housewarming gift of another ready-made multi-million dollar deficit.

At the confirmation hearing before the Senate Committee on Transportation, Dr. Larson, in response to a question, pointedly stated he would recommend that Governor Thornburgh veto any bill reinstating studded tires because of our present inability to pay for the damage. If we are serious about putting our highway problem back on its feet, we cannot hang one more millstone around the Department's neck. If we approve the studded tires, Mr. President, we must responsibly adopt an amendment requiring studded tire users to contribute for the damage they cause.

Mr. President, over the noon hour, from 12:00 to 1:00, I appeared on a radio program and answered questions in my District and outside my District—in the District of the gentleman from Cambria, Senator Coppersmith, in the District of the gentleman from Indiana, Senator Stapleton, and in the District of the gentleman from Centre, Senator Corman. When I explained the situation to those constituents—mine and those of the gentlemen just mentioned—and they understood it would be \$10 per year for the users of studded tires and that they would have to display a sticker—probably on their license plate since the license plate can be transferred to another car if they choose to trade it in—overwhelmingly, I was surprised, frankly at the number of people who said, “Senator, that seems reasonable.” As we travel the highways today—we do not have to go back and debate the amendments of the gentleman from Crawford, Senator Dwyer—we know that our highways are, indeed, in deplorable condition.

Mr. President, I feel these are responsible amendments; it is a modest fee; it is reasonable to ask that those users of our highways who want to use studded tires and who want to have freedom of choice should also have the obligation of at least paying for most of the damage those studded tires cause. I know all the arguments about the salt; I know all the arguments about what other damage can be done to highways but, Mr. President, this is a choice and I believe that those who choose to use studded tires should choose to pay for them as well.

I also believe pragmatically that if we pass this bill with these amendments contained therein we can preclude a governmental veto and give those who want to use studded tires an opportunity to use them and pay for the damage they cause to our highways.

Senator KUSSE. Mr. President, I am completely opposed to the proposition set forth by the gentleman from Blair, Senator Jubelirer. I think I could best illustrate my opposition by using an example of a fictitious couple:

Mr. and Mrs. Jones live on a hill in Warren County. We experience some pretty bad weather at times there. They have a middle class type home; they are childless. Now, the school district proposes that they should have a swimming pool for all the kids in that district. Now, do we decree that only the people with children will pay since they are the ones who are going to use it? No, we ask Mr. and Mrs. Jones to pay their fair share even though they may never use that pool.

The municipality decides to build a park for the use of the children and the people of the area. Mr. and Mrs. Jones never intend to use that park. Do we exonerate them from paying a share? No, we expect them to pay.

Mr. and Mrs. Jones have two small cars by their choice. Do we give them a preferential rate on their license plate because they have a light weight car that does not do as much harm to the road? No, we charge the same registration fee regardless of the size of the automobiles.

But now, because they have small cars which are a little bit more difficult to operate on icy roads, they decide they would like to have studded tires; are we going to say they have to pay extra because they happen to want to use a different kind of tire than other motorists?

Mr. President, it does not seem fair to me. I am opposed and I hope my colleagues will also oppose this proposition.

Senator FUMO. Mr. President, I desire to interrogate the gentleman from Blair, Senator Jubelirer.

The PRESIDENT. Will the gentleman from Blair, Senator Jubelirer, permit himself to be interrogated?

Senator JUBELIRER. I will, Mr. President.

Senator FUMO. Mr. President, has the gentleman estimated the amount of revenue which would be generated by the \$10 per car fee charged under this program?

Senator JUBELIRER. I am sorry, Mr. President, I did not hear the question.

Senator FUMO. Mr. President, has the gentleman estimated the gross amount of revenue which would be generated by this fee at \$10 per car from individuals using studded tires?

Senator JUBELIRER. Yes, Mr. President, I have.

Senator FUMO. Mr. President, does the gentleman have that amount?

Senator JUBELIRER. Mr. President, the amount would be approximately \$20 million.

Senator FUMO. Mr. President, may I ask the gentleman on what that is based?

Senator JUBELIRER. Mr. President, it is based on a study by the Pennsylvania Department of Transportation and the Pennsylvania AAA which advised that we have approximately six and one-half million car users in Pennsylvania. I believe the last figures indicated that approximately thirty per cent of them had used studs. Broken down, the figure rounds out to approximately \$20 million in the studies which they have undertaken.

Senator FUMO. Mr. President, has the gentleman determined the cost of the administration of this program, not just the printing of the labels, but the cost of distributing them and

the annual renewal, by mail I would assume, and things of that nature?

Senator JUBELIRER. Yes, Mr. President, I have. I talked with Mr. Hohenwater of the Pennsylvania Department of Transportation this morning. The administration of the program would be minimal.

Mr. President, we envision that when a person applies for his registration and the \$24 is paid, there could be a column on that card to check advising that studded tires would be used. The fee could be sent in at that time. At that time the Department, very easily, could return a decal of some sort to be placed probably on the license plate since that can be transferred. I have been advised by the Department that they would have no problem whatsoever administering this. They indicated that the cost would be minimal.

Senator FUMO. Mr. President, many times I have heard people come to the Senate floor and talk about minimal costs. I am a little leary of that adjective. I would like to know if we have something in dollars and cents. If we are talking about mailing two million labels, as I understand the gentleman's calculations, printing the labels, having someone check this off in a box, hiring a number of PennDOT employees to go through these things and ascertain who will get the labels and who will not, I feel minimal may be a relevant word if we are talking about a budget of billions of dollars, but when we are talking about generating \$20 million, will it cost us \$10 million or \$15 million to generate the \$20 million? Do we have a better figure than "minimal"?

Senator JUBELIRER. Mr. President, I cannot give the gentleman exact figures, but in discussing the matter with the Department, there would be no need to hire additional employees to handle this program. They are plugged in with their registration figures so that it would be a matter of doing some things with the computer. I cannot give the gentleman precise figures.

Again, in trying to do my homework in trying to prepare this as best we could to try and come up with something that is reasonable and responsible, one of the things we were interested in, as is the gentleman from Philadelphia, Senator Fumo, is the cost of administering the program. I assure the gentleman it will not take \$15 million to get the \$20 million it would generate. I can pick out any figure the gentleman wants, but I do not know the precise figure. I can only go on my discussion with the people from PennDOT this morning. They assured me that this would not be a problem. I believe they are the professionals and I must accept what they tell me.

Senator FUMO. Mr. President, is it not true that the Department of Transportation has consistently opposed studded tires and should we not be leary of their estimates of minimal cost when it comes to amendments such as these?

Senator JUBELIRER. Mr. President, would the gentleman repeat his question?

The PRESIDENT. Would Senator Fumo restate the question?

Senator FUMO. Mr. President, is it not true that the Department of Transportation has usually opposed the use of studded tires in Pennsylvania and, therefore, should we not be a little suspect or leary about their minimal estimates of the cost of the administration of this program?

Senator JUBELIRER. Mr. President, I believe if they wanted to defeat the thing completely, they probably would have exaggerated the cost. I believe when one is checking off something on a card which is received anyway, that precludes the sending out of another piece of literature which requires another stamp. Registration applications will be received anyway and if there is just a little box on there to check, that requires no additional cost of any kind. The only thing we are talking about is the vehicle itself. We manufacture the license plates in our State correctional institutions; perhaps they could print the decals there also.

Mr. President, I believe it could be done at an absolute minimal cost and that the program would generate significant dollars for the maintenance of highways and would be put to good use to offset the damage of the studded tires. I suppose at some point we have got to believe someone.

Senator FUMO. Mr. President, I might tend to agree with the gentleman if this were being done in private industry, but I have my suspicions about the governmental bureaucracy when we talk about simple concepts.

My next question is: The gentleman has estimated that \$30 million to \$50 million in damage is done by studded tires. I would like to know if that is just studded tires or is that also damage which could conceivably be done by overuse of salt and overloading of trucks?

Senator JUBELIRER. Mr. President, this is a study done by the AAA on studded tires only. The \$50 million figure came in with the old type of stud which was used. It is less with the new type of stud being used. The figure is somewhere around \$30 million. Somewhere in the mixture of the old and new types of studs we have between \$30 million and \$50 million damage based on their study on studded tires alone.

Senator FUMO. Mr. President, I have concluded my interrogation of the gentleman from Blair, Senator Jubelirer. I would now like to make a few brief remarks.

Number one, I support the concept of allowing our citizens to use studded tires. I thought about this at great length. When I first came here, I was amazed at the amount of time we spent on debating this issue. After we banned the use of studded tires I saw a large outcry throughout the Commonwealth.

Apparently the banning of studded tires makes criminals of the overwhelming majority of this Commonwealth. I think that is exactly part of the frustration against which the voters constantly cry out. When government is not responsive to their needs and penalizes them for their needs then I believe government must respond and reverse its position.

Although there seems to be some strong sentiment for studded tires, we are now going to charge or tax those individuals for their use of these instruments which they feel are necessary. I do not feel that is proper either.

If there is a serious problem which we all are aware of then let us address it in another manner. Let us seriously address this problem.

I have seen studies on studded tires that say they are safe; some say they are unsafe. They say they cost \$10 million, \$20 million, now \$50 million and as low as \$5 million. I sincerely do not believe we have adequate data to be able to pin a charge of

\$10 per car on to these individuals. I believe this is one of the things the electorate is crying out against in their frustration with government. I do not feel we should give them anymore ammunition and anymore frustration.

Mr. President, I would urge a "no" vote on these amendments and a "yes" vote on the studded tire issue today.

Senator ROMANELLI. Mr. President, I desire to interrogate the gentleman from Blair, Senator Jubelirer.

The PRESIDENT. Will the gentleman from Blair, Senator Jubelirer, permit himself to be interrogated?

Senator JUBELIRER. I will, Mr. President.

Senator ROMANELLI. Mr. President, I would like to know if the gentleman would amend his amendments to place a user tax of some sort on road salt, which is the real culprit of damaging roads in Pennsylvania?

Senator JUBELIRER. No, Mr. President, I would not. I believe the answer is that, first of all, road salt is a proven safety plus; secondly, it is controllable far more than studded tires. I believe the issue today is studded tires, the damage they do to highways and if this Body is prepared to step forward and say that those who want to use them are prepared to pay for the damage they do, that is the only issue I see; a modest fee of \$10 per year.

Senator ROMANELLI. Mr. President, it is a proven fact that \$160 million damage is done to Pennsylvania roads and it is proven that it is done by salt rather than studded tires.

Mr. President, I urge a "no" vote on these amendments.

Senator MESSINGER. Mr. President, is it not an equitable solution that when the service of studs is desired, that you pay a stud fee?

It is my belief that the reference to school taxes and so on was not a good reference because people, even if they do not have children, have a benefit from that. There is no benefit to the highways of Pennsylvania by the use of studs.

