

# Legislative Journal

TUESDAY, MAY 8, 1979

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## SENATE

TUESDAY, May 8, 1979.

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

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

### PRAYER

The following prayer was offered by the Secretary of the Senate, Hon. MARK GRUELL, JR.:

You are protector, O God, of all who trust in You. Without You nothing is right or holy. Shower Your mercy upon us. With You as our leader and guide, may we use the good things of life without losing those that will last forever. This favor we ask through Jesus Christ, Your Son, our Lord. 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 HESS TO VOTE FOR SENATOR STAUFFER

Senator HESS. Mr. President, I would like to ask for a legislative leave for Senator Stauffer, who is at a meeting in the Governor's office. We will be voting him.

The PRESIDENT. Senator Hess requests leave of absence for Senator Stauffer. Are there any objections? The Chair hears none. Leave is granted.

### SENATOR ZEMPRELLI TO VOTE FOR SENATOR KELLEY, SENATOR MCKINNEY AND SENATOR SMITH

Senator ZEMPRELLI. Mr. President, although Senator Kelley is with us in physical presence at the moment, I understand on good information from him that he will be departing the floor. For that portion of the Session which he is absent I would ask for a legislative leave to vote him.

Mr. President, I also am advised that Senator McKinney is presently attending a legislative function. He has requested that I request of you a legislative leave and the right to vote him in this Session.

Mr. President, I would also ask for a legislative leave for Senator Smith who is not with us today.

The PRESIDENT. Senator Zemprelli asks for legislative leaves of absence for Senator Kelley, Senator McKinney and Senator Smith. Are there any objections? The Chair hears none. The leaves are granted.

### GUESTS OF SENATOR RALPH W. HESS PRESENTED TO SENATE

Senator HESS. Mr. President, in our gallery today, we have some guests from York County from the Thirty-first Senatorial District and the Twenty-eighth Senatorial District. The gentleman from Cumberland, Senator Hopper, and I would appreciate the Senate giving their usual warm welcome to this group of senior citizens. They are classified under the heading of Thomasville, but they are spread all over the western part of York County. I would appreciate your very sincere warm welcome, Mr. President.

The PRESIDENT. Will those guests please rise so the Senate may give you their traditional warm welcome?

(Applause.)

### GUESTS OF SENATOR PHILIP PRICE, JR. PRESENTED TO SENATE

Senator PRICE. Mr. President, it gives me great pleasure to introduce the Zapf family from the Philadelphia area, Mr. and Mrs. Zapf and their three children, Steve, Jennifer and Richard, whom I believe are sitting in the front row of the gallery. With them is a guest from France who is attending a School of Social Work at the University of Pennsylvania in Philadelphia by the name of Remi Pelletier. I wonder if the Senate would be good enough to extend its usual warm welcome to these visitors today.

The PRESIDENT. Will the Zapf family and Remi Pelletier please stand so the Senate may accord you their traditional warm welcome?

(Applause.)

### HOUSE MESSAGES

#### HOUSE BILL FOR CONCURRENCE

The Clerk of the House of Representatives being introduced, presented for concurrence HB 780, which was referred to the Committee on Aging and Youth.

**SENATE BILL RETURNED WITH AMENDMENTS**

He also returned to the Senate **SB 208**, with the information that the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. The bill, as amended, will be placed on the Calendar.

**HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILL**

He also informed the Senate that the House has concurred in amendments made by the Senate to **HB 36**.

**BILL SIGNED**

The President (William W. Scranton III) in the presence of the Senate signed the following bill:

**HB 36.**

**CHANGES IN STANDING COMMITTEES OF SENATE**

The PRESIDENT. The President pro tempore of the Senate has appointed Senator James Lloyd to the Committee on Education, replacing Senator Freeman Hankins who has resigned.

The President pro tempore of the Senate has appointed Senator Clarence F. Manbeck to serve as a member of the Senate Committee on Professional Licensure.

The President pro tempore of the Senate has appointed Senator Edward Howard to serve as member of the Senate Committee on Constitutional Changes and Federal Relations.

**REPORTS FROM COMMITTEES**

Senator **KELLEY**, from the Committee on Law and Justice, reported, as committed, **SB 518**.

Senator **LEWIS**, from the Committee on Local Government, reported, as committed, **SB 210** and **535**; as amended, **SB 188**.

Senator **STOUT**, from the Committee on Military and Veterans Affairs, reported, as committed, **SB 448**.

**BILLS INTRODUCED AND REFERRED**

Senators **REIBMAN** AND **DWYER** presented to the Chair **SB 728**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," further providing for part-time employment.

Which was committed to the Committee on State Government.

They also presented to the Chair **SB 729**, entitled:

An Act establishing a flexible hours work program for employees; imposing duties on the Executive Board and making an appropriation.

Which was committed to the Committee on State Government.

Senators **REIBMAN**, **MESSINGER**, **ROSS**, **MURRAY** and

**LEWIS** presented to the Chair **SB 730**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," authorizing the Department of General Services to provide for the installation of original works of art in public buildings.

Which was committed to the Committee on State Government.

They also presented to the Chair **SB 731**, entitled:

An Act amending the act of May 1, 1933 (P. L. 103, No. 69), entitled "The Second Class Township Code," authorizing the making of grants to nonprofit art corporations.

Which was committed to the Committee on Local Government.

They also presented to the Chair **SB 732**, entitled:

An Act amending the act of June 24, 1931 (P. L. 1206, No. 331), entitled "The First Class Township Code," authorizing the making of grants to nonprofit art corporations.

Which was committed to the Committee on Local Government.

They also presented to the Chair **SB 733**, entitled:

An Act amending the act of August 9, 1956 (1955 P. L. 323, No. 130), entitled "The County Code," authorizing the making of grants to nonprofit art corporations.

Which was committed to the Committee on Local Government.

They also presented to the Chair **SB 734**, entitled:

An Act amending the act of February 1, 1966 (1965 P. L. 1656, No. 581), entitled "The Borough Code," authorizing the making of grants to nonprofit art corporations.

Which was committed to the Committee on Local Government.

They also presented to the Chair **SB 735**, entitled:

An Act amending the act of July 28, 1953 (P. L. 723, No. 230), entitled, as amended, "Second Class County Code," authorizing the making of grants to nonprofit art corporations.

Which was committed to the Committee on Local Government.

Senators **REIBMAN** and **MESSINGER** presented to the Chair **SB 736**, entitled:

An Act amending the act of July 8, 1957 (P. L. 579, No. 321), entitled, as amended, "An act establishing minimum compensation and increments for members of the faculty and administration of the Thaddeus Stevens State School of Technology, providing leave of absence with pay for faculty members and the superintendent of the school and imposing duties on the Board of Trustees of such school and the Secretary of Education," adding to the schools covered by the act.

Which was committed to the Committee on Education.

Senators **REIBMAN**, **DWYER** and **MESSINGER** presented to the Chair **SB 737**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," providing for the

combination of school districts, charging the State Board of Education to receive such petitions, to conduct hearings on the petitions and to submit approved petitions to referendum; making certain clarifications and updating the law relative to annexations; requiring that school boards affected by annexations shall properly and adequately advertise and hold a public meeting to decide whether to request a hearing before the Council of Basic Education; providing for the establishment of transfer districts from one school district to an adjacent district, charging the State Board of Education to receive such petitions, to conduct hearings on the petitions and to approve or reject such requests.

Which was committed to the Committee on Education.

Senators REIBMAN, MELLOW and ROMANELLI presented to the Chair **SB 738**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," renaming the Intermediate Unit and granting them authority to coordinate transportation services.

Which was committed to the Committee on Education.

They also presented to the Chair **SB 739**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," further providing for vehicle depreciation charges.

Which was committed to the Committee on Education.

They also presented to the Chair **SB 740**, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," transferring to the Department of Transportation the duty to approve the means and contracts under which certain school districts transport pupils.

Which was committed to the Committee on Education.

They also presented to the Chair **SB 741**, entitled:

An Act amending the act of July 1, 1978 (No. 55A), entitled "Motor License Fund Supplement to the General Appropriation Act of 1978," appropriating a sum from the Motor License Fund to the Department of Transportation for pupil transportation and making repeals.

Which was committed to the Committee on Transportation.

Senators STAPLETON, ORLANDO, COPPERSMITH, KUSSE and MELLOW presented to the Chair **SB 742**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, requiring open trucks to have covers over certain loads.

Which was committed to the Committee on Transportation.

Senators GEKAS, COPPERSMITH, HESS, KUSSE, CORMAN, HOPPER and ORLANDO presented to the Chair **SB 743**, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for theft under extreme emergencies.

Which was committed to the Committee on Judiciary.

Senators O'PAKE, REIBMAN, LLOYD, FUMO, ROSS, LEWIS and HOWARD presented to the Chair **SB 744**, entitled:

An Act amending the act of August 22, 1953 (P. L. 1344, No. 383), entitled "The Marriage Law," increasing the fees for marriage licenses and providing for the disposition of the increased revenue from such fees.

Which was committed to the Committee on Judiciary.

