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SESSION OF 2004 188TH OF THE GENERAL ASSEMBLY

No. 66

**SENATE**

SATURDAY, November 20, 2004

The Senate met at 12 m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Catherine Baker Knoll) in the Chair.

**PRAYER**

The following prayer was offered by the Secretary of the Senate, Hon. MARK R. CORRIGAN:

Let us pray.

Dear Lord, our God in heaven, we convene for a rare Saturday Session of the Senate, but before we start to address the onerous tasks of this day, we turn our attention to You. We are tired, Lord, in mind and body. Refresh us with Your spirit, guide us with Your wisdom, bless all our efforts on behalf of Your people. May all that we accomplish this day be pleasing in Your sight. Amen.

**PLEDGE OF ALLEGIANCE**

(The Pledge of Allegiance was recited by those assembled.)

**JOURNAL APPROVED**

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of November 19, 2004.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator BRIGHTBILL, and agreed to by voice vote, further reading was dispensed with and the Journal was approved.

**HOUSE MESSAGES**

**HOUSE CONCURS IN SENATE AMENDMENTS  
TO HOUSE BILLS**

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to HB 176, 835, 1329, 1330, 1331, 2036, 2090, 2262, 2384 and 2482.

**SENATE BILL RETURNED WITH AMENDMENTS**

The Clerk of the House of Representatives returned to the Senate SB 677, with the information the House has passed the

same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XIV, section 5, this bill will be referred to the Committee on Rules and Executive Nominations.

**BILLS SIGNED**

The PRESIDENT (Lieutenant Governor Catherine Baker Knoll) in the presence of the Senate signed the following bills:

HB 176, HB 835, HB 1262, HB 1329, HB 1330, HB 1331, HB 1867, HB 1868, HB 2036, HB 2055, HB 2090, HB 2262, HB 2270, HB 2326, HB 2384, HB 2387, HB 2482, HB 2865 and HB 2980.

**LEGISLATIVE LEAVE**

Senator BRIGHTBILL. Madam President, I ask for a legislative leave for Senator Dent.

The PRESIDENT. Senator Brightbill requests a legislative leave for Senator Dent. Without objection, that leave will be granted.

**LEAVES OF ABSENCE**

Senator BRIGHTBILL asked and obtained a leave of absence for Senator GREENLEAF, for today's Session, for personal reasons.

Senator WOZNIAK asked and obtained leaves of absence for Senator O'PAKE and Senator SCHWARTZ, for today's Session, for personal reasons.

**CALENDAR**

**HB 477 CALLED UP OUT OF ORDER**

HB 447 (Pr. No. 4798) -- Without objection, the bill was called up out of order, from page 2 of the Third Consideration Calendar, by Senator BRIGHTBILL, as a Special Order of Business.

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

HB 447 (Pr. No. 4798) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for certain immunity for persons who donate vehicles and equipment to volunteer fire companies and for sentences for certain drug offenses committed with firearms.

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 PRESIDENT. The Chair recognizes the gentleman from  
Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, this is the opening  
vote, but this is a vote for a bill that generated interest as it went  
through the amendment process. It deals with mandatory sentenc-  
ing and it includes provisions for certain drug offenses commit-  
ted with firearms, and the Members should be aware of the sub-  
ject matter.

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:

YEA-42

Armstrong	Jubelirer	Piccola	Thompson
Boscola	Kasunic	Pileggi	Tomlinson
Brightbill	Kukovich	Pippy	Wagner
Conti	LaValle	Punt	Waugh
Corman	Lemmond	Rafferty	Wenger
Costa	Logan	Rhoades	White, Donald
Dent	Madigan	Robbins	Williams, Constance
Erickson	Mellow	Scarnati	Wonderling
Ferlo	Mowery	Stack	Wozniak
Fumo	Musto	Stout	
Gordner	Orie	Tartaglione	

NAY-5

Earll	Kitchen	Williams, Anthony H.
Hughes	White, Mary Jo	

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

Ordered, That the Secretary of the Senate 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.

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from  
Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I request a legisla-  
tive leave for Senator Tomlinson.

The PRESIDENT. Without objection, the leave will be  
granted.

CONSIDERATION OF CALENDAR RESUMED

BILLS CALLED OUT OF ORDER

Without objection, the following bills on today's Calendar  
were called out of order by Senator BRIGHTBILL, as Special  
Orders of Business.

BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE

HB 850 (Pr. No. 4799) -- The Senate proceeded to consider-  
ation of the bill, entitled:

An Act amending the act of July 28, 1953 (P.L.723, No.230),  
known as the Second Class County Code, providing for insurance and  
other employee benefits; further providing for authority of county com-  
missioners to make contracts; amending provisions relating to acquisi-  
tion, use, leasing and disposing of property for county and to construc-  
tion or alteration of county buildings; further prohibiting disorderly  
conduct in and about courthouses and jails; further providing for joining  
with municipality in improving certain streets and highways and for  
parks and comfort houses; amending provisions relating to monuments  
and memorials; further providing for acquiring of property for certain  
purposes and for authority to provide for morgues; amending provisions  
relating to bridges, viaducts, culverts, roads and recreation places; fur-  
ther providing for findings and declaration of policy and for tax relief;  
repealing provisions relating to reimbursement to school districts of the  
first class A; and making editorial changes.

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 PRESIDENT. The Chair recognizes the gentlewoman  
from Allegheny, Senator Orie.

Senator ORIE. Madam President, the city of Pittsburgh is  
going through a crisis right now, and this is part of a package that  
has been worked through consensus with the Democrats and  
Republicans in the House of Representatives and in the Senate,  
as well as the administration, specifically the Governor and Sec-  
retary Masch. We are asking for support of this bill. It is needed  
for Pittsburgh to get back on the road to recovery.

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:

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate 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.

## SECOND CONSIDERATION CALENDAR

### BILLS OVER IN ORDER AND RECOMMITTED

**SB 848 (Pr. No. 1856)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the period of limitation in the doctrine of adverse possession; and making repeals.

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

Pursuant to Senate Rule X, the bill was recommitted to the Committee on Judiciary.

**SB 1198 (Pr. No. 1857)** -- The Senate proceeded to consideration of the bill, entitled:

An Act providing immunity for physician reporting of suspected illegal use of controlled substance.

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

Pursuant to Senate Rule X, the bill was recommitted to the Committee on Judiciary.

### BILL OVER IN ORDER

**HB 2071** -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

### BILL OVER IN ORDER AND RECOMMITTED

**HB 2185 (Pr. No. 4142)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for the offense of selling or furnishing liquor or malt or brewed beverages to minors resulting in injury or death.

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

Pursuant to Senate Rule X, the bill was recommitted to the Committee on Judiciary.

### BILLS OVER IN ORDER

**HB 2304** and **HB 2412** -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

## SPECIAL ORDER OF BUSINESS GUESTS OF SENATOR JAY COSTA PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Madam President, I am very proud this afternoon to introduce two guests who have come here from my district from Baldwin Borough, one of the larger communities in my senatorial district. Here with us, Madam President, is one of our council members in Baldwin Borough, Mike Ducker, who has been a council member for a number of years now and is very active in the Jail Guards Association back in Allegheny County. But more importantly, although it is nice to have Mike here, we are very happy and pleased to have his son Michael here today, who is one of the 10 finalists in the running for the United States Senate Youth Scholarship Program. He was chosen from 156 students from across Pennsylvania to participate in the program, and he was here today interviewing with folks from that scholarship program and also participating in an exam. Not only is he a very bright young man, but he is an athletic one as well as a member of the Baldwin High School Football Team. I am very pleased to have him here today, a young man who I believe will continue his education here in the Commonwealth at Penn State University, and I am very happy to say thank you for coming here this afternoon. I would appreciate it if we would give Mike Ducker and his son a nice round of applause.

The PRESIDENT. Would Mike and his son please rise so we can give you a warm round of applause.

(Applause.)

## CONSIDERATION OF CALENDAR RESUMED

### BILL ON CONCURRENCE IN HOUSE AMENDMENTS AS AMENDED

#### SENATE CONCURS IN HOUSE AMENDMENTS AS AMENDED

**SB 1209 (Pr. No. 1997)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 4 (Amusements) and 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for definitions and for the Pennsylvania Gaming Control Board established; providing for applicability of other statutes and for review of deeds, leases and contracts; further providing for general and specific powers, for temporary regulations, for board minutes and records, for slot machine licensee financial fitness and for supplier and manufacturer licenses application; providing for manufacturer licenses; further providing for occupation permit application, for establishment of State Gaming Fund and net slot machine revenue distribution, for transfers from State Gaming Fund, for multiple slot machine license prohibition, for local land use preemption, for public official financial interest, for enforcement, for penalties, for background checks, for fingerprints and for corrupt organizations; and making related repeals.

On the question,

Will the Senate concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 1209?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 1209.

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

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Madam President, I urge very strongly a positive vote on the motion to concur. You will recall that this bill, Senate Bill No. 1209, is the first step in cleaning up our new gaming law. Last July we enacted a massive expansion of gaming in this Commonwealth, and no matter how you feel about that particular issue, I think it is universally believed that if we are going to do it, we need to do that activity in the correct way, in a way that all Pennsylvanians will have confidence in the fairness and the integrity of that new law. This bill takes the first step in establishing that integrity under that law.

It does a number of things, probably most important, it eliminates any possibility of any interest or ownership by public officials, either in the gaming activity itself or in the manufacturers or suppliers. It makes clear, without any shadow of a doubt, that any public official will have any interest, any ownership interest, or any of their relatives or close family members, any ownership interest, either in the gaming activities or in the manufacturers and the suppliers of those activities, of the goods needed for those activities. It also eliminates the requirement that the manufacturers have Pennsylvania suppliers in place to provide the equipment for the gaming activities, it makes the suppliers optional.

Madam President, it is important that we concur in this legislation so that the people of Pennsylvania will have confidence as we embark on this new endeavor for our Commonwealth.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, on page 49, lines 17 and 18, it removes Act 71's, which is our gaming bill, prohibition against family members - parents, adult children, brothers and sisters - of public officials having a financial interest in gaming operations or working directly for a licensed company. This is a change that is in this bill, it is not current law, so if you do this bill, you will now permit each Member of the Senate to ask Penn National, or whatever entity that is going to be in your area, to hire their relatives. It even permits the family of the Attorney General and even the Commissioner of State Police to own a slot venue. This was all prohibited under Act 71, so I want the people of Pennsylvania to know under the guise of closing the 1-percent loophole, we have opened up an enormous not loophole, door, garage door, for ourselves, for public officials. I think that is horrible and poor, poor public policy.

On pages 6 to 8, in a dramatic contrast to the standard applied to Members of the legislature and other elected officials, employees and all of their family members of the newly established gaming board are absolutely prohibited from having any financial interest or employment with any gaming entity. We went into this in depth last night. Significantly for them even, there are no ex-

emptions for mutual funds, pension funds, or retirement accounts. We did not even allow that for those people, unlike the specific exceptions that are listed for Members of the legislature, again, this privileged class that you have set up on pages 48 and 49. As such, the 200-plus employees of this new State agency and all of their family, whether they live in Chicago, California, or anywhere else, will have no practical option that would even permit passive investments through a 401K, for example, but we can. We can.

Madam President, we are not going to support privileges for ourselves in this General Assembly that we are not going to extend to everybody.

Page 49, lines 23 to 26, removes from the gambling bill that is currently law the prohibition against political party county officials from working for or owning a slot venue. This means that all of your political professionals and hacks back home can get involved in gaming. We had that out. We said we did not want party officials to have anything to do with gaming because of the obvious suspect for corruption. You are letting them do it. This bill now permits any political party county official to own or work for a gambling operation if the gambling operation is not located in their home county. The Republican or Democratic chairman of Montgomery County may own a licensed gaming operation in Philadelphia, Bucks, or any other county. The Republican or Democratic chairman of Chester County may work or have a financial interest in a slot operation in Bucks County. This change also undermines the current gaming law, Act 71's prohibition against political campaign contributions from licensed gaming companies. To gain political favor, all they have to do is hire or include in any investment deal the county political leaders. Come on.

In fact, on page 50, lines 8 through 30, you will adopt -- we are not voting for this, but you will -- a new definition of public official that now permits members of the Pennsylvania Convention Authority, the Delaware River Port Authority to own or work for a slot venue. Now I know there were some calls made by some important Republicans who serve on those boards who were very upset with your original language, and obviously you have responded to their needs. This is a particular invitation to corruption, because in the cases of the Pennsylvania Convention Center and the DRPA, because each are significant landowners in the city of Philadelphia and their decisions will have a direct impact on the site and location of slot venues in the city of Philadelphia, but they are your friends.

The poorly drafted definition of "public official" does not include either of these governmental entities or many others. We had that in the bill; you took it out. So while you are trying to tell the people of Pennsylvania you are doing this to prevent corruption, you are doing this to get rid of the 1 percent that we might get, you have all of your buddies in town having a field day. We originally said nobody, nobody could own more than 1 percent. They can own it all. So you have not tightened this bill, you have opened this up, and I can see the fat cats moving in now.

Fact, I am asking you to read the bill. I do not expect you to really do that, but I am putting it on the record, and you can take a look at it and we will take a break if you want to read it and check my facts. Page 50, lines 12 to 16, and lines 24 to 26, only prohibits employment or financial interest of municipal officials

and officers if that municipality directly receives a distribution of gross terminal revenue. Now, we know you are smart over there and we know why you said that. Unfortunately, and here is the hook, it sounds good on paper, but when you read it and understand it, unfortunately most municipalities, with the exception of Philadelphia and Pittsburgh, that host license gaming operations do not directly receive gross terminal revenue but rather are eligible to receive a grant from the Department of Community and Economic Development. And even if they were to receive the revenue directly, this loophole would still permit neighboring elected officials to have a financial interest.

Under the language, for example, the mayor of Harrisburg could own Penn National. Now I know you think that is bizarre, but I remember, in fact, I was driving in today from my farm, Senator Piccola, out in Halifax, our district, on the John Shumaker Memorial Highway, and I remember John Shumaker, who was Senator Piccola's predecessor. He owned the racetrack, and if he were here today, he probably might have to divest, but I think he would retire. But it is not unseemly or unthinkable that someone in here would have some kind of gambling interest. He owned that racetrack, along with Peter Carlino who still, I believe, owns it with a public company.

Fact, on pages 17 to 19, it provides an even larger loophole for county officials, permitting many to own or work directly for a gaming operation, so long as that county does not again directly receive gross terminal revenue. County commissioners, solicitors, or executives may have an ownership or be employed by a slot venue. That loophole, too, did not exist in Act 71, the original gaming bill.

Gifts for gaming companies. Fact, page 19, lines 5 to 10, language was added that added in the Committee on Rules and Executive Nominations to inexplicably permit slot operators to now become manufacturers and suppliers of slot machines. Not only is this unprecedented in new jurisdictions, but it also would allow a company like Penn National to move surplus or outdated slot machines they may have in other States into Pennsylvania for use by their slot operations. This change guarantees that all transactions involving slot machines will be conducted by out-of-State gaming companies. This was clearly a favor done for the gaming industry.

Fact, another favor for the gaming companies. Page 14, lines 15 to 30, also amended in the Senate Committee on Rules and Executive Nominations to effectively remove the gaming at slot distribution centers, an initiative intended to provide skilled jobs and business opportunities in Pennsylvania. Act 71 guaranteed that the sale, installation, and service of slot machines were done by businesses that came within the clear regulatory jurisdiction of the gaming board. This change was made over the objections of a majority of Members of the House and the Governor. This is one tangible economic benefit that Pennsylvania citizens would enjoy.

I want to read to you in part a letter that I received from some gentleman in Emigsville, Pennsylvania, I believe that is in York County, and I will have it available for anybody who wants it.

(Reading:)

"Mr. Fumo," it goes on to say, this provision "...provides for supplier and manufacturer licenses. Currently, any person seeking to provide,"

currently in the law, "slot machines or other equipment to a slot licensee or to manufacture slot machines would apply to the board for a license." The legislation would remove that. Keystone Transport Systems, Inc., this is the name of the company, "Keystone is an established business in the [sic] Pennsylvania that has PROVEN to create jobs. We need to be able to at least compete for those 100+ jobs" that he is talking about with the supplier provisions in the license. "The three manufacturers that we have spoken to have now stated (since the passing of SB 1209)," and now pending these amendments, "that they would run everything direct and keep the jobs/revenue in their own state.

"Please do not support Sections 1317 and 1317.1 of Senate Bill 1209 and keep the jobs in Pennsylvania." Signed by Chad McNaughton and Arthur Krall.

I do not remember who represents York County in here, but perhaps he would want to check with his constituents. One hundred jobs just in York County, out the window. Who is going to benefit from that? The out-of-State manufacturers, but we are for job creation in Nevada.

Importantly, this was the most likely opportunity for minority- and female-owned businesses to participate in the gaming industry. Because of the lack of capital that they possess in general, they are not going to own a tenth of a percent of a gambling entity, but they could own a slot distributorship. The only group that benefits from this change are the out-of-State companies like WMS Gaming. These businesses are strictly regulated under the terms of our bill that we passed, and the experience of States like New Mexico and New Jersey demonstrate that concerns of corruption regarding this particular area of the industry are unfounded. If you want to talk about corruption, talk about the power that you now have to tell an owner to hire your relative. That is corruption, not competing in the industry to sell machines.

Fact, page 21 to 22 removes completely Act 71's one per person limitation on the ownership and control of slot venues. This was done to benefit Penn National. They must have a hell of a lobbyist. If enacted, not only would Penn National be free to back out of their deal to sell their slot eligible venue in Wilkes-Barre, but even if they were to sell it, they would no longer have to seek the gaming board's approval under the terms and conditions of the sale. These two pages alone give to Penn National \$200 million. I hope you guys got enough contributions from their lobbyists to cover that outrage.