If these amendments would be approved I believe I could vote for studded tires. If these amendments are defeated and the users do not pay for that service, then they will not have the service of studded tires as far as I am concerned.

CONSTITUTIONAL POINT OF ORDER

Senator EARLY. Mr. President, I rise to a constitutional point of order.

The PRESIDENT. The gentleman from Allegheny, Senator Early, will state it.

Senator EARLY. Mr. President, the amendments offered by my colleague from Blair, Senator Jubelirer, are totally unconstitutional.

I make that point with reference to Article III, Section 10, of the Constitution which clearly states: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills."

By the gentleman's own admission the amendments he is offering would generate an additional \$20 million in revenue. This, Mr. President, is clearly unconstitutional, as I just read, because we are not even amending a House bill, as would be permissible, but we are amending a Senate bill.

Therefore, Mr. President, I rise to make the constitutional

point of order that this is totally unconstitutional.

The PRESIDENT. The question before this Senate is the constitutional point of order raised by Senator Early, that the amendments are unconstitutional and violate Article III, Section 10 of the Constitution of Pennsylvania.

Senator JUBELIRER. Mr. President, in response to the question of the gentleman from Allegheny, Senator Early, I would suggest that these amendments are not revenue raisers as such. We are not raising money to pay for anything but, rather, it is a fee; it is a fee that is earmarked and not a tax. The amendments clearly set forth that it is a fee, not a tax, and that the fee is earmarked to go to the Motor License Fund for the maintenance of our highways in Pennsylvania to offset the damage that is done by studded tires.

I do not believe it is unconstitutional, Mr. President.

The PRESIDENT. Article III, Section 10, of the Constitution of Pennsylvania provides: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills."

Senator EARLY. Mr. President, I only used the argument and was quoting the gentleman from Blair, Senator Jubelirer, in his debate when he said—and he used the term during his debate—"revenue."

Therefore, Mr. President, I would like to have a roll call vote on the constitutionality.

The PRESIDENT. The question before the Senate is the constitutional point of order raised by Senator Early. Those voting "aye" will vote to sustain the constitutional point of order.

Senator JUBELIRER. Mr. President, you have not made a ruling yet.

The PRESIDENT. All constitutional points of order are decided by the Members of the Senate.

The question before the Senate is the constitutional point of order raised by Senator Early. Those voting "aye" will vote to sustain the point of order, thereby declaring the amendments unconstitutional. Those voting "no" will vote that the point of order is not well taken and thereby declare that the amendments are constitutional.

Senator STAUFFER. Mr. President, I believe, regardless of how we stand on the issue before us, the vote should be to permit the amendments to be offered.

I believe, as the gentleman from Blair, Senator Jubelirer, has pointed out, his amendments—and in looking at the language of the amendments—talk about a fee. It is certainly within the realm of this Senate to consider fees, whether they be for licensing or anything else. When we speak of revenue raisers we are talking about taxes. There is a clear delineation on the question and I believe the Senate would be doing an injustice if it prohibited itself from considering the matter of fees.

Therefore, I would hope that the question raised by the gentleman from Allegheny, Senator Early, would not be sustained by the Senate.

Senator EARLY. Mr. President, to eliminate all confusion, would the Chair restate the point of order?

The PRESIDENT. Does the Senator want the question restated?

The question before the Senate as raised by Senator Early is

that the amendments are unconstitutional and they violate Article III, Section 10 of the Constitution of Pennsylvania, which provides that, "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills."

Those voting "aye" will vote to sustain the point of order, thereby declaring the amendments unconstitutional.

Those voting "no" will vote that the point of order is not well taken and thereby declare that the amendments are constitutional.

The yeas and nays were required by Senator EARLY and were as follows, viz:

YEAS—3

Early, Lincoln, Schaefer,

NAYS—46

Andrews, Hankins, Manbeck, Reibman, Arlene, Hess, McKinney, Romanelli, Bell, Holl, Mellow, Ross, Bodack, Hopper, Messinger, Scanlon, Coppersmith, Howard, Moore, Smith, Corman, Jubelirer, Murray, Snyder, Dwyer, Kelley, O'Connell, Stapleton, Fumo, Kury, O'Pake, Stauffer, Gekas, Kusse, Orlando, Stout, Greenleaf, Lewis, Pecora, Tilghman, Gurzenda, Loeper, Price, Zemprelli, Hager, Lynch,

Less than a majority of all the Senators having voted "aye," the question was determined in the negative.

The PRESIDENT. The Senate declares the amendment constitutional.

And the question recurring, Will the Senate agree to the amendments?

Senator BELL. Mr. President, earlier in the Session I introduced a bill that would do the same thing as these amendments submitted by the gentleman from Blair, Senator Jubelirer.

During the past fall I made many inquiries in my area as to whether those who want to use studs would be willing to pay a user fee. I got no flak on this. I found that, without a user fee—my District is pretty well divided politically—some say we should not have studs because they cause highway damage; others say we should have studs because they are needed. I found that the concept of those who have to use studded tires, like people in this Senate, who must come here regardless of weather, a great majority of them do not object to paying a minimal fee—a minimal fee in this case, I say to the gentleman from Philadelphia, Senator Fumo—is \$10. I find that this is a compromise.

Mr. President, I am going to vote for these amendments and whether or not they pass, I will vote for the bill.

Senator STAPLETON. Mr. President, just one note before we take the vote on these amendments. I think it is important for many of those Senators who have supported the studded tire bill to keep in mind that we feel we have the votes this time and

we would prefer to have the studded tire bill as it is without the amendments.

And the question recurring, Will the Senate agree to the amendments?

The yeas and nays were required by Senator JUBELIRER and were as follows, viz:

YEAS—17

Andrews, Howard, Lynch, Reibman, Bell, Jubelirer, Manbeck, Schaefer, Corman, Kury, Messinger, Snyder, Gekas, Lewis, Moore, Stout, Hess,

NAYS—31

Bodack, Hankins, Mellow, Ross, Coppersmith, Holl, Murray, Scanlon, Dwyer, Hopper, O'Connell, Smith, Early, Kelley, O'Pake, Stapleton, Fumo, Kusse, Orlando, Stauffer, Greenleaf, Lincoln, Pecora, Tilghman, Gurzenda, Loeper, Price, Zemprelli, Hager, McKinney, Romanelli,

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring, Will the Senate agree to the bill on third consideration?

It was agreed to.

And the amendments made thereto having been printed as required by the Constitution,

On the question, Shall the bill pass finally?

Senator HAGER. Mr. President, I have made a special plea to the Members of the Senate that we not repeat the same debate—I think this is the eighth time we have voted on this—but I want to say something which is different from before. Eight times I have voted against studded tires. The last time I made it clear to my constituents if they wanted them to let me know. They have let me know. I intend to vote in favor of studded tires, Mr. President.

Senator ZEMPRELLI. Mr. President, all of us received many letters, some more significant than others. I received one short letter which I believe puts the whole subject matter into perspective and if I were going to say anything, I would say "Amen."

I introduce that letter, it is very short, addressing itself to the subject matter. It is addressed to me and it says:

"I am a taxpayer in Pennsylvania and I think it is only fair that I be allowed to express my opinion on studded tires.

"PennDOT and our former Governor placed the blame for our road conditions on the studs. Mr. Shapp threatened to veto a bill allowing their use during certain months of the year.

"There have been no studded tires this year and our roads are in terrible condition. Have you ever considered that there are many factors involved in the deterioration of our roads? Such

as poor drainage, poor workmanship, inferior materials and even overloaded trucks.

“Studded tires are safer on our icy roads.

“Sincerely, Stanley P. Lenhart.”

I believe that Mr. Lenhart has succinctly told the story in that short letter which I cherish as being totally responsive to the problem. I would ask that we adopt Senate Bill No. 10 unanimously as being a recognition of the need for studded tires as part of the complex problem and certainly not simplistic as being that which could be answered in the vacuum, that is, roads versus conditions versus studded tires.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—36

Arlene,	Greenleaf,	McKinney,	Ross,
Bell,	Gurzenda,	Mellow,	Scanlon,
Bodack,	Hager,	Moore,	Schaefer,
Coppersmith,	Hankins,	Murray,	Smith,
Corman,	Holl,	O'Connell,	Stapleton,
Dwyer,	Kelley,	O'Pake,	Stauffer,
Early,	Kusse,	Orlando,	Stout,
Fumo,	Lincoln,	Pecora,	Tilghman,
Gekas,	Loeper,	Romanelli,	Zemprelli,

NAYS—13

Andrews,	Jubelirer,	Lynch,	Price,
Hess,	Kury,	Manbeck,	Reibman,
Hopper,	Lewis,	Messinger,	Snyder,
Howard,			

A constitutional majority of all the Senators having voted “aye,” the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

BILL RECOMMITTED

SB 51 (Pr. No. 144) — Upon motion of Senator ZEMPRELLI, and agreed to, the bill was recommitted to the Committee on Local Government.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 60 (Pr. No. 60) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—49

Andrews,	Hankins,	Lynch,	Reibman,
Arlene,	Hess,	Manbeck,	Romanelli,
Bell,	Holl,	McKinney,	Ross,
Bodack,	Hopper,	Mellow,	Scanlon,
Coppersmith,	Howard,	Messinger,	Schaefer,

Corman,	Jubelirer,	Moore,	Smith,
Dwyer,	Kelley,	Murray,	Snyder,
Early,	Kury,	O'Connell,	Stapleton,
Fumo,	Kusse,	O'Pake,	Stauffer,
Gekas,	Lewis,	Orlando,	Stout,
Greenleaf,	Lincoln,	Pecora,	Tilghman,
Gurzenda,	Loeper,	Price,	Zemprelli,
Hager,			

NAYS—0

A constitutional majority of all the Senators having voted “aye,” the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

SB 199 (Pr. No. 200) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—49

Andrews,	Hankins,	Lynch,	Reibman,
Arlene,	Hess,	Manbeck,	Romanelli,
Bell,	Holl,	McKinney,	Ross,
Bodack,	Hopper,	Mellow,	Scanlon,
Coppersmith,	Howard,	Messinger,	Schaefer,
Corman,	Jubelirer,	Moore,	Smith,
Dwyer,	Kelley,	Murray,	Snyder,
Early,	Kury,	O'Connell,	Stapleton,
Fumo,	Kusse,	O'Pake,	Stauffer,
Gekas,	Lewis,	Orlando,	Stout,
Greenleaf,	Lincoln,	Pecora,	Tilghman,
Gurzenda,	Loeper,	Price,	Zemprelli,
Hager,			

NAYS—0

A constitutional majority of all the Senators having voted “aye,” the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

SB 280 (Pr. No. 282) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—49

Andrews,	Hankins,	Lynch,	Reibman,
Arlene,	Hess,	Manbeck,	Romanelli,
Bell,	Holl,	McKinney,	Ross,
Bodack,	Hopper,	Mellow,	Scanlon,
Coppersmith,	Howard,	Messinger,	Schaefer,
Corman,	Jubelirer,	Moore,	Smith,
Dwyer,	Kelley,	Murray,	Snyder,
Early,	Kury,	O'Connell,	Stapleton,
Fumo,	Kusse,	O'Pake,	Stauffer,
Gekas,	Lewis,	Orlando,	Stout,
Greenleaf,	Lincoln,	Pecora,	Tilghman,

Gurzenda, Loeper, Price, Zemprelli, Hager,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

SECOND CONSIDERATION CALENDAR

BILLS OVER IN ORDER

SB 95, 140, 181, 185, 189 and 190 — Without objection, the bills were passed over in their order at the request of Senator ZEMPRELLI.