They also presented to the Chair **SB 745**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," providing for the establishment and operation of an administrative office under the Governor to be known as the Pennsylvania Office on Crime Victims; imposing powers and duties; authorizing certain advisory boards and establishing a funding method for the expenses of such office.

Which was committed to the Committee on Judiciary.

Senator KUSSE presented to the Chair **SB 746**, entitled:

An Act amending the act of June 15, 1961 (P. L. 373, No. 207), entitled "Inheritance and Estate Tax Act of 1961," excluding from the tax of a nonresident's estate the real estate in Pennsylvania subject to a contract of sale.

Which was committed to the Committee on Finance.

Senators COPPERSMITH, HAGER, HESS, HOWARD, DWYER, LEWIS, O'CONNELL, SNYDER, HOPPER, STAUFFER, KELLEY, KUSSE, MESSINGER, GEKAS, MANBECK, MOORE and PRICE presented to the Chair **SB 747**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, adding provisions relating to product liability actions.

Which was committed to the Committee on Judiciary.

Senators REIBMAN, LEWIS, MESSINGER and O'PAKE presented to the Chair **SB 748**, entitled:

An Act amending the act of June 13, 1967 (P. L. 31, No. 21), entitled "Public Welfare Code," changing the name of the Department of Welfare to the Department of Human Services.

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

Senators REIBMAN, BODACK, CORMAN, O'PAKE and MESSINGER presented to the Chair **SB 749**, entitled:

An Act authorizing the Department of Education to make grants to educational institutions, agencies and consortia for the development and operation of special educational programs and counseling services to provide educational and career opportunities for Pennsylvania adults and for other related educational purposes and making an appropriation.

Which was committed to the Committee on Education.

Senators HOWARD, CORMAN, HOPPER, FUMO, PRICE, SNYDER, MANBECK, O'CONNELL, LEWIS, ORLANDO, ROSS, HOLL, HAGER AND COPPERSMITH presented to the Chair **SB 750**, entitled:

An Act amending Title 71 (State Government) of the Pennsylvania Consolidated Statutes, revising provisions relating to retirement for State employees and officers.

Which was committed to the Committee on Finance.

Senators DWYER, ARLENE, COPPERSMITH, HOLL, OR-

LANDO, JUBELIRER, O'PAKE, GEKAS, O'CONNELL, ANDREWS, MOORE and PECORA presented to the Chair **SB 751**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," further providing for the membership and powers and duties of the Industrial Board.

Which was committed to the Committee on Labor and Industry.

They also presented to the Chair **SB 752**, entitled:

An Act amending the act of April 27, 1927 (P. L. 465, No. 299), entitled, as amended, "Fire and Panic Act," permitting certain political subdivisions to conduct inspections in lieu of department personnel, requiring certain reports within one month of inspection, further providing for job performance criteria for inspectors, further providing for waivers and certain occupancy permits, requiring certain complaints to be in writing, further providing for the membership, terms and duties of the Industrial Board, creating field offices for the Bureau of Occupational and Industrial Safety and providing penalties.

Which was committed to the Committee on Labor and Industry.

Senators STOUT and LINCOLN presented to the Chair **SB 753**, entitled:

An Act authorizing the Department of General Services with the approval of the Secretary of Environmental Resources, in the name of the Commonwealth of Pennsylvania to grant an easement to the Leeland Development Company, a Pennsylvania corporation, to a tract of land within the bed of the Monongahela River situate in Dunkard Township, Greene County, Pennsylvania.

Which was committed to the Committee on State Government.

Senators HESS, STAUFFER and KUSSE presented to the Chair **SB 754**, entitled:

An Act amending the act of November 1, 1971 (P. L. 495, No. 113), entitled "An act providing for the compensation of county officers in counties of the second through eighth classes, for the disposition of fees, for filing of bonds in certain cases and for duties of certain officers," further providing for the salary of the county commissioners and other officers.

Which was committed to the Committee on Local Government.

Senators O'CONNELL and PECORA presented to the Chair **SB 755**, entitled:

An Act amending the act of July 20, 1974 (P. L. 551, No. 190), entitled "Medical Practice Act of 1974," including anesthesiologist's assistants in the definition of physician's assistants.

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

Senators STAPLETON, O'CONNELL, ROSS and GURZENDA presented to the Chair **SB 756**, entitled:

An Act amending the act of June 12, 1968 (P. L. 173, No. 94), entitled "Cooperative Agricultural Association Act," further providing for the audits of certain cooperatives.

Which was committed to the Committee on Agriculture and Rural Affairs.

Senator GURZENDA presented to the Chair **SB 757**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," further providing for the Department of Aging.

Which was committed to the Committee on Aging and Youth.

Senators MANBECK, LYNCH, STAPLETON and MOORE presented to the Chair **SB 758**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for the registration, licensing, operation and movement under permits of farm vehicles, implements of husbandry and fertilizer equipment.

Which was committed to the Committee on Transportation.

Senators HAGER, LEWIS, DWYER, CORMAN, GEKAS and HESS presented to the Chair **SB 759**, entitled:

An Act amending the act of July 15, 1976 (P. L. 1036, No. 208), entitled "Volunteer Fire Company, Ambulance Service and Rescue Squad Assistance Act," extending assistance in the form of loans for purchase of certain used equipment.

Which was committed to the Committee on Local Government.

Senators ROMANELLI, ZEMPRELLI, BODACK, SCHAEFER and SCANLON presented to the Chair **SB 760**, entitled:

An Act amending the act of July 28, 1953 (P. L. 723, No. 230), entitled, as amended, "Second Class County Code," redefining "county employe" and prescribing the qualifications for retirement allowances of certain persons.

Which was committed to the Committee on Local Government.

Senator KUSSE presented to the Chair **SB 761**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," further providing for the powers of the Secretary of Education.

Which was committed to the Committee on Education.

Senators LEWIS, LINCOLN, MURRAY, KUSSE, O'PAKE, ORLANDO, O'CONNELL and COPPERSMITH presented to the Chair **SB 762**, entitled:

An Act amending the act of November 1, 1971 (P. L. 495, No. 113), entitled "An act providing for the compensation of county officers in counties of the second through eighth classes, for the disposition of fees, for filing of bonds in certain cases and for duties of certain officers," increasing the salary of certain county officers and county commissioners for calendar years 1981 and 1983 and other county officers in calendar year 1982.

Which was committed to the Committee on Local Government.

Senators LEWIS and BODACK presented to the Chair **SB 763**, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, providing for special registration plates for former prisoners of war and exempting them from the payment of certain fees.

Which was committed to the Committee on Transportation.

## CALENDAR

### THIRD CONSIDERATION CALENDAR

#### BILL OVER IN ORDER

**SB 226** — Without objection, the bill was passed over in its order at the request of Senator ZEMPRELLI.

#### BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

**SB 283 (Pr. No. 668)** — Considered the third time,

On the question

Will the Senate agree to the bill on third consideration?

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

Amend Bill, page 1, by inserting between lines 9 and 10:

Section 1. Subsection (e) of section 6, act of September 10, 1974 (P. L. 639, No. 209), known as the "Abortion Control Act," is amended to read:

Section 6. Control of Practice of Abortion.—\* \* \*

(e) Every facility in which an abortion is performed within the Commonwealth of Pennsylvania during any quarter year shall file with the Department of Health a report showing the total number of abortions performed within such hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. The name of the facility filing the report and the name of the person who performed the abortions, if it is included on the report, shall be afforded confidentiality by the department, provided that such confidentiality shall not restrict nor prohibit the department from providing this information to other responsible governmental agencies for purposes of investigating alleged violations of this act or any other Act of Assembly or Congress.

\* \* \*

Amend Sec. 1, page 1, line 10, by striking out "1." and inserting: 2.

Amend Sec. 1, page 1, lines 10 and 11, by striking out "of September 10, 1974 (P. L. 639, No. 209), known as the "Abortion Control Act,""

Amend Sec. 1 (Sec. 6.1), page 2, by inserting between lines 17 and 18: The name of the facility filing the report and the name of the person who performed the abortions, if it is included on the report, shall be afforded confidentiality by the department, provided that such confidentiality shall not restrict nor prohibit the department from providing this information to other responsible government agencies for purposes of investigating alleged violations of this act or any other Act of Assembly or Congress.

Amend Sec. 2, page 2, line 23, by striking out "2." and inserting: 3.

On the question,

Will the Senate agree to the amendments?

Senator MESSINGER. Mr. President, what these amendments do are require that the Department of Health in their reports concerning abortion treat the reports with confidentiality, provided, of course, that such confidentiality shall not restrict the department from providing information to other responsible governmental agencies if they are investigating alleged violations of this act, which is known as the Abortions Control Act.

I would like to point out to those people who have misinterpreted this that one of the reasons for this is to prevent the harassment of individuals who perform abortions which is a legal medical practice in the United States. It has nothing to do with whether or not the operation is moral or immoral or any other point, just as we treat with confidentiality reports on many other medical problems that are made to the Department of Health.

Mr. President, actually its main purpose is to prevent the harassment of individuals who, in their conscience and because of the legality of the operation, do perform abortions.