Madam President, this is an atrocious piece of legislation, and worse than that, it is a deceptive piece of legislation. The so-called do-gooders, right wing, antigaming people in this Chamber who did not want gaming and who were so concerned about corruption have now given the Commonwealth a bill that allows for more corruption than anywhere in America. And despite that, they rub it in and say that we are allowed to do what we want, other people are not. How in the name of God can you call this reform? How in the name of God can you call this tightening the 1 percent? This opens everything for you, and tightens it for other people. It opens everything for you and sticks it to small people who want to have distributorships, who have jobs available and are ready to roll, and in addition, to cap it off, the icing on the cake is \$200 million for Penn National. Wow, what a day you had reforming the Gaming Code. Man, you ought to be congratulated.

We on this side of the aisle are not going to vote for this. We are going to urge the Governor to veto this kind of corrupt legislation, and I hope to God he does, and I think he will.

Thank you, Madam President, and I know what I am saying when I say that. I know, I know we have a new sheriff in town and we cannot count on him, but on this one, I think we can, because this one rubs his nose in it. This one would make him a co-conspirator with you on opening up these loopholes for you and your friends and your relatives.

Madam President, I urge a negative vote, and I hope that we all do that.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentlewoman from Venango, Senator Mary Jo White.

Senator M.J. WHITE. Madam President, this is one of the more cynical displays I have ever seen in this body. This is the biggest, fattest red herring that has ever been dangled in front of this body. We brought this amendment to try to fix the ownership issue and the misperception that was out there in the public. We brought this bill to try to increase the enforcement powers of the Attorney General of Pennsylvania with regard to gaming. Is this perfect? Absolutely not. We got into whose family members should be included, whose should not, who should be in and who should be out, and mind you, we are talking principally about investments and employment. You know, it is a very, very difficult issue to fine tune, but when the Senator suggests that this is all about public corruption, we have laws about public corruption. If I use my position in this legislature to attempt to get a job for anyone in my family by promising favors, or by promising to withhold favors from any party, not just a gaming institution, but any party, I am guilty of public corruption and I can be prosecuted. You know, this is silliness to say that we are all going to be in there looking for jobs for our relatives.

The other part is the gentleman states that we have all this power over the gaming commission. Well, where is that power? Four Members of this body, two from each House, select a nominee for the gaming commission, and the Governor selects the other three. We do not even have confirmation power. We confirm the head of the Liquor Control Board, we confirm members of the Game Commission, but the gaming commission never comes before this body. We have absolutely no power to confirm or deny confirmation to any of those people. We have no leverage whatsoever. There are people who want to see this bill defeated, I have no doubt about that, and this is just a perfect display of people who do not want to see this ownership change go through, of people who do not want to see a situation where a manufacturer has to have a supplier who is nothing more than a guy with a telephone taking orders and a big commission. That is not jobs, Madam President.

I urge an affirmative vote on this. It is not perfect, we are loving it to death, we are fixing it up to the point where we are trying to close all the loopholes, and in doing so, sometimes we are walking through the looking glass here, but we will have opportunities to improve it. Let us not throw out the baby with the bath water. This is a good bill. It does the right things, and let us move on with it.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, perhaps we ought to start in the beginning of this, talk about the current state of the law, the law that Ed Rendell, Governor Ed Rendell, drove through this legislature and what the law currently provides, because the public outrage over some of the terms of this law is the reason that we are here today, this afternoon.

Number one, a Member of the General Assembly, such as Senator Fumo or myself, under the current law, can own 1 percent of a gambling entity, and 1 percent of Penn National is worth \$13 million, and we can have a 1-percent interest if we have the ability to invest.

Number two, and interestingly, because this is not a drafting error, this is something that was fought over when we passed Act 71, a Member of the General Assembly, such as Senator Fumo or myself, can own 100 percent of a supplier. I listened as Senator Fumo read a letter from Keystone Transport in York County, Pennsylvania, and I sympathize with those folks. My guess is the fact that they are written or talked about in floor debate will probably be a positive for them at some point in time, but the one thing that they did not see is that to become a supplier, you need the political clout to be approved by the gaming board. Now, under the law as it is currently written, and this has not been well reported by the media, a supplier can consist of a Pennsylvania corporation 100 percent owned by a Member of the General Assembly. Now, that is also true for a manufacturer, but it is pretty tough to go out with a modest sum of money and become a manufacturer. I think Senator Fumo, in his comments, talked about the fact, he touched on the fact, that one can become a supplier with a very, very modest investment. What you need is a CPA to set up your Pennsylvania corporation, a telephone, and a small office, and depending on the deal that you make as a supplier with the manufacturers, you may have to go to the post office once a month, get your check, and deposit it. There is no other requirement for a supplier in this law. Senator Fumo likes to use the word "loophole." This is not a loophole. This was intentionally inserted into Act 71 by Governor Rendell as he worked through this legislation to benefit someone. This is not a loophole. In fact, on the floor of this Senate I offered one amendment, and my amendment would have said that a Member of the General Assembly can have no interest in a suppliership. That amendment was defeated.

So, while the public focus in this debate has been on the so-called 1 percent, and in fact my understanding is that it has even been misrepresented and that people think that we are getting 1 percent, the truth is that the real problem here is with suppliers. Now, if you look at business models, and the gentleman from Philadelphia is quite capable of this, as are others, there are many businesses that have suppliers. They call them dealerships in the automobile business, and the model where you see a supplier, and let us take the automobile industry as an example, every community has a supplier or distributor or dealer. Why is that? Because you have literally thousands and thousands of customers, and you need the supplier to add service to the sale of an automobile. So, when I go buy an automobile, I get my local service, I get my options, I get my extras, I get my warranty ser-

vice back through my local distributor. There is something that needs to be provided there.

In the gaming industry, there are going to be 14 customers, only 14, and each customer is going to be geographically isolated from each other and is going to provide or be provided with 3,000 to 5,000 gaming machines, slot machines. Each manufacturer, when they sit down to negotiate with each purchaser, will be quite able to make provisions for service. Now, this has been couched as economic development. Oh, we are going to bring jobs to Pennsylvania. If there are jobs, they will come to Pennsylvania, whether you have the legal entity of a supplier or not. You will need to have some kind of a service mechanism, and the fact that it is run out of a Pennsylvania corporation does not provide one job for Pennsylvania. What it does provide, if you have the Acme Slot Company dealing with, let us say, Penn National in Dauphin County, they will need to have a service arrangement, and maybe that means that on the floor on any given night there are always two service people on duty, they have the ability to fly in parts, they have a distribution center within an hour and a half, because when one of those slot machines goes down, it is like turning off the tap on a money machine. So, the service is going to be very important.

And in the final analysis, neither the slot provider, such as a Penn National, nor the manufacturer is going to want to go to a distributor unless they have some real say as to who that distributor is, particularly the manufacturer. Any great product needs great service. I have people who are friends in these kinds of businesses, and what is happening in Pennsylvania is that these larger companies, these international, multinational companies in Pennsylvania are actually sorting through their service providers, where maybe 20 years ago in Pennsylvania they might have had 120 service providers, they might be down to 60, and they might be directing a consolidation of the 60 to a couple of good people who know how to manage these things, because service is very important to the sale.

Madam President, this is laughable. This is not a loophole that we are closing, this was intentionally built into this gaming bill, the creation of the concept of a supplier. Remember, to be a supplier, what do you need? You need to be a Pennsylvania corporation, which can be anybody. It does not need to be a Pennsylvania resident. But more importantly, you need to have the political clout to be approved by the board. Last night in Senator Fumo's floor debate, he referenced the janitor at the gaming commission. We are not talking about the janitor at the gaming commission. What he is talking about is what a "no" vote says today. What a "no" vote says is that a Member of the General Assembly may continue, under the law, to form a Pennsylvania corporation and be a supplier, and an "aye" vote says no to that, Madam President. It is very simple. As Senator White noted in her comments, this bill is not perfect. There are some very difficult public policy issues that we need to work through on these things.

I listened to the gentleman's debate last evening, and it was interesting because we are talking about children, emancipated children, parents, brothers, and sisters. Of course, I have a brother, an older brother. The fact that I am an elected political official starts closing and foreclosing his options in this world, and he is not a happy guy. Now, I am okay with that, because he is not a constituent, he lives in San Jose, California, so I do not

have to worry about his vote. But I do have emancipated children, three of them, and like all of you who have emancipated children, I am sure they, like mine, send monthly checks home to help with the bills. Seriously, one is in the movie business, one is a lawyer in Washington, D.C., and one sells advertising. What the rule that Senator Fumo wants, or says he wants, is that my son's law firm where he is an associate, a young guy, if they had the opportunity to do work in Pennsylvania for any kind of gambling entity, which I do not believe they do, they would have to make the simple choice. They could either accept the work and fire my son, or turn down the work. I do not know about this one particular law firm that he works for, but my son is then operating at a considerable economic disadvantage.

Is the rule the way we have done it perfect? Probably not. Are we going to learn some lessons through this process? Yes, we are. But we have already learned a lesson. The lesson is that the public does not want Members of the General Assembly having a financial interest in a suppliership of slot machines. They do not want us having a 1-percent interest in the business, let alone a 100-percent interest. That is the message. That is the message.

An "aye" vote, Madam President, is a vote to begin the process of reform.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, for the benefit of the people of Pennsylvania, what is going on here this afternoon is that the Republicans, in order to support this, need some kind of an argument, some kind of excuse so they can spin it when they do what they are about to do.

I will tell you what an "aye" vote does. An "aye" vote allows the Senator's brother from San Jose to come back and open up a supplier. It does not allow him to do it. My amendment yesterday said we could not do it and he could not do it. And are we worried? We are not worried about the janitor in the gaming board, but we are worried about the county chairman. I heard one Senator get up and say this was silly, we do not even have confirmation power over these nominees. I did not see the Senator offer an amendment. I would have supported it. I did not see that. So when they get up and say, I do not want to offer an amendment to correct it, I do not want to offer an amendment to do what I want to do, I do not want it in there so I have an excuse to vote for corruption. And if this was not about politics, why did they remove the provision that prohibited political county chairmen from having an interest in these entities? Why did they do that?

As far as what a "yes" vote does, a "yes" vote opens a tunnel, a garage door for every one of your friends. And let us take the reality of the world. People out there watching this television are not as dumb as you might think they are. In the original bill, yes, there was no prohibition for anyone in Pennsylvania from owning a distributorship. Why? There is an unlimited number of them. Anybody could go get them. But you have to understand the dynamics of the board. The board consists of, as we were told by Senator White, four legislative appointees, one appointed by each of the Caucus leaders and three from the Governor. In order to get that license, all four of those legislative appointees, and at least one of the Governor's, have to vote to do that. Now, does anyone in here think for one moment that any Member of the General Assembly would put his name on an application that

they were going to have a supplier license and that all the four Caucuses were going to agree? You know, a lot of this started with allegations about me wanting a supplier license, and I told the press and I will tell the public, do you think I am dumb enough to apply for a license when I know that the Republican Caucus appointee is never going to approve me for a license? Who is kidding whom here? But that was your fear. So, we came back and said, okay, if that is your argument, in order to take it away, and so you all feel comfortable, we will put in something that says no Member of the General Assembly nor any member of their family shall have any interest or get any money from gaming. The Senator gives you an example of his son in a law firm. I remember in this Chamber not long ago, and you do too, and I am not going to name names, and I have privilege on this floor, so I will say it, a certain Senator's son, who happened to be a Republican, represented some pretty damn big corporations that had legislation pending in front of the committee that the Senator chaired. Now, I do not know if that kid was bright or not, but I know he made millions of dollars. So, under this provision, one of your emancipated children, or your brother or your sister can be a member of a law firm and get that kind of work.

Now, Senator White got up and said, well, if I were to have a quid pro quo, I could be prosecuted for corruption, and I should be. We all know that. What we attempt to prevent, and what we do prevent is to remove, A, the temptation from those who are dumber than her who might try to do that, i.e. the people whom Senator Wozniak talked about in Arizona or New Mexico, or wherever it was. More importantly than that, the sophistication of this kind of corruption does not come about when you say, either hire my son or my brother or my sister, or I am going to stick it to you, or if you do it, I will do you a favor. There are not many people in this General Assembly who are that dumb anymore. What happens is, you ask, you wink your eye. The message is clear and the deal is done. You do not get prosecuted for that, the same way a Senator who used to sit in this Chamber never got prosecuted for what he did, and God knows what other deals are going on out there. That is what we are talking about. And your "yes" vote will allow the wink of the eye, take care of this. You can say, you know, my son is in a law firm and he is a great kid. That is all you have to say. The guy is not stupid, and if he owns a \$100 million company, you know he is not stupid.

The 1-percent rule was a joke, you spun it, you did a very effective job at it, but as Senator Brightbill said, 1 percent of Penn National is \$13 million. I do not know anybody in this Chamber--and I know a lot of people in this Chamber and some of us have some money--who can afford to take \$13 million, write a check, and buy 1 percent of that company. I do not know if it is a great investment. It might be or might not be. That was a smokescreen. You talk about a red herring, Senator White, that is a red herring, and it still is today. The real corruption is not even in the distributorships, it is in who sells the napkins, who gives the Coke franchise, as was said earlier, who has the shrimp concession. That is where it is at, and you now allow for that. That is what a "yes" vote means.

I have heard all kinds of things in here tonight. Geez, this is horrible, they are trying to characterize us as doing something corrupt. We gave you an amendment last night that straightened that out, and you rejected it. And I agree that we are not worried

about the janitor over in the gaming board, but we sure as hell put the restrictions on the janitor over there. If we were not worried about him, why did you put these restrictions on him? Why did you do that? Why did you not just make it the gaming board and key employees? You are the ones who adopted the standard, not me, but you do not want that same standard applied to you. You want the janitor over there to have a higher standard than you have. And let me tell you, that guy can wink his eyes until he goes blind, and nobody will hire his brother. You gave him the standard, but you lifted it from yourself, and you have the audacity to tell me that a "yes" vote is a great vote. A "yes" vote is to open up loopholes and, yes, they are loopholes big enough to drive a tractor trailer through for yourselves.

We offered the amendment to straighten it out, and you voted it down. You did not want the same standard that the janitor over there has, and you admit that the janitor cannot get a damn thing done, but you impose the standards on him. People in this State are not that dumb. If a standard is a standard, it should apply to everybody, everybody, including us. A "yes" vote is to open up that loophole for yourselves, and you are going to see the ramifications of that. We are going to see it, not tomorrow, not next year, but in 5 years, 10 years, we are going to have a chairman in here who has son, we are going to have somebody who has a brother, and all of a sudden they are going to be working for a casino, doing this, doing that, the wink of the eye, and that is what we are trying to prevent. We just want you to enjoy and take on the mantle and the same scrutiny as the janitor at the gaming board, and you do not want to do that. You want to be free to recommend your brother, your emancipated children, your sister, whether they live in Chicago or not.

Let me tell you something. For the kind of money that could be made on some of these deals, if I had a brother, and I do not have a brother or a sister, I would tell them to move back from Chicago or San Jose. They will never see that kind of money out there. And we are also now talking about multistate corporations. I will tell you an interesting little sideline. Maybe my kid does not come back from Arizona, but he works for the law firm that represents Ballys out in Arizona. Gee, that has nothing to do with me, because we have a casino here, he does not represent them, he represents the corporation in Arizona. That is the loophole you put in here. It is going to be hard to find, but that is what you have done. Now, if you do not want to do that stuff, if you are really serious and honest that you do not want to hire your brothers, sisters, your sons, your emancipated children, live with the same standard as the janitor. Put your money where your mouth is. Stop it, stop setting up a two-tiered system. You do not want to do that.

A "yes" vote means corruption, a "yes" vote means the possibility for all kinds of shenanigans by your political leaders, by yourselves, and your families. That is what a "yes" vote means. And if you are worried about anybody owning a suppliership, adopt my other rule that nobody in this Chamber individually, or any member of their family, can get anything from gaming anywhere. I voted for that. I offered that last night. You do not want to do this. We know what this is about. This is about your relatives. Not all of you, there are many of you who are well-meaning, but it is about your relatives trying to grab a deal, and we have already done enough in this Chamber for relatives.



We ought to stop it, and that is what a "no" vote means, we stop it.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, as I listened to the gentleman from Philadelphia, and as he pointed his finger over here, all I wanted to do was hold up a mirror so he could see himself.

#### POINT OF ORDER.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, point of order, because I cannot speak three times. The gentleman is making an accusation. He is lucky he has immunity on this floor from lawsuits for defamation. Do not tell me about pointing a finger. I have no interest, want no interest, and none of my Members do. Let him tell me the same thing. Let him tell me whose relatives in this Chamber are working for the gaming industry. Let the gentleman tell me who has them, we do not.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for an "aye" vote because the items that the gentleman mentioned, the difficult public policy issues that he mentioned, have been here before. As he spoke, my recollection was to some Executive Nominations that we had here, and I remember very clearly, for example, on our Calendar we had the nomination of a commissioner to the Liquor Control Board, his father was a State Senator, these kinds of difficult choices, and we made that nomination as Republicans because we believed that individual was qualified to do the job. What the gentleman is talking about is automatic disqualification because you happen to have a sibling, father, or child in the General Assembly. Madam President, that is a very harsh rule, and I do not think we should impose that rule across the board.

The gentleman talks about winking. Well, I have not seen any of that conduct regarding winking and the kind of conduct that he has described, and that is the reason I have suggested holding up the mirror, because perhaps he has seen that.

#### POINT OF ORDER

Senator FUMO. Madam President, point of order.