SENATE RESOLUTION, SERIAL NO. 7, CALLED UP

Senator ZEMPRELLI, without objection, called up from page 3 of the Calendar, Senate Resolution, Serial No. 7, entitled:

Amending Senate Rule 16—Committees, Powers and Responsibilities.

On the question, Will the Senate adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 7, ADOPTED

Senator ZEMPRELLI. Mr. President, I move that the Senate do adopt Senate Resolution, Serial No. 7.

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

Senator HAGER. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator HAGER. Mr. President, it is my understanding from the Majority Leader in the meeting of the Committee on Rules and Executive Nominations of last week, I believe, that rather than offer the resolutions of the gentleman from Dauphin, Senator Gekas, and the gentleman from Bucks, Senator Howard, as amendments to Senate Resolution, Serial No. 7, we would handle them immediately afterward on unanimous consent to introduce the resolutions and deal with them substantively at that point. Is that the understanding of the Majority Leader as well?

Senator ZEMPRELLI. Mr. President, the Minority Leader has stated the issue concisely and accurately. I would hope we would have an independent vote on Senate Resolution, Serial No. 7, and at that time, I would hope that the gentleman from Bucks, Senator Howard, and the gentleman from Dauphin, Senator Gekas, could present their resolutions with unanimous consent to have them considered.

Senator HAGER. Mr. President, I thank the gentleman.

Senator KELLEY. Mr. President, I do not want the dialogue between the Majority Leader and the Minority Leader to speak for this particular Member of preempting my right to object on the unanimous consent request at any time in the future.

Senator ZEMPRELLI. Mr. President, I wish to assure the gentleman from Westmoreland, Senator Kelley, as well as other Members of the Senate that the action which is taken here, if it is considered unusual, is certainly to be an isolated instance and we presume nothing by way of precedent for that which we do at this time.

Senator HAGER. Mr. President, may we be at ease?

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

Senator ZEMPRELLI. Mr. President, I would like very much to remind all the Members of the Senate that there are important roll calls to be taken with respect to the resolutions on the Calendar which are to be considered and those which have been offered by unanimous consent. Unfortunately, in the order of the Calendar they have not been reached until this time. I would reemphasize what I have just stated. I am asking all Senators to return to the floor so that the issue can be adequately debated and an appropriate vote taken.

And the question recurring, Will the Senate agree to the motion?

The yeas and nays were required by Senator ZEMPRELLI and were as follows, viz:

YEAS—48

- Andrews, Hankins, Lynch, Reibman, Arlene, Hess, Manbeck, Romanelli, Bodack, Holl, McKinney, Ross, Coppersmith, Hopper, Mellow, Scanlon, Corman, Howard, Messinger, Schaefer, Dwyer, Jubelirer, Moore, Smith, Early, Kelley, Murray, Snyder, Fumo, Kury, O'Connell, Stapleton, Gekas, Kusse, O'Pake, Stauffer, Greenleaf, Lewis, Orlando, Stout, Gurzenda, Lincoln, Pecora, Tilghman, Hager, Loeper, Price, Zemprelli,

NAYS—1

Bell,

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative, and the resolution was adopted.

UNFINISHED BUSINESS

SENATE RESOLUTIONS

AMENDING SENATE RULE 16, SECTION 6

Senators HOWARD and PRICE offered the following resolution (Serial No. 21), which was read as follows:

In the Senate, February 27, 1979.

RESOLVED, That Senate Rule XVI, section 6 be amended to read:

XVI COMMITTEES

* * *

Notice of Meetings

6. (a) The chairman of a committee or subcommittee, or, in

his absence, the vice-chairman with the approval of the chairman, shall provide each member of the committee with written notice of committee meetings, which shall include the date, time and place of the meeting and the number of each bill which may be considered. During session notice of meetings of standing committee may be published in the daily Calendar. If notice of publication in the daily Calendar of standing committee or subcommittee meetings has been ordered by a committee chairman such information shall be delivered to the Secretary's office in writing by the end of the session on the day preceding its intended publication.

(b) Whenever the Chairman of any Standing Committee shall refuse to call a regular meeting, then a majority of its members of the Standing Committee may vote to call a meeting by giving two days written notice to the President pro tempore of the Senate, setting the time and place for such meeting. Such notice shall be read in the Senate and the same posted by the Chief Clerk in the Senate. Thereafter, the meeting shall be held at the time and place specified in the notice. In addition, all provisions of the act of July 19, 1974 (P. L. 486, No. 175), referred to as the Sunshine Law, relative to notice of meetings shall be complied with.

(c) When the majority of the members of a Standing Committee believe that a certain bill or resolution in the possession of the Standing Committee, should be considered and acted upon by such Committee, they may request the Chairman to include the same as part of the business of a committee meeting. Upon failure of the Chairman to comply with such request, the membership may require that such bill be considered by written motion made and approved by a majority vote of the entire membership to which such committee is entitled.

* * *

Senator HOWARD asked and obtained unanimous consent for the immediate consideration of this resolution.

On the question,
Will the Senate adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 21, ADOPTED

Senator HOWARD. Mr. President, I move that the Senate do adopt Senate Resolution, Serial No. 21.

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

Senator HOWARD. Mr. President, this is one of the two resolutions to which the gentleman from Allegheny, Senator Zemprelli, alluded earlier. I would like to thank the gentleman for the opportunity to present this resolution at this time. This represents a fulfillment of a promise he made to me and the Senate in January and I would like to publicly acknowledge the value which I place on his fulfillment of that promise.

If I could, I would like to explain to the Members what this resolution is not. This resolution deals with the powers of the committee chairman. It has been characterized as an opportunity for the Minority Party to harass the Majority Party in the Senate. It is not that. On the reading of the resolution the Members can find, very quickly, it does nothing more than follow the House Resolution which we have in the House of Representatives on the same matter. It makes it possible for a majority of the members of a committee—and, of course, all of our

standing committees are very firmly in the hands of the Majority Party—to act, if they feel that the chairman of that committee fails to call a meeting when he should or fails to raise for consideration of the committee matters which are properly assigned to that committee, upon petition, call meetings and place items at issue on the agenda and act upon them.

This resolution merely makes it possible for a majority of the members of a committee to override the veto of the chairman where, in fact, that chairman acts contrary to the wishes of the majority of the members of that committee. It is nothing more than an opportunity to bring the democratic process—small “d”—into the committee system.

We have done a very quick review of many of the legislative processes of the states in this country and we discovered that in Pennsylvania we are one of the last remaining major states we can find that still grants the chairmen of its committees the enormous power that is implied in the total control of the flow of legislation through that committee. Other states have had this problem in the past and they have rectified it by creating a more orderly process for the handling of legislation.

This change in the Rules has been endorsed by a number of citizens groups including Common Cause, the League of Women Voters, AUW and others. At this time I not only move its adoption, Mr. President, but I ask for the support of the Senate in this long overdue action.

Senator ZEMPRELLI. Mr. President, I would like to make a brief reply to the gentleman. Although the gentleman from Bucks, Senator Howard, has suggested what the resolution is not, I take issue with him as to what it is not. I view it as precisely what he has indicated it is not.

It has been a long standing tradition in Pennsylvania to recognize within the democratic system—using again the small “d”—the power of a pocket veto, so to speak, on behalf of the committee chairmen. The resolution goes to the very root of that problem.

The innuendo is to suggest that there is not a means or method by which the same result can be accomplished and that is through the use of a discharge resolution which not only embraces the members of a committee, but a majority of the Senate which is, in fact, more representative of the democratic process.

Mr. President, I do not know that there is anything wrong with that and I would suggest to the Senator that today perhaps we are the Majority Party and he is the Minority Party. He may have a different feeling at a later time. Perhaps not the gentleman from Bucks, Senator Howard, but the Members of his caucus may have a different attitude at a later time. That is not to be construed as a position of weakness or any apprehension of what the future may bring.

However, ultimately the responsibility is to the electorate. We have all kinds of people who are monitoring exactly what is taking place in this Body and I am sure if there is something so outrageous in the exercise of that principle of the democratic process, those responsible for doing what is not right would certainly be chastized for it in one way or another.

What I stand for here is the support of the basic rudiments of a two-party system where the power to control the flow of leg-

isolation rests with those who are assigned in the capacity of being responsible for the committees who are a part of the flow of that legislation.

Mr. President, I am jealous in the protection of those rights and would ask for rejection of the resolution sponsored by the gentleman from Bucks, Senator Howard.

Senator HAGER. Mr. President, as I understand the Majority Leader, the gist of his argument really breaks down into two.

Number one, it is the rudiments of the two-party system which he stands for. The rudiments of the two-party system, I might like to point out to him, really rest upon a Majority and a Minority and not upon a dictatorial control of committees by the designee of the leadership of one party or another.

It seems to me that the most democratic rudiment of all is that if a majority of the people considering an issue feel it is time for that issue to see the light of day, then it does so. It also seems to me to be very undemocratic, indeed, to say that a person, merely because he is designated by those elected to leadership of a Majority shall have the right to, if he wishes, stand against even that Majority which put him in his position.

Therefore, I feel if someone really stands for the rudiments of the two-party system, he would stand with the gentleman from Bucks, Senator Howard, in getting rid of this very undemocratic Rule.

The second argument, as I recall, was that it has been a long standing tradition. Well, one of the nice things about the Senate in the last couple of years is that it has gotten rid of some very long standing traditions such as closed committee meetings, secret and unreported committee votes, phantom committee meetings, telephone consensuses. It seems to me that long standing is something we should very quickly kick down the stairs.

Senator COPPERSMITH. Mr. President, when this subject was first brought up, it was my understanding that the proposal of the gentleman from Bucks, Senator Howard, would say that any five members, by petition, could force a bill out of committee. I opposed that. However, I have always taken the position, since I have been a Member of this Body, that the chairman should not have a dictatorial right to control the flow of legislation and I believe I agree with him that that is an aberration in our Rules.

