

Legislative Journal

WEDNESDAY, JUNE 10, 1981

SESSION OF 1981

165TH OF THE GENERAL ASSEMBLY

No. 37

SENATE

WEDNESDAY, June 10, 1981.

The Senate met at 9:30 a.m., Eastern Daylight Saving Time.

THE PRESIDENT (Lieutenant Governor William W. Scranton III) in the Chair.

PRAYER

The following prayer was offered by the Secretary of the Senate, Hon. W. THOMAS ANDREWS.

Dear Heavenly Father, be with us as we go about the peoples' business today.

Guide us in the acts that we do, in the decisions we make. Please, this day, be with our Majority Leader and his son Andy, who lies in a hospital in Altoona, watch over them both so they both may be well again, that Andy may return to health and that Senator Jubelirer may return to us. Be with them and us through the coming week.

In Your Name, we pray. 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 STAUFFER, further reading was dispensed with, and the Journal was approved.

SENATOR STAUFFER TO VOTE FOR SENATOR KUSSE

Senator STAUFFER. Mr. President, I would ask for a legislative leave of absence for Senator Kusse, who has been called back to his district because of the very serious developments regarding the storms and I will be voting him in today's Session.

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

SENATOR SCANLON TO VOTE FOR SENATOR LYNCH, SENATOR ANDREZESKI, SENATOR MELLOW AND SENATOR SMITH

Senator SCANLON. Mr. President, I would like to request legislative leaves for Senators Lynch, Andrezeski, Mellow and Smith.

The PRESIDENT. The Chair hears no objection and the leaves are granted.

GENERAL COMMUNICATIONS

RECALL OF ADMINISTRATIVE RULES REPORT NO. 2

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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
Bureau of Professional and
Occupational Affairs
State Real Estate Commission
Harrisburg, Pa. 17120

June 8, 1981

W. Thomas Andrews
Secretary of the Senate
Room 462, Main Capitol Building
Harrisburg, PA 17120

Dear Mr. Andrews:

This letter serves as a formal request for the withdrawal of regulations concerning rental referral agents which were submitted to the Senate on April 27, 1981 by the State Real Estate Commission pursuant to Section 404 of the Real Estate Licensing Act of February 19, 1980.

A copy of the regulations is attached for your convenience. The regulations are being withdrawn upon advisement that they could not be approved due to a typographical omission in Section 35.176(d).

The regulations with the corrected omission will be re-submitted under cover of a separate letter.

Sincerely,

P. JOHN DONNELLY,
Chairman, State Real
Estate Commission

ADMINISTRATIVE RULES REPORT NO. 4 OF 1981

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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
Bureau of Professional and
Occupational Affairs
State Real Estate Commission
Harrisburg, Pa. 17120

June 9, 1981

W. Thomas Andrews
Secretary of the Senate
Room 462, Main Capitol Building
Harrisburg, PA 17120

Dear Mr. Andrews:

Attached please find rules and regulations, which have been proposed by the State Real Estate Commission, concerning rental referral agents.

Pursuant to Section 404 of the Real Estate Licensing Act of February 19, 1980, these proposed rules and regulations are being submitted to yourself and the Chief Clerk of the House of Representatives on this date for printing and distribution among all members of both chambers in the same manner as a reorganization plan.

In conformity with the Reorganization Act of 1955, these proposed regulations are being submitted to both chambers on this date upon advisement that both chambers will be in session.

Similar regulations were submitted to both chambers on April 27, 1981. However, due to a typographical omission the regulations were withdrawn from both chambers by letter dated June 8, 1981.

The attached regulations which reflect the correction of the omission, are similar in all other respects to the regulations which had been submitted on April 27, 1981.

Sincerely,

P. JOHN DONNELLY,
Chairman, State Real
Estate Commission

ADMINISTRATIVE RULES REPORT
NO. 4 OF 1981

Printer's No. A.R.R. 4

Transmitted June 10, 1981

Section 1. Under the authority of section 404 of the act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing Act," the State Real Estate Commission proposed rules and regulations for licensing and regulating rental listing referral agents, copies of which are on file in the Offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives.

Section 2. Upon the approval of these rules and regulations by the General Assembly pursuant to the provisions of section 404 of the act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing Act," and the act of April 7, 1955 (P.L.23, No.8), known as the "Reorganization Act of 1955," the State Real Estate Commission may promulgate them as final rules and regulations in the manner provided by law.

(Editorial Note: Final action on this report must occur within 60 calendar days or ten legislative days following its date of transmittal to the General Assembly, whichever is later)

The PRESIDENT. This will be placed on the Calendar.