The PRESIDENT. The gentleman will state his point.

Senator FUMO. Madam President, I let the gentleman know that one of his former Members did that, not me. If he does not like it and cannot stand the heat, get out of the kitchen. But do not get up and try to cloud the issue by accusing me of stuff unless he has something to back it up.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, it is the gentleman from Philadelphia who felt the need to interrupt me on two separate occasions now.

Senator FUMO. Madam President, I did it when the gentleman got personal and accused me of things that I have never done in my life, while he stands to defend them for his own Members.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. I ask for an affirmative vote, Madam President.

#### LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. For the record, Senator Dent has returned, and his legislative leave is cancelled.

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

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

#### YEA-28

Armstrong	Gordner	Pileggi	Thompson
Boscola	Jubelirer	Pippy	Wagner
Brightbill	Lemmond	Punt	Waugh
Conti	Madigan	Rafferty	Wenger
Corman	Mowery	Rhoades	White, Donald
Dent	Orie	Robbins	White, Mary Jo
Erickson	Piccola	Scarnati	Wonderling

#### NAY-19

Costa	Kasunic	Mellow	Tomlinson
Earl	Kitchen	Musto	Williams, Anthony H.
Ferlo	Kukovich	Stack	Williams, Constance
Fumo	LaValle	Stout	Wozniak
Hughes	Logan	Tartaglione	

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

#### COMMUNICATION FROM THE GOVERNOR

##### RECALL COMMUNICATION REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows and referred to the Committee on Rules and Executive Nominations:

##### JUDGE, COURT OF COMMON PLEAS, MONROE COUNTY

November 20, 2004

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

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated November 9, 2004, for the appointment of Jennifer Ann Wise, Esquire, P.O. Box 218, Scotrun Avenue, Scotrun, 18355, Monroe County, Fourteenth Senatorial District, as Judge of the Court of Common Pleas of Monroe County, to serve until the first Monday of January 2006, vice The Honorable Mark P. Pazuhanich, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

EDWARD G. RENDELL  
Governor

### DISCHARGE PETITION

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

November 20, 2004

#### A PETITION

To place before the Senate the nomination of Edward J. Borkowski, Esquire as Judge, Court of Common Pleas, Allegheny County.

TO: The Presiding Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Edward J. Borkowski, Esquire, Pittsburgh, Pennsylvania, as Judge, Court of Common Pleas, Allegheny County, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

Robert D. Robbins  
David J. Brightbill  
Jeffrey E. Piccola  
Noah W. Wenger  
Robert C. Jubelirer

The PRESIDENT. The communication will be laid on the table.

### RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, at this time I request a recess of the Senate for a meeting of the Committee on Rules and Executive Nominations.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Madam President, if the Republicans are going to have a caucus after the meeting of the Committee on Rules and Executive Nominations, we would then want to do the same thing.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, we have not decided yet whether we need to go immediately to caucus or whether we can come back on the floor. We will decide that at the time of the meeting of the Committee on Rules and Executive Nominations. Senator Mellow will be in the meeting, so we will consult with him at that time.

The PRESIDENT. For those reasons, without objection, the Senate will be in recess.

### AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

## HOUSE MESSAGES

### HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILL

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to **HB 2749**.

### HOUSE CONCURS IN SENATE BILL

The Clerk of the House of Representatives returned to the Senate **SB 1030**, with the information the House has passed the same without amendments.

### HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE AMENDMENTS TO SENATE BILL

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to House amendments to **SB 92**.

### BILLS REPORTED FROM COMMITTEE

Senator BRIGHTBILL, from the Committee on Rules and Executive Nominations, reported the following bills:

#### SB 72 (Pr. No. 1998) (Amended) (Rereported) (Concurrence)

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for aggravated assault and for expiration of chapter relating to wiretapping and electronic surveillance; further defining "criminal justice agency"; and further providing for expungement.

#### SB 109 (Pr. No. 1999) (Amended) (Rereported) (Concurrence)

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for identification of incorrect debtor, for summary offenses involving vehicles, for law enforcement records, for duration of commitment and review and for assessments.

#### SB 668 (Pr. No. 1888) (Rereported) (Concurrence)

An Act requiring institutions of higher education to provide students and employees with information relating to crime statistics and security measures and to provide similar information to prospective students and employees upon request; granting powers to the State Board of Education; establishing a uniform crime reporting program; requiring all county and municipal law enforcement agencies to report certain information occurring within the respective jurisdictions; imposing duties on the Pennsylvania Commission on Crime and Delinquency; authorizing the Pennsylvania State Police to collect and gather information on crime and make annual reports; providing for penalties; and making a related repeal.

#### SB 856 (Pr. No. 1951) (Rereported) (Concurrence)

An Act amending the act of May 15, 1939 (P.L.134, No.65), referred to as the Fireworks Law, regulating sale and use of fireworks.

**SB 892 (Pr. No. 1785) (Rereported) (Concurrence)**

An Act amending the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, providing for the definition of "professional consultants"; and further providing for contents of subdivision and land development ordinance and for release from improvement bond.

**SB 912 (Pr. No. 1987) (Rereported) (Concurrence)**

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for crop insurance premium payments and for a report by the Department of Agriculture; and making a repeal.

**SB 959 (Pr. No. 2000) (Amended) (Rereported) (Concurrence)**

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the Constables' Education and Training Account, for information required upon commitment and subsequent disposition and for definition of "eligible offender."

**SB 1041 (Pr. No. 1972) (Rereported) (Concurrence)**

An Act providing for the continuation of the Pennsylvania Senior Environment Corps volunteer program administered by the Department of Environmental Protection and the Department of Aging.

**SB 1099 (Pr. No. 1979) (Rereported) (Concurrence)**

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for courts of common pleas; providing for summary offenses; and further providing for informal adjustment, for consent decrees, for compulsory arbitration, for disposition of delinquent children and for sentences for offenses against infants.

**HB 994 (Pr. No. 4760) (Rereported) (Concurrence)**

An Act empowering municipalities, counties and public transportation agencies to work cooperatively to establish Transit Revitalization Investment Districts (TRID), including partnerships with the National Railroad Passenger Corporation requiring planning studies, comprehensive plan and zoning amendments and use of existing statutes and techniques to achieve transit-oriented development, redevelopment, community revitalization and enhanced community character through TRID creation; establishing value capture areas as a means to reserve and use future, designated incremental tax revenues for public transportation capital improvements, related site development improvements and maintenance; promoting the involvement of and partnerships with the private sector in TRID development and implementation; encouraging public involvement during TRID planning and implementation; and providing for duties of the Department of Community and Economic Development.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 1**

**SENATE CONCURS IN HOUSE AMENDMENTS  
AS AMENDED**

**SB 72 (Pr. No. 1998)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for aggravated assault and for expiration of chapter relating to wiretapping and electronic surveil-

lance; further defining "criminal justice agency"; and further providing for expungement.

On the question,

Will the Senate concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 72?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 72.

On the question,

Will the Senate agree to the motion?

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

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 2**

**SENATE CONCURS IN HOUSE AMENDMENTS**

**SB 668 (Pr. No. 1888)** -- The Senate proceeded to consideration of the bill, entitled:

An Act requiring institutions of higher education to provide students and employees with information relating to crime statistics and security measures and to provide similar information to prospective students and employees upon request; granting powers to the State Board of Education; establishing a uniform crime reporting program; requiring all county and municipal law enforcement agencies to report certain information occurring within the respective jurisdictions; imposing duties on the Pennsylvania Commission on Crime and Delinquency; authorizing the Pennsylvania State Police to collect and gather information on crime and make annual reports; providing for penalties; and making a related repeal.

On the question,

Will the Senate concur in the amendments made by the House to Senate Bill No. 668?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 668.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

**SB 856 (Pr. No. 1951)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 15, 1939 (P.L.134, No.65), referred to as the Fireworks Law, regulating sale and use of fireworks.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 856?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 856.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

**SB 892 (Pr. No. 1785)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, providing for the definition of "professional consultants"; and further providing for contents of subdivision and land development ordinance and for release from improvement bond.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 892?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 892.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

**SB 912 (Pr. No. 1987)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for crop insurance premium payments and for a report by the Department of Agriculture; and making a repeal.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 912?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 912.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

SB 1041 (Pr. No. 1972) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the continuation of the Pennsylvania Senior Environment Corps volunteer program administered by the Department of Environmental Protection and the Department of Aging.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 1041?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 1041.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling

Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

SB 1099 (Pr. No. 1979) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for courts of common pleas; providing for summary offenses; and further providing for informal adjustment, for consent decrees, for compulsory arbitration, for disposition of delinquent children and for Sentences for offenses against infants.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 1099?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 1099.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

BILL ON CONCURRENCE IN HOUSE AMENDMENTS TO SENATE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS TO SENATE AMENDMENTS

HB 994 (Pr. No. 4760) -- The Senate proceeded to consideration of the bill, entitled:

An Act empowering municipalities, counties and public transportation agencies to work cooperatively to establish Transit Revitalization Investment Districts (TRID), including partnerships with the National Railroad Passenger Corporation requiring planning studies, comprehensive plan and zoning amendments and use of existing statutes and techniques to achieve transit-oriented development, redevelopment, community revitalization and enhanced community character through TRID creation; establishing value capture areas as a means to reserve and use future, designated incremental tax revenues for public transportation capital improvements, related site development improvements and maintenance; promoting the involvement of and partnerships with the private sector in TRID development and implementation; encouraging public involvement during TRID planning and implementation; and providing for duties of the Department of Community and Economic Development.

On the question,

Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 994?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate amendments to House Bill No. 994.

On the question,

Will the Senate agree to the motion?

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

**YEA-47**

Armstrong	Hughes	Oric	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SPECIAL ORDER OF BUSINESS  
CONSIDERATION OF SUPPLEMENTAL  
CALENDAR No. 1 RESUMED**

**SENATE CONCURS IN HOUSE AMENDMENTS  
AS AMENDED**

**SB 109 (Pr. No. 1999) --** The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for identification of incorrect debtor, for summary offenses involving vehicles, for law enforcement records, for duration of commitment and review and for assessments.

On the question,

Will the Senate concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 109?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 109.

On the question,

Will the Senate agree to the motion?

**MOTION TO SUSPEND SENATE RULE XIV**

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, there has been much discussion in this Capitol building and in the media lately about pay raises and about us attempting to increase our salaries. Madam President, I do not know where that eventually is going to go, but from what I have heard, it is not progressing too well. The hour is getting late, Madam President, and while we may not have the wherewithal to reward the Governor's cabinet and ourselves, and believe me I think many Members deserve a raise, I think it is important, extremely important that we remove the judiciary from our bickering and from our debate and hold them above that.

For that reason, Madam President, I move to suspend the rules so I can offer an amendment granting a pay raise to the judiciary only. If, in fact, things change, I will be the first to come back and offer an amendment adding our pay raises and those of the Governor and the other men and women of this administration.

The PRESIDENT. Senator Fumo moves that Senate Rule XIV be suspended to offer an amendment to Senate Bill No. 109.

On the question,

Will the Senate agree to the motion to suspend Senate Rule XIV?

The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for a "no" vote.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, I ask for a "yes" vote in the interest of at least helping our judiciary out of this morass.

And the question recurring,

Will the Senate agree to the motion to suspend Senate Rule XIV?

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

**YEA-19**

Boscola	Kasunic	Mellow	Wagner
Costa	Kitchen	Musto	Williams, Anthony H.
Ferlo	Kukovich	Stack	Williams, Constance
Fumo	LaValle	Stout	Wozniak
Hughes	Logan	Tartaglione	

**NAY-28**

Armstrong	Gordner	Pileggi	Thompson
Brightbill	Jubelirer	Pippy	Tomlinson
Conti	Lemmond	Punt	Waugh
Corman	Madigan	Rafferty	Wenger
Dent	Mowery	Rhoades	White, Donald
Earll	Orie	Robbins	White, Mary Jo
Erickson	Piccola	Scarnati	Wonderling

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

And the question recurring,

Will the Senate agree to the motion to concur in amendments made by the House, as further amended by the Senate, to Senate Bill No. 109?

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

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SENATE CONCURS IN HOUSE AMENDMENTS AS AMENDED**

**SB 959 (Pr. No. 2000)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the Constables' Education and Training Account, for information required upon commitment and subsequent disposition and for definition of "eligible offender."

On the question,

Will the Senate concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 959?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 959.

On the question,

Will the Senate agree to the motion?

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

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**CONSIDERATION OF CALENDAR RESUMED**

**BILLS CALLED OUT OF ORDER**

Without objection, the following bills on today's Calendar were called out of order by Senator BRIGHTBILL, as Special Orders of Business.

**BILLS AMENDED**

**HB 2442 (Pr. No. 3592)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, further providing for legislative intent, for definitions and for proposed regulations and procedure for review.

On the question,

Will the Senate agree to the bill on third consideration?

Senator BRIGHTBILL offered the following amendment No. A5494:

Amend Title, page 1, line 12, by inserting after "termination":, for composition

Amend Bill, page 1, lines 16 through 19; pages 2 and 3, lines 1 through 30; page 4, lines 1 through 26, by striking out all of said lines on said pages and inserting:

Section 1. Section 3 of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, reenacted and amended June 30, 1989 (P.L.73, No.19), is amended by adding a definition to read:

Amend Bill, page 5, by inserting between lines 8 and 9:

Section 2. Section 4(g) of the act, amended June 25, 1997 (P.L.252, No.24), is amended to read:

Section 4. Composition of commission; membership, compensation; vacancies; removal.

\*\*\*

(g) The following apply:

(1) The commission shall elect a chairperson, who shall serve for a term of two years and until a successor is elected. The chairperson shall preside at meetings of the commission and shall execute documents relating to the formal actions of the commission.

(2) At the first meeting in January of even-numbered years,

the commission shall also elect a vice-chairperson, who shall serve a term of two years and until a successor is elected. The vice-chairperson shall preside at the meeting of the commission in the absence of the chairperson.

(3) If a vacancy exists in the office of chairperson or the chairperson is unable to perform the duties of the office of chairperson on a permanent basis, the vice-chairperson shall assume the office of the chairperson for the remainder of the chairperson's unexpired term and until a successor is elected.

Amend Sec. 3, page 5, lines 10 and 11, by striking out "and the section is amended by adding a subsection"

Amend Sec. 3 (Sec. 5), page 7, lines 6 through 21, by striking out all of said lines

Amend Sec. 3 (Sec. 5), page 7, line 30; page 8, lines 1 through 29, by striking out all of said lines on said pages

Amend Sec. 4, page 9, line 17, by striking out "in 60 days" and inserting: immediately

On the question,

Will the Senate agree to the amendment?

It was agreed to.

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

**HB 873 (Pr. No. 4751)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for suspension of operating privilege, for careless driving, for penalties for violation of school zone speed limits, for powers of the department and local authorities and for surcharges.

On the question,

Will the Senate agree to the bill on third consideration?

Senator FUMO offered the following amendment No. A4984:

Amend Title, page 1, line 3, by striking out ", FOR CARELESS DRIVING," and inserting; and for careless driving; providing for exemption from additional requirements for highway occupancy permits for agricultural purposes; and further providing

Amend Bill, page 6, by inserting between lines 8 and 9:

Section 1.1. Title 75 is amended by adding a section to read:

§ 6103.1. Exemption from additional requirements for highway occupancy permits for agricultural purposes.

The department shall waive all additional requirements for a highway occupancy permit in a fifth through eighth class county when all of the following conditions exist:

(1) The State highway has an overall width of at least 33 feet.

(2) Not more than five combination vehicles per week will access the highway.

(3) The lack of sufficient land is not the result of a subdivision within ten years by the applicant.

(4) The waiver is necessary for the expansion or creation of an agricultural operation which lacks other highway access points that could be permitted without waiver.

(5) The applicant does not hold fee simple title to land necessary to provide access without this waiver.

(6) The State highway has an Average Daily Travel of less than 6,500 vehicles per day.

(7) The highway access point has a sight distance of at least 500 feet.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, what this does is clarify an area of the law concerning small agricultural operations when they are landlocked and do not have suitable easements to allow for the flow of larger vehicles. It is important to smaller farmers in Pennsylvania, and I urge its adoption. It does not affect my farm.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

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

Senator C. WILLIAMS offered the following amendment No. A5499:

Amend Title, page 1, line 3, by striking out ", FOR CARELESS DRIVING," and inserting: and for careless driving; providing for spilled cargo and for accident scene clearance; further providing

Amend Title, page 1, line 5, by striking out "AND" where it appears the second time and inserting a comma

Amend Title, page 1, line 6, by removing the period after "SURCHARGES" and inserting: and for removal of vehicles and spilled cargo from roadway.

Amend Bill, page 6, by inserting between lines 29 and 30:

Section 2. Title 75 is amended by adding sections to read:

§ 3743.1. Spilled cargo.

(a) General rule.—Immediately following an accident, a police officer may remove or direct removal of spilled cargo from any roadway to the nearest point off the roadway where the spilled cargo will not interfere with or obstruct traffic.

(b) Storage of cargo.—When, in the opinion of a police officer, it is necessary to protect the contents, load or spilled cargo of a wrecked vehicle from the elements, spoilage or theft, the police officer may remove or direct the removal of the contents or load or spilled cargo and have the same stored, at the expense of the owner, at the nearest practical place of storage.

(c) Liability for damage or loss.—In carrying out the provisions of this section, no liability shall attach to the police officer or, absent a showing of gross negligence, to any person acting under the direction of the police officer for damage to or loss of any portion of the contents or load or spilled cargo.

§ 3745.1. Accident scene clearance.