Mr. President, I believe this is a reasonable proposal and I intend to vote for it.

Senator ZEMPRELLI. Mr. President, it is interesting to note the change in attitudes we have had since the subject matter was developed several weeks ago about having the Lieutenant Governor not be the party to assign bills. The opposite argument was used so to speak; it was a stripping of the power of that office to suggest that the President pro tempore would be the party to assign bills. Now we find ourselves in a reverse situation.

I query, what is the situation with respect to our attitude on what the Majority considers if we do not understand the meaning of a discharge resolution? To parochialize or make smaller the area of being able to force a bill for consideration by five members of a particular committee is certainly less democratic than it would be to have a majority of the Body as a whole.

It is also interesting to me to try to rationalize the concept as being favorable when the discharge resolution has been a matter which has been historically protected in not being able to be forced upon the Body because of our mutual respect for the preservation of the powers of the chairman of the committee. There is a patent inconsistency between that which the gentleman from Bucks, Senator Howard, is attempting to do at this time and what our express attitude has been over the years with respect to this subject matter.

Senator HOWARD. Mr. President, the gentleman from Allegheny, Senator Zemprelli, restated a commonly held belief, which is in error, which was alluded to by the gentleman from Cambria, Senator Coppersmith. This resolution does not say that five members of a committee have the power to force a bill out of committee for consideration. It simply says that a majority of the members of a committee, through an orderly process, must give the chairman of that committee notice of their wish to consider a bill. Then, if he fails to do that, the majority of the members of the committee, by signed petition, may then have that bill listed for action in that committee. The resolution does not say "five members." A majority of the constitutionally created members of that committee are the only ones who can act.

Secondly, I cannot let the moment pass without giving an absolute certified guarantee to whoever is interested that whether we are in the Majority or Minority, I would advocate and support this matter. I do not see that it has anything to do with who is in the Majority here. I believe it has a lot to do with what the constitutional and democratic process in the Legislature really means. As stated by the gentleman from Allegheny, Senator Zemprelli, it goes right to the root of the problem. It is, in fact, the root of our problem.

Senator KELLEY. Mr. President, I desire to interrogate the gentleman from Bucks, Senator Howard.

The PRESIDENT. Will the gentleman from Bucks, Senator Howard, permit himself to be interrogated?

Senator HOWARD. I will, Mr. President.

Senator KELLEY. Mr. President, with regard to the remarks made by the gentleman from Cambria, Senator Coppersmith, and responded to by the gentleman from Bucks, Senator Howard, my question is: Did he, at any time or is it his intention to, communicate with any of the other Members of this Body that the substance of the Rule he is now proposing to this Body, refer to five members or was it always in its present form which states a majority of the members of a committee?

Senator HOWARD. Mr. President, as long as I have been introducing this resolution—and it has now been eight years—it has been in exactly this same form.

Senator KELLEY. Mr. President, I thank the gentleman.

I would also like to add to the comments of the gentleman from Cambria, Senator Coppersmith, because I feel, in essence, the substance and the language of this resolution, which is an amendment to the Rules, is a provision for nothing more than the majority responsibility of conducting the affairs of any deliberative body. I see nothing wrong with it and it seems to me it is unfortunate, however, that we would have to put that in the Rules. I would believe that every chairman of every committee of this Body, if it received the expressions, just verbally

and informally, of bills which they felt should be brought up for consideration, that chairman would respond.

Mr. President, I intend to vote for the resolution but very reluctantly because I feel it is self-indicating in that the chairmen of the committees have not been responding or that there are a number of members who are presuming that they would not respond accordingly. Perhaps it would be better practice if we tested the informal approach first. However, since the resolution is before us, I intend to vote for it.

Senator HAGER. Mr. President, I cannot tell you how happy I am to hear that Members from the other side of the aisle are going to be joining those of us on this side of the aisle. Frankly, this is the Senate coming into the Twentieth Century. This is the Senate making the changes. It seems to me it is a continuation of a course of action over the last couple of years which can only help the Senate in its image in the eyes of the people of Pennsylvania.

I would like to point out that it is not self-indicting. Apparently the Majority Leader stated the case that we are now taking away from the power of the chairman of a committee. Regardless of the view of the gentleman from Westmoreland, Senator Kelley, it is the Majority Leader's view that the committee chairmen have had the right and have finally exercised that right to overrule those in the majority in a committee, regardless of their political posture. He stands in favor of that. I am sorry and I wish he would change his mind.

He further sees some kind of an ambiguity between our position on the attempt of the Majority to take away the bill referral power of the Lieutenant Governor and this one. As a matter of fact, Mr. President, they are part and parcel of the same kind of thing. While on the one hand the Majority was saying that because it was in control, it would control all flow of bills and take that power away from the man elected by the people of this Commonwealth. At the same time we were trying to show that we were trying to democratize the Senate by saying, no more iron fisted control in one man or in one small group of people. They are much the same thing.

He also says that there is a patent ambiguity between what is being suggested now by the Howard-Hager resolution. What we have done "over the years" there absolutely is a clear break here with what we have done over the years, and I think the Senate is saying it is time to do it.

Senator ZEMPRELLI. Mr. President, I reaffirm everything I have said and I would add one thing further. That is, if I have ever seen a resolution offered which would give or lend credibility to the concept of disruption it would be the enactment of this resolution. I can envision every Member of the Minority Party, from time to time, trying to pick off Members of the Majority in some form or another in order to form a majority of that committee. I do not see that as being constructive. I see that as being disruptive.

I see nothing wrong with making a repronouncement of the principles of the two-party system that one shall have its way and the other shall have its say. I find that over the years that has been the basis upon which good government has resulted and this Commonwealth has flourished. I see no reason to deviate from that position as of this moment.

Mr. President, I ask that this particular resolution be rejected. I would say clearly—and make no apology for it—it is an abdication of the power that now rests with the Majority Party. I would think less of myself if I did not stand for that power because they are the rules of the game by which we were elected and for which we secured a Majority of the people in this Chamber. At the same time I would respect that Majority if it rested with the other side of the aisle. It is difficult for me to understand the rationale that exists in the party that would change from one position to another with respect to the party they represent. There are no third parties in this Chamber.

Senator HAGER. Mr. President, I believe the difference has been stated here very clearly. The Majority Leader stands with the ways of the past where party is more important than the numbers of the persons in the Senate. He says, "Those are the rules of the game." I believe what the gentleman does not understand is that the rules of the game have changed.

Senator BELL. Mr. President, we know things change from yesterday until today and chickens come home to roost. I believe the Majority Leader was saying yesterday that the gentleman from Montgomery, Senator Tilghman, and I were opposing change for change sake.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator HOWARD and were as follows, viz:

YEAS—30

Andrews,	Hess,	Loeper,	Price,
Bell,	Holl,	Manbeck,	Reibman,
Coppersmith,	Hopper,	Messinger,	Schaefer,
Corman,	Howard,	Moore,	Snyder,
Dwyer,	Jubelier,	O'Connell,	Stapleton,
Gekas,	Kelley,	O'Pake,	Stauffer,
Greenleaf,	Kusse,	Pecora,	Tilghman,
Hager,	Lewis,		

NAYS—19

Arlene,	Hankins,	Mellow,	Scanlon,
Bodack,	Kury,	Murray,	Smith,
Early,	Lincoln,	Orlando,	Stout,
Fumo,	Lynch,	Romanelli,	Zemprelli,
Garzenda,	McKinney,	Ross,	

A majority of the Senators having voted "aye," the question was determined in the affirmative.

RECONSIDERATION OF SENATE RESOLUTION, SERIAL NO. 21

Senator ROMANELLI. Mr. President, I move that the Senate do now reconsider the vote by which Senate Resolution, Serial No. 21, was adopted.

Senator MCKINNEY. Mr. President, I second the motion.

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

Senator HAGER. Mr. President, I would ask if this vote for

immediate reconsideration passes that we immediately have a roll call vote on that matter.

Senator ZEMPRELLI. Mr. President, I would ask only that the Members of the Democratic caucus vote against immediate consideration of this resolution.

POINT OF ORDER

Senator KELLEY. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Westmoreland, Senator Kelley, will state it.

Senator KELLEY. Mr. President, as I understand the parliamentary situation, the gentleman from Allegheny, Senator Romanelli, and the gentleman from Philadelphia, Senator McKinney, moved for the reconsideration of the vote. That question, as I understand it, was never disposed of or was it?

The PRESIDENT. The question has not been disposed of. We are not reconsidering the vote.

The question before the Senate is, shall the Senate reconsider the vote.

Senator KELLEY. Mr. President, therefore the question we are voting on is not the immediate reconsideration but whether or not the Senate will reconsider?

The PRESIDENT. That is correct.

Senator KELLEY. Therefore, Mr. President, as stated by the gentleman from Allegheny, Senator Zemprelli, we are not voting for the immediate reconsideration but just the reconsideration?

The PRESIDENT. We are voting for the immediate reconsideration but we are not reconsidering the vote.

Senator ZEMPRELLI. Mr. President, then my instructions to my caucus were in error. My instructions should have been a favorable vote for reconsideration.

Mr. President, I would ask for an affirmative vote.

The PRESIDENT. The question before the Senate is, will the Senate agree to reconsider the vote on the resolution of the gentleman from Bucks, Senator Howard?

Senator HAGER. Mr. President, it has always been the practice of this Body, just as a matter of courtesy, to allow reconsideration of a motion and I would ask that on voice vote there be a unanimous vote that this question may be reconsidered upon the motion of the gentleman from Allegheny, Senator Romanelli.

POINT OF INFORMATION

Senator ZEMPRELLI. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Allegheny, Senator Zemprelli, will state it.

Senator ZEMPRELLI. Mr. President, has the issue been approved for reconsideration?

The PRESIDENT. Not yet, Senator.

Senator ZEMPRELLI. Mr. President, may I be recognized as soon as it has?

And the question recurring,

Will the Senate agree to the motion?

A voice vote having been taken, the question was determined in the affirmative.

And the question recurring,

Will the Senate agree to the motion to adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 21, LAID ON THE TABLE

Senator ZEMPRELLI. Mr. President, at this time I move that the resolution be tabled.

On the question,

Will the Senate agree to the motion?

Senator HAGER. Mr. President, I do not wish to get into the problem of debating nondebatable motions. I merely ask for all the reasons which my colleagues might suspect I might have that we oppose this motion and I ask for a roll call vote and ask all Members who stand with us to vote against the motion to table.

The PRESIDENT. This is a nondebatable motion.

Senator ZEMPRELLI. Mr. President, I do not wish to debate the motion either. I would only suggest to the Minority Leader that if he is agreeable to not moving for the immediate consideration of this motion to reconsider, I will be very happy to withdraw my motion to table the resolution. I assure my colleagues the issue will be brought before the Senate on Tuesday.