REPORTS FROM COMMITTEES

Senator BELL, from the Committee on Consumer Protection and Professional Licensure, reported, as amended, **SB 600**.

Senator PRICE, from the Committee on Urban Affairs and Housing, reported, as amended, **SB 81** and **117**.

CALENDAR

THIRD CONSIDERATION CALENDAR

PREFERRED APPROPRIATION BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 1291 (Pr. No. 1772) — 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?

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

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

Senator HAGER. I will, Mr. President.

Senator KELLEY. Mr. President, relying partially and not completely on the news media and the reports, there is an indication the gentleman had been served with some documentation from the Federal Court. I wonder if the gentleman from Lycoming, Senator Hager, could verify if that was the fact concerning certain controversies that arose originally out of the Western District of Pennsylvania? Supposedly, the gentleman received papers from the Third Circuit Court concerning a matter, part of which is part of House Bill No. 1291.

Senator HAGER. Yes, Mr. President. Both the Speaker of the House and the President pro tempore of the Senate were served with a court order signed by Judge Ruggero J. Aldisert of the Third Circuit Court. Apparently a three judge panel of the Third Circuit Court decided since the matter was so urgent, an order should be served upon those two constitutional officers, demanding a response by 4:00 yesterday afternoon—at least delivered to them by 4:00 p.m. yesterday—in writing, as to the process and as to the progress of the legislation.

Mr. President, there was not an order that we take any action and as a matter of fact, both Mr. Ryan and I were for the institution somewhat chagrined and, in fact, insulted that a Federal Court Judge, who had no jurisdiction over either the President pro tempore or the Speaker of the House, would

decide to issue some kind of a court order. It was his opinion, it is mine, and it is the opinion of counsel to the Majority of the Senate that the Federal Court has no jurisdiction in this matter either over the Speaker of the House or the President pro tempore, and our responses to the court indicated that, that we felt there was no jurisdiction.

However, Mr. President, we have been responding to the news media and we did respond to them as to exactly what the course of action was. We were very careful in our correspondence to the court to point out to them that we felt they had no business issuing court orders to us since neither one of us was served with process or was made a part of the action, nor was there any way we could see any connection between the Federal Courts and the two constitutional officers which were served in Pennsylvania government.

Senator KELLEY. Mr. President, I desire to interrogate the gentleman from Chester, Senator Stauffer.

The PRESIDENT. Will the gentleman from Chester, Senator Stauffer, permit himself to be interrogated?

Senator STAUFFER. I will, Mr. President.

Senator KELLEY. Mr. President, as the Acting Majority Leader, I wonder if the gentleman from Chester, Senator Stauffer, could reveal to us whether or not this matter is scheduled today in response or reaction to the Federal Court proceedings, a part of which are embraced in House Bill No. 1291?

Senator STAUFFER. Mr. President, the response to that question is positively no. In fact, the meeting to bring out House Bill No. 1291, amended with the welfare provisions, was called last Thursday, which was prior to any activity or filings in the courts. We predated any action of the court in the setting up of the meeting at which this legislation was reported from committee.

Senator KELLEY. Mr. President, I would only like to observe it is most unfortunate. I think the issue that has been raised collaterally by the attempt by the Federal Court of the Third Circuit to, by implication, serve the President pro tempore of this Body and the Speaker of the other Body, raises a much more fundamental serious question than whether or not the beneficiaries of welfare programs are going to receive their checks. Especially so whenever the United States Government Executive head, the President of the United States, has in his campaign and since taking office repeatedly talked about the return of the power of the States and the Federalism of this country.

Mr. President, I regret this and I am somehow inclined to want to vote "no" to prove the point of the sovereignty of the Commonwealth and other sister States on this particular issue. Of course, I do not think it is important for us to ever vote emotionally on these issues, but it certainly is something I think it should be well spread on the public record.

Senator HAGER. Mr. President, I personally share some of the reactions of the gentleman from Westmoreland, Senator Kelley. I do not think the constitutional point is any more important. I think it is a totally separate issue and I would not want the over-reaching of a Federal Court to keep this Body from passing legislation which is going to get those checks to people who are badly in need of them.