(a) General rule.—Notwithstanding any other provision of law to the contrary, the driver of any vehicle in an accident that does not result in apparent serious injury or death shall immediately remove the vehicle from the roadway to a safe refuge on the shoulder, emergency lane or median, or to a place otherwise removed from the roadway whenever, in the judgment of the driver:

(1) The motor vehicle does not require towing and can be normally and safely driven under its own power in its customary manner without further damage or hazard to the motor vehicle, traffic elements or the roadway.

(2) The motor vehicle can be moved safely.

(b) Driver request.—The driver of a motor vehicle involved in a traffic accident may request any individual who possesses a valid driver's license to remove the vehicle from the roadway in order to comply with this section. Such individual is not required to comply with the request and shall not be subject to any liability, either civil or criminal, for refusing the request.

(c) Police officers.—A police officer may immediately remove or direct removal of a wrecked vehicle if the owner or operator cannot remove the wrecked vehicle or refuses or fails to have the vehicle removed as required under this section. In carrying out the provisions of this subsection, no liability shall attach to the police officer or, absent a showing of gross negligence, to any person acting under the direction of the police officer for damage to any vehicle or damage to or loss of any portion of the contents of the vehicle.



(d) No liability.—The driver or any other person who has removed a vehicle from the roadway as provided in this section before the arrival of a law enforcement officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this section.

(e) Other driver duties.—Compliance with this section shall not affect a driver's duty to comply with section 3742 (relating to accidents involving death or personal injury), 3743 (relating to accidents involving damage to attended vehicle or property), 3744 (relating to duty to give information and render aid), 3745 (relating to accidents involving damage to unattended vehicle or property), 3746 (relating to immediate notice of accident to police department) or 3747 (relating to written report of accident by driver or owner).

(f) Other police duties.—This section shall not relieve any law enforcement officer of an investigating police department, including the Pennsylvania State Police, from complying with section 3746 or 3751 (relating to reports by police).

(g) Penalty.—Any person violating this section commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$50.

§ 3757. Compensation for incident removal costs.

(a) General rule.—Notwithstanding any other law or regulation, any entity incurring the cost of removing a vehicle or cargo at an accident scene, if the removal is authorized by a police officer, shall have the unqualified right to compensation for the cost of removal and cargo storage and cleanup from the owner of:

(1) A vehicle removed.

(2) A vehicle the cargo of which was removed in whole or in part.

(3) The cargo removed.

(b) Right to information.—A towing company that removes a vehicle or cargo under subsection (a) shall have the unqualified right to any information relevant to vehicle ownership and information affecting compensation, including, but not limited to, insurance information.

Amend Sec. 2, page 6, line 30, by striking out "2" and inserting: 3

Amend Sec. 3, page 9, line 9, by striking out "3" and inserting: 4

Amend Bill, page 12, by inserting between lines 22 and 23:

Section 5. Section 7310 of Title 75 is amended to read:

§ 7310. Removal of [vehicles and spilled cargo] abandoned or presumed abandoned vehicles from roadway.

(a) General rule.—Police officers may immediately remove or direct removal of [abandoned or wrecked vehicles and spilled cargo] any vehicle abandoned or presumed to be abandoned from any roadway, including the roadway's berm or shoulder, to the nearest point off the roadway where the vehicle [or spilled cargo] will not interfere with or obstruct traffic. [Immediately following an accident, the wrecked vehicle or spilled cargo shall be removed or directed to be removed from the roadway by a police officer if the owner or operator cannot remove the wrecked vehicle or refuses or fails to have the vehicle removed within a reasonable time.

(b) Storage of cargo.—When, in the opinion of a police officer, it is deemed necessary for the protection of the contents or load of a wrecked vehicle or spilled cargo from the elements, spoilage or theft, the police officer may remove or direct to be removed and have stored at the expense of the owner the contents or load or spilled cargo at the nearest practical place of storage.]

(c) Liability for damage or loss.—In carrying out the provisions of this section, no liability shall attach to the police officer or, absent a showing of gross negligence, to any person acting under the direction of the police officer for damage to a presumed abandoned vehicle or damage to or loss of any portion of the contents [or load or spilled cargo.] of the vehicle.

(d) Removal from Pennsylvania Turnpike System.—Notwithstanding the other provisions of this section, any vehicle on the Pennsylvania Turnpike System presumed to be abandoned as defined in section 102 (relating to definitions) shall immediately be removed by or at the direction of the Pennsylvania State Police to the contract garage providing service for that area. In all cases, the Pennsylvania State Police shall remove or direct the removal of any such vehicle within 24 hours of the time of the vehicle's presumption of abandonment.

Amend Sec. 4, page 12, line 23, by striking out "4" and inserting:

6

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentlewoman from Montgomery, Senator Connie Williams.

Senator C. WILLIAMS. Madam President, this amendment has come out of the work of a number of Montgomery County Members of the House. Representative Kate Harper, Representative Gene McGill, and I have been working to straighten up the incident management issues that come on our roadways. Our districts are in the heart of the very heavily congested southeastern Pennsylvania, Route 309, the 476 expressway, and when accidents occur on those highways, we sometimes have jams that last all day and it has an incredible impact on the commerce and on the quality of life and on interstate travel. We have been working with State Police and with the local police, and this amendment deals with some of the issues we have on incident management. I believe this amendment is agreed to, and what it will do is have immunity for towing and removing personnel if a vehicle or cargo is damaged when the police officer tells it to move, absent gross negligence, so that if we can get any noninjury accidents off the road, there is a provision in it that towers get paid, and there is a provision to ensure that if there is cargo associated with it, somebody is responsible for storing the salvageable cargo, so, I ask for a positive vote on this.

Thank you.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

And the question recurring,

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

The PRESIDENT. The Chair recognizes the gentleman from Bucks, Senator Conti.

Senator CONTI. Madam President, I rise in support of House Bill No. 873, which increases the penalties for the offense of careless driving. I have chosen to just take a moment to share a thought or two on this bill. Careless driving is basically a catch-all for all types of driving behavior done with complete disregard for others on the road. This could mean speeding, weaving in and out of traffic, blowing through an intersection, or simply falling asleep behind the wheel of a car.

So today I suggest to you, once again, that careless driving also includes talking on a hand-held cell phone. Several years ago I introduced an amendment on the floor of this Chamber that would have outlawed the use of hand-held cell phones while driving a car. I did this on behalf of my constituents, the Pena family, who lost their 2-year-old daughter, Morgan, in a terrible car accident.

Madam President, since that tragedy, the number of cell phone users in America has soared to 163 million and counting. According to a Harvard University study in 2003, approximately 2,600 highway deaths and 330,000 injuries are linked to cell phone use every year.

So, I rise today in support of this bill's broad language, and encourage law enforcement and the courts to take cell phone use

into consideration when charging for this offense. I might remind everybody that the driver in that tragedy was issued two \$25 careless driving fines. So I thank the sponsor for the opportunity to go over this today. Technology is moving forward. My own new, current, free cell phone is voice activated. Many of you have shared a new informed position on this important matter, so, today is not the time, tonight is not the night, this is not the Session, but I will be back next Session to offer a \$250 fine and a 5-year sunset for a violation of misusing a hand-held cell phone in the car, and as the current Governor of California would say, I will be back, on this issue.

Thank you, Madam President.

And the question recurring,

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

The PRESIDENT. Without objection, House Bill No. 873 will go over in its order as amended.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2066 (Pr. No. 4752) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further defining "collectible motor vehicle"; providing for titling and inspection of reconstructed, modified and specially constructed vehicles and for advisory panel; further providing for required registration and certificate of title, for vehicles exempt from registration, for antique, classic and collectible plates, for safety inspection criteria for street rods and for limited liability of inspection station or mechanic; providing for certificate of appointment for enhanced vehicle safety inspection for reconstructed vehicle inspection sites; and further providing for State replacement vehicle identification number plate.

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:

YEA-47

Table with 4 columns of names: Armstrong, Boscola, Brightbill, Conti, Corman, Costa, Dent, Earll, Erickson, Ferlo, Fumo, Gordner; Hughes, Jubelirer, Kasunic, Kitchen, Kukovich, LaValle, Lemmond, Logan, Madigan, Mellow, Mowery, Musto; Orié, Piccola, Pileggi, Pippy, Punt, Rafferty, Rhoades, Robbins, Scarnati, Stack, Stout, Tartaglione; Thompson, Tomlinson, Wagner, Waugh, Wenger, White, Donald, White, Mary Jo, Williams, Anthony H., Williams, Constance, Wonderling, Wozniak.

NAY-0

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

Ordered, That the Secretary of the Senate 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.

BILLS AMENDED

HB 2666 (Pr. No. 4591) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for period of registration and for the prohibition on expenditures for emission inspection program.

On the question,

Will the Senate agree to the bill on third consideration?

Senator MADIGAN offered the following amendment No. A5379:

Amend Title, page 1, line 2, by inserting after "registration": ; providing for commercial driver records; further providing for exemption from other fees

Amend Sec. 1, page 1, lines 9 and 10, by striking out all of said lines and inserting:

Section 1. Section 1307(a) of Title 75 of the Pennsylvania Consolidated Statutes is amended to read:

Amend Bill, page 2, by inserting between lines 6 and 7

Section 2. Title 75 is amended by adding a section to read:

§ 1620. Commercial driver records.

The department shall establish a program for unlimited annual electronic driver record checks for employers of commercial drivers. The program shall include the registration of the employer with the department including an estimate of the number of drivers employed and an annual fee which shall be based on \$5 per estimated driver. The department shall provide the registered employer with unlimited electronic access to uncertified driver records. The department is authorized to periodically audit the registered employer to determine that fees are approximately in line with the number of employees' records being accessed. If the department determines that the employer misrepresented the number of drivers whose records would be accessed, or that the record of a driver other than a commercial driver employee or prospective commercial driver employee was accessed, the department shall take appropriate action.

Section 3. Section 1902 of Title 75 is amended by adding a paragraph to read:

§ 1902. Exemptions from other fees.

No fee shall be charged under this title for or to any of the following:

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(9) A driver record of a school bus driver obtained electronically from the department by the employer of the school bus driver or any Federal or state transportation association of school bus operators on behalf of the employer, where the employer or the association has paid an annual record access fee established by the department. The department shall publish notice of the annual fee in the Pennsylvania Bulletin.

Section 4. Section 4706(d) of Title 75 is amended to read:

Amend Sec. 2, page 2, line 16, by striking out "2" and inserting: 5

On the question,

Will the Senate agree to the amendment?

It was agreed to.

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

HB 2775 (Pr. No. 4460) -- The Senate proceeded to consideration of the bill, entitled:

An Act establishing the Chesapeake Bay Watershed Education Program; providing for the issuance of grants and for the powers and duties of the Department of Education.

On the question,

Will the Senate agree to the bill on third consideration?

Senator HUGHES, on behalf of Senator A.H. WILLIAMS, offered the following amendment No. A4987:

Amend Sec. 3, page 2, line 23, by inserting after "school": and an environmental education center

On the question,

Will the Senate agree to the amendment?

It was agreed to.

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

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 3**

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 2442 (Pr. No. 4806) –** The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, further providing for definitions, for composition and for proposed regulations and procedure for review.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate 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.

**COMMUNICATIONS FROM THE GOVERNOR  
REPORTED FROM COMMITTEE ON RULES  
AND EXECUTIVE NOMINATIONS**

Senator ROBBINS, from the Committee on Rules and Executive Nominations, reported communications from His Excellency, the Governor of the Commonwealth, recalling the following nominations, which were read by the Clerk as follows:

**JUDGE, COURT OF COMMON PLEAS,  
MONROE COUNTY**

November 20, 2004

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

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated November 9, 2004, for the appointment of Jennifer Ann Wise, Esquire, P.O. Box 218, Scotrun Avenue, Scotrun, 18355, Monroe County, Fourteenth Senatorial District, as Judge of the Court of Common Pleas of Monroe County, to serve until the first Monday of January 2006, vice The Honorable Mark P. Pazuhanich, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

November 19, 2004

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

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated June 28, 2004, for the appointment of Adrian R. King, Jr., Esquire, 8833 Norwood Avenue, Philadelphia, 19118 Philadelphia County, Fourth Senatorial District, as a member of the Pennsylvania Public Utility Commission, to serve until April 1, 2009, or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Terrance J. Fitzpatrick, Esquire, Hummelstown, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

EDWARD G. RENDELL  
Governor

**NOMINATIONS RETURNED TO THE GOVERNOR**

Senator ROBBINS. Madam President, I move that the nominations just read by the Clerk be returned to His Excellency, the Governor.

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

The PRESIDENT. The nominations will be returned to the Governor.

**EXECUTIVE NOMINATIONS****EXECUTIVE SESSION**

Motion was made by Senator ROBBINS,

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

Which was agreed to by voice vote.

**NOMINATIONS TAKEN FROM THE TABLE**

Senator ROBBINS. Madam President, I call from the table certain nominations and ask for their consideration.

The Clerk read the nominations as follows:

**MEMBER OF THE PENNSYLVANIA  
ENERGY DEVELOPMENT AUTHORITY**

September 21, 2004

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, Ray Bologna, 1690 Sturbridge Drive, Sewickley 15143, Allegheny County, Fortieth Senatorial District, for appointment as a member of the Pennsylvania Energy Development Authority, to serve until April 8, 2006, and until his successor is appointed and qualified, vice James H. Cawley, Mechanicsburg, resigned.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE PENNSYLVANIA  
ENERGY DEVELOPMENT AUTHORITY**

September 21, 2004

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, Virginia L. Brown, 5720 Pemberton Street, Philadelphia 19143, Philadelphia County, Eighth Senatorial District, for reappointment as a member of the Pennsylvania Energy Development Authority, to serve until April 8, 2008, and until her successor is appointed and qualified.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE PENNSYLVANIA  
ENERGY DEVELOPMENT AUTHORITY**

September 21, 2004

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, Ty Christy, 104 Mirage Court, Renfrew 16053, Butler County, Fortieth Senatorial District, for appointment as a member of the Pennsylvania Energy Development Authority,

to serve until April 8, 2007, and until his successor is appointed and qualified, vice James J. Canova, East McKeesport, resigned.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE PENNSYLVANIA  
ENERGY DEVELOPMENT AUTHORITY**

September 21, 2004

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, Romulo L. Diaz, Jr., 1326 Spruce Street, Apt. 508, Philadelphia 19107, Philadelphia County, First Senatorial District, for appointment as a member of the Pennsylvania Energy Development Authority, to serve until April 8, 2006, and until his successor is appointed and qualified, vice John R. Bonassi, Pittsburgh, whose term expired.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE PENNSYLVANIA  
ENERGY DEVELOPMENT AUTHORITY**

September 21, 2004

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, Joseph A. Dworetzky, 7801 Huron Street, Philadelphia 19118, Philadelphia County, Fourth Senatorial District, for appointment as a member of the Pennsylvania Energy Development Authority, to serve until April 8, 2007, and until his successor is appointed and qualified, vice C. Alan Walker, Bigler, resigned.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE MUNICIPAL POLICE OFFICERS'  
EDUCATION AND TRAINING COMMISSION**

October 15, 2004

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, John C. Eckenrode, 600 Arch Street, 8th Floor, Philadelphia 19106, Philadelphia County, First Senatorial District, for appointment as a member of the Municipal Police Officers' Education and Training Commission, to serve for a term of three years and until his successor is appointed and qualified, vice Jeffrey A. Lampinski, Philadelphia, resigned.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE STATE BOARD  
OF PHYSICAL THERAPY**

September 9, 2004

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, Cindy Best, 80 Shady Lane, York Haven 17370, York County, Fifteenth Senatorial District, for appointment as a member of the State Board of Physical Therapy, to serve for a term of four years and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Ronald Goetsch, Rutledge, whose term expired.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE STATE BOARD OF  
CERTIFIED REAL ESTATE APPRAISERS**

August 16, 2004

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, Robert Kelly, (Public Member), 524 Country Club Lane, Havertown 19083, Delaware County, Seventeenth Senatorial District, for appointment as a member of the State Board of Certified Real Estate Appraisers, to serve for a term of four years and until his successor is appointed and qualified, but not longer than six months beyond that period, vice Daniel Taylor, Pittsburgh, whose term expired.

EDWARD G. RENDELL  
Governor

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

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

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Governor be informed accordingly.

**EXECUTIVE SESSION RISES**

Senator ROBBINS. Madam President, I move that the Executive Session do now rise.

The motion was agreed to by voice vote.

**CONSIDERATION OF CALENDAR RESUMED**

**THIRD CONSIDERATION CALENDAR RESUMED**

**BILL OVER IN ORDER**

**HB 56** -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

**BILL OVER IN ORDER TEMPORARILY**

**HB 197** -- Without objection, the bill was passed over in its order temporarily at the request of Senator BRIGHTBILL.

**BILLS ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 248 (Pr. No. 277)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, further providing for tax levy; and making an editorial change.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

**HB 250 (Pr. No. 279)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, further providing for township and special tax levies.

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:

## YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

## NAY-0

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

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

## BILL OVER IN ORDER

**SB 667** -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

## BILL OVER IN ORDER TEMPORARILY

**HB 851** -- Without objection, the bill was passed over in its order temporarily at the request of Senator BRIGHTBILL.

## BILL OVER IN ORDER

**SB 963** -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

## BILL OVER IN ORDER AND RECOMMITTED

**SB 1230 (Pr. No. 1833)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further defining "racketeering activity."

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

Pursuant to Senate Rule X, the bill was recommitted to the Committee on Judiciary.

## BILLS OVER IN ORDER

**HB 1861 and HB 2358** -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

## HB 197 CALLED UP

**HB 197 (Pr. No. 4780)** -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 2 of the Third Consideration Calendar, by Senator BRIGHTBILL, as a Special Order of Business.