Senator HAGER. Mr. President, I am tempted to allow the Majority to do that to themselves if they want. The longer it is dragged out the worse it looks for them but I suspect we should vote on it today, Mr. President.

Senator ZEMPRELLI. Mr. President, I wish to assure the Minority Leader that he should quit worrying about us and worry about himself. We will worry about ourselves.

And the question recurring,

Will the Senate agree to the motion?

(During the calling of the roll, the following occurred:)

Senator ZEMPRELLI. Mr. President, as I have talked to Members of my caucus it has become clear that there was confusion over the import of this resolution. Quite frankly, at this point in time, the motion to table is for no other purpose than for us to understand precisely what the resolution is. There were five or six Members of our caucus who believed the resolution was somewhat different.

The motion to table is only for the purpose of having a clear understanding and discuss the matter at length. I wish to commit to my caucus and to the Members of the Senate that this issue will be brought from the table on Tuesday if it is, in fact, tabled at this time. To table is not an intent to kill it but merely to explain it within the caucus.

POINT OF ORDER

Senator ANDREWS. Mr. President, I rise to a point of order.

The PRESIDENT. The gentleman from Lawrence, Senator Andrews, will state it.

Senator ANDREWS. Mr. President, we are in the middle of a roll call and it is my understanding that we are not permitted to make speeches during roll calls and that the roll call should be announced before any comments are made by anybody.

The PRESIDENT. The gentleman is correct. There is nothing

in order at this time but the announcement of the roll.

Senator ZEMPRELLI. Mr. President, I apologize.

Senator COPPERSMITH. Mr. President, on the Majority Leader's undertaking that this matter will be considered on Tuesday, I will change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

Senator STAPLETON. Mr. President, under the same circumstances, since this resolution will be considered on Tuesday, I will change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

Senator MESSINGER. Mr. President, I will also change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

The yeas and nays were required by Senator ZEMPRELLI and were as follows, viz:

YEAS—25

Arlene,	Kelley,	Mellow,	Ross,
Bodack,	Kury,	Messinger,	Scanlon,
Coppersmith,	Lewis,	Murray,	Smith,
Early,	Lincoln,	O'Pake,	Stapleton,
Fumo,	Lynch,	Orlando,	Stout,
Gurzenda,	McKinney,	Romanelli,	Zemprelli,
Hankins,			

NAYS—24

Andrews,	Hager,	Kusse,	Price,
Bell,	Hess,	Loeper,	Reibman,
Corman,	Holl,	Manbeck,	Schaefer,
Dwyer,	Hopper,	Moore,	Snyder,
Gekas,	Howard,	O'Connell,	Stauffer,
Greenleaf,	Jubelirer,	Pecora,	Tilghman,

A majority of the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. The resolution will lay on the table.

AMENDING SENATE RULE 18, SECTIONS 1, 2 AND 3

Senators GEKAS and PRICE offered the following resolution (Serial No. 22), which was read as follows:

In the Senate, February 27, 1979.

RESOLVED, That Senate Rule XVIII be amended to read:

XVIII COMMITTEE MEMBERS

Members, Attendance, Voting

1. Every member of a committee shall be in attendance during each of its meetings, unless excused or necessarily prevented and shall vote on each question, except that no member of a committee shall be required or permitted to vote on any questions immediately concerning his private rights as distinct from the public interest.

2. The Chairman may excuse any Senator for just cause from attendance on the meetings of his committee for any stated period, and such excused absence shall be noted on the records of such committee.

3. Any member of a committee who is otherwise engaged in legislative duties may have his vote recorded on measures pending before the committee by communicating in writing to the chairman: (a) the nature of the legislative duties that prohibits his attendance and; (b) the manner in which he desires to be voted on such measures pending before the committee.]

Senator GEKAS asked and obtained unanimous consent for the immediate consideration of this resolution.

On the question,

Will the Senate adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 22, ADOPTED

Senator GEKAS. Mr. President, I move that the Senate do adopt Senate Resolution, Serial No. 22.

On the question,

Will the Senate agree to the motion?

Senator GEKAS. Mr. President, contrary to what has been cast as the reasoning on the part of the gentleman from Bucks, Senator Howard, by the other side that this might be construed as an attack on the committee chairman, my resolution is one which would lift the burden from the committee chairman, the burden of constantly having to tabulate, to make and to vote proxy votes for absentee members. My resolution would remove that burden from the committee chairman.

Let me put this in the correct context. The rules for committee members are as follows. If you will listen to them carefully as they are now constituted, the removal of the proxy vote improves the system and falls right in line with the modernization that the gentleman from Allegheny, Senator Zemprelli, is so proud to have presented in the past few days and springs us farther into the Twentieth Century than even the gentleman from Lycoming, Senator Hager, would have hoped that the resolution of the gentleman from Bucks, Senator Howard, was able to do.

The gentleman from Allegheny, Senator Zemprelli, wants to make the process open and more responsible. Here is another opportunity. Here is what the committee rules say: "Every member of a committee shall be in attendance during each of its meetings, unless excused or necessarily prevented and shall vote on each question, except that no member of a committee shall be required or permitted to vote on any questions immediately concerning his private rights as distinct from the public interest."

So, we start off with the proposition that every member shall be in attendance during each of its meetings.

Number two is very salient to this proposal: "The Chairman may excuse any Senator for just cause from attendance on the meetings of his committee for any stated period, and such excused absence shall be noted on the records of such committee."

The third section, the one which I wish to erase from the Rules, has to do with allowing every member to vote by proxy.

How does this relieve the burden from the shoulders of the committee chairman?

He no longer has to worry when armed with a fistful of proxies as to how to vote the final proposition, especially when amendments have been offered, especially when a long series of questions have been raised, especially when debate has occurred on various questions. To allow the committee chairman to vote a proxy for the final vote places upon him a responsibility that he never asked for many times, to vote a member on a

final bill that is no longer the same proposition which emerged from the committee in the first place.

Secondly, by contrast, adopting my rule also helps the absentee member because by the very same token the bill for which he has sent the proxy may have been mutilated beyond recognition by the time the final vote comes up. Therefore, the situation arises where the member will have voted for a bill which he will never recognize when it is publicized in the newspaper the next day. That has actually happened. I am not dreaming this up. I am telling you by example things I have viewed personally and all the Members have experienced of the things that can happen by this proxy voting.

More importantly than that, what is the reason which has been stated over the years for the need for a proxy vote? It is because we have so many conflicts it is said. That is true. I, myself, have had the experience of not being able to attend several other meetings to which I am party because of my responsibilities as Minority Chairman of the Committee on Judiciary. I feel that if fifteen meetings are being held and the Committee on Judiciary is holding a meeting, I must stay at the meeting of the Committee on Judiciary. It would be easy, one would say, for me to discharge my responsibilities by sending out fourteen proxies and remaining at my seat in the Committee on Judiciary.

Why do we want that? We want the public back home to know that we are attending the meetings we are supposed to be attending. Do not permit the proxy which is a false method of doing that.

The second phrase of this committee rule permits us to get an excused absence and thereby we do not prostitute the process. We can send in an excused absence; our vote is not recorded, but the public and our constituents at home know by the record of that day that we have attended the meeting of the Committee on Judiciary and by virtue of the conflict we cannot attend the meeting of the Committee on Law and Justice. That serves the members' purposes best and, at the same time, prevents the committee chairman from having that terrible onus of having to vote people and not being sure that he will have voted them correctly in the final analysis.

Let us take it one step further back than this. It is at the committee meeting, Mr. President, that the public is first exposed to the issues of the legislative process. It is at the committee level that the first debate occurs on any given issue. It is at the committee level where the ideas of the public and the professionals are heard on the issues on a daily basis and first exposed.

We cannot permit the committee system which is supposed to be the test, the first test, the screening process, to be a simple running rubber stamp for any given group of people or any party or any individual Senator. We must, in the first instance, exercise the democratic process in the microcosm of the committee which then takes its bigger step on the floor of the Senate.

We will be doing ourselves a favor and restoring integrity to the committee system and reinstating the confidence of the public which we want this Body to have.

The gentleman from Allegheny, Senator Zemprelli, has

helped me out in this although perhaps he did not know it when he announced the new schedule of meetings for committees. The gentleman has tried his level best to present a plan whereby the committee meetings and hearings will be so staggered that the conflicts about which we are so worried will be minimized. That will help.

I am saying as affirmatively as I can that the excused absence provision covers all of us and makes us responsible Legislators. The public will understand better that I am in the Committee on Judiciary deliberating and cannot attend the meeting of the Committee on Law and Justice and that my absence there is excused than my exercising my duties in the Committee on Judiciary and sending over a piece of paper to the Committee on Law and Justice to have a vote recorded after a debate about which I knew nothing and the input of which I had none and questions to which I had no answers.

Mr. President, I ask for adoption of this resolution.

Senator O'PAKE. Mr. President, I agree with the gentleman from Dauphin, Senator Gekas, that proxies can be and have been abused. However, I cannot agree that this is the answer to that problem. The answer to that problem is to properly enforce the restrictions that go with Paragraph 3 of the present Rule XVIII and they are, the nature of the legislative duty that prohibits the attendance must be explained and, secondly and very important, the manner in which he desires to be voted on such measures pending before the committee. If any Senator does not want to be recorded as voting on a bill without having heard the full discussion on the merits of that bill, he does not have to be recorded as voting.

Therefore, Mr. President, the answer to the abuse of the proxy system is to enforce the proper application of the present law.

In Utopia I would agree that we should always be everywhere physically, attentively and reflecting the best wishes of our constituency all the time. But until we change either the Rules of the Senate, it would dictate that we can be in three places at the same time or three people at the same time or until we cut down the number of committees. There are now twenty-one permanent standing committees. I believe I am a member of seven or eight and not a day goes by that I do not have a conflict with at least one of them. Until we further streamline the scheduling of these committee meetings and hearings, there is no way that we can get by without some properly enforced system of proxy voting.

Committee chairmen will be terribly embarrassed when they call a committee meeting, giving notice under the Sunshine Law, perhaps having people come from across the Commonwealth to that committee meeting and walk in to find that since there are two or three conflicts, he does not have the number of members there to conduct committee business.

Public hearings have very often been a source of embarrassment to the Senate because the people who are Members of the Senate had conflicts with other committee hearings.

I agree that if we could do things the way they should be in perfection, we should be personally present and voting, very attentively and very conscientiously, at every committee meeting. But, until we have fewer standing committees or further

improve on the admirable attempts of streamlining and efficiency which our Majority Leader is attempting to impose in this Session, this change would just not work.

Therefore, Mr. President, I must oppose this resolution.