Mr. President, it occurs to me, since I have been interviewed on the radio from Philadelphia a number of times, from different radio stations, that perhaps the public may never understand our defensiveness of our institution, our demand publicly that there be a separation of powers not only between the Judiciary and the Legislature but also between the Federal system and the State system. It may very well be taken as some posturing or some puffing on our part, but both Mr. Ryan and I felt it was essential to our form of government that we make it very clear we were not submitting to the jurisdiction of the court, particularly when it had taken no steps whatsoever to subject us to that jurisdiction. We have also, I think, been at great pains to explain that we are not being contemptuous of the court's position, but we are trying to make it very, very clear we feel State government and the legislative part of State government should only submit to a Federal order when in fact we have properly been made subject to Federal jurisdiction.

Mr. President, I, of course, would urge an affirmative vote on House Bill No. 1291 and let us continue to make very clear to the Federal Courts that we consider them to be men who have been elevated to a position but they are still subject to the laws and indeed to the Constitution of this land.

Senator BELL. Mr. President, it is apparent we have two different questions here. Of course, we want to pass the bill this morning. But there is a very serious threat to the integrity of State government, not only this State but every State in the United States, when a Federal Court panel can serve notice such as they did upon the Speaker of the House and the President pro tempore. I am going to respectfully suggest to the Leadership of both sides to get together with their counterparts and file rather novel proceedings with the Supreme Court of the United States to restrain future actions of this type. I say novel because the actions of the Third Circuit Court of Appeals are indeed novel. What is good for the goose is good for the gander. I suggest even though the Supreme Court of the United States rejects such action, that the Legislature of Pennsylvania file initial proceedings in the Supreme Court of the United States after the course is decided by the Leaders of both sides of both houses so we can preclude further infringements on the reserve powers of the State under the United States Constitution.

Senator SCANLON. Mr. President, I agree with the general tenor of remarks which have been made today concerning the intervention of the Third Circuit Court of the Federal Judiciary. I think what we do in the Legislature frankly in most respects is of no concern of theirs and I particularly resent an ex parte order which was served upon the Leadership of the House and the Senate without their having been served with any prior writ or process.

However, Mr. President, it appears to me that the entire situation could have been avoided had the Majority Party timely called a meeting of the Committee of Conference on House Bill No. 686, which we passed some time ago, providing this money for these particular recipients who have now been waiting for the past three days because of the failure of the Republican Party in the House to call a meeting of the

Committee of Conference to adopt this legislation. The root of the problem is that tucked in that bill, and I am referring to House Bill No. 686, is \$150,000 or \$200,000 to run the Office of Counsel General, which has been a bone of contention politically. I think it is a shame the welfare recipients of Pennsylvania have had to wait now seventy-two hours and probably through tomorrow before this bill has gone through the House and is signed by the Governor and the Secretary would issue the checks.

Mr. President, I do agree the Third Circuit of the United States Judicial system certainly overstepped the bounds of at least propriety in issuing the order. However, it all could have been avoided.

Senator STAUFFER. Mr. President, I think it is necessary that there be a brief response to the gentleman from Allegheny, Senator Scanlon, and some of his remarks. I think it is important to note the partisan hint that he put to his remarks certainly does not hold because if the gentleman checks the House roll call, he will find there were a few Republicans in the House who moved to nonconcur in House Bill No. 686, which passed unanimously I might say in the Senate and that the entire House Democratic caucus also moved to nonconcur.

Mr. President, it was not a partisan matter that made that happen in the House. I think additionally, the gentleman's reference to other items in that legislation must recognize the money for the Counsel General was in that bill long before the amendments to place the welfare deficiencies were placed in that bill. That was an integral part of that legislation and it was an important aspect of that legislation.

Senator SCANLON. Mr. President, I would like to briefly respond by reminding the acting Majority Leader that it is a Republican Party that controls the House of Representatives, not the Democratic Party.

The Republican Party put on a display here last Tuesday of team work on every one of about 100 amendments, the likes of which I have never seen in all the years that I have been in Harrisburg.

Mr. President, it is regrettable at least this team work does not transcend across this dome into the House of Representatives.

Senator TILGHMAN. Mr. President, I have never heard such misstatements in my life from the good gentleman on the other side of the aisle.

What relationship amendments to the General Appropriations bill in the Senate have to the Democrats in the House holding up payments to welfare recipients in the State, I do not know. Let us call a spade a spade. This bill could have been passed in the House with a little bit of Democratic support. Sure, there are some Republicans that objected to the bill on political purposes. It went down to defeat because I suppose the Democrats got so tangled up in \$150,000 to \$200,000, that they forgot the welfare money was in there. I do not know what the situation is, but the gentleman from Allegheny, Senator Scanlon, is totally and completely wrong. There is no earthly reason that the record of this Senate should have his misstatements in it.