Senator SCHAEFER. Mr. President, I rise in opposition to the amendments that were offered by my distinguished colleague. I recognize that, as with many of the issues we face, there is a threat of reason or rationale behind it. I think we have to kind of weigh the relative value of what we are trying to achieve with the bill.

The amendments were offered with the rationale or urging that this would help prevent harassment of people who were involved in this kind of procedure.

Initially, I would like to submit to this Body for its consideration my opinion that most of the people who are involved in this kind of medical procedure are not that well-known, especially those who oppose abortion or this kind of medical procedure.

I do not think, in other words, any further measure of protection in the harassment area will be afforded, because quite frankly, these people advertise, these people get their message out one way or another, because this is how they get their trade. So I say that the underlying basis for the argument is probably not there.

The second thing that I would like to say is I believe these amendments on their merits are undesirable. I say this because the aim and intent of this legislation is to make the entire issue of choosing this type of medical procedure one that is made with the knowledge of all the facts surrounding the relative risk or possibility of complications that may arise from taking this kind of medical procedure and abortion.

I think this is important for people who are faced with this very, I believe, tragic kind of decision. It is important that they knowingly understand not only the incident of risk across the State, but also the incident of risk that may be associated with any one particular doctor, any one particular facility or clinic. If a clinic or a doctor is performing this type of surgery and is having a significant degree of complications from his procedures, I believe a woman should understand this and know this. I think that is not the kind of information that we want to hide, we want to give this kind of confidential treatment. As a matter of fact, I think we have an obligation to make sure that

women know this.

So, for those two reasons, Mr. President, I would ask for a "no" vote on these amendments. I would also respectfully request a roll call.

Senator MESSINGER. Mr. President, I think that argument is specious in the fact that we know that some surgeons are better than others and we do not report publicly in any publications that the incidence of complications in a gall bladder operation are greater with this surgeon than they are with others, and I really do not believe that that kind of an argument is a suitable argument for these amendments.

Furthermore, if there is any indication of illegality, this information can be made available to other State agencies.

Mr. President, the reason is the constantly making this available in publications. It is putting the same story in the newspaper or in other publications month after month after month, and that induces much more harassment of individuals than is absolutely essential under this kind of a situation. I am not debating whether or not abortions are immoral or not. The truth of the matter is they are legal, and it is a legal medical procedure.

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

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

Senator BODACK. Mr. President, I would like to change my vote from "aye" to "no."

The PRESIDENT. The gentleman will be so recorded.

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

YEAS—21

Andrews,	Hankins,	Kury,	Price,
Coppersmith,	Hess,	Lewis,	Reibman,
Corman,	Hopper,	Manbeck,	Snyder,
Dwyer,	Howard,	Messinger,	Stauffer,
Gekas,	Jubelirer,	Moore,	Tilghman,
Hager,			

NAYS—23

Bell,	Kusse,	O'Pake,	Schaefer,
Bodack,	Lincoln,	Orlando,	Smith,
Early,	Lloyd,	Pecora,	Stapleton,
Greenleaf,	Loeper,	Romanelli,	Stout,
Gurzenda,	Murray,	Ross,	Zemprelli,
Holl,	O'Connell,	Scanlon,	

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?

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

Senator ARLENE. Mr. President, I would like to change my vote from "no" to "aye."

The PRESIDENT. The gentleman will be so recorded.

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

YEAS—46

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

NAYS—2

Kury, Lewis,

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

BILL OVER IN ORDER

**HB 300** — Without objection, the bill was passed over in its order at the request of Senator ZEMPRELLI.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

**HB 305 (Pr. No. 1128)** — Considered the third time and agreed to,

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

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—48

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

NAYS—0

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

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.



## BILL OVER IN ORDER

**SB 316** — Without objection, the bill was passed over in its order at the request of Senator ZEMPRELLI.

## BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

**SB 334 (Pr. No. 338)** — Considered the third time,

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

Senator STAUFFER. Mr. President, I ask that Senate Bill No. 334 go over in its order.

Senator EARLY. Mr. President, I object to Senate Bill No. 334 going over in its order. My rationale for objecting is the fact that this bill was supposed to have run the last time we were in Session. I agreed at the time to let it go over then. I see no reason to postpone it.

## MOTION FOR BILL OVER IN ORDER

Senator STAUFFER. Mr. President, I move that Senate Bill No. 334 go over in its order.

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

Senator EARLY. Mr. President, I respectfully ask my colleagues to vote "no" on the motion. I say that because the bill is certainly not a new piece of legislation. This legislation was passed in a previous Session, and I have to tell you, Mr. President, it passed at the time with absolutely no negative votes. Unfortunately, at the time the bill was amended and amended, as most no-fault bills get amended, the Governor at the time vetoed the legislation because of the other amendments that were added.

I see, Mr. President, this again as an attempt to amend this legislation and I am sure, Mr. President, we will end up with the same results: That is, amendments which will cause the Governor, or perhaps even the House, to come out against this legislation. For that reason, Mr. President, I am asking my colleagues to vote "no" on the motion to delay this.

Senator STAUFFER. Mr. President, the gentleman from Allegheny, Senator Early, is incorrect in characterizing my request that the bill go over as a means of amending or in any way killing the legislation. Yesterday when this bill was discussed in our caucus, there was some misunderstanding on the part of our Members regarding the actual impact of this legislation on insurance rates for senior citizens.

Therefore, the request was made by our Members that we hold the bill until we return for the next Session, so that they would have an opportunity to gather more information and to check out the actual effects of the legislation.

Mr. President, there is no attempt, no desire to kill the bill, or to do anything but to give us an opportunity to get the information on which the Members can cast an intelligent vote. Without that opportunity, many of us will probably be forced to vote "no" on what may be a very good piece of legislation that we would like to support, but we cannot do so blindly, we need to have the information that will enable us to cast an intelligent

vote. That is the only reason for the request that the bill go over.

Senator EARLY. By way of repetition, Mr. President, this is not a new piece of legislation; they caucused on it in previous Sessions, they voted on it unanimously. Not one individual voted against it in previous Sessions. I ask, Mr. President, that we do run this bill today.

Senator BELL. Mr. President, I have known many cases in previous Sessions when we made horrible mistakes because we did not know what we were voting on. The question here is, will the passage of this legislation raise the insurance rates of every senior citizen who is eligible for Medicare.

Senator STAUFFER. Mr. President, to point out that a bill was considered in previous Sessions, I think, is unfair to the Members, because obviously you do have new Members. We handle a great deal of legislation. Many of us who may be very articulate on a particular bill at one time, a year or two later would not have a clear recollection of all the points.

I think the gentleman from Allegheny, Senator Early, should recognize that there is a very clear question as to whether under Federal law we are permitted to do what this bill proposes to do. There is a very serious question regarding Federal regulations and what they would permit us to do.

Mr. President, it is answers to questions like that that we want to find out. We like the idea, and perhaps we will support it, but the question is, can we.

Senator EARLY. Mr. President, I believe the gentleman from Chester, Senator Stauffer, is debating the merits of the bill, which I have no objection to. I would be happy to debate the merits of Senate Bill No. 334 with the gentleman if that is his desire.

At this point in time, the motion the gentleman from Chester, Senator Stauffer, made, was to take the bill over. Now to indicate, Mr. President, that the sincerity is not quite there, this bill has been on our Calendar for seven days. That is seven legislative days, which means they have had plenty of time to research this bill and caucus on this bill. I ask, Mr. President, that we do run it.

Mr. President, I ask for a roll call vote.

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

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

Senator ZEMPRELLI. Mr. President, I had instructions from the gentleman from Westmoreland, Senator Kelley, to vote him "no," and inadvertently I voted him "aye." Therefore, I would like to change his vote from "aye" to "no."

The PRESIDENT. The gentleman will be so recorded.

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

## YEAS—23

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

## NAYS—25

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

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.

On the question,  
Shall the bill pass finally?

Senator STAUFFER. Mr. President, one of the questions which arose which was the major reason that we wanted to put the bill over to get an answer was the question as to whether the Federal government would permit people to give up the primacy of Medicare. After contact with the Insurance Department, they told us that they do not know yet. It is a question that they have in their mind, they were not able to give us that answer this morning. It was for that reason that we needed more time.

So, although the legislation may be well intended, there is a question as to whether or not legally, under Federal law, people can do this.

There is also an additional question which has arisen. That is, what will happen to insurance rates if people take advantage of this provision if this bill were to be enacted into law and the law were to be upheld. Will this result in a very large increase for hundreds of thousands of people who have given up the benefits in order to provide for perhaps the three or four who might be involved in automobile accidents?

Mr. President, that is a very serious question, and because we do not have answers to those questions, my vote will be cast in the negative.

Senator EARLY. Mr. President, in answer to the first question, the question of the Federal government permitting this is one that came up in the committee when Senate Bill No. 334 was discussed originally. The question came up by the Insurance Department that the Federal government under the No-fault Act would permit this at the time. The Committee on Insurance then voted to table the bill.

Mr. President, I researched that particular issue and discovered that even though the Insurance Department at the time thought it was not permitted, the research proved that the Federal government under the No-fault Law does permit it.