Senator MESSINGER. Mr. President, when the Senate agrees to do away with proxy voting on the floor of the Senate, which is a far more important situation, then I would support such a move for the committee system. We do have proxy voting on the floor. The Majority Leader and Minority Leader are really put on the spot when somebody has legislative leave and the respective leaders are asked to vote them and then the bill is amended or the amendments have not been considered by the time the Member leaves.

Therefore, Mr. President, until we agree that every Senator must be at his desk when voting on the floor, I cannot get too excited about every Senator having to be at his place in a committee meeting.

Senator COPPERSMITH. Mr. President, in his remarks the gentleman from Dauphin, Senator Gekas, was worried about having a conflict between meetings of the Committee on Judiciary and the meetings of the Committee on Law and Justice. According to this evening's Evening Bulletin it stated that Monday's meeting of the Committee on Law and Justice needed fewer than ten seconds to report to the Calendar a measure to continue for another three years a special tax break for the breweries. Certainly one could spare ten seconds from the meeting of the Committee on Judiciary to go to a meeting of the Committee on Law and Justice.

Senator KELLEY. Mr. President, I could understand the arguments propounded by the gentleman from Dauphin, Senator Gekas, except for his choice to go to the meeting of the Committee on Judiciary instead of the meeting of the Committee on Law and Justice.

Mr. President, the gentleman from Dauphin, Senator Gekas, began his defense in support of the resolution by stating he wanted to relieve the committee chairmen of a burden. You know, Mr. President, everything in our system of government can be said is a burden.

I believe we should look at the essence of this resolution as what we want to preserve. I think we want to preserve the idea that the constituency is represented. It is pointed out by my colleague and Chairman of the Committee on Judiciary, the gentleman from Berks, Senator O'Pake, that the Rules specifically provide that the instructions will be there and they will have knowledge of the input of the witnesses.

Therefore, I believe in the present form. The member now, in order to have the proxy effectuated, has to be excused on official business. I believe the function of the committee system is only right and proper as long as it is consistent, as indicated by the gentleman from Lehigh, Senator Messinger, with what we do on the floor, and I see no reason in the world why we should support and change this Rule by this resolution at this time.

Indeed, the gentleman from Dauphin, Senator Gekas, made the best argument against himself when he referred to the gentleman from Allegheny, Senator Zemprelli's change in the Rules in scheduling the committee meetings because they are

now changed so that there will be less conflict and less chance for conflict and, therefore, less use of the proxies.

Mr. President, I believe that alone imposes upon us a rule of reason to say that we should allow the new schedule to have its effect with the use of the proxy. I would like to conclude, Mr. President, by saying that even if the gentleman from Dauphin, Senator Gekas, is absent from the Committee on Law and Justice, we always know how to vote him because he is always for law and justice.

Senator SNYDER. Mr. President, I have been critical of proxy voting so often that I cannot properly keep quiet in this debate.

I support the resolution of the gentleman from Dauphin, Senator Gekas, for the reasons he stated. We all have had experience in giving or taking proxies at meetings, blanket proxies. Issues then come up which the person who gave the proxy could not possibly have anticipated and the chairman or the holder of the proxy has the duty of guessing what is in the absentee's mind. This is obviously a provision of the legislative system.

Another situation which occurs all too frequently is that among the members at the committee—say there are eight members there—a vote is taken and five are one way and three the other, then the chairman produces three or four proxies and he turns the whole issue around and determines it in a way in reverse of those who sat there and were interested enough to come and deliberate.

I am not much impressed by legislative leave at any time to the extent that that enters into this argument. The place we belong is in the Senate if we are elected here and I have yet to hear of many instances in which a person who honestly belongs at the other place to which they went and asked for legislative leave.

As far as absence from the committee is concerned, the new schedule by the Majority, which I commend, should be the answer to that. There is only one committee meeting at a time and if that is the schedule, we belong there, we should be there and cast our own vote. This proxy voting is a form of fakery and I feel it is terrible and we should pass this resolution.

Senator PRICE. Mr. President, as a new Member here I cannot imagine being in the position of explaining to constituents how I did not vote on a bill or did vote on a bill by proxy when I was not there to participate in the debate and understand what the questions were.

Therefore, Mr. President, I support this resolution on the ground that only those who would participate would be eligible to vote. I feel that is the responsible way.

Senator MANBECK. Mr. President, as a victim of circumstances I would like to support this resolution also because I had placed all the confidence in my fearless leader to vote me when I had attended a meeting—thank you very much, Mr. Fearless Leader.

We will now go to the committee process where I had given my proxy to the gentleman from Philadelphia, Senator McKinney, for whom I have a great deal of respect, when a committee meeting was called. Sometime during the last Session after the summer recess, there were meetings called for, I

believe, every committee authorized by the Senate. Being Minority Chairman of a committee I felt it was my responsibility to attend that committee meeting.

The gentleman from Philadelphia, Senator McKinney, had called a meeting of the Committee on State Government and I thought it was responsible for me to attend that committee meeting or at least give my proxy to the chairman so that a legal committee meeting could be held. Unfortunately there were so many meetings held that morning that the chairman asked that the bill which was before the committee be laid on the table. That was a disaster for me because they said I gave my proxy to a Philadelphia Democrat and he voted to lay the bill on the table which, they said would have killed the Ethics Bill. I suppose there are many people who would hope that the Ethics Bill would have been killed, but it was not.

Therefore, Mr. President, I must support this resolution because it gives the Member of the Senate the privilege of asking for an excused absence and, therefore, the chairman of the committee can then plan his progress of that committee meeting.

Senator McKINNEY. Mr. President, of course I am going to vote against this resolution. However, I would like to respond to the gentleman from Lebanon, Senator Manbeck.

He did give me his proxy in good faith and it was the Ethics Bill which was before the committee. Of course, when we laid the bill on the table it was with the understanding that the bill would be reported out of committee within three days, which it was. However, it seems that he was up for reelection at the time and perhaps his Democratic opponent got hold of the fact that I was a Philadelphia Democrat and I did vote to table the bill in his name. However, it was rectified because I believe I called a press conference or sent a letter to the press rectifying the situation.

And the question recurring,

Will the Senate agree to the motion?

The yeas and nays were required by Senator GEKAS and were as follows, viz:

YEAS—30

Andrews,	Greenleaf,	Jubelirer,	O'Connell,
Arlene,	Gurzenda,	Lincoln,	Pecora,
Bell,	Hager,	Loeper,	Price,
Corman,	Hankins,	Lynch,	Smith,
Dwyer,	Hess,	Manbeck,	Snyder,
Early,	Holl,	McKinney,	Stauffer,
Fumo,	Hopper,	Moore,	Tilghman,
Gekas,	Howard,		

NAYS—19

Bodack,	Lewis,	Orlando,	Schaefer,
Coppersmith,	Mellow,	Reibman,	Stapleton,
Kelley,	Messinger,	Romanelli,	Stout,
Kury,	Murray,	Ross,	Zemprelli,
Kusse,	O'Pake,	Scanlon,	

A majority of the Senators having voted "aye," the question was determined in the affirmative.

RECONSIDERATION OF SENATE RESOLUTION, SERIAL NO. 22

Senator ZEMPRELLI. Mr. President, I move that the Senate do now reconsider the vote by which Senate Resolution, Serial No. 22, was adopted.

Senator ROMANELLI. Mr. President, I second the motion.

On the question,

Will the Senate agree to the motion?

Senator COPPERSMITH. Mr. President, I am going to break a long-standing tradition and vote against this reconsideration motion and I believe the other Members should vote against it also.

Senator ZEMPRELLI. Mr. President, I would ask that all the Members vote for the reconsideration motion, as an established practice of the Senate, to give the same opportunity for our caucus to discuss the significance of these amendments that seemed to pass so readily without full discussion.

Senator HAGER. Mr. President, unless the gentleman from Cambria, Senator Coppersmith, demands a roll call vote, it seems to me this could be done on a voice vote and he could be recorded in the negative.

Senator ZEMPRELLI. Mr. President, I am asking for a roll call vote.

And the question recurring,

Will the Senate agree to the motion?

The yeas and nays were required by Senator ZEMPRELLI and were as follows, viz:

YEAS—43

Andrews,	Hess,	Lynch,	Reibman,
Arlene,	Holl,	Manbeck,	Romanelli,
Bell,	Hopper,	McKinney,	Ross,
Bodack,	Howard,	Mellow,	Scanlon,
Corman,	Jubelirer,	Messinger,	Schaefer,
Dwyer,	Kelley,	Moore,	Smith,
Early,	Kury,	Murray,	Stapleton,
Fumo,	Kusse,	O'Connell,	Stauffer,
Gurzenda,	Lewis,	O'Pake,	Stout,
Hager,	Lincoln,	Orlando,	Zemprelli,
Hankins,	Loeper,	Pecora,	

NAYS—6

Coppersmith,	Greenleaf,	Snyder,	Tilghman,
Gekas,	Price,		

A majority of the Senators having voted "aye," the question was determined in the affirmative.

And the question recurring,

Will the Senate agree to the motion to adopt the resolution?

SENATE RESOLUTION, SERIAL NO. 22, LAID ON THE TABLE

Senator ZEMPRELLI. Mr. President, at this time I move to table the resolution which was just passed, Senate Resolution, Serial No. 22.

On the question,

Will the Senate agree to the motion?

Senator HAGER. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Zemprelli.

The PRESIDENT. Will the gentleman from Allegheny, Senator Zemprelli, permit himself to be interrogated?

Senator ZEMPRELLI. I will, Mr. President.

Senator HAGER. Mr. President, is it the intention of the Majority Leader to bring this matter before the Senate on next Tuesday as well as the resolution which was treated in exactly this manner a few moments ago?

Senator ZEMPRELLI. Mr. President, within the powers vested in me, I would certainly say to the Minority Leader that I would have this resolution reconsidered in the same fashion as the previous resolution passed and my purpose is the same.

Senator HAGER. Mr. President, that being the case, I would personally agree to the tabling and ask that we consider both of these matters next Tuesday.

I would also point out, as the gentleman from Allegheny, Senator Zemprelli, has stated, apparently it takes some time to understand these matters. The Democrat caucus has only had these since the first of February. I hope they will be able to look at them between now and next Tuesday as well.

Senator TILGHMAN. Mr. President, I prefer—and I am going to stick on this little thing for a while—that we consider this resolution on Monday. We will be back here on Monday and maybe we can do a little work here on Monday.

And the question recurring,

Will the Senate agree to the motion?

A voice vote having been taken, the question was determined in the affirmative.

The PRESIDENT. The resolution will lay on the table.