Senator SCANLON. Mr. President, I would just like to close by saying I have a hunch we are going to see House Bill No. 686 somewhere along the line in the very near future.

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—48

Andrezeski	Holl	Mellow	Scanlon
Bell	Hopper	Messinger	Shaffer
Bodack	Howard	Moore	Singel
Corman	Kelley	Murray	Smith
Early	Kusse	O'Connell	Snyder
Fisher	Lewis	O'Pake	Stapleton
Gekas	Lincoln	Pecora	Stauffer
Greenleaf	Lloyd	Price	Stout
Hager	Loeper	Reibman	Street
Hankins	Lynch	Rhoades	Tilghman
Helfrick	McKinney	Romanelli	Wilt
Hess	Manbeck	Ross	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.

ANNOUNCEMENT BY MAJORITY WHIP

Senator STAUFFER. Mr. President, I would like the Members to take note of the fact that although that vote completes the formal voting action in the Senate today, we will be keeping the desk open for a couple of hours at least in order that we can deal with communications between the House and the Senate.

Senator SCANLON. Mr. President, I desire to interrogate the gentleman from Chester, Senator Stauffer.

The PRESIDENT. Will the gentleman from Chester, Senator Stauffer, permit himself to be interrogated?

Senator STAUFFER. I will, Mr. President.

Senator SCANLON. Mr. President, would the gentleman advise us as to the date upon which we will return when the adjournment motion is made?

Senator STAUFFER. Mr. President, we will return to Session Monday, June 15th at 2:00 p.m.

UNFINISHED BUSINESS

REPORT FROM COMMITTEE

Senator GEKAS, from the Committee on Judiciary, reported, as amended, SB 579.

SENATE RESOLUTION

**DIRECTING PRESIDENT PRO TEMPORE OF
SENATE ENTER INTO CONTRACT WITH
PENNSYLVANIA ECONOMY LEAGUE TO
MEASURE IMPACT ON SCHOOL DISTRICT OF
MANDATES IMPOSED BY STATE AND
FEDERAL GOVERNMENTS**

Senators HAGER, JUBELIRER, HESS, RHOADES, O'CONNELL, MANBECK, KUSSE, STAUFFER, PECORA, LOEPER, HOWARD, PRICE, WILT, SNYDER, FISHER, CORMAN, STAPLETON, GREENLEAF, LINCOLN and STOUT offered the following resolution (Serial No. 47) which was read and referred to the Committee on Rules and Executive Nominations:

In the Senate, June 10, 1981.

WHEREAS, An ever-growing number of individuals and organizations are expressing concern over the proliferation and impact of mandates being imposed by the State and Federal Government on local school districts; and

WHEREAS, Individual mandates impose requirements on school districts financial and managerial resources as well as constraints on local decision makers discretion; and

WHEREAS, Mandates are often imposed without adequate determination of their cost or their benefit or without sufficient consideration of the means of financing them; and

WHEREAS, No precise definition of the term mandate as used in public debate exists, nor does an inventory of mandates currently in effect listing their source; and

WHEREAS, No measures exist to assist the Senate in evaluating the effectiveness of a mandate in achieving its stated goal; therefore be it

RESOLVED, That the Senate of Pennsylvania authorizes the President pro tempore to enter into a contract with the Pennsylvania Economy League for the purposes of measuring the impact on school districts of mandates imposed by State and Federal Governments and their agencies; and be it further

RESOLVED, That the Economy League, with the assistance of representatives of education organizations, the Senate and its staff, and the Pennsylvania Department of Education develop a definition of the term "mandate" for the scope of this study; and be it further

RESOLVED, That its final report include suggested criteria for evaluating present mandates as well as proposed future ones; and be it further

RESOLVED, That the costs of the contract be paid from moneys appropriated to the Chief Clerk for incidental expenses; and be it further

RESOLVED, That the final report be presented to the Senate no later than one year after the passage of this Resolution.

RECESS

Senator STAUFFER. Mr. President, I would ask that the Senate now recess to the call of the Chair.

The PRESIDENT. If there is no objection, the Senate will recess to the call of the Chair.

AFTER RECESS

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

HOUSE MESSAGE

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

The Clerk of the House of Representatives being introduced, informed the Senate that the House has concurred in amendments made by the Senate to **HB 1291**.

BILLS SIGNED

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

HB 61 and 1291.

**SENATOR STAUFFER REQUESTED
TO PRESIDE**

The PRESIDENT. The Chair requests Senator Stauffer come to the rostrum.