## BILL AMENDED

**HB 197 (Pr. No. 4780)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, further providing for delegation of taxing powers and restrictions thereon, for limitations on rates of specific taxes and for the appointment of a single collector of taxes; and making a repeal.

On the question,

Will the Senate agree to the bill on third consideration?

## ORIE AMENDMENT A5564

Senator ORIE offered the following amendment No. A5564:

Amend Title, page 1, line 23, by removing the comma after "THEREON" and inserting: ; providing for nonresident sports facility usage fee, for parking tax rates and for payroll taxes; further providing

Amend Title, page 1, line 24, by inserting after "taxes;": further providing for the applicability of petitions under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act;

Amend Sec. 1 (Sec. 2), page 5, line 28, by inserting after "COLLECT": an emergency and municipal services tax and

Amend Sec. 1 (Sec. 2), page 5, line 29, by striking out "EMERGENCY AND MUNICIPAL TAX"

Amend Sec. 1 (Sec. 2), page 6, line 25, by striking out "EMERGENCY AND MUNICIPAL SERVICES TAX" and inserting: (emergency and municipal services tax)

Amend Sec. 1 (Sec. 2), page 7, lines 17 through 21, by striking out ", AND" in line 17; all of lines 18 through 20 and "BASIS" in line 21

Amend Sec. 1 (Sec. 2), page 9, by inserting between lines 16 and 17:

(14) Except by cities of the second class, to levy, assess or collect a tax on payroll amounts generated as a result of business activity.

(15) Except by cities of the second class in which a sports stadium or arena that has received public funds in connection with its construction or maintenance is located, to levy, assess and collect a publicly funded facility usage fee upon those nonresident individuals who use such facility to engage in an athletic event or otherwise render a performance for which they receive remuneration.

Amend Bill, page 9, lines 17 through 19, by striking out all of said lines and inserting:

Section 2. The act is amended by adding sections to read:

Section 2.2. Payroll Tax.—(a) A city of the second class may levy, assess or collect a tax that does not exceed fifty-five hundredths percent on payroll amounts generated as a result of an employer conducting business activity within a city of the second class. For purposes of a payroll tax levied, assessed or collected by a city of the second class, the business activity shall be directly attributable to activity within a city of the second class. For purposes of computation of the payroll tax imposed pursuant to this section, the payroll amount attributable to the city shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll expense which the total number of days an employe, partner, member, shareholder or other individual works within the city bears to the total number of days such employe or person works within and outside of the city.

(a.1) A charitable organization that qualifies for tax exemption pursuant to the act of November 26, 1997 (P.L.508, No.55), known as the "Institutions of Purely Public Charity Act," shall calculate the tax that would otherwise be attributable to the city, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to section 511 of the Internal Revenue Code of 1986 (Public Law 95-223, 26 U.S.C. § 1 et seq.). If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act," the tax shall be paid on the payroll attributable to such for-profit branches, affiliates or subsidiaries, whether or not the employes are leased or placed under the

auspices of the charity's umbrella or parent organization. Nothing in this paragraph shall restrict the ability of a charitable organization to contract with the city to provide services to the city in lieu of some or all taxes due under this section.

(b) For purposes of the payroll tax assessed pursuant to this section, an employer is conducting business within a city of the second class if the employer engages, hires, employs or contracts with one or more individuals as employees, and in addition, the employer does at least one of the following:

- (1) maintains a fixed place of business within the city;
- (2) owns or leases real property within the city for purposes of such business;
- (3) maintains a stock of tangible personal property in the city for sale in the ordinary course of such business;
- (4) conducts continuous solicitation within the city related to such business; or
- (5) utilizes the streets of the city in connection with the operation of such business other than transportation through the city.

(c) All employers in a city of the second class shall file quarterly returns and make quarterly payments as provided for by ordinance enacted by a city of the second class. Every employer making a return shall certify the correctness thereof. A city of the second class may audit, examine or inspect the books, records or accounts of all employers subject to the tax imposed pursuant to this section.

(d) A city of the second class may enact ordinances and regulations necessary to implement this section. The ordinance levying the tax authorized by this section shall permanently replace the city's existing mercantile tax and shall reduce the business privilege tax rate as follows:

(1) In tax years 2005 and 2006 the business privilege tax shall be two mills.

(2) In tax years 2007, 2008 and 2009 the business privilege tax shall be one mill unless the revenues collected from the payroll expense tax exceed fifty million five hundred thousand dollars (\$50,500,000) in any fiscal year, at which time the business privilege tax shall be replaced for the subsequent fiscal year. After the phase out of the business privilege tax, all amounts of moneys in excess of fifty million five hundred thousand dollars (\$50,500,000) shall be used by the city of the second class to further accelerate the reduction of the tax imposed by the city of the second class on parking as provided in section 5.1.

(3) In tax year 2010 and thereafter, the business privilege tax may not be imposed.

(e) All taxes, additions and penalties collected pursuant to this section shall be used by a city of the second class exclusively for the general revenue purposes of the city.

(f) An employer shall not offset the amount of tax paid pursuant to this section by reducing compensation or benefits paid to employees.

(g) A city of the second class may bring suit for the recovery of taxes due and unpaid under this section. Any suit brought to recover the tax imposed by this section shall be commenced within three years after such tax is due, or within three years after the declaration or return has been filed, whichever is later. Provided, however, That this limitation shall not prevent the institution of a suit for the collection of any tax due or determined to be due in the following cases:

(1) Where no declaration or return was filed by any person although a declaration or return was required to be filed by him under provisions of this section, there shall be no limitation.

(2) Where an examination of the declaration or return filed by any person, or of other evidence relating to such declaration or return in the possession of the city of the second class, reveals a fraudulent evasion of taxes, there shall be no limitation.

(3) In the case of substantial understatement of tax liability of twenty-five percent or more and no fraud, suit shall be begun within six years.

(4) This section shall not be construed to limit the governing body from recovering delinquent taxes by any other means provided by law.

(h) If for any reason the payroll tax is not paid when due, interest at the rate of six percent per annum on the amount of said tax, and an additional penalty of one percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of any such tax, the employer shall, in addition, be liable for the costs of

collection and the interest and penalties herein imposed. A city of the second class may, by ordinance or resolution, establish a one-time period during which interest or interest and penalties that would otherwise be imposed for the nonreporting or underreporting of payroll tax liabilities or for the nonpayment of payroll taxes previously imposed and due shall be waived in total or in part if the taxpayer voluntarily files delinquent returns and pays the taxes in full during the period so established.

(i) In addition to any other additions, penalties or enforcement proceedings provided for by ordinance of a city of the second class or a law of this Commonwealth for the collection and enforcement of taxes or the submission of information to a government entity:

(1) Any employer who wilfully makes any false or untrue statement on the employer's return commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000) or to imprisonment for not more than two years, or both.

(2) Any employer who wilfully fails or refuses to file a return required by this section commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than one year, or both.

(3) Any person who wilfully fails or refuses to appear before the collector in person with the employer's books, records or accounts for examination when required under the provisions of this section or of an ordinance to do so, or who wilfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the collector is requested, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than six months, or both.

(j) As used in this section:

"Employer" means all persons conducting business activity within a city of the second class, except for a governmental entity.

"Payroll amounts" means all amounts paid by an employer as salaries, wages, commissions, bonuses, net earnings and incentive payments, whether based on profits or otherwise, fees and similar remuneration for services rendered, whether directly or through an agent and whether in cash, in property or the right to receive property.

Section 2.3. Nonresident Sports Facility Usage Fee.—A city of the second class, in which is located a sports stadium or arena that has received public funds in connection with its construction or maintenance, may enact a publicly funded facility usage fee upon those nonresident individuals who use such facility to engage in an athletic event or otherwise render a performance for which they receive remuneration. The fee may be a flat dollar amount or a percentage of the individual's income attributable to such individual's usage of the facility. If the fee is a percentage, it may not exceed three percent of the earned income of the individual attributable to the usage of the facility. If any fee is imposed, those individuals liable for the fee shall be exempt from any earned income tax imposed by the city of the second class pursuant to this act and any such tax imposed under section 652.1 of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949." Should a court of competent jurisdiction determine this provision to be invalid for any reason, persons subject to the publicly funded facility usage fee shall not be exempt from any previously applicable earned income tax.

Section 5.1. Second Class City Parking Tax Rates.—The rate of the tax imposed on parking transactions shall not differ from the rate contained in City of Pittsburgh Ordinance Number 43-2003 as of January 1, 2004, except as follows:

(1) In tax year 2007, the rate of tax shall not exceed 45%.

(2) In tax year 2008, the rate of tax shall not exceed 40%.

(3) In tax year 2009, the rate of tax shall not exceed 37.5%.

(4) In tax year 2010, the rate of tax shall not exceed 35% as existed prior to the adoption of the ordinance.

Section 3. Section 8 of the act, amended or added October 11, 1984 (P.L.885, No.172) and July 1987 (P.L.203, No.30), is amended to read:

Amend Sec. 2 (Sec. 8), page 11, by inserting between lines 4 and 5:

(12) On payrolls, fifty-five hundredths percent.

Amend Sec. 2 (Sec. 8), page 12, lines 28 through 30, by striking

out all of said lines and inserting: the aggregate of both taxes does not exceed two percent. In the case of duplication of emergency and municipal services taxes by both a school district, other than a school district of the first class A, and another taxing body, the

Amend Sec. 2 (Sec. 8), page 13, line 2, by striking out all of said line and inserting: of a tax on the privilege of engaging in an occupation collected by the school

Amend Sec. 2 (Sec. 8), page 13, lines 4 and 5, by striking out "AN EMERGENCY AND MUNICIPAL SERVICES TAX" and inserting: a tax on the privilege of engaging in an occupation

Amend Sec. 2 (Sec. 8), page 13, line 7, by inserting after "(\$5):": A school district of the first class A shall not levy, assess or collect an emergency and municipal services tax.

Amend Sec. 3, page 13, line 8, by striking out "3" and inserting: 4

Amend Sec. 4, page 15, line 8, by striking out "4" and inserting: 5

Amend Bill, page 15, lines 21 through 24, by striking out all of said lines and inserting:

Section 6. Any ordinance or resolution providing for the levying, assessment or collection of a tax on individuals for the privilege of engaging in an occupation which has been enacted by a political subdivision prior to the effective date of this section shall continue in full force and effect, without reenactment, as if such tax had been levied, assessed or collected as an emergency and municipal services tax under section 2(9) of the act. All references in any ordinance or resolution to a tax on the privilege of engaging in an occupation shall be deemed to be a reference to an emergency and municipal services tax for the purposes of the act.

Section 6.1. Section 141 of the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act, shall not apply to a city of the second class insofar as the section confers authority upon the city to petition for the imposition of an earned income tax on nonresidents. This section shall not be construed to limit any other provision in the Municipalities Financial Recovery Act. This section shall expire upon termination of the authority established under the act of February 12, 2004 (P.L.73, No.11), known as the Intergovernmental Cooperation Authority Act for Cities of the Second Class.

Section 7. (a) The following acts and parts of acts are repealed:

Section 1970.3 of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(b) All other acts or parts of acts and all ordinances and resolutions or parts thereof inconsistent with the provisions of this act are suspended to the extent necessary to carry out the provisions of this act.

Section 8. This act shall apply to taxes levied for tax years commencing on or after January 1, 2005.

Section 9. This act shall take effect immediately.

On the question,

Will the Senate agree to the amendment?

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

YEA-30

Armstrong	Jubelirer	Pileggi	Tomlinson
Brightbill	Kukovich	Pippy	Waugh
Conti	LaValle	Punt	Wenger
Corman	Lemmond	Rafferty	White, Donald
Costa	Logan	Rhoades	White, Mary Jo
Earll	Madigan	Robbins	Wonderling
Erickson	Mowery	Scarnati	
Gordner	Orie	Thompson	

NAY-17

Boscola	Kasunic	Stack	Williams, Constance
Dent	Kitchen	Stout	Wozniak
Ferlo	Mellow	Tartaglione	
Fumo	Musto	Wagner	
Hughes	Piccola	Williams, Anthony H.	

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

On the question,

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

WAGNER AMENDMENT A5550

Senator WAGNER offered the following amendment No. A5550:

Amend Title, page 1, line 23, by inserting after "THEREON," providing for payroll expense tax; further providing

Amend Sec. 1 (Sec. 2), page 6, line 28, by inserting brackets before and after "PAYMENT" and inserting immediately thereafter:

Except as provided in clause (9.1), payment

Amend Sec. 1 (Sec. 2), page 7, line 22, by inserting brackets before and after "IT" and inserting immediately thereafter

Except as provided in clause (9.1), it

Amend Sec. 1 (Sec. 2), page 8, by inserting between lines 1 and 2: (9.1) To levy, assess or collect any emergency and municipal services tax under clause (9) in a city of the second class unless it conforms to the following:

Payment of any occupational privilege tax to any city of the second class by any person pursuant to an ordinance or resolution passed or adopted under the authority of this act shall be limited to fifty-two dollars (\$52) on each person for each calendar year.

It is the intent of this provision that no person engaging in an occupation in a city of the second class shall pay more than fifty-two dollars (\$52) in any calendar year in total emergency and municipal services tax. This shall be irrespective of the number of political subdivisions within which such person may be employed within any given calendar year.

Amend Bill, page 9, by inserting between lines 16 and 17:

(14) Except by cities of the second class, to levy, assess or collect a tax on payroll amounts generated as a result of business activity. A city of the second class may levy, assess or collect a payroll tax that does not exceed eighty-five hundredths percent of the payroll paid by employers in a city of the second class. For purposes of a payroll tax levied, assessed or collected by a city of the second class, the business activity shall be directly attributed to activity within a city of the second class. For purposes of the payroll tax paid pursuant to this clause, the payroll amount paid by employers within a city of the second class shall be apportioned to exclude payroll attributed to business activity outside a city of the second class.

Section 1.1. The act is amended by adding sections to read:

Section 2.2. Payroll Expense.—(a) Cities of the second class which currently levy, assess and collect a mercantile or business privilege tax on gross receipts or part thereof shall have the authority to levy, assess and collect an annual payroll expense tax on employers doing business within the city, subject to all of the following conditions:

(1) The ordinance levying the tax authorized by this subsection shall simultaneously and permanently repeal the city's existing mercantile tax and business privilege tax on gross receipts or part thereof, such repeal to be effective upon the commencement of the first tax year for which the payroll expense tax must be paid. Following such repeal, pursuant to section 533(a) of the act of December 13, 1988 (P.L.1121, No.145), known as the "Local Tax Reform Act," the city shall not levy, assess or collect or provide for the levying, assessment or collection of a mercantile or business privilege tax on gross receipts or part thereof.

(2) The rate of the payroll expense tax shall be set by ordinance of the city at a rate not exceeding eighty-five hundredths percent of the employer's annual payroll expense attributable to the city. The ordinance levying the tax authorized by this section shall permanently repeal the city's existing mercantile tax.

(3) The ordinance levying the tax authorized by this subsection shall provide for its collection. The taxes shall be collected in accordance with all provisions, restrictions, limitations, rights of notice and appeal as are applicable to other taxes imposed for city purposes.



(b) (1) Notwithstanding any contrary provision of law of this Commonwealth, including the provisions of this act and the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," every employer shall pay the payroll expense tax if authorized and levied by the city pursuant to subsection (a).

(2) Any tax imposed pursuant to subsection (a) shall not apply to any employer unless the employer is doing business within the city. An employer is doing business within a city if the business engages, hires, employs or contracts with one or more individuals as employees, or if one or more individuals earn profits for or relating to the performance of work or rendering of services in whole or in part within the city, and in addition, the employer does at least one of the following:

(i) maintains a fixed place of business within the city;

(ii) owns or leases real property within the city for purposes of such business;

(iii) maintains a stock of tangible personal property in the city for sale in the ordinary course of such business;

(iv) conducts continuous solicitation within the city related to such business; or

(v) utilizes the streets of the city in connection with the operation of such business other than transportation through the city.

(3) For purposes of computation of the tax imposed pursuant to subsection (a), the payroll expense attributable to the city shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll expense which the total number of days an employe, partner, member, shareholder or other individual works within the city bears to the total number of days such employe or person works within and outside of the city. The collector shall prescribe regulations providing for use of alternative forms of apportionment of payroll expense in addition to the form prescribed by the preceding sentence.

(4) Every tax year in which an employer incurs payroll expense shall be subject to the tax imposed pursuant to subsection (a). Every employer subject to the payment of the tax shall compute the employer's taxable payroll expense using the tax measurement year beginning in the tax base year. Every employer who does not have a tax measurement year ending in the tax year in which the employer first incurs payroll expenses shall file a return and pay any estimated tax due pursuant to paragraph (7), but shall not be required to file a final return until the next tax year. Every employer terminating its activities and no longer incurring payroll expenses during the tax year shall compute the employer's payroll expenses using the period that begins on the beginning date of the tax measurement year ending in the tax year and ends on the date payroll expense is no longer incurred. The collector shall prescribe regulations to ensure that every employer with a change in tax measurement year, including an employer that may have multiple tax measurement years within a tax year, shall pay the tax imposed by this section for all periods in which payroll expense is incurred.

(5) Every employer subject to the tax imposed pursuant to subsection (a) shall file an annual return at such time and in such manner as provided for by ordinance. Such provisions may permit reasonable extensions of time for filing returns, provided an estimated return is filed on or before the due date and is filed in the manner and paid in the amount prescribed by the collector.

(6) Every employer subject to the tax imposed pursuant to subsection (a) shall file a return upon a form as required by the collector. Every employer making a return shall certify the correctness thereof.