We then, Mr. President, asked the Chairman to bring the bill up again. This time we clarified the objection raised by the Insurance Department. The bill was then passed in committee, and as I indicated, it was passed on the floor with no negative votes. Unfortunately, by way of history, the Governor vetoed it.

So, Mr. President, this is the first time that that question has come up. If my good friend, the gentleman from Chester, Sena-

tor Stauffer would have called it to my attention, I could have assured him that that unfounded criticism toward the legislation is just not true.

He also posed, Mr. President, the question of rates. I will answer that question by giving you a summary of the legislation. Specifically, Mr. President, at the present time, a senior citizen when purchasing no-fault insurance must take a reduced rate of ten per cent on his premiums. For that reduction of ten per cent, he then must use his Medicare/Medicaid as his primary insurance. If that individual would have an accident in a year, he cannot use his no-fault insurance, he must use his Medicare/Medicaid first. If in that same year he would become ill and he must go to the hospital, he is liable to find himself in a situation where his Medicare/Medicaid has already been used up. Even though he paid for the no-fault insurance, he would get no benefits.

Now, perhaps you say, why is he buying it? He is buying it, Mr. President, because assuming that he has an accident and he uses up his Medicare/Medicaid, then in the same year he has another accident, he then can use his no-fault insurance. In that situation, Mr. President, he will not be affected. But he would be affected if, one, he had an accident, used up his Medicare/Medicaid and then in the same year became ill and had to go to the hospital. He would be left without coverage.

Now, it would not affect the rates, as the gentleman from Chester, Senator Stauffer, has indicated, because a senior citizen desiring to be protected would have to give up the option of the ten per cent reduction. That is his choice. Some senior citizens may say: "I would like the ten per cent reduction, therefore, I will take the ten per cent reduction of my premiums and I will use my Medicare/Medicaid as my primary coverage."

Another senior citizen may say: "I have been ill and there is a good possibility I will need my Medicare/Medicaid, so, therefore, I cannot afford to take the reduction."

So, we are mandating nothing in this legislation, Mr. President, all we are doing is giving the senior citizen an option. So I ask, Mr. President, for the sake of all the senior citizens of Pennsylvania, to please cast your vote in the affirmative.

Senator BELL. Mr. President, if Senate Bill No. 334 said what the gentleman from Allegheny, Senator Early, said it said, I would have no question about it. But when I read the bill and read that the retired person may "elect," it does not say when the election is to be made by the retired person. The retired person under this bill could elect to go against the no-fault benefits after the retired person had been injured.

Mr. President, it should read "at the time the policy is written." Now, I happen not to be a retired person, although I am partially retired, I am retired according to this definition because I draw a pension from the United States Army. I do get a lower rate because under current law I have elected to go to the Blue Cross and Blue Shield—or now it is, with me, Blue Cross and Medicare benefits.

I would not take an allegation made on the floor of this Senate as fact, because I have seen those facts disappear. I am fearful, and I want confirmation that this will not result in higher rates for all retired persons, because the bill might be interpreted as meaning that the election can be taken at the time



of the accident. I have seen a lot of bills go through this Legislature in my time, and I have seen an awful lot of legislative mistakes, and I want that question answered before I vote "aye." I want an answer not from another Senator—I am not saying the Senator will misinterpret—I want to go to the authorities and have them tell me that Senate Bill No. 334, as written, means that the election is taken at the time the policy is issued, because the bill does not say that.

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—43

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

NAYS—5

Bell,	Snyder,	Stauffer,	Tilghman,
Gekas,			

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 347 (Pr. No. 351)** — 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—48

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

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 348 (Pr. No. 352)** — 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—48

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

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 367 (Pr. No. 371)** — 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—48

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

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 432 (Pr. No. 674)** — Considered the third time and agreed to,

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

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—48

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

## 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 489 (Pr. No. 746)** — Considered the third time and agreed to,

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

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—46

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

## NAYS—2

Bell, O'Connell,

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 501 (Pr. No. 747)** — Considered the third time and agreed to,

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

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—48

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

## 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 502 (Pr. No. 669)** — Considered the third time and agreed to,

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

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—47

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

## NAYS—1

Bell,

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 ON THIRD CONSIDERATION AMENDED

**SB 565 (Pr. No. 597)** — Considered the third time,

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

Senator ZEMPRELLI, on behalf of Senator KELLEY, by unanimous consent, offered the following amendments:

Amend Title, page 1, line 5, by removing the period after "requirements" and inserting: and restrictions on the issuance of certain licenses.

Amend Bill, page 1, by inserting between lines 7 and 8:

Section 1. Subsection (b) of section 3.1, act of May 31, 1945 (P. L. 1198, No. 418), known as the "Surface Mining Conservation and Reclamation Act," amended December 28, 1972 (P. L. 1662, No. 355), is amended to read:

Section 3.1. \* \* \*

(b) The department shall not issue any new surface mining operator's license or renew any existing surface mining operator's license to any person or operator if [it finds, after investigation,] due process, hearing and findings of fact establish that the applicant for licensure or renewal has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby. Where the applicant is a corporation, partnership or association, the department shall not issue such license or renewal if, after investigation, it finds that any officer or director or principal owner of such corporation, partnership or association has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby, or if any such officer or director or principal owner is or has been an officer or director or principal owner of any other corporation, partnership or association, which has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby.

Amend Sec. 1, page 1, line 8, by striking out "1." and inserting: 2.

Amend Sec. 1, page 1, lines 8 through 10, by striking out "act of May 31, 1945" in line 8, all of line 9, and "and Reclamation Act," in line 10, and inserting: of the act,

On the question,

Will the Senate agree to the amendments?

They were agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator ZEMPRELLI.

#### BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

**SB 568 (Pr. No. 670)** — Considered the third time,

On the question,

Will the Senate agree to the bill on third consideration?

Senator HAGER. Mr. President, in the absence of the gentleman from Chester, Senator Stauffer, from the microphone, I ask that Senate Bill No. 568, Printer's No. 670, go over in its order.

Senator STAPLETON. Mr. President, I object to Senate Bill No. 568 going over, and I ask for a roll call vote.

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

Senator HAGER. Mr. President, there was a misunderstanding. I did not realize that the gentleman from Indiana, Senator Stapleton, objected. I will remove my request. It would seem to me that we would not need a roll call vote on whether or not Senate Bill No. 568 should go over.

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 desire to interrogate the gentleman from Indiana, Senator Stapleton.

The PRESIDENT. Will the gentleman from Indiana, Senator Stapleton, permit himself to be interrogated?

Senator STAPLETON. I will, Mr. President.

Senator HAGER. Mr. President, as I read Senate Bill No. 568, it not only affects any future contracts which may arise in the form of leases, but it also purports to affect all past ones and change the terms and conditions as agreed to between the parties. Is that correct, Mr. President?

Senator STAPLETON. Mr. President, that is correct.

Senator HAGER. Mr. President, has the gentleman ever heard of the constitutional prohibition about government affecting the terms and conditions of contracts between private persons?

Senator STAPLETON. Mr. President, this has been brought up at a number of meetings and, of course, we had the pros and the cons and I believe that this Senate Bill No. 568 is constitutional and I am willing to accept that.

Senator HAGER. Mr. President, has the gentleman gotten himself an opinion from an attorney's constitutional expertise or otherwise, as to the constitutionality of going against the Constitution of Pennsylvania and the Constitution of the United States?

Senator STAPLETON. Mr. President, the attorneys for the gas companies have looked into this Senate Bill No. 568. They have examined it and they have given me no indications that it is unconstitutional. One of them did talk to me about this matter and brought it up and told me that one of his attorneys thought that this could be unconstitutional. However, I have not had any other sentiments from other people in the gas industry. I, myself, have not contacted an attorney on my staff or anyone else.

Senator HAGER. Mr. President, is the gentleman familiar with Article I, Section 17 of the Constitution of Pennsylvania which says, "No ex post facto law nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities shall be passed?" Mr. President, is the gentleman aware of that?

Senator STAPLETON. Mr. President, I am aware of it now that you have brought it up, yes.

Senator HAGER. Mr. President, does the gentleman not agree that passage of this Senate Bill No. 568 would impair existing contracts in direct contradiction of the Constitution of Pennsylvania?

Senator STAPLETON. Mr. President, Senate Bill No. 568 certainly does alter any drilling in the past and that is why we have introduced Senate Bill No. 568. I am not concerned so much about the new drilling that will take effect. I am only thinking that that is why the bill was drafted as it is. For any of those wells and any of those leases over the many years that have been drilled, if they come in now and do any redrilling or

new drilling or deeper drilling, they will take effect under the new lease.

Senator HAGER. Mr. President, do those very words not tell us that the gentleman from Allegheny, Senator Stapleton, feels that existing contracts would be altered or amended in violation of the Constitution of Pennsylvania?

Senator STAPLETON. Mr. President, they certainly would be altered under the Constitution and that is why the bill was introduced. I hope the gentleman from Lycoming, Senator Hager, realizes that, and that is why I ask for the passage of Senate Bill No. 568.