The PRESIDING OFFICER (John Stauffer) in the Chair.

REPORTS OF COMMITTEE

Senator TILGHMAN, from the Committee on Appropriations, rereported, as committed, **SB 406**; reported, as committed, **SB 853, 854, 855, 856, 857, 858, 859, 861, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 891 and 892.**

BILLS ON FIRST CONSIDERATION

Senator MOORE. 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 81, 117, 579, 600, 853, 854, 855, 856, 857, 858, 859, 861, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 891 and 892.

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

RECESS

Senator MOORE. Mr. President, I would request that the desk remain open and that the Senate stand in recess until the call of the Chair.

The PRESIDING OFFICER. Without objection, the Senate will stand in recess subject to the call of the Chair.

AFTER RECESS

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

CHANGE IN COMMITTEE OF CONFERENCE ON HB 686

The PRESIDING OFFICER. The Chair wishes to announce that the President pro tempore has appointed Senator John Stauffer to the Committee of Conference on **HB 686**, replacing Senator Frank O'Connell who has resigned.

RECESS

The PRESIDING OFFICER. There being no further business, the Senate will stand in recess until the call of the Chair.

AFTER RECESS

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

HOUSE MESSAGE

HOUSE NONCONCURS IN SENATE AMENDMENTS TO HOUSE BILL

The Clerk of the House of Representatives being introduced, informed the Senate that the House has nonconcurred in amendments made by the Senate to **HB 712**.

BILL WHICH HOUSE HAS NONCONCURRED IN SENATE AMENDMENTS

SENATE INSISTS UPON ITS AMENDMENTS
NONCONCURRED IN BY THE HOUSE TO HB 712

HB 712 (Pr. No. 1680) — Senator TILGHMAN. Mr. President, I move that the Senate do insist upon its amendments to House Bill No. 712, and that a Committee of Conference on the part of the Senate be appointed.

The motion was agreed to.

Ordered, That the Clerk inform the House of Representatives accordingly.

COMMITTEE OF CONFERENCE APPOINTED ON HB 712

The PRESIDING OFFICER. The Chair announces, on behalf of the President pro tempore, the appointment of Senators TILGHMAN, STAUFFER and LEWIS as a Committee of Conference on the part of the Senate to confer with a similar committee of the House (if the House shall appoint such committee) to consider the differences existing between the two houses in relation to House Bill No. 712.

Ordered, That the Clerk inform the House of Representatives accordingly.

REPORT OF COMMITTEE OF CONFERENCE SUBMITTED AND LAID ON THE TABLE

Senator TILGHMAN submitted the Report of Committee of Conference on **HB 686**, which was laid on the table.

HOUSE MESSAGE

HOUSE ADOPTS REPORT OF COMMITTEE OF CONFERENCE

The Clerk of the House of Representatives being introduced, informed the Senate that the House has adopted Report of Committee of Conference on **HB 686**, which was placed on the Calendar.

ANNOUNCEMENTS BY THE SECRETARY

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

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

MONDAY, JUNE 15, 1981

1:00 P.M.	TRANSPORTATION (to consider Senate Bills No. 592, 684, 808, 845 and House Resolution No. 78)	Room 459, 4th Floor Conference Rm., North Wing
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TUESDAY, JUNE 16, 1981

11:00 A.M.	LOCAL GOVERNMENT (to consider Senate Bills No. 400, 514, 624, 653, 678, 679, 775, 780, 781 and House Bill No. 643)	Room 459, 4th Floor Conference Rm., North Wing
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12:30 P.M.	ENVIRONMENTAL RESOURCES AND ENERGY (to consider House Bill No. 163)	Room 461, 4th Floor Conference Rm., North Wing
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WEDNESDAY, JUNE 17, 1981

9:30 A.M.	URBAN AFFAIRS AND HOUSING (to consider Senate Bills No. 190, 195, 737, 738, 758 and 802)	Room 459, 4th Floor Conference Rm., North Wing
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11:00 A.M.	MILITARY AND VETERANS AFFAIRS (to consider the nomination of Brig. Gen. Frank H. Smoker, Jr., as Major General PA National Guard and to discuss Senate Bills No. 674 and 675)	Room 460, 4th Floor Conference Rm., North Wing
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ADJOURNMENT

Senator STAUFFER. Mr. President, I move that the Senate do now adjourn until Thursday, June 11, 1981, at 11:00 a.m., Eastern Daylight Saving Time.

The motion was agreed to.

The Senate adjourned at 11:59 p.m., Eastern Daylight Saving Time.