(7) An employer subject to the tax imposed pursuant to subsection (a) shall make quarterly estimated tax payments in such manner as provided by regulations prescribed by the collector either in equal quarterly installments based upon the prior year's tax liability or in quarterly installments based on the amount of payroll expenses arising in such quarter, and upon making the return shall pay the amount of tax shown as due to the collector less any estimated tax payments paid for the tax year.

(7.1) A charitable organization granted tax exemption under the provision of the act of November 26, 1997 (P.L.508, No.55), known as the "Institutions of Purely Public Charity Act," shall calculate the tax attributable to the city, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to section 511 of the Internal Revenue Code of 1986 (Public Law 95-223, 26 U.S.C. § 1 et seq.). If the charity has purchased

or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act." The tax shall be paid on the payroll attributable to such for-profit branches, affiliates, subsidiaries, or other business entities whether or not the employees are leased or placed under the auspices of the charity's umbrella or parent organization.

(8) In addition to any other additions, penalties or enforcement proceedings provided for by ordinance of the city or law of this Commonwealth for the collection and enforcement of taxes:

(i) Any employer who wilfully makes any false or untrue statement on the employer's return commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000) or to imprisonment for not more than two years, or both.

(ii) Any employer who wilfully fails or refuses to file a return required by this section commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than one year, or both.

(iii) Any person who wilfully fails or refuses to appear before the collector in person with the employer's books, records or accounts for examination when required under the provisions of this section or of an ordinance to do so, or who wilfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the collector is requested, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than six months, or both.

(c) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"City" means a city of the second class as defined in the act of June 25, 1895 (P.L.275, No.188), entitled "An act dividing the cities of this State into three classes with respect to their population, and designating the mode of ascertaining and changing the classification thereof in accordance therewith."

"Collector" means the receiver of taxes in a city.

"Employer" means any individual, sole proprietor, partnership, limited partnership, association, foundation, corporation, S corporation, estate or trust. The term includes a financial employer, a manufacturer, a regulated employer and other for-profit entities that are exempt from a mercantile or business privilege tax on gross receipts or part thereof imposed by a city immediately prior to the tax imposed pursuant to subsection (a). Whenever used in any provision of this section that prescribes or imposes a penalty, the term, as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof, responsible for the reporting and payment of taxes, provided that such individuals shall not be subject to penalties if they discharged their duties with respect to reporting and payment of taxes with reasonable care, prudence and diligence. The term does not include:

(1) a purely public charity as defined in the Institutions of Purely Public Charity Act except as provided in subsection (b)(7.1);

(2) the Federal Government;

(3) the Commonwealth;

(4) any political subdivision or any authority created and organized under and pursuant to the law of this Commonwealth;

(5) any state other than this Commonwealth;

(6) any local government of a state other than this Commonwealth;

(7) any authority or governmental entity created and organized by the law of any state other than this Commonwealth;

(8) any government of a nation other than the United States; or

(9) any insurance company, association or exchange or any fraternal, benefit or beneficial society of another state for which such other state, by reason of the tax imposed by this act, subjects insurance companies, associations or exchanges or fraternal, benefit or beneficial societies of this Commonwealth to additional or further taxes, fines, penalties or license fees.

"Financial employer" means any employer that is not a regulated employer but is: a bank; a private bank or banker; a building and loan association; a savings and loan association; a credit union; a savings bank; a bank and trust company; a trust company; any employer that is a regulated financial services institution; an investment company regis-

tered as such with the Federal Securities and Exchange Commission; a holding company; a person registered under the act of December 5, 1972 (P.L. 1280, No. 284), known as the "Pennsylvania Securities Act of 1972," including traders; a dealer and broker in money, credits, commercial paper, bonds, notes, securities and stocks and monetary metals; or a factor and commission merchant.

"Manufacturer" means a person whose business is the sale of goods, commodities, wares or merchandise of its own manufacture, growth or production, including processors.

"Payroll expense" means the salaries, wages, commissions, bonuses and incentive payments, whether based on profits or otherwise, fees and similar remuneration for services rendered, whether directly or through an agent and whether in cash or in property or transfer of the right to receive property or remuneration. The term shall not mean or include:

(1) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability;

(2) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government;

(3) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment;

(4) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency;

(5) payments to reimburse actual expenses;

(6) payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits, provided that the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits;

(7) any compensation received by United States servicemen serving in a combat zone;

(8) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1986 that is licensed by the Commonwealth or a political subdivision thereof as a placement agency;

(9) payments made by employers or labor unions for employee benefit programs covering Social Security or retirement; or

(10) personal use of an employer's owned or leased property or of employer-provided services.

"Person" means a corporation, partnership, business trust, other association, estate, trust, foundation or natural person.

"Regulated employer" means an employer subject to tax pursuant to Article VII, VIII, IX or XV of the act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," a public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission, all or a portion of the activities of which is to furnish or supply service or services at the rates specified in its tariffs, an employer which is a health maintenance organization as defined in the act of December 29, 1972 (P.L. 1701, No. 364), known as the "Health Maintenance Organization Act," an employer which is a preferred provider organization as defined in section 630 of the act of May 17, 1921 (P.L. 682, No. 284), known as "The Insurance Company Law of 1921," and 31 Pa. Code § 152.2 (relating to definitions), or an employer licensed under the act of April 12, 1951 (P.L. 90, No. 21), known as the "Liquor Code."

"S corporation" means any person with a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Tax base year" means the twelve-month period immediately preceding the tax year.

"Tax measurement year" means the fiscal or calendar year by which the employer keeps its books and records for Federal tax purposes.

"Tax year" means the twelve-month period from January 1 to December 31.

Section 5.1. Parking Tax Rates.—Beginning January 1, 2005, the rate of the tax imposed on parking transactions shall not exceed forty

percent.

Amend Sec. 2 (Sec. 8), page 10, line 16, by inserting after "PERCENT.":

In cities of the second class where a public service foundation is created under section 7(b) of the act of November 26, 1997 (P.L. 508, No. 55), known as the "Institutions of Purely Public Charity Act," the term "amusement" for tax purposes under this act shall not include any form of performing arts, regardless of the nature thereof, for which the net proceeds inure to the benefit of an institution of purely public charity.

Amend Sec. 2 (Sec. 8), page 11, by inserting between lines 4 and 5:

(12) On payroll expenses in cities of the second class, eighty-five hundredths of one percent.

(13) On parking transactions in cities of the second class after December 31, 2004, forty percent.

Amend Sec. 2 (Sec. 8), page 12, line 29, by striking out "(12)"

Amend Sec. 6, page 15, line 24, by striking out "January 1, 2004" and inserting: immediately

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Madam President, my amendment to House Bill No. 197 hopefully will get the support to improve House Bill No. 197 for the city of Pittsburgh. For the sake of the Members and those listening, Madam President, House Bill No. 197 is a piece of legislation that combines some taxing entities within the Penn Hills community in Allegheny County, and it also includes in it the increase in the occupational privilege tax that was amended into it by Senator Armstrong earlier this week, an amendment that I supported and approximately 35, 40 Members of this body supported. So they were two ingredients in it.

Now an amendment just passed, Senator Orie's amendment, and my amendment A5550 enhances this legislation for a number of different reasons. It is also important to note that what we are talking about here tonight is something that we have talked about extensively in the past in this Chamber, which is correcting the city of Pittsburgh's fiscal problems, and the best way we can do that. As a matter of fact, this General Assembly became engaged in that process approximately a year ago with the creation of the Intergovernmental Cooperation Authority. I thought that was going to be explained under Senator Orie's amendment, but it is very important to note that they have been working hard with two appointees from this Chamber, David O'Loughlin from the Democratic Caucus, and Jim Roddey from the Republican Caucus, as two members out of five who have put forth a report to the General Assembly and the people of Pittsburgh on how to improve the fiscal crisis of Pittsburgh. Now, we have all read about that, and what this amendment does, Madam President, to enhance the previous amendment is the following: It eliminates the onerous, outdated, unfair business privilege tax. There is a business privilege tax that exists in the city of Pittsburgh which does not tax 24 of the top 25 companies in Pittsburgh. In other words, they pay no business privilege tax, and as a result of that, all the other businesses pay their share.

Now, the Orie amendment, what it did was create a new business tax, the payroll expense tax, and kept the business privilege tax in place at a lesser amount, at one-third of what it was previously. What my amendment does, and it is just not my amendment, it is Senator Ferlo's, Senator Costa's, and Senator Logan's,

and what our amendment does is it eliminates the business privilege tax. So, I want all the Members to know that, because what this amendment does is much more attractive for all the businesses in Pittsburgh, especially small businesses that have paid the share for the large businesses for decades. So there is a major change in this amendment versus the previous amendment.

The other changes that it makes is it takes the payroll expense tax that is in Senator Orié's amendment and increases it from .55 to .85. Now, everyone may be concerned because that is a considerable increase, but you must keep in mind that you eliminate totally the business privilege tax with that change in revenue. But here is the best part, Madam President of the amendment. What the amendment also does is decreases a very onerous and the highest parking tax in America which is in the city of Pittsburgh.

Madam President, the point I was making is the third point in my amendment versus the Orié amendment, that the city of Pittsburgh has the highest parking tax in America. For every dollar paid in parking, 50 cents goes to the city of Pittsburgh. It is a major deterrent for businesses, for business growth, business location, business expansion, relocation, et cetera, and for people visiting, shopping, going to the arts, whatever, in the city of Pittsburgh. What this amendment does is it cuts that parking tax by 20 percent of the tax. In other words, it cuts it from 50 cents on a dollar to 40 cents on a dollar, a significant decrease. But the amendment does much more, Madam President. What it really does is eliminates duplication in the tax process. You see, with the Orié amendment, it created a new business tax and left one in existence. This amendment does not. It takes two business taxes that the city of Pittsburgh has, it wipes both of them out and creates one, so it eliminates duplication in terms of the collection of the tax, the staffing in the city of Pittsburgh, and the efficiencies in government, and that is really what this is all about, creating greater efficiencies in the city of Pittsburgh.

So, Madam President, I wanted to clearly define the differences of these taxes and the different proposals, and I ask for an affirmative vote on amendment A5550.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator PIPPY.

Senator PIPPY. Madam President, I ask for a negative vote on the gentleman's amendment for a few reasons. What he says is accurate, and he is well-intentioned. As he mentioned, however, this process has been going on for not only the last year, but there have been talks for many years as to how we can reduce costs in the city of Pittsburgh. The ICA report came out, the Act 47 report came out, and they all talked about \$269 million worth of cuts over the next 5 years. They talked about new revenue streams. What the Orié amendment did was implement many of those recommendations. However, just like anything in life, we just cannot do it alone. The House, Senate, Democrats, Republicans, cannot do it alone, we have to work together. So that is what we did. We worked with the Governor's Office, we worked with the Senate Democrats, we worked with the gentleman, and he has been a strong advocate for a much higher business tax, but we argued for the cuts and to get the expenses reduced for the city first before we give them new revenue. Those two are philosophical differences. What we have here is a combination of

both. We have something that the Governor has agreed to and said he would sign.

Madam President, I would like to offer into the record a letter from the Governor dated November 20. It was written earlier this morning in the 0200 hour, we are about at the 20th hour, of the 20th day, of the 11th month, but what it says is that the administration believes the cuts should be the first recourse and they will work from now until 2009 to cut \$269 million worth of city expenses. But they have always recognized that closing Pittsburgh's budget deficit would require some revenue initiatives. The ICA came out with a report, we took that report and made the change as a part of the normal legislative process. Therefore, and I quote, "Our administration, working through the Act 47 coordinators, will not seek to petition for the imposition of a commuter tax." And they believe that this legislation we are passing, the Orié amendment, is the final component needed to alleviate Pittsburgh's financial crisis while creating a fairer tax system. By no means is this a panacea, by no means will anyone come out here waving flags and cheering. Everyone has given up a little, but this is the bill that the Governor will sign, and it will stop Pittsburgh from having a commuter tax, it will stop Pittsburgh from having to file with the courts, and it will give us the time we need to continue to review the process.

Earlier we said that the school district needs to be part of this equation. If you note, the Orié amendment waits a few years before we get them involved, and we are going to have a study. So everyone has given something. I also note, the gentleman mentioned the tax. We do reduce it from 6 to 2 mills. One thing that is important is that we went back to the chamber of the city, the business chamber, and asked what will this do if we go from .55 to .55 plus 2 mills? What is the difference? These are actual company data from 2003: a florist under the old plan paid \$1,000 to the city in taxes under the business privilege tax. Under the new plan, with the 2-mill increment, they would pay \$429 less. Yes, it would still be there, but they would pay less. A dentist pays less. The local hotel pays less. The power laundry pays less. The gentleman mentioned earlier that the large businesses need to pay their fair share. The Primary Metal Manufacturer pays \$322,000 more. So what happened was that the businesses he mentioned, they are paying the .55, they are not paying the .85, they are paying the .55. The small businesses will be paying 63 percent less than what they were paying for 2 years, after that it drops to 1 mill, and we believe the estimates are very conservative, and we have a trigger built into the language so that after 2 years it could be completely eliminated.

So, I want to make it very clear to my colleagues that not only are we reducing the tax for small businesses, the larger businesses are starting to pay their fair share, and frankly, the commuters are also kicking in, so, I ask for a negative vote.

Thank you, Madam President.

*(The following letter was made a part of the record at the request of the gentleman from Allegheny, Senator PIPPY.)*

COMMONWEALTH OF PENNSYLVANIA  
Office of the Governor  
Harrisburg, PA

November 20, 2004

To the Members of the General Assembly:

Our Administration has always believed that cuts in city spending should be our first recourse in addressing Pittsburgh's fiscal issues. That is why we have worked tirelessly with the Intergovernmental Cooperation Authority and the Act 47 Coordinators to reduce city spending. So far \$269 million in spending cuts from 2005 through 2009 have been identified and are being implemented. We will continue to work with the Intergovernmental Cooperation Authority and Act 47 Coordinators to enforce the provisions of the City's Act 47 Plan and seek additional ways to reduce spending, increase efficiency, and improve the quality of city services in the City of Pittsburgh.

We have always recognized, however, that closing Pittsburgh's budget deficit would require revenue initiatives as well as spending cuts. The plan that is now before the General Assembly achieves this goal by providing Pittsburgh with enough revenue to close its remaining budget gap. It is the final component that we need to alleviate Pittsburgh's financial crisis while also creating a fairer tax structure for businesses in Pittsburgh.

Therefore our Administration, working through the Act 47 Coordinators, will not seek to petition for the imposition of the commuter tax authorized under section 141 of Act 47 if this set of proposals is enacted by the General Assembly.

Sincerely,

EDWARD G. RENDELL  
Governor

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Madam President, I appreciate the remarks of my colleague from Allegheny, Senator Pippy. I just want to add a few comments in a response. First, Madam President, I forgot to mention in my analysis of the amendment put forth by Senator Ferlo, Senator Logan, and Senator Costa that not only do we eliminate the business privilege tax, we wipe it out. We eliminate the business privilege tax. We reduce the parking tax by 20 percent. What I forgot to mention is we eliminate the amusement tax on nonprofit arts groups. In the Orié amendment, that is cut in half; ours eliminates it totally.

So I want everyone to compare. There are three substantive differences in the taxes that significantly reduce the burden, especially on small businesses. Senator Pippy talked about small businesses, who really have carried the load forever in the city of Pittsburgh, and one of the reasons why Pittsburgh is in the bad economic shape it is in is the majority of big businesses have never paid the business privilege tax. Well, the small businesses will continue to pay it, but the big businesses will be exempted, and that is really the significant problem here. But let me give Senator Pippy a comparison of our proposal to his proposal. Senator Pippy represents the west suburbs, many of the communities that I previously represented under the former reapportionment. I know those communities well. A resident of Moon Township who works in the city of Pittsburgh and drives in every day and has a lease for that car, and let us say the monthly lease is \$100, and that is a very cheap monthly lease if you park in the downtown area of the city of Pittsburgh, under our proposal, at a minimum, there will be a \$10 savings per month and \$120 per year to this constituent, just on the parking differential alone. Now, if that person owns a business that is located in the city of Pittsburgh and it is a small business, it is not one of those that are exempted, that individual could literally save thousands of dollars a year because they are now paying equally to the large busi-

nesses in terms of the tax that is applied. So there is a significant differential that exists. I just want to remind everyone that this is a significant amendment that benefits everyone, except the big businesses that have gotten a tax break forever, that are going to pay their fair share. It benefits everyone else, and that is the clear difference in this amendment.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Pippy.

Senator PIPPY. Madam President, the gentleman is correct that there is a 10-percent reduction in the parking tax in the Orié amendment -- actually, we have all worked on it together, it is almost difficult to call it one person's, because unlike what he is proposing, this could become law. If his amendment goes in, and it is not agreed to, and this is the whole legislative process we are talking about, if it were up to me, we would have property tax reform, we would have lower business taxes, but it is not just up to me, it is up to 50 of us, it is up to 203 State Representatives, it is up to the Governor's Office. So you cannot just get everything you want, you have to work with people. And we have been doing it until 4 o'clock in the morning, until 2 o'clock, and what the gentleman is saying now is everything he has said before, and his intentions are good, but in order for this to become law and help the Moon Township person who is driving in, if his goes in and it does not pass the House, not only will they get the 50 percent parking tax, not only will we have the business tax stay the same at the old business privilege with no payroll, but even worse, we will have a 2.75 percent wage tax tacked on to that with 1.75 on to the local residents.