#### CONSTITUTIONAL POINT OF ORDER

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

The PRESIDENT. The gentleman from Lycoming, Senator Hager, will state it.

Senator HAGER, Mr. President, I ask the Senate to decide whether this statute on its face, particularly taking the words of its sponsor who says that it will, will impair the obligations of contracts already existing. Therefore, it is in violation of Article I, Section 17 of the Constitution of Pennsylvania.

THE PRESIDENT. The question before the Senate is the point of order raised by the gentleman from Lycoming, Senator Hager, that Senate Bill No. 568 is unconstitutional and that it violates Article I, Section 17 of the Constitution of Pennsylvania.

That Section provides, "No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed."

Those voting "aye" will vote to sustain the point of order, thereby declaring Senate Bill No. 568 unconstitutional. Those voting "no" will vote the point of order is not well taken and thereby declare that Senate Bill No. 568 is constitutional.

Senator COPPERSMITH. Mr. President, to explain my vote on this matter and also to raise some general points, this is an exceedingly complicated issue. I have always taken the position that unless something is patently and obviously unconstitutional, when a constitutional question is submitted to this Body, it is hardly equipped without looking at briefs or studying the matter to make a decision of constitutionality or non-constitutionality. Therefore, on the basis that this is not obviously and patently unconstitutional, I intend to vote to sustain the constitutionality of this measure.

Senator HAGER. Mr. President, words, of course, do not make a thing true or so. Although I hear the words of the gentleman from Cambria, Senator Coppersmith, I feel that if the gentleman would read Senate Bill No. 568, it very clearly says that leases or contracts already existing shall be changed by this law. It is impossible for the gentleman to come to that conclusion.

Mr. President, I ask if the gentleman from Cambria, Senator Coppersmith, has not already done so, that he take a look at the bill and then the Constitution and he will see the clear and utter contradiction.

Senator COPPERSMITH. Mr. President, in response to the gentleman from Lycoming, Senator Hager, I should point out

to him that many times lease arrangements between landlords and lessees are subsequently affected by zoning ordinances that prevent expansion of facilities that are permitted in the lease, but may be prohibited by the zoning ordinance. Governmental actions many times do affect contractual relationships between people, and it is not a black or white situation as the gentleman from Lycoming, Senator Hager, would paint.

Senator HAGER. Mr. President, the matter which the gentleman from Cambria, Senator Coppersmith, has just raised is distinguishable and anybody who is as good a lawyer as he knows exactly that in this case we have a law which says all contracts which have been written prior to this time shall be altered by this law. The zoning ordinance is something entirely different. A lease exists between two people, which a subsequent law, not applying to that lease, not aimed at that lease but collaterally says that certain action shall not be legal, is a totally different thing.

I understand the gentleman's point of view, but it seems to me that anyone who has the legal ability of the gentleman from Cambria, Senator Coppersmith, well knows, not only in this Body but also elsewhere, has to stretch things very much to say that this bill is perhaps constitutional when, in fact, its very words just go against the Constitution line by line.

Senator ZEMPRELLI. Mr. President, I listened with a great deal of interest to the arguments in favor of constitutionality and in opposition to constitutionality. Perhaps my only point in addressing the Senate at this time is to suggest that what we are doing here is less significant than an action that we took in the heat of the emotion and at the cry of the public related to contracts that dealt with Members of the Senate in their various pension plans that had vested. We, in the Senate, abrogated all of those ties and I think that the basic question involved is somewhat the same, the right to interfere with contracts.

Mr. President, it seems to me that there is an inconsistency in the arguments which are being made at this time with respect to the issue of constitutionality as opposed to those that were made at an earlier time. I would ask Members of my caucus to understand that in voting "no" on the issue, they vote to sustain the constitutionality of the bill that is before us.

Senator MOORE. Mr. President, although I agree with the objectives of Senate Bill No. 568, that is to guarantee royalties to lessors, it is also apparent to me that the bill does fly in the face of the Constitution. I would propose and suggest to the prime sponsor, my good friend, the gentleman from Indiana, Senator Stapleton, that we take another look at this legislation and make an effort to redraft the bill so that it will be constitutional and will protect lessors in the future.

The PRESIDENT. The question before this Senate is the constitutional point of order raised by Senator Hager.

Those voting "aye" declare Senate Bill No. 568 unconstitutional. Those voting "no" declare Senate Bill No. 568 constitutional.

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

YEAS—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,	

NAYS—25

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

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

The PRESIDENT. Senate Bill No. 568 has been ruled constitutional.

And the question recurring,  
Shall the bill pass finally?

Senator HAGER. Mr. President, I believe I understand the motivation behind the sponsorship of Senate Bill No. 568. I believe it is very possible there may have been some people exploited. My problem, however, is that there are rules of law and we have a Constitution for a purpose. I have lost on the constitutional issue on a strict party line vote save one, and it seems to me that having lost on that, I am not now released from my obligation to obey the laws and the Constitution as I see them. Although there very well may be some people, land-owners, who signed leases for a figure which they felt was all right at the time but now feel is too low, and although the gentleman from Indiana, Senator Stapleton, may wish to exculpate them from their own foolishness, or their own poor bargaining position, I feel it is my responsibility as a Member of this Senate to go with what I consider the Constitution to very clearly say. Further, I believe it is the responsibility of this Legislature to say to the people of this State that if you have once entered into a contract, the State will not interfere to become a super bargaining agent for anyone. Although there is, indeed, sympathy for persons who may have been taken advantage of, if in fact there were some, and although there is indeed a wish that those contracts which may have been entered into foolishly might be renegotiated, there is also in me a belief that we must stand for the law. Therefore, Mr. President, I shall vote "no" on Senate Bill No. 568.

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—28

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

NAYS—20

Andrews,	Hess,	Kusse,	Price,
Bell,	Holl,	Loeper,	Reibman,
Corman,	Hopper,	Manbeck,	Snyder,
Gekas,	Howard,	Moore,	Stauffer,
Hager,	Jubelirer,	Pecora,	Tilghman,

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.

BILLS OVER IN ORDER

SB 600 and 632 — Without objection, the bills were passed over in their order at the request of Senator ZEMPRELLI.

MOTION TO CONSIDER GOVERNOR'S  
RECALL COMMUNICATION

Senator HAGER. Mr. President, at this point, at the end of the Third Consideration Calendar, before going to the Second Consideration Calendar, I would move that the Senate honor Governor Thornburgh's recall of Governor Shapp's nomination of Thomas P. Dalfonso to the Pennsylvania Turnpike Commission.

The PRESIDENT. It has been moved by Senator Hager that the nomination of Mr. Thomas P. Dalfonso be returned to the Governor.

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

POINT OF ORDER

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

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

Senator ZEMPRELLI. Is the motion in order at this time?

Senator ZEMPRELLI. Mr. President, is the motion in order at this time?

Senator ZEMPRELLI. Mr. President, I feel certain that the next move that will be made will be to hold an Executive Session for the purpose of having Mr. Dalfonso's nomination considered by the Senate.

I would just simply ask the Members of the Democratic caucus of the Senate to vote "no" on the issue of the recall.

Senator HAGER. Mr. President, it is no surprise to me that the gentleman from Allegheny, Senator Zemprelli, is confident that the next move will be to ask for the Executive Session to rise—when I went over that procedure with him just before this moment—but, I ask all the Members to honor the recall of this Governor of a nomination by a preceding Governor to the Turnpike Commission and I ask for an "aye" vote.

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

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

YEAS—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,	

NAYS—25

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

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

EXECUTIVE NOMINATION

EXECUTIVE SESSION

Motion was made by Senator HAGER,

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

Which was agreed to.

NOMINATION TAKEN FROM THE TABLE

Senator HAGER. Mr. President, I call from the table for consideration the nomination of Thomas P. Dalfonso, as a member of the Pennsylvania Turnpike Commission.

The Clerk read the nomination as follows:

MEMBER OF THE PENNSYLVANIA TURNPIKE COMMISSION

January 12, 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 Thomas P. Dalfonso, 26 Colonial Drive, Monessen 15062, Westmoreland County, Thirty-second Senatorial District, for appointment as a member of the Pennsylvania Turnpike Commission, to serve until June 4, 1983, and until his successor is appointed and qualified, vice Egidio Cerilli, Greensburg, resigned.

MILTON J. SHAPP.

On the question,

Will the Senate advise and consent to the nomination?

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

YEAS—24

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

NAYS—24

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

Less than a constitutional two-thirds majority having voted "aye," the question was determined in the negative.

RECONSIDERATION OF EXECUTIVE NOMINATION

NOMINATION LAID ON THE TABLE

Senator ZEMPRELLI. Mr. President, at this time I move that the vote by which Thomas P. Dalfonso failed to receive the advise and consent of the Senate be reconsidered.

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

The PRESIDENT. It has been moved by Senator Zemprelli that the vote by which the nominee was defeated be reconsidered, and it has been seconded by Senator Romanelli.

On the question,

Will the Senate agree to the motion?

POINT OF ORDER

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

The PRESIDENT. The gentleman from Lycoming, Senator Hager, will state it.