**SPECIAL SENATE COMMITTEE TO REVIEW
ADMINISTRATIVE PRACTICES OF THE
DEPARTMENT OF PUBLIC WELFARE RELATING
TO MEDICAID**

Senators O'PAKE, ORLANDO, SCHAEFER, STAPLETON, MOORE, MANBECK and ROSS offered the following resolution (Serial No. 23), which was read and referred to the Committee on Rules and Executive Nominations:

In the Senate, February 27, 1979.

WHEREAS, This Commonwealth is facing flagrant violations and massive misuse of medicaid funds vitally needed to provide drugs for welfare recipients truly in need; and

WHEREAS, This misuse results in the loss of tremendous sums of taxpayers' dollars desperately needed to provide quality medical care for the many deserving poor, a stated goal of the medicaid program; and

WHEREAS, Reports of welfare drug fraud and phony welfare identification documents have continually surfaced in news reports which describe the following abuses:

(1) One doctor made nearly \$1,000,000 in the last seven years.

(2) Another physician billed the State \$92,444 last year for 12 1/2 hours work a week.

(3) For providing necessary and unnecessary drugs to welfare recipients the State pays druggists \$2.5 million and an additional \$4,000,000 for medical care monthly in Philadelphia.

(4) Some welfare recipients are known to sell prescription drugs, many of which are addictive, for as much as \$3 and \$5 a pill.

(5) Last year one drugstore collected \$622,061 from the State for filling welfare prescriptions.

(6) One person reportedly paid \$20 for a photo I.D. card, a blank check entitling the bearer to receive welfare benefits.

(7) Another person seeking to buy one medical services card was offered ten; they now go for \$10 each; and

WHEREAS, These violations weaken the entire medicaid program; and

WHEREAS, These abuses breed disrespect both for our welfare and legal systems; and

WHEREAS, Drugs illicitly secured on the blackmarket under the medical assistance program are cropping up in schools and playgrounds endangering the health of our youth; and

WHEREAS, This misuse is the subject of an investigation by the Department of Justice; and

WHEREAS, The scope of this investigation is limited by Federal statute; and

WHEREAS, The Department of Public Welfare appears incapable of solving this problem administratively; therefore be it

RESOLVED, That the President pro tempore of the Senate appoint a five member Senate committee, three from the majority and two from the minority, for the purpose of reviewing the administrative practices of the Department of Public Welfare relating to medicaid; and be it further

RESOLVED, That the committee may hold hearings, take testimony, and make its investigations at such places as it deems necessary within this Commonwealth. It may issue subpoenas under the hand and seal of its chairman commanding any person to appear before it and to answer questions touching matters properly being inquired into by the committee and to produce such books, papers, records and documents as the committee deems necessary. Such subpoenas may be served upon any person and shall have the force and effect of subpoenas issued out of the courts of this Commonwealth. Any person who willfully neglects or refuses to testify before the committee or to produce any books, papers, records or documents, shall be subject to the penalties provided by the laws of the Commonwealth in such case. Each member of the committee shall have power to administer oaths and affirmations to witnesses appearing before the committee; and be it further

RESOLVED, That officials and staff of the Department of Public Welfare provide such cooperation as will be necessary; and be it further

RESOLVED, That the committee make a report to the Senate within a reasonable time which would include the findings of the committee and make recommendations for changes in law or administrative practice which are appropriate and consistent with the findings of this review.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to Mr. and Mrs. Henry Lipschutz by Senator Fumo.

Congratulations of the Senate were extended to Delbert O'Dell Hague, Jr., Anne Henderson and to Cathy Bertuzzi by Senator Andrews.

Congratulations of the Senate were extended to Mr. and Mrs. J. Reed Chapman and to Mr. and Mrs. Allen C. Wiltrout by Senator Stout.

Congratulations of the Senate were extended to Jeffrey Bombich by Senator Romanelli.

Congratulations of the Senate were extended to Mr. and Mrs. Forest H. Steva, Mr. and Mrs. Louis Ridonelli, Mr. and Mrs. Frank J. Sirak, Mr. and Mrs. Angelo Tavani, Mr. and Mrs. Dante Filigenzi, Mr. and Mrs. Frank Jerioski, Mr. and Mrs. Vincent Bucci and to Mr. and Mrs. August M. Aggers by Senator Orlando.

PETITIONS AND REMONSTRANCES

Senator O'PAKE. Mr. President, I have just introduced a resolution in the Senate today that calls for the creation of a special committee to investigate the Department of Public Welfare's management of the medicaid program in Pennsylvania. Everywhere we turn, reports of welfare drug fraud and phony welfare identification documents continue to surface.

A series of articles published last year in the Philadelphia Daily News revealed the following abuses, among others:

First, one doctor participating in the medicaid program made nearly \$1 million from medicaid reimbursement over the last seven years.

Two, another physician billed the State under the medicaid program for \$92,444 last year for twelve and one-half hours of work a week. At least twenty-three others are known to be doing similar billing.

Three, in Philadelphia alone, the State pays pharmacists \$2.5 million a month for drugs for welfare recipients.

Four, last year, in one year, one drugstore collected \$622,061 from the State for filling welfare prescriptions.

Five, the program abuse is not limited to health care providers. Some welfare recipients are known to sell their tax-paid prescription drugs, many of which are addictive, for as much as \$3.00 and \$5.00 a pill.

Six, the taint of abuse also goes beyond medical providers and welfare recipients to include some State employees in the Welfare Department. These employees are responsible for the disbursement and security of photo I.D. cards that act as a blank check entitling the bearer to receive welfare benefits. One person reportedly paid \$20 for a photo I.D. card, and another person seeking to buy one medical services card was offered \$10.

The resolution I have introduced today would establish a five-member, bipartisan committee to investigate the administrative practices of the Department of Public Welfare relating to medicaid. The Special Senate Committee would have the power to subpoena a welfare staff, recipients, medical providers or anyone else involved in the medicaid program. The committee would focus its efforts towards investigating the means by which such fraud has been institutionalized in the medicaid program.

Mr. President, we, as Legislators, who will be shortly reviewing the Welfare Department budget, must pinpoint the problems within the system which apparently cloak millions of dollars a year in medicaid abuse. The Department of Public Welfare has a major responsibility through its claim processing and other activities to detect fraud. Data from the Department of Welfare is crucial to the success of the investigatory activities carried out by the Medicaid Fraud Control Unit recently established in the Department of Justice.

I question the methodology now being used by the Welfare Department. I question the Department's handling of data that surely must show billing patterns and practices indicative of potential program fraud.

In short, I want to know, and I think the taxpayers of Pennsylvania want to know, why it is so easy to buy tax-paid drugs and welfare I.D. cards on the black market, and why some

physicians and pharmacists are getting richer by working fewer hours and submitting a multitude of claims for State reimbursement under the medicaid program. The helpless and indigent people who need the program and benefits are not usurping our tax dollars. It is the system that has opened its doors to abuse through lax and poor management of a well-intended program.

I am offering my resolution today, Mr. President, as a means to tackle the system that has virtually institutionalized medicaid fraud on a massive scale in Pennsylvania.

PERMISSION GRANTED COMMITTEE TO MEET DURING SESSION

Senator ZEMPRELLI. Mr. President, I announce a meeting of the Committee on State Government, to be held immediately, during which time the Senate can proceed with its business.

The PRESIDENT. There being no objection, the Committee on State Government will proceed with its meeting.

REPORT FROM COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS

Senator FUMO, by unanimous consent, from the Committee on Rules and Executive Nominations, reported the following nominations, made by His Excellency, the Governor, which were read by the Clerk as follows:

SECRETARY OF AGING

February 6, 1979.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Gorham L. Black, Jr., 4000 Gypsy Lane, Apartment 702, Philadelphia 19144, Philadelphia County, Thirty-sixth Senatorial District, for appointment as Secretary of Aging, to serve until the third Tuesday of January, 1983, and until his successor shall have been appointed and qualified, pursuant to Act 70, approved June 20, 1978.

DICK THORNBURGH.

SECRETARY OF LABOR AND INDUSTRY

February 7, 1979.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Myron Lawrence Joseph, 5420 Plainfield Street, Pittsburgh 15217, Allegheny County, Forty-third Senatorial District, for appointment as Secretary of Labor and Industry, to serve until the third Tuesday of January, 1983, and until his successor shall have been appointed and qualified, vice The Honorable Paul J. Smith, New Cumberland, whose term expired.

DICK THORNBURGH.

COMMISSIONER OF THE PENNSYLVANIA STATE POLICE

January 25, 1979.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Daniel F. Dunn, 2941 Greenwald Road, Bethel Park 15102, Allegheny County, Thirty-seventh Senatorial District, for appointment as Commissioner of the Pennsylvania State Police, to serve until the third Tuesday of January, 1983, and until his successor shall have been appointed and qualified, vice Colonel Paul J. Chylak, Hershey, whose term expired.

DICK THORNBURGH.

DISTRICT JUSTICE

January 2, 1979.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Esther Cotner, Box 157, Washingtonville 17884, Montour County, Twenty-seventh Senatorial District, for appointment as District Justice in and for the County of Montour, Class 3, District 04, to serve until the first Monday of January, 1982, vice Guy H. Williams, Danville, resigned.

MILTON J. SHAPP.

EXECUTIVE NOMINATIONS

EXECUTIVE SESSION

Motion was made by Senator FUMO,

That the Senate do now resolve itself into Executive Session for the purpose of considering certain nominations made by the Governor.

Which was agreed to.

CONSIDERATION OF EXECUTIVE NOMINATIONS

Senator FUMO asked and obtained unanimous consent for immediate consideration of the nominations made by His Excellency, the Governor, and reported from committee at today's Session.

NOMINATION TAKEN FROM THE TABLE

Senator FUMO. Mr. President, I call from the table for consideration the nomination reported from committee today and previously read by the Clerk for Gorham L. Black, Jr., as Secretary of Aging.

On the question,

Will the Senate advise and consent to the nomination?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—49

Andrews, Hankins, Lynch, Reibman,
Arlene, Hess, Manbeck, Romanelli,
Bell, Holl, McKinney, Ross,
Bodack, Hopper, Mellow, Scanlon,
Coppersmith, Howard, Messinger, Schaefer,
Corman, Jubelirer, Moore, Smith,
Dwyer, Kelley, Murray, Snyder,
Early, Kury, O'Connell, Stapleton,
Fumo, Kusse, O'Pake, Stauffer,
Gekas, Lewis, Orlando, Stout,
Greenleaf, Lincoln, Pecora, Tilghman,
Gurzenda, Loeper, Price, Zemprelli,
Hager,

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Governor be informed accordingly.

NOMINATION TAKEN FROM THE TABLE

Senator FUMO. Mr. President, I call from the table for consideration the nomination reported from committee today and previously read by the Clerk for Esther Cotner, as District Justice in and for the County of Montour.

On the question,

Will the Senate advise and consent to the nomination?