So, Madam President, the reason we are here at this late hour is because we said we were going to work together, we are going to try to get something that stops us from having a commuter tax implemented. So I ask my colleagues to understand, and this was said earlier, if we fail to act, if we cannot step up and agree and finally come together on an issue, and we have not had much luck tonight on a lot of issues, we will fail the constituents we represent. I might not have gotten everything I wanted, but I got the one thing I wanted most, something that the majority of both bodies can pass and that the Governor can sign. Then guess what? It is sort of like a football game, something like the Penn State game today, but those guys did pretty well, they crushed them. But this is sort of like we won the game, but we are not in the payoffs. We have done what we need to do to take the next step, but we have not won the Super Bowl. We have done what we need to do to make sure that tomorrow we do not get a call saying, how could you let a commuter tax come on the city of Pittsburgh and the people around them? But everyone did not pat us on the back. We worked together.

So I want to thank the gentleman for all he has done, and he has been a key part of it, but in the end, we had to come to an agreement. We had to say this is what is acceptable. This is what, as you will see in the letter that we passed out, the Governor will sign, and this is what will stop the commuter tax or the wage tax on the resident.

The other thing I will add, Madam President, and I think it is something important, as written in the letter, this fills the gap and does not give much surplus. So what does that mean? That provides incentives not only for us as a legislature to continue to be

part of the process, but it ensures that the city itself is going to work to make those cuts. They need to make those \$269 million worth of cuts for this to work out. The city has the ability to immediately reduce the parking tax that he mentioned, if, for example, they put a \$5 garbage fee on themselves. That would let them start the process, but we could not agree to that. So we said this is what we can do, this is what the Governor will sign, and I ask my colleagues to vote "no" on his amendment, and then finally vote "yes" on the bill later.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentlewoman from Allegheny, Senator Orié.

Senator ORIE. Madam President, just briefly, one of the components that is included in this consensus amendment deals with the school district of Pittsburgh. Senator Wagner, who represents the school district of Pittsburgh and has been a champion for reform where reform is needed, if ever somebody should be a component in this reform package, it is the school district of Pittsburgh. The Pittsburgh School District has a budget of \$526 million and projects an \$85.6 million fund balance as of December 31, 2004. The Pittsburgh School District's enrollment has declined 12.5 percent, from 40,000 students to 35,000 students, since 2002. According to a study that was done, "Keeping the Promise: The Case for Reform in the Pittsburgh Public Schools," September 2003, it indicates that the school district can eliminate at least \$10 million a year by closing schools to reduce underutilization, where 25 percent of the district's current building capacity is unused at this point in time.

If I could share with my colleagues, they indicate, based on State standards, the buildings open today can accommodate 30 percent more students than are currently enrolled. Even considering recent recommendations for small class sizes, 25 percent of the district's building capacity is unused. Underused buildings are expensive, adding unnecessary operating, maintenance, staff, teacher, and administrative costs to the budget. Excess capacity contributes to the district's 7 to 1 pupil to staff ratio, one of the most expensive in the State of Pennsylvania. With that said, Madam President, the pain that we have spread has been comprehensive and placed fairly across all in regards to making a recovery package for the city of Pittsburgh. It includes the commuters, the school district, businesses, nonprofits that are for-profits, and we believe that this solution, which the Governor has indicated if passed will be signed into law, there will be no commuter taxes, this is the solution Pittsburgh needs. To put the onus on the city's businesses would do detrimental harm to what is happening in Pittsburgh. The most important thing we can do for Pittsburgh is make a fairer, more competitive tax system and bring Pittsburgh back to be the economic hub it should be for southwestern Pennsylvania.

So with that said, the fact that he blatantly disregards putting the school district as one of the solutions, I am asking for a negative vote on his amendment.

And the question recurring,

Will the Senate agree to the amendment?

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

YEA-16

Costa	Kitchen	Mellow	Wagner
Ferlo	Kukovich	Musto	Williams, Anthony H.
Fumo	LaValle	Stack	Williams, Constance
Hughes	Logan	Tartaglione	Wozniak

NAY-31

Armstrong	Gordner	Pileggi	Thompson
Boscola	Jubelirer	Pippy	Tomlinson
Brightbill	Kasunic	Punt	Waugh
Conti	Lemmond	Rafferty	Wenger
Corman	Madigan	Rhoades	White, Donald
Dent	Mowery	Robbins	White, Mary Jo
Earll	Orie	Scarnati	Wonderling
Erickson	Piccola	Stout	

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, as amended?

WAGNER AMENDMENT A5551

Senator WAGNER offered the following amendment No. A5551:

Amend Title, page 1, line 23, by inserting after "THEREON," providing for payroll expense tax; further providing

Amend Sec. 1 (Sec. 2), page 5, line 27, by inserting after "EXCEPT":

that this shall not apply to cities of the second class and

Amend Sec. 1 (Sec. 2), page 6, line 28, by inserting brackets before and after "PAYMENT" and inserting immediately thereafter:

Except as provided in clause (9.1), payment

Amend Sec. 1 (Sec. 2), page 7, line 22, by inserting brackets before and after "IT" and inserting immediately thereafter

Except as provided in clause (9.1), it

Amend Sec. 1 (Sec. 2), page 8, by inserting between lines 1 and 2:

(9.1) To levy, assess or collect any emergency and municipal services tax under clause (9) in a city of the second class unless it conforms to the following:

Payment of any occupational privilege tax to any city of the second class by any person pursuant to an ordinance or resolution passed or adopted under the authority of this act shall be limited to fifty-two dollars (\$52) on each person for each calendar year.

It is the intent of this provision that no person engaging in an occupation in a city of the second class shall pay more than fifty-two dollars (\$52) in any calendar year in total emergency and municipal services tax. This shall be irrespective of the number of political subdivisions within which such person may be employed within any given calendar year.

Amend Bill, page 9, by inserting between lines 16 and 17:

(14) Except by cities of the second class, to levy, assess or collect a tax on payroll amounts generated as a result of business activity. A city of the second class may levy, assess or collect a payroll tax that does not exceed fifty-five hundredths percent of the payroll paid by employers in a city of the second class. For purposes of a payroll tax levied, assessed or collected by a city of the second class, the business activity shall be directly attributed to activity within a city of the second class. For purposes of the payroll tax paid pursuant to this clause, the payroll amount paid by employers within a city of the second class shall be apportioned to exclude payroll attributed to business activity outside a city of the second class.

Section 1.1. The act is amended by adding sections to read:

Section 2.2. Payroll Expense.—(a) Cities of the second class which

currently levy, assess and collect a mercantile or business privilege tax on gross receipts or part thereof shall have the authority to levy, assess and collect an annual payroll expense tax on employers doing business within the city, subject to all of the following conditions:

(1) The ordinance levying the tax authorized by this subsection shall simultaneously and permanently repeal the city's existing mercantile tax and reduce the city's business privilege tax on gross receipts or part thereof to a rate not to exceed two mills, such reduction and repeal to be effective upon the commencement of the first tax year for which the payroll expense tax must be paid. Following such repeal, pursuant to section 533(a) of the "Local Tax Reform Act," the city shall not levy, assess or collect or provide for the levying, assessment or collection of a mercantile or business privilege tax on gross receipts or part thereof.

(2) The rate of the payroll expense tax shall be set by ordinance of the city at a rate not exceeding fifty-five hundredths percent of the employer's annual payroll expense attributable to the city. The ordinance levying the tax authorized by this section shall permanently repeal the city's existing mercantile tax.

(3) To the extent that the ordinance reduces the rate of the city's business privilege tax, such reduction shall be effective upon the commencement of the first tax year for which a payroll expense tax must be paid. The city shall not increase the rate of the city's business privilege tax following any reduction of such rate. Following the repeal of the city's existing mercantile tax, pursuant to section 533(a) of the act of December 13, 1988 (P.L.1121, No.145), known as the "Local Tax Reform Act," the city shall not levy, assess or collect or provide for the levying, assessment or collection of a mercantile tax on gross receipts or part thereof.

(4) The ordinance levying the tax authorized by this subsection shall provide for its collection. The taxes shall be collected in accordance with all provisions, restrictions, limitations, rights of notice and appeal as are applicable to other taxes imposed for city purposes.

(b) (1) Notwithstanding any contrary provision of law of this Commonwealth, including the provisions of this act and the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," every employer shall pay the payroll expense tax if authorized and levied by the city pursuant to subsection (a).

(2) Any tax imposed pursuant to subsection (a) shall not apply to any employer unless the employer is doing business within the city. An employer is doing business within a city if the business engages, hires, employs or contracts with one or more individuals as employees, or if one or more individuals earn profits for or relating to the performance of work or rendering of services in whole or in part within the city, and in addition, the employer does at least one of the following:

- (i) maintains a fixed place of business within the city;
- (ii) owns or leases real property within the city for purposes of such business;
- (iii) maintains a stock of tangible personal property in the city for sale in the ordinary course of such business;
- (iv) conducts continuous solicitation within the city related to such business; or
- (v) utilizes the streets of the city in connection with the operation of such business other than transportation through the city.

(3) For purposes of computation of the tax imposed pursuant to subsection (a), the payroll expense attributable to the city shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll expense which the total number of days an employe, partner, member, shareholder or other individual works within the city bears to the total number of days such employe or person works within and outside of the city. The collector shall prescribe regulations providing for use of alternative forms of apportionment of payroll expense in addition to the form prescribed by the preceding sentence.

(4) Every tax year in which an employer incurs payroll expense shall be subject to the tax imposed pursuant to subsection (a). Every employer subject to the payment of the tax shall compute the employer's taxable payroll expense using the tax measurement year beginning in the tax base year. Every employer who does not have a tax measurement year ending in the tax year in which the employer first incurs payroll expenses shall file a return and pay any estimated tax due pursuant to paragraph (7), but shall not be required to file a final return until the next tax year. Every employer terminating its activities and no longer

incurring payroll expenses during the tax year shall compute the employer's payroll expenses using the period that begins on the beginning date of the tax measurement year ending in the tax year and ends on the date payroll expense is no longer incurred. The collector shall prescribe regulations to ensure that every employer with a change in tax measurement year, including an employer that may have multiple tax measurement years within a tax year, shall pay the tax imposed by this section for all periods in which payroll expense is incurred.

(5) Every employer subject to the tax imposed pursuant to subsection (a) shall file an annual return at such time and in such manner as provided for by ordinance. Such provisions may permit reasonable extensions of time for filing returns, provided an estimated return is filed on or before the due date and is filed in the manner and paid in the amount prescribed by the collector.

(6) Every employer subject to the tax imposed pursuant to subsection (a) shall file a return upon a form as required by the collector. Every employer making a return shall certify the correctness thereof.

(7) An employer subject to the tax imposed pursuant to subsection (a) shall make quarterly estimated tax payments in such manner as provided by regulations prescribed by the collector either in equal quarterly installments based upon the prior year's tax liability or in quarterly installments based on the amount of payroll expenses arising in such quarter, and upon making the return shall pay the amount of tax shown as due to the collector less any estimated tax payments paid for the tax year.

(7.1) A charitable organization granted tax exemption under the provision of the act of November 26, 1997 (P.L.508, No.55), known as the "Institutions of Purely Public Charity Act," shall calculate the tax attributable to the city, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to section 511 of the Internal Revenue Code of 1986 (Public Law 95-223, 26 U.S.C. § 1 et seq.). If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act." The tax shall be paid on the payroll attributable to such for-profit branches, affiliates, subsidiaries, or other business entities whether or not the employees are leased or placed under the auspices of the charity's umbrella or parent organization.

(8) In addition to any other additions, penalties or enforcement proceedings provided for by ordinance of the city or law of this Commonwealth for the collection and enforcement of taxes:

(i) Any employer who wilfully makes any false or untrue statement on the employer's return commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000) or to imprisonment for not more than two years, or both.

(ii) Any employer who wilfully fails or refuses to file a return required by this section commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than one year, or both.

(iii) Any person who wilfully fails or refuses to appear before the collector in person with the employer's books, records or accounts for examination when required under the provisions of this section or of an ordinance to do so, or who wilfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the collector is requested, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than six months, or both.

(c) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"City" means a city of the second class as defined in the act of June 25, 1895 (P.L.275, No.188), entitled "An act dividing the cities of this State into three classes with respect to their population, and designating the mode of ascertaining and changing the classification thereof in accordance therewith."

"Collector" means the receiver of taxes in a city.

"Employer" means any individual, sole proprietor, partnership, limited partnership, association, foundation, corporation, S corporation, estate or trust. The term includes a financial employer, a manufacturer, a regulated employer and other for-profit entities that are exempt from

a mercantile or business privilege tax on gross receipts or part thereof imposed by a city immediately prior to the tax imposed pursuant to subsection (a). Whenever used in any provision of this section that prescribes or imposes a penalty, the term, as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof, responsible for the reporting and payment of taxes, provided that such individuals shall not be subject to penalties if they discharged their duties with respect to reporting and payment of taxes with reasonable care, prudence and diligence. The term does not include:

(1) a purely public charity as defined in the Institutions of Purely Public Charity Act except as provided in subsection (b)(7.1);

(2) the Federal Government;

(3) the Commonwealth;

(4) any political subdivision or any authority created and organized under and pursuant to the law of this Commonwealth;

(5) any state other than this Commonwealth;

(6) any local government of a state other than this Commonwealth;

(7) any authority or governmental entity created and organized by the law of any state other than this Commonwealth;

(8) any government of a nation other than the United States; or

(9) any insurance company, association or exchange or any fraternal, benefit or beneficial society of another state for which such other state, by reason of the tax imposed by this act, subjects insurance companies, associations or exchanges or fraternal, benefit or beneficial societies of this Commonwealth to additional or further taxes, fines, penalties or license fees.

"Financial employer" means any employer that is not a regulated employer but is: a bank; a private bank or banker; a building and loan association; a savings and loan association; a credit union; a savings bank; a bank and trust company; a trust company; any employer that is a regulated financial services institution; an investment company registered as such with the Federal Securities and Exchange Commission; a holding company; a person registered under the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," including traders; a dealer and broker in money, credits, commercial paper, bonds, notes, securities and stocks and monetary metals; or a factor and commission merchant.

"Manufacturer" means a person whose business is the sale of goods, commodities, wares or merchandise of its own manufacture, growth or production, including processors.

"Payroll expense" means the salaries, wages, commissions, bonuses and incentive payments, whether based on profits or otherwise, fees and similar remuneration for services rendered, whether directly or through an agent and whether in cash or in property or transfer of the right to receive property or remuneration. The term shall not mean or include:

(1) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability;

(2) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government;

(3) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment;

(4) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency;

(5) payments to reimburse actual expenses;

(6) payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employe benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits, provided that the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits;

(7) any compensation received by United States servicemen serving in a combat zone;

(8) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1986 that is licensed by the Commonwealth or a political subdivision thereof as a placement

agency;

(9) payments made by employers or labor unions for employe benefit programs covering Social Security or retirement; or

(10) personal use of an employer's owned or leased property or of employer-provided services.

"Person" means a corporation, partnership, business trust, other association, estate, trust, foundation or natural person.

"Regulated employer" means an employer subject to tax pursuant to Article VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," a public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission, all or a portion of the activities of which is to furnish or supply service or services at the rates specified in its tariffs, an employer which is a health maintenance organization as defined in the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act," an employer which is a preferred provider organization as defined in section 630 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and 31 Pa. Code § 152.2 (relating to definitions), or an employer licensed under the act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code."

"S corporation" means any person with a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Tax base year" means the twelve-month period immediately preceding the tax year.

"Tax measurement year" means the fiscal or calendar year by which the employer keeps its books and records for Federal tax purposes.

"Tax year" means the twelve-month period from January 1 to December 31.

Section 5.1. Parking Tax Rates.—Beginning January 1, 2005, the rate of the tax imposed on parking transactions shall not exceed thirty-five percent.

Amend Sec. 2 (Sec. 8), page 10, line 16, by inserting after "PERCENT.":

In cities of the second class where a public service foundation is created under section 7(b) of the act of November 26, 1997 (P.L.508, No.55), known as the "Institutions of Purely Public Charity Act," the term "amusement" for tax purposes under this act shall not include any form of performing arts, regardless of the nature thereof, for which the net proceeds inure to the benefit of an institution of purely public charity.

Amend Sec. 2 (Sec. 8), page 11, by inserting between lines 4 and 5:

(12) On payroll expenses in cities of the second class, fifty-five hundredths of one percent.

(13) On parking transactions in cities of the second class after December 31, 2004, thirty-five percent.

Amend Sec. 2 (Sec. 8), page 12, line 29, by striking out "(12)" Amend Sec. 5, page 15, line 21, by striking out all of said line and inserting:

Section 5. The following acts or parts of acts are repealed:

(1) Section 1970.3 of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code,

(2) Section 2(b) of the act of May 12, 1911 (P.L.295, No.187),

"A supplement to an act, entitled 'An act for the government of cities of the second class,' approved the seventh day of March, Anno Domini one thousand nine hundred and one; providing for the levy, collection, and disbursement of taxes and water-rents, or rates, and conferring certain powers and duties in reference thereto upon the city treasurer, the board of water assessors, and the collector of delinquent taxes; and repealing certain acts relating to matters herein provided for," is repealed as to the authority to impose, levy or collect a business privilege tax.

Amend Sec. 6, page 15, line 24, by striking out "January 1, 2004" and inserting: immediately

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Madam President, if you did not like the previous amendment, I am sure you will like this one, because this amendment in comparison to the Orié amendment is significantly better also, but in a couple of different ways. Number one, the Orié amendment creates a payroll expense tax of .55 percent. This amendment does not touch the payroll expense tax. In other words, it stays at .55 percent. That is basically what the corporate community in Pittsburgh has suggested to the leadership through the Allegheny conference and other means, that they want this tax to go no higher than .55 percent. The difference in this amendment is it takes the Orié amendment, which keeps in place the business privilege tax at 2 percent but it eliminates the exemption, so in other words, both taxes, both business taxes are applied equally, and that has been the problem forever in Pittsburgh. Having been a Pittsburgh City Council member for 10 years and the president of council for 4, and Senator Ferlo the same, we understand this problem of what this tax has done due to it being unfair. It has been counterproductive in terms of business growth in Pittsburgh.