Senator HAGER. Mr. President, just to make the Secretary's life much more enjoyable, I raise the issue of whether or not such a motion is proper. During this procedure, we are voting on the fifth day following the filing of a petition during which period this vote must be raised and voted within five days.

Therefore, unless the gentleman from Allegheny, Senator Zemprelli, intends to have immediate reconsideration of the vote, it would seem to me that under the law, there can be no reconsideration beyond today's date.

The PRESIDENT. The gentleman's motion is in order.

POINT OF ORDER

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

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

Senator ZEMPRELLI. Mr. President, it is my understanding that, first of all, we are dealing with a case of first instance. We have not had the experience, we have conflicting rules, we have the Rule of the Senate, and as I was reading it earlier today, it allows for reconsideration and reconsideration to take place within so many days after an issue has been raised.

We also have the clear language of the act which would suggest that a nomination must be acted upon within twenty-five days. There is some feeling that has been expressed that once a petition has been filed by five Members, the five-day provision prevails and supersedes.

As I understand it, these are opinions of people in this



Chamber that may very well become the matter of litigation and subject of litigation. I do not think any of us enjoy the status in this Chamber that would allow us to say unquestionably what the procedural rights are with respect to the issue which is before us, and I reiterate that it being a case of first instance we should proceed with due caution because we will be establishing a precedent that will be followed for many years in the future.

Based upon the need to establish a clear-cut precedent, and the need to establish a procedure by which this Chamber may follow for many years in the future, I would raise the question and ask the Chair specifically whether or not my motion is in order?

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

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

Senator HAGER. Mr. President, it has always been the practice of this Senate to allow reconsideration. I do not believe it is necessary to call for an individual vote, we would accept a voice vote to allow for reconsideration.

And the question recurring,

Will the Senate agree to the motion?

The motion was agreed to.

And the question recurring,

Will the Senate advise and consent to the nomination?

#### MOTION TO LAY NOMINATION ON THE TABLE

Senator ZEMPRELLI. Mr. President, at this time I would move that the nomination of Thomas P. Dalfonso be tabled.

On the question,

Will the Senate agree to the motion?

Senator HAGER. Mr. President, it would appear to me that that motion is not according to law, this being the fifth and last day under which that matter may be voted upon.

#### POINT OF ORDER

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

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

Senator ZEMPRELLI. Mr. President, in reading the act and it is also understanding—and I will repeat—we are into a situation of first instance on the issue. In one provision there is a mandate that the appointment be acted upon within twenty-five legislative days. Intervening that procedure for automatic confirmation was a petition which requires that there be activity on the nomination within five days. As it would apply to the instant case before us, the fifth day, and final day for action on the petition happens to be the twenty-third day within the twenty-five day process.

It would suggest to me that there may be an interpretation, and I take the position that there are, in fact, two additional days for which and under which and by which the nomination of Thomas Dalfonso may be considered. It seems to me one of the prevailing interpretations under the act that was passed and under the Rules of the Senate that prevail would be that

the fifth day would be the demise of any action allowing for the confirmation. I think it is absolutely imperative that we have a clear and concise understanding of what the rights, obligations and procedures of the Senate are with respect to dealing in terms of advise and consent to the various nominations, as I believe Mr. Dalfonso's case is perhaps the first in a line of nominees that will be subjected to the procedures that we will follow here today, and those interpretations that naturally follow from those proceedings.

Accordingly, I am asking the Chair to rule on the matter of whether or not the motion to table the nomination of Thomas Dalfonso is in order.

Senator HAGER. Mr. President, I thank the gentleman from Allegheny, Senator Zemprelli, for his point of view. It seems to me that what he has said is that the Constitution very clearly says that once a petition is filed, it, and the words are: "Must be voted upon prior to the expiration of five legislative days."

If the gentleman from Allegheny, Senator Zemprelli, agrees that the Constitution has any validity at all, what it says is that you must have action upon it within twenty-five days, if a petition is filed during that time, within five days of the filing of that petition.

It seems to me if he takes any other position, he is really saying there is no value to this phrase at all, or to this entire section of the Constitution. To say that it must be voted upon within five days is meaningless, is to obviate the twenty-five day provision as well.

Unless it is the gentleman from Allegheny, Senator Zemprelli's position that the words "be voted upon" mean nothing more than we should have some kind of a straw vote which is meaningless, and then within two days take some other kind of action.

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, does the gentleman from Allegheny, Senator Zemprelli, take the position that within twenty-five days, the Senate must act and that means they cannot adjourn on the twenty-fifth day and they cannot take a recess on the twenty-fifth day, but there must actually be a vote within twenty-five days?

Senator ZEMPRELLI. Mr. President, as an attorney, and certainly not one who pretends to be expert on the subject, and having been asked for an opinion, it would be my opinion that action should be taken within twenty-five days. I am only suggesting at this point that the question in time would be whether or not there are two remaining days for consideration of Mr. Dalfonso's nomination on the basis of the reconsideration which would seem to be consistent with the Rules of the Senate and the Constitution of Pennsylvania.

Now the additional question which is raised, and I am not prepared to answer and have no opinion about it, is the question as to whether or not the rule of reconsideration was five days after the time in which a vote is considered may be invoked, in which event it would extend to the twenty-eighth

day. I am only calling attention to the fact that these questions exist and need to be resolved, and I think we have got the basis upon which to offer some resolution. We are not here to influence the vote as it pertains to Mr. Dalfonso, but to raise a question as to procedure.

Senator HAGER. Would the gentleman from Allegheny, Senator Zemprelli, then say that we would have to raise once again a petition to vote on Mr. Dalfonso?

Senator ZEMPRELLI. I would think that the basis for reconsideration would be precisely the same rule that we follow in every matter of reconsideration, and that is that the matter be called from the table, once having been placed upon the table, and voted on in the course of activity as has been the procedure in the Senate for years. That this not be any different than any other matter that is considered for reconsideration.

Senator HAGER. Mr. President, would the gentleman from Allegheny, Senator Zemprelli, not agree from his course of reasoning it would follow that the nomination has been acted upon within twenty-five days? Therefore, having once been acted upon, is it the gentleman's position that now the twenty-five days could be allowed to expire and, therefore, Mr. Dalfonso take office by forfeit of the Senate's right or the Senate's duty to call from the table and reconsider the vote by which he was defeated?

Senator ZEMPRELLI. My position, Mr. President, is that under no set of circumstances would Mr. Dalfonso be entitled to the office once having taken a vote on the issue; that the reconsideration issue in my judgment, for whatever humble opinion it may be, would be nothing more than a de novo exercise based on a vote once taken; that the ability of Mr. Dalfonso to become certified by virtue of failure of action on the part of the Senate, has been totally obviated by the fact that a vote has been taken.

#### POINT OF ORDER

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

The PRESIDENT. The gentleman from Lycoming, Senator Hager, will state it.

Senator HAGER. Mr. President, is it not the opinion of the Chair that a vote to reconsider—

The PRESIDENT. The Chair would like to inform the gentleman that we do have a point of order pending currently.

Senator HAGER. Well, I now have a subsidiary one, Mr. President, not to make life difficult.

The PRESIDENT. Your subsidiary point of order is out of order at this time until the primary point of order is ruled upon.

Senator HAGER. All right, Mr. President, I would then withdraw my point of order and point out to the gentleman from Allegheny, Senator Zemprelli, as soon as he is able to listen, that a motion to reconsider has the effect of completely wiping out the previous vote. So if we are to follow your suggestion and the position of having acted but not having acted, and it would seem to me upon the twenty-fifth day if I were to follow your logic, Mr. Dalfonso automatically becomes a member of the Turnpike Commission.

Senator ZEMPRELLI. Mr. President, it is not uncommon to

have this Body interpret its own previous actions. I think if we look at legislative intent with respect to the legislation that was passed, and I have the author standing here proudly beside my left arm, who has been breathing into my left ear and advising me as I am proceeding, and I think it is clear to say that our purpose was, basically fundamentally in root core, that no nominee should be allowed to take office unless there has been some action, or suggestion that we should take some action within twenty-five days so that the matter would be considered.

Mr. President, I disagree with the Minority Leader when he says that a reconsideration is an obviation of a previous action. I believe that it is much like taking an appeal from a previous decision as we come to understand in matters of litigation, that the negative vote on Mr. Dalfonso in this instance, is a matter of record, and the issue to reconsider is based on the premise of the indelible and permanent fixture of a rejection, and only in the consideration of the reconsideration favorably would you obviate the record, and not by the instance of presenting the reconsideration motion.

I still suggest to the gentleman from Lycoming, Senator Hager, that the question of Mr. Dalfonso being able to come into the office by virtue of the passage of twenty-five days can never happen once a vote has been taken.

I also suggest to the gentleman from Lycoming, Senator Hager, that the thrust of my concern at this moment is those two precious days that exist between the twenty-third day and the twenty-fifth day. Recognizing the Rules of this Chamber allow for a motion for reconsideration does not the reconsideration then allow the time period of twenty-five days, which is the constitutional mandate in the first instance?