Senator HAGER. Mr. President, as I have already discussed with the gentleman from Philadelphia, Senator Fumo, and the gentleman from Allegheny, Senator Zemprelli, this is another of the Shapp appointments and, with the permission of the Senate, we would be willing to accept the same roll call as was recorded on each of those. As I recall it may have been 26 to 23.

Senator FUMO. Mr. President, it was 26 to 23.

Senator HAGER. I have been advised that we are on another Session day, Mr. President, and cannot accept that vote because the whole membership of the Senate is not present.

POINT OF INFORMATION

Senator ZEMPRELLI. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Allegheny, Senator Zemprelli, will state it.

Senator ZEMPRELLI. Mr. President, is it not possible for the Chair to accept a voice vote?

The PRESIDENT. No, it is not, Senator.

Senator TILGHMAN. Mr. President, would the Majority Leader consider laying this nomination on the table and it could be taken up next Tuesday when we are all here. Otherwise, we will have to wait until we all get back on the floor.

Senator ZEMPRELLI. Mr. President, I would be satisfied to put them all on the table, Mr. President.

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

And the question recurring,

Will the Senate advise and consent to the nomination?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—26

Arlene, Kelley, Messinger, Scanlon,
Bodack, Kury, Murray, Schaefer,
Coppersmith, Lewis, O'Pake, Smith,
Early, Lincoln, Orlando, Stapleton,
Fumo, Lynch, Romanelli, Stout,
Gurzenda, McKinney, Ross, Zemprelli,
Hankins, Mellow,

NAYS—23

Andrews, Hager, Kusse, Price,
Bell, Hess, Loeper, Reibman,

Corman,	Holl,	Manbeck,	Snyder,
Dwyer,	Hopper,	Moore,	Stauffer,
Gekas,	Howard,	O'Connell,	Tilghman,
Greenleaf,	Jubelirer,	Pecora,	

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Governor be informed accordingly.

NOMINATION TAKEN FROM THE TABLE

Senator FUMO. Mr. President, I call from the table for consideration the nomination reported from committee today and previously read by the Clerk for Daniel F. Dunn, as Commissioner of the Pennsylvania State Police.

On the question,
Will the Senate advise and consent to the nomination?

Senator FUMO. Mr. President, I intend to vote for Mr. Dunn as Commissioner of State Police, but I would be remiss in my duties as a Senator if I did not bring to this Chamber some relevant testimony which was elicited by myself at Mr. Dunn's confirmation hearing before the Committee on Law and Justice and the Committee on State Government.

My particular problem with this nomination and my fear, although I intend to vote "yes" with reservation, is that Commissioner Dunn's philosophy is basically that, depending on the target of an investigation, he may be inclined to put aside the constitutional rights of an individual.

I would like to quote from page 24 of the notes of testimony where the interrogation on this area began.

"SENATOR FUMO: But philosophically you really have no basic objection, or you're not appalled by the fact that agents break and enter to plant these kinds of devices?" The devices we are referring to here are electronic eavesdropping devices.

"You kind of say, I guess, the end justifies the means and that it's the degree of the crime, or the person we're after that allows us to use extensive means.

"Is that what you're telling me?"

"MR. DUNN. I think that in some cases that such means are permissible.

"SENATOR FUMO. I have to say I strenuously disagree with you that in the United States of America that we would take the Constitution and tear it up because we're trying to get somebody who someone in the law enforcement area says, is very bad people.

"We've got to get this guy so we're going to break and enter to do it and this will be our test case.' I just have to say I disagree with you thoroughly philosophically on that answer."

Mr. Dunn's response was, "Well, I guess that's what makes the world go around, Senator."

After that, there was an ensuing debate over whose rights we were protecting and one of the Senators kind of felt that we were attempting to protect the civil rights of criminals merely because the law enforcement agency wanted to wiretap or eavesdrop on those individuals, people tend to think these people are criminals.

I suggest to my colleagues that the lesson we got in Watergate was that we do not throw the Constitution away for any

reason. I submit to my colleagues that I am concerned about Mr. Dunn's response to that line of questioning and although the Third Circuit Court in U. S. versus Dahlia, a case which I referred to in this Chamber when we debated the wiretap issue, has held that you can break and enter, at least in the Federal courts, for the purpose of planting these devices; other circuit courts have held in the negative.

Mr. President, I just want to say I am concerned about that kind of philosophy being based in the mind of the Commissioner of the Pennsylvania State Police.

Senator SCHAEFER. Mr. President, the hour is late and I do not wish to belabor the point but I have met with Mr. Dunn and Mr. Dunn is a constituent.

I believe that part of the testimony that the gentleman from Philadelphia, Senator Fumo, read is an accurate reflection but you must read some other items he said. I believe you must also understand the court's role in this entire process.

Earlier in his testimony, the gentleman from Philadelphia, Senator Fumo, asked, "My last question, again, on wiretapping is because of the Dahlia case. Would you allow surreptitious entry by your agents to plant wiretaps as a policy decision?"

"MR. DUNN: As a policy decision? I would want court guidance on it."

I think that is a responsible approach. I hope that the gentleman from Philadelphia, Senator Fumo, is not implying in his words that the nominee, Mr. Dunn, is standing for flouting, engaging in illegal conduct, doing unconstitutional acts because I do not think that is what he said. What he said was, "I want court guidance on this. I will follow what the court says I can do."

The central issue here, Mr. President, I believe is the effective use of this type of equipment. I believe it stands to reason that if anyone is going to be involved in the prosecution or the attempted investigation of criminal activities, the last thing to be done is tell the person being investigated that this kind of equipment will be used. It totally nullifies its effectiveness.

Mr. President, I believe he was very candid, refreshingly so, in his approach. But, in no way, size, shape or form did he indicate to me that he was going to flout the law.

Senator FUMO. Mr. President, just to clarify the issue a bit further, I recognize Mr. Dunn said he was going to look for court guidance but I also recognize and informed him that the Pennsylvania Supreme Court does not give advisory opinions.

As far as letting an individual know he is being wiretapped—you do not do that—I agree with that too if he is going to be wiretapped, but I do not go as far as to say that for breaking and entering into an individual's home and invading his privacy and planting electronic eavesdropping devices; break and enter again, maybe, to change the battery; break and enter again to retrieve the device. That is the philosophical question that we have before us. Mr. Dunn was very clear that he had no problems with that philosophy and he probably would be the test case; meaning that, when the proper target arose he would have no compulsion about testing the constitutional issues here, breaking and entering to plant these devices, and then seeing whether or not the Supreme Court would uphold them.

I submit to my colleagues that the victim of that breaking

and entering would then only have as his recourse an appeal to the Supreme Court and, in the meantime, his rights would have been violated.

It is regrettable that this Senate does not have the strong feelings about invasion of privacy that it once did. I guess we will have to wait and see whose rights are violated and then maybe see the wheel turn and have individuals stand up and defend those rights at that point in time.

Senator BELL. Mr. President, I will be very brief. I believe there are civil rights of criminals but there are also civil rights of the victims.

And the question recurring,
Will the Senate advise and consent to the nomination?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—49

Andrews,	Hankins,	Lynch,	Reibman,
Arlene,	Hess,	Manbeck,	Romanelli,
Bell,	Holl,	McKinney,	Ross,
Bodack,	Hopper,	Mellow,	Scanlon,
Coppersmith,	Howard,	Messinger,	Schaefer,
Corman,	Jubelirer,	Moore,	Smith,
Dwyer,	Kelley,	Murray,	Snyder,
Early,	Kury,	O'Connell,	Stapleton,
Fumo,	Kusse,	O'Pake,	Stauffer,
Gekas,	Lewis,	Orlando,	Stout,
Greenleaf,	Lincoln,	Pecora,	Tilghman,
Gurzenda,	Loeper,	Price,	Zemprelli,
Hager,			

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Governor be informed accordingly.

NOMINATION LAID ON THE TABLE

Senator FUMO. Mr. President, while we are still in Executive Session, I would like to clarify for the Members the reason I have not moved that Myron L. Joseph, Secretary of Labor and Industry, be lifted from the table for confirmation is that I have been requested by the Republican caucus to hold that nomination on the table and I intend to honor that request made by the Minority Leader on behalf of the Republican caucus. We are not asking that his name be lifted from the table today but I want the record to clearly reflect the reasoning behind that move.

Senator ROMANELLI. Mr. President, due to the fact that Dr. Joseph is a resident of my District I would like to know why he is being held? I believe someone should have the courtesy to come to me.

Senator HAGER. Mr. President, I will be happy to discuss that with the gentleman from Allegheny, Senator Romanelli. I neglected to consider the fact that he was the Senator with whom I should have talked. I will be happy to do that with the gentleman.

EXECUTIVE SESSION RISES

Senator FUMO. Mr. President, I move that the Executive

Session do now rise.

The motion was agreed to.

REPORTS FROM COMMITTEE

Senator McKINNEY, by unanimous consent, from the Committee on State Government, reported, as committed, SB 208 and 297.

BILLS ON FIRST CONSIDERATION

Senator ZEMPRELLI. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from committees for the first time at today's Session.

The motion was agreed to.

The bills were as follows:

SB 11, 208, 223, 224, 225, 274 and 297.

And said bills having been considered for the first time, Ordered, To be laid aside for second consideration.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

WEDNESDAY, FEBRUARY 28, 1979

9:30 A.M.	JUDICIARY (Public Hearing on legislation on the Searches and Seizures of objects in the possession of reporters and newsrooms; also to consider Senate Bills No. 12 and 14; this is a Joint Committee Meeting with the House Judiciary Committee)	Senate Majority Caucus Room
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TUESDAY, MARCH 13, 1979

10:30 A.M.	URBAN AFFAIRS AND HOUSING (a Hearing on testimony relating to Senate Bill No. 65)	Senate Majority Caucus Room
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ADJOURNMENT

Senator ZEMPRELLI. Mr. President, I move that the Senate do now adjourn until Monday, March 5, 1979, at 3:00 p.m., Eastern Standard Time.

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

Senator HAGER. Mr. President, I wonder if the gentleman from Allegheny, Senator Zemprelli, might not want to announce to the membership who still might be around here that there will be a roll call vote on House Bill No. 56 on Monday.

Senator ZEMPRELLI. Mr. President, the Rules we have adopted are not to be excuses for Senators not to show up. There are going to be occasions when roll calls will be taken when the expediency of the situation dictates such should be done. A classic example of that will be on Monday when, in the

interest of moving House Bill No. 56, we will ask that it be considered on final consideration and a roll call will be expected. That is for the information of all the Members who may have left the floor of the Senate.

And the question recurring,

Will the Senate agree to the motion?

The motion was agreed to.

The Senate adjourned at 5:45 p.m., Eastern Standard Time.