So by eliminating the exemption of the business privilege tax at 2 mills rather than 6 mills, you gain extra revenue. So what do we do with that extra revenue? What we do with that extra revenue is again go right at the heart of one of the most onerous taxes that Pittsburgh has, which is the parking tax. Now, in the previous proposal, we reduced it 20 percent, from 50 cents on a dollar to 40 cents on a dollar, and in this proposal we reduce it by 30 percent, from 50 cents on a dollar to 35 cents on a dollar. So the example I gave of Senator Pippy's constituent of saving \$120 a year, that individual will now save \$180 a year under the parking tax change, and under the amusement tax, we again eliminated that for the nonprofit arts groups. In Senator Orié's proposal it is cut in half. Why? Because we pick up additional revenue by eliminating the exemption.

Now, the great part of this proposal, Madam President, and it is really at the heart and soul of this whole issue, is how we treat small businesses, and small businesses are the economic engine of America. The majority of jobs in the city of Pittsburgh and in this Commonwealth and in this country come from small businesses. The problem in Pittsburgh is small businesses have been treated unequally. That continues under the Orié amendment, because with the continuation of the business privilege tax, the exemption stays in place for 25 out of the top 26 businesses in Pittsburgh, and that is blatantly unfair. So, if we are going to agree to the corporate community to keep the payroll expense tax at .55, let us create a level playing field for all businesses, especially for small businesses, so that is a significant difference.

I just want to respond also to Senator Orié's previous comments. In regard to the school district, we addressed some of the concerns of revenue with the school district in the other bill that we passed earlier today. Under her amendment, what we are doing with the school district, and one of the reasons why I am not supporting it, is that we are taking revenue away from the school district in the out years as it relates to the wage tax, and I believe very strongly that cannot be done until there is a further analysis of the financial conditions of the school district. The reason why I state that is, in any of these proposals, whether it is Senator Orié's, Senator Wagner's, whatever, we are taking from the school district two lump sums of money. All of us have

agreed to that. We are taking away the RAD tax of \$4 million, we have agreed to that, and we are also taking away the elimination of the mercantile tax, which they get \$4 million a year, and we are also having them take up the cost of the school crossing guards. Under any of these proposals, it will cost the school district \$10 million every year, so there are significant differences in this amendment to the Orié amendment and also to the previous amendment that failed, but I feel very strongly that either of these amendments give us more revenue to do more things to make Pittsburgh more economically competitive.

Thank you.

The PRESIDENT. The Chair recognizes the gentlewoman from Allegheny, Senator Orié.

Senator ORIE. Madam President, for the reasons already mentioned, I ask for a negative vote from my colleagues.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, can we take the same roll-call vote?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Madam President, I hope that others would reconsider and vote in the affirmative.

Senator BRIGHTBILL. Madam President, and I hope they do not.

Senator WAGNER. Madam President, I hope our logic would prevail.

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

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

YEA-16

Costa	Kitchen	Mellow	Wagner
Ferlo	Kukovich	Musto	Williams, Anthony H.
Fumo	LaValle	Stack	Williams, Constance
Hughes	Logan	Tartaglione	Wozniak

NAY-31

Armstrong	Gordner	Pileggi	Thompson
Boscola	Jubelirer	Pippy	Tomlinson
Brightbill	Kasunic	Punt	Waugh
Conti	Lemmond	Rafferty	Wenger
Corman	Madigan	Rhoades	White, Donald
Dent	Mowery	Robbins	White, Mary Jo
Earll	Orie	Scarnati	Wonderling
Erickson	Piccola	Stout	

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, as amended?

RHOADES - MELLOW AMENDMENT A5413

Senator RHOADES and Senator MELLOW offered the following amendment No. A5413:



Amend Sec. 1 (Sec. 2), page 9, by inserting between lines 16 and 17:

(14) To levy, assess or collect an amusement or admissions tax on the charge imposed upon a patron for the sale of admission to or for the privilege of admission to a bowling alley or bowling lane to engage in one or more games of bowling.

Amend Sec. 2 (Sec. 8), page 10, line 29, by inserting a bracket before "(11)"

Amend Sec. 2 (Sec. 8), page 11, line 4, by inserting a bracket after "BOWLING."

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

The PRESIDENT. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Madam President, this amendment would prohibit the local authority from levying an amusement or admission tax on a bowling patron for the privilege of admission to a bowling alley.

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

The yeas and nays were required by Senators RHOADES and MELLOW and were as follows, viz:

YEA-46

Armstrong	Hughes	Piccola	Tomlinson
Boscola	Kasunic	Pileggi	Wagner
Brightbill	Kitchen	Pippy	Waugh
Conti	Kukovich	Punt	Wenger
Corman	LaValle	Rafferty	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Dent	Logan	Robbins	Williams, Anthony H.
Earl	Madigan	Scarnati	Williams, Constance
Erickson	Mellow	Stack	Wonderling
Ferlo	Mowery	Stout	Wozniak
Fumo	Musto	Tartaglione	
Gordner	Orie	Thompson	

NAY-1

Jubelirer

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

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

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Madam President, I will be brief. In regard to House Bill No. 197, there was an article in today's Pittsburgh Tribune-Review that says it better than I could say it, and the headline of the article is "Senate ready to slap more taxes on city," meaning the city of Pittsburgh, with new and higher taxes, and that is precisely what we are voting on here today. Even a couple of business owners in downtown Pittsburgh, in my senatorial district, made comments. Denise Gaynor, who owns a downtown restaurant said, I was hopeful that we would all be taxed

fairly, this is ridiculous, and Eitan Solomon, the owner of Prime Gear, a downtown retailer, said he knows the basic line, we are probably going to pay more. It is just going to be two separate taxes, he added, referring to the business privilege and the payroll tax.

Now, Madam President, I do not think we should pass this bill, because if it is not amended, I think it is not in the best interest of Pittsburgh. There has been a very long deliberation, and I am sorry the hour is late, and I am speaking in regard to this bill, and I know everyone would like to go home on a Saturday night, and I clearly understand that, but I am passionate about this issue because Pittsburgh is my city. The problem with this bill is the taxes are not balanced properly, and there is not enough revenue to properly address the city's problem. There have been countless meetings for the oversight board, which has been in existence for 8 months, and I commend all five members of that oversight board, the chairman, Bill Lieberman; the Governor's appointee, John Murray; the House Democrats' appointee, Jim Smith; the Senate Republicans' appointee, Jim Roddey; and the Senate Democrats' appointee, David O'Loughlin. They have worked long and hard to come up with a recommendation for this General Assembly, and part of the recommendation was to eliminate the business privilege tax. Now, that is what is in this bill, and the reason why they were so strong behind that was they knew it was basically unfair and it placed too much of a burden on small businesses or businesses that presently pay it. We have ignored that recommendation. True, in the out years, 5 years out, if everything works well in Pittsburgh, it will be eliminated, but that is one basic serious flaw of this proposal.

Secondly, Pittsburgh remains with the highest parking tax in America, not by 1 percent or 2 percent, at 31 percent on a dollar when Senator Ferlo was councilman, it was the highest in America, but at 50 cents on a dollar, it is by far the highest in America. We have done virtually nothing to address that problem. Why not? We do not have sufficient revenue, and there have been continual attempts to get more revenue. I would have been in support of tweaking the occupational privilege tax not to where this group suggested it at 144, but possibly somewhere half that or somewhere to get additional revenue so the city of Pittsburgh can move forward. In addition, I thought we all had a consensus at one point to make sure that the new business tax would be equal to the business taxes that were lost. That did not happen. In other words, the common person in Pittsburgh has to pay more because of the change, especially when the business privilege tax is eliminated 5 years out. So we still have problems, and we have not come up with the absolute solutions, and that is the reason why I am passionate about this issue.

The Majority Leader and I just had a little bit of an exchange. I am sorry we did, and I mean that sincerely, but the issue is so passionate to me because it is my city. Pittsburgh is my city, and your city, and many people's city, and we want to correct this problem the right way. Unfortunately, I do not believe we have done that in this bill, so we are going to be back at it. It is going to come back to this General Assembly or it is going to have to be addressed in a different way, and that is the reason why I am so concerned about this legislation. So, I am not sure, Madam President, what will happen. There possibly still could be a commuter tax on top of these changes, and I know the mayor is writ-

ing a letter to the Governor saying there will not be, under the ICA, according to the law and Act 47, when the city of Pittsburgh filed for it, I still believe that is possible on top of this, or revenue will have to be generated some other way.

The ICA board that we created, this General Assembly created, has not done a perfect job, but a pretty good job in cutting costs in the city of Pittsburgh, to try to put Pittsburgh on the straight and narrow in the future, but I still believe more needs to be done. I will just end, Madam President, with the following: Pittsburgh is a great city. Pittsburgh has been through many, many crises. It was probably environmentally the worst city in America after the Second World War when it had polluted skies and polluted water, and the business community and the governmental community came together and solved that problem. They did it with courage and conviction and strong recommendations, but it also required revenue, revenue that came from sources that never existed before, they solved it. In the 1980s, when the steel industry declined dramatically and we lost 150,000 jobs, government and the private sector came together and solved the problem and had a building boom in Pittsburgh. Well, another crisis is in front of Pittsburgh and it is a fiscal crisis, and sure, we are passing a bill today and we think we are doing something. But I can tell you we are not doing enough, and that is what disturbs me so much about this legislation. There was a process in place, I do not think it worked the way it should have, we should have done more, and that is the reason why I am not happy with House Bill No. 197.

Thank you.

And the question recurring,

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

The PRESIDENT. Without objection, House Bill No. 197 will go over in its order as amended.

#### BILL AMENDED

**HB 2664 (Pr. No. 4590)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, further providing for flying while impaired; and imposing penalties.

On the question,

Will the Senate agree to the bill on third consideration?

#### MADIGAN AMENDMENT A5489

Senator MADIGAN offered the following amendment No. A5489:

Amend Title, page 1, line 2, by inserting after "for": temporary public transportation assistance funding and for

Amend Bill, page 1, lines 6 and 7, by striking out all of said lines and inserting:

Section 1. Title 74 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 1310.2. Temporary public transportation assistance funding.

(a) Allocation.—Notwithstanding any provision of this chapter to the contrary, up to \$6,000,000 from the Public Transportation Assis-

stance Fund, or the Supplemental Public Transportation Assistance Account, which remains unexpended or unencumbered on the effective date of this section may be allocated, as determined to be appropriate by the department, to Class 3 transit entities and Class 4 transit entities for operational expenses, including, but not limited to, personnel expenses, materials, supplies, asset maintenance and capital projects.

(b) Waiver.—No local match shall be required for any expenditure of funds under this section by a Class 3 transit entity or Class 4 transit entity.

(c) Expiration.—This section shall expire on June 30, 2005.

Section 2. Title 74 is amended by adding a chapter to read:

Amend Sec. 2, page 7, line 15, by striking out all of said line and inserting:

Section 3. This act shall take effect as follows:

(1) The addition of 74 Pa.C.S. § 1310.2 shall take effect immediately.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 90 days.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Bradford, Senator Madigan.

Senator MADIGAN. Madam President, this would provide for up to \$6 million from the Public Transportation Assistance Fund or the Supplemental Public Transportation Assistance Account, which remains unexpended or unencumbered on the effective date of this section and may be allocated as determined to be appropriate by the department to Class 3 transit entities and Class 4 transit entities for operational expenses, including but not limited to personnel, materials, supplies, asset maintenance, and capital projects. Should the Governor decide to utilize flex Federal dollars for public transportation, mass transit agencies, these Class 3 and Class 4 entities, would not be included, and this would provide assistance to them as well as the opportunity for the Governor to utilize interim financing for mass transit.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

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

#### KASUNIC AMENDMENT A5180

Senator KASUNIC offered the following amendment No. A5180:

Amend Title, page 1, line 2, by inserting after "Statutes,": further providing for distribution of funding; and

Amend Bill, page 1, lines 6 and 7, by striking out all of said lines and inserting:

Section 1. Section 1310 of Title 74 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 1310. Distribution of funding.

\*\*\*

(c.1) Adjustments.—If a new local transportation organization or transportation company is established and meets the criteria of a Class 1 transit entity, Class 2 transit entity, Class 3 transit entity or Class 4 transit entity as such criteria is set forth in section 1310.1 (relating to supplemental public transportation assistance funding), the department shall make an appropriate adjustment in its calculation of the transit

entity section 1310 share and 1310.1 share for each transit entity class to which such local transportation organization or transportation company shall be entitled. This determination shall include, but shall not be limited to, an appropriate adjusted based grant for that local transportation organization or transportation company and a determination of appropriate adjustments to class percentages or transit entity shares.

\*\*\*

Section 2. Title 74 is amended by adding a chapter to read:  
Amend Sec. 2, page 7, line 15, by striking out "2" and inserting: 3

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

The PRESIDENT. The Chair recognizes the gentleman from Fayette, Senator Kasunic.

Senator KASUNIC. This is an amendment similar to a bill that we provided earlier this year for mass transit funding for Fayette County, which was left out of the funding mechanism when the census was last taken and we were moved into an urban center versus the rural center that we are. When we did, somehow the formula did not provide the necessary funding, so this takes us back to a rural county and once again providing the funding. It is an agreed-to amendment, Madam President.

And the question recurring,  
Will the Senate agree to the amendment?  
It was agreed to.

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

#### STACK AMENDMENT A5162

Senator STACK offered the following amendment No. A5162:

Amend Sec. 1 (Sec. 6502), page 2, line 18, by striking out "drug" and inserting: controlled substance

Amend Sec. 1 (Sec. 6502), page 2, line 24, by striking out "drug" and inserting: controlled substance

Amend Sec. 1 (Sec. 6502), page 3, line 3, by striking out "drug" and inserting: controlled substance

Amend Sec. 1 (Sec. 6504), page 3, line 20, by striking out "suspicion" and inserting: grounds

Amend Sec. 1 (Sec. 6504), page 3, lines 20 and 21, by striking out "is in violation of section 6502" and inserting: has violated section 6502(a)

Amend Sec. 1 (Sec. 6504), page 3, line 22, by striking out "breath test" and inserting: test of blood, breath or urine

Amend Sec. 1 (Sec. 6504), page 3, lines 24 through 30, by striking out all of said lines and inserting: assisting the officer in determining whether the individual is in violation of section 6502(a) and should be placed under arrest. It shall be the duty of the law enforcement officer to inform the individual at the time of the request of the penalties for refusal under subsection (c) and the reporting requirements under section 6505 (relating to reporting). If the individual, after being notified of the penalties and reporting requirements, refuses to submit to chemical testing the test shall not be conducted. Nothing in this section shall be construed to require a law enforcement officer to request an individual to submit to a chemical test prior to placing the individual under arrest for a violation of section 6502(a).

Amend Sec. 1 (Sec. 6504), page 4, line 2, by striking out "6502, the individual shall be requested to" and inserting: 6502(a), the individual shall

Amend Sec. 1 (Sec. 6504), page 4, lines 5 through 9, by striking out all of said lines and inserting: presence of a controlled substance. It shall be the duty of the law enforcement officer to inform the individual at the time of the request of the penalties for refusal under subsection (c) and the reporting requirements under section 6505. If the individual, after being notified of the penalties and reporting requirements, refuses to submit to chemical testing, the test shall not be conducted.

(c) Refusal.—Notwithstanding section 6503(1) (relating to penalty), an individual who violates section 6502(a) and who refuses to submit to a test requested or required under subsection (a) or (b), shall be sentenced to pay a fine of not less than \$2,500 nor more than \$5,000.

Amend Sec. 1 (Sec. 6504), page 4, line 11, by inserting after "proceeding": arising out of a violation of section 6502

Amend Sec. 1 (Sec. 6504), page 4, line 12, by striking out "defendant's" and inserting: individual's

Amend Sec. 1 (Sec. 6504), page 4, line 14, by striking out "defendant's" and inserting: individual's

Amend Sec. 1 (Sec. 6504), page 4, line 29, by striking out "title" and inserting: chapter

Amend Sec. 1 (Sec. 6504), page 5, line 30, by inserting after "action": arising out of a violation of section 6502

Amend Sec. 1 (Sec. 6504), page 6, line 1, by striking out "defendant" and inserting: individual

Amend Sec. 1 (Sec. 6504), page 6, line 2, by inserting after "subsection": (a) or

Amend Sec. 1 (Sec. 6504), page 6, line 12, by inserting after "tested": or the individual charged under section 6502(b)

Amend Sec. 1 (Sec. 6504), page 7, lines 6 and 7, by striking out "as may be reasonably expected from unusual" in line 6 and all of line 7 and inserting: for good cause.

Amend Sec. 1 (Sec. 6505), page 7, line 11, by striking out "results of a" and inserting: name of the individual and the results of the individual's

Amend Sec. 1 (Sec. 6505), page 7, line 13, by striking out "refusal" and inserting: name of an individual that refused

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

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Stack.

Senator STACK. Madam President, I believe this is agreed to. This is merely a technical amendment to the driving while intoxicated legislation, which calls for a mandatory suspension of a license when the accused refuses a breathalyzer test.

And the question recurring,  
Will the Senate agree to the amendment?  
It was agreed to.

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

#### RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, at this point, I ask for a recess of the Senate for about 10 minutes.

The PRESIDENT. Without objection, there will be a 10-minute recess.

#### AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

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

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to House amendments to **SB 1102**.

**SENATE BILL RETURNED WITH AMENDMENTS**

The Clerk of the House of Representatives returned to the Senate **SB 705**, with the information the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XIV, section 5, this bill will be