I would also suggest to the gentleman from Lycoming, Senator Hager, that I do not feel as strongly as I may articulate about this situation, or otherwise I might verbalize a little more profoundly. However, I do feel the issues need to be resolved and would suggest that the issue be certified in the manner that I prescribe.

The PRESIDENT. On the gentleman's point of order, the Chair rules the motion to lay the nomination of Thomas Dalfonso on the table is out of order, that the petition is extant, action must be taken within five days. The question must therefore recur, will the Senate advise and consent to the nomination.

#### MOTION TO ADJOURN

Senator LINCOLN. Mr. President, I move that this Senate do now adjourn until May 21, 1979, at 3:00 p.m.

The PRESIDENT. It has been moved by Senator Lincoln that the Senate do now adjourn. The gentleman's motion is out of order at this time barring a motion that the Executive Session do now rise.

Senator LINCOLN. Mr. President, in my reading of the Senate Rules, a motion to adjourn takes precedent over any other motion that we have before us.

The PRESIDENT. Not in Executive Session, Senator.

Senator LINCOLN. Mr. President, would you cite me some reference that would show me that a motion to adjourn does not have precedent?

The PRESIDENT. The Senate will be at ease.  
(The Senate was at ease.)

#### MOTION WITHDRAWN

Senator LINCOLN. Mr. President, I may be able to solve your problem.

On the advice of my esteemed Majority Leader, I withdraw my motion to adjourn.

#### RULING OF CHAIR APPEALED

Senator ZEMPRELLI. Mr. President, at this time, I move to appeal the ruling of the Chair and ask for a roll call vote.

The PRESIDENT. Senator Zemprelli moves to appeal the ruling of the Chair that the motion to lay on the table is out of order.

#### RECESS

Senator ZEMPRELLI. Mr. President, before any further consideration on my motion to appeal the ruling of the Chair, several Members of my caucus have asked for a short recess for the purpose of a caucus. I would ask that we be given permission to use the Minority caucus room, if there is no conflict with the gentleman from Lycoming, Senator Hager.

Rather, Mr. President, let us use the Rules room.

Senator HAGER. Mr. President, I can understand the gentleman from Allegheny, Senator Zemprelli's willingness to use the Rules room, but I look forward to the day when they can frequently use the Minority caucus room.

The PRESIDENT. For the purpose of a Democratic caucus in the Rules room, the Chair declares a recess.

#### AFTER RECESS

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

The question before the Senate is, shall the decision of the Chair stand as the judgment of the Senate? Those voting "aye" vote to sustain the ruling of the Chair, those voting "nay" vote to reverse the ruling of the Chair.

Senator ZEMPRELLI. Mr. President, for the reasons previously stated, I am requesting the Members of the Democratic caucus to vote "no" on the question.

Senator HAGER. Mr. President, I think it is extremely significant that the Majority Leader has just said that he has asked the Democratic Members of the Senate to vote "no" on the question, thereby making what is a constitutional argument nothing more than a political one.

I would like to point out to all of the Members of the Senate what I think is a very serious issue before this Body, and not a political one. The issue which arises on the nomination of Mr. Dalfonso, and by the motion to reconsider that vote shall recur before this Body with perhaps numbing regularity as days go on, when appointments of Governor Thornburgh come before this Body and this side asks for a reconsideration.

It seems to me this is not a political vote which should be taken, but a vote to declare the clear words of the Constitution to

mean something in this Body. For that reason I have to say just a few more words on this issue.

The very obvious purpose of the fifteen-day rule is to make sure there is a vote taken upon any nominee within the twenty-five legislative days. However, the gentleman from Allegheny, Senator Zemprelli's position, if you follow it, comes out to something far different from that. His position is that so long as a vote has been taken, the sheer act of having taken a vote, so long as that has been taken within five days, even though eradicated by a motion to reconsider, the constitutional mandate has been satisfied.

The gentleman from Allegheny, Senator Zemprelli, then says that if no further vote is taken within twenty-five legislative days of the Governor's nomination, the nominee shall not take office as though consented to by the Senate. That interpretation, however, is a direct denial of the Constitution which says, in fact and by word, that the nominee "shall take office as if the appointment had been consented to by the Senate."

The position of the gentleman from Allegheny, Senator Zemprelli, is not a literal interpretation of the words of the Constitution, it is a perversion of the clear words of the Constitution, particularly those words which say "be voted upon" and "shall act upon" and "fails to act upon."

The only way the position of the gentleman from Allegheny, Senator Zemprelli, makes any sense is to say that non-action is action. Because when you take a vote upon someone and then reconsider that vote, you have made that action a nullity. To say that having taken that vote, then having made it a nullity, therefore, satisfies the Constitution, and the words "shall have acted upon," is nonsense.

It seems to me, Mr. President, that this issue is far more important than asking the Democratic Members to vote with you on the issue.

Senator ZEMPRELLI. Mr. President, I wish to apologize to the gentleman from Lycoming, Senator Hager. The gentleman's point is well taken. I should not have asked the Democratic Members to vote for it. I would hope that I would get some Republican votes, but perhaps it is my intuitive nature that would tell me when the final record is taken and everyone stands up and is counted, it will come out precisely the way that I have predicted it would, although I would hope there would be some enlightenment.

I do not mean to make this political, and perhaps it is my inability to project sincerity, but I do feel very sincere that the issue we are talking about here is not a Dalfonso issue. He is the catalyst by which certain decisions are going to be made as to how we shall proceed.

It is interesting to note, and I do not think I am out of order in suggesting what happened in my caucus a few moments ago. We had varied opinions as to what was the real interpretation of what we are about. I would say to you, Mr. President, that there were at least four that seemed to have some rationale as to probabilities of what the actions were of this Body.

It is for that reason, Mr. President, and for many other reasons, all of which are devoid of politics, that the things we are about here are being done. I would hope to invoke that degree of sincerity and for that reason I would reiterate and ask

all the Members of the Senate knowing better as to the final count would sustain the position of the Majority Leader and vote in opposition to the matter that is now before us by registering a negative vote.

Senator HAGER. Mr. President, could you restate not only the question, but also how an affirmative and a negative vote will be interpreted?

The PRESIDENT. The question before the Senate is, shall the decision of the Chair stand as the judgment of the Senate? An "aye" vote will sustain the Chair, a "nay" vote will reverse the judgment of the Chair.

The yeas and nays were required by Senator ZEMPRELLI 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—26

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

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

The PRESIDENT. The decision of the Chair is not sustained.

And the question recurring,

Will the Senate agree to the motion to lie the nomination of Thomas P. Dalfonso on the table?

Senator HAGER. Mr. President, I would request a roll call vote, and I would accept the vote as just recorded on the constitutional point of order.

Senator ZEMPRELLI. Mr. President, I thank the gentleman from Lycoming, Senator Hager. I have no quarrel with that.

## POINT OF INFORMATION

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

The PRESIDENT. The gentleman from Erie, Senator Orlando, will state it.

Senator ORLANDO. Mr. President, are we accepting a vote of 22-26 or just the reverse of that vote?

Senator HAGER. Mr. President, as I understand the vote we have just voted not to table the nomination.

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—26

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

## NAYS—22

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

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

The PRESIDENT. The nomination of Thomas P. Dalfonso will lie on the table.

Senator HAGER. Mr. President, while we are still in Executive Session, 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, we have just gone through what I think will probably be an historic debate. In order that it have meaning, I ask the gentleman from Allegheny, Senator Zemprelli, is it his firm intention and the intention of his caucus to bring the nominee, Thomas P. Dalfonso, back before this Senate by removing his nomination from the table before the twenty-fifth legislative day from his nomination by the Governor?

Senator ZEMPRELLI. Mr. President, I think I would preface my remarks by saying any procedure that would preclude Mr. Dalfonso from being considered automatically certified would be taken as a move of integrity by the Democratic caucus.

Secondly, I would suggest to the gentleman from Lycoming, Senator Hager, that the Chair, the Majority Leader, and certainly from the questions that were asked and some of the questions that were raised, has some quarrel as to whether or not Mr. Dalfonso's being on the table would automatically expire at the end of two days under the Rules of the Senate.

Mr. President, I would also say that there might be consistency to suggest that Mr. Dalfonso's name being on the table may be one where it could possibly be interpreted and maybe found by the courts that it would remain on the table until such time as it is brought from the table. I think the most important thing that I can tell the Minority Leader and the Members of the Senate is that Mr. Dalfonso is a catalyst and a vehicle to have these questions determined so that in our further deliberations we may know what we are doing with respect to executive nominations under the new law.

Senator HAGER. Mr. President, I had a lot of respect for the gentleman from Westmoreland, Senator Kelley's ability to say a lot and leave me guessing, but I have met a new champion.

I restate the question, Mr. President. Is it the intention of the

Majority to bring before the Senate the nominee by removing him from the table before the twenty-fifth—by removing his nomination from the table and calling for a vote before the twenty-fifth legislative day from the nomination by the Governor?

Senator ZEMPRELLI. Mr. President, I think that the most reasonable interpretation is that it must be done within two days, and we would certainly hope to do that.

Senator HAGER. Mr. President, I preface my next question by simply saying that hope springs eternal a lot of places, but it does not answer this question. I restate the question.

Mr. President, is it the gentleman from Allegheny, Senator Zemprelli's intention not to hope to do it, but to bring before this Senate the nomination of this nominee by removing from the table the nomination of the Governor within the twenty-five legislative days?

Senator ZEMPRELLI. Mr. President, I get the feeling from the gentleman's remarks that I am the anarchist that is running the Senate. I really am not. The gentleman can make the same motion. I would have no objection to it. I would think that I would give the gentleman the courtesy of letting the gentleman know precisely what the move is after we have analyzed what has happened here today. I would say to the gentleman that I would have every intention of bringing Mr. Dalfonso's name before the Senate in accordance with the Rules of the Senate.

#### EXECUTIVE SESSION RISES

Senator HAGER. Mr. President, I move that the Executive Session do now rise and I file with that a motion calling for the nominee to be considered by the Senate in accordance with the Constitution and the Rules of the Senate.

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

#### POINT OF ORDER

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

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

Senator ZEMPRELLI. Mr. President, is it proper to have with a motion to adjourn the Executive Session a motion that would allow for bringing Mr. Dalfonso's name before the Senate?

The PRESIDENT. No, it is not.

Senator HAGER. Mr. President, I would like to point out to the Chair and to the gentleman from Allegheny, Senator Zemprelli, that I made no such motion. I was simply filing a resolution which has already been ruled by this Chair and by the Secretary that it may be done at any time during the Session. It has simply been filed.

Senator ZEMPRELLI. Mr. President, I misunderstood the gentleman. I thought that he had incorporated both a motion to adjourn the Session with a motion to have the name brought from the table.

And the question recurring,

Will the Senate agree to the motion that the Executive Session do now rise?

The motion was agreed to.

#### DISCHARGE PETITION

The PRESIDENT laid before the Senate the following communication, which was read by the Clerk as follows:

May 8, 1979.

TO: The Presiding Officer of the Senate

WE, the undersigned members of the Senate, pursuant to the provisions of Article IV, Section 8(b) of the Constitution of Pennsylvania, do hereby request that you place the nomination of THOMAS P. DALFONSO (32nd District) of Monessen, Westmoreland County, as a member of the Pennsylvania Turnpike Commission before the entire Senate body for a vote said nomination having not been voted upon finally within fifteen (15) legislative days:

R. Budd Dwyer  
Ralph W. Hess  
William J. Moore  
John Stauffer  
W. Thomas Andrews

#### CONSIDERATION OF CALENDAR RESUMED

##### SECOND CONSIDERATION CALENDAR

##### BILL ON SECOND CONSIDERATION

**HB 39 (Pr. No. 521)** — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

##### BILLS OVER IN ORDER

**SB 132 and 211** — Without objection, the bills were passed over in their order at the request of Senator ZEMPRELLI.

##### BILL ON SECOND CONSIDERATION

**SB 258 (Pr. No. 748)** — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

##### BILLS OVER IN ORDER

**SB 306 and 366** — Without objection, the bills were passed over in their order at the request of Senator ZEMPRELLI.

##### BILL ON SECOND CONSIDERATION

**SB 443 (Pr. No. 563)** — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

##### BILL OVER IN ORDER

**SB 449** — Without objection, the bill was passed over in its order at the request of Senator ZEMPRELLI.

##### BILLS ON SECOND CONSIDERATION

**SB 540 (Pr. No. 560), SB 546 (Pr. No. 749) and SB 551 (Pr. No. 583)** — Considered the second time and agreed to,  
Ordered, To be transcribed for a third consideration.

## BILL REREFERRED

**SB 681 (Pr. No. 750)** — Upon motion of Senator ZEMPRELLI, and agreed to, the bill was rereferred to the Committee on Appropriations.

## BILL ON SECOND CONSIDERATION

**SB 685 (Pr. No. 727)** — Considered the second time and agreed to,

Ordered, To be transcribed for a third consideration.

## UNFINISHED BUSINESS

## REPORTS FROM COMMITTEES

Senator ARLENE, from the Committee on Labor and Industry, reported, as committed, **HB 510**.

Senator ZEMPRELLI, on behalf of Senator McKINNEY, from the Committee on State Government, reported, as committed, **SB 496, 525, 532 and 646**; as amended, **SB 299**.

## BILL REREFERRED

Senator ZEMPRELLI, on behalf of Senator McKINNEY, from the Committee on State Government, returned to the Senate **SB 300**, which was rereferred to the Committee on Professional Licensure.

## CONGRATULATORY RESOLUTIONS

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

Congratulations of the Senate were extended to Allegheny County Adult Services/Area Agency on Aging and to the South High Alumni Association by Senator Romanelli.

Congratulations of the Senate were extended to Michael C. Smith, David J. Ruskowski, Mia Strazzeri and to John O'Brien by Senator Lloyd.

Congratulations of the Senate were extended to L. Butler Hennon by Senator Andrews.

Congratulations of the Senate were extended to the Marian High School "Fillies" Girls Basketball Team by Senator Guzenda.

Congratulations of the Senate were extended to Michele Marie Solick by Senator Stauffer.

Congratulations of the Senate were extended to the Reverend James P. Jackson by Senator Arlene.

Congratulations of the Senate were extended to Susan Ann Horvath by Senator O'Pake.

Congratulations of the Senate were extended to Mrs. Bertha Lewis, Mrs. Mary D'Angelo, Mr. Bertha Kiehl, Mr. and Mrs. Charles Horner and to Mr. and Mrs. Herbert F. McIntire by Senator Stapleton.

Congratulations of the Senate were extended to Mr. and Mrs. William Semler and to Mr. and Mrs. Henry Armbruster by Senator Early.

Congratulations of the Senate were extended to Father John Anthony Palko, Melanie Wolfe, Mr. and Mrs. James Kelley and to Mr. and Mrs. David Sphar by Senator Stout.

## 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 188, 210, 299, 448, 496, 518, 525, 532, 535, 646 and HB 510.**

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

## PETITIONS AND REMONSTRANCES

Senator BELL. Mr. President, during the Executive Session, I intentionally stayed out of the debate on the meaning of Article IV, Section 8(b) of the Constitution. We saw here on the floor of the Senate an exhibition of very expert point and counterpoint, legal skirmishing, legal smokescreens. But, apparently, unless somebody answers me, I am the last person to speak before the adjournment. I can read the Constitution. The Constitution says if the Senate has not voted upon the nomination within fifteen legislative days following such submission, any five Members of the Senate may, in writing, request the Presiding Officer of the Senate to place the nomination before the entire Senate Body.

Now, I am going to read slowly, ". . . whereby the nomination must," the word is "must," "be voted upon prior to the expiration of five legislative days . . ." I have heard all kinds of legal theories. I have heard somebody say here when the Senate reconsidered that means we did not reject the nominee for the Turnpike Commission.

Mr. President, the facts boil down to the very clear situation five days have expired, we have either voted this man down or we have never voted. In either case, this Senate has witnessed today whereby a majority of its Members can say the Constitution be damned.

## HOUSE MESSAGE

## HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives being introduced, informed the Senate that the House has concurred in resolution from the Senate, entitled:

Recess Adjournment.

## ANNOUNCEMENTS BY THE SECRETARY

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

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

WEDNESDAY, MAY 9, 1979

9:30 A.M. PUBLIC HEALTH AND Senate Majority  
WELFARE (Public Hear- Caucus Room



ing on House Bill No. 308  
and to consider Senate  
Bill No. 184)

WEDNESDAY, MAY 16, 1979

10:00 A.M. LAW AND JUSTICE (Public Hearing on Senate Bills No. 205, 262 and 549) Upper Moreland Twp. Building, 117 Park Ave., Willow Grove, PA

FRIDAY, MAY 18, 1979

10:30 A.M. STATE GOVERNMENT Subcommittee (Public Hearing to study Senate Bills No. 287 and 322) Gold Room, Allegheny Co. Court House, Pittsburgh, PA.

MONDAY, MAY 21, 1979

11:00 A.M. JUDICIARY (to consider the nomination of James R. Cavanaugh, as Judge of the Superior Court) Senate Majority Caucus Room

2:30 P.M. APPROPRIATIONS (to consider Senate Bill No. 615; Senate Majority Caucus Room

House Bills No. 59, 486  
and 643)

TUESDAY, MAY 22, 1979

12:00 Noon PROFESSIONAL LICENSURE (to consider House Bill No. 215) Senate Minority Caucus Room

TUESDAY, MAY 29, 1979

10:00 A.M. EDUCATION (to consider Senate Bills No. 241, 355, 356, 368, 561 and House Bill No. 140) Senate Majority Caucus Room

ADJOURNMENT

Senator ZEMPRELLI. Mr. President, I move that the Senate do now adjourn until Monday, May 21, 1979, at 3:00 p.m., Eastern Daylight Saving Time, unless sooner recalled by the President pro tempore.

The motion was agreed to.

The Senate adjourned at 4:55 p.m., Eastern Daylight Saving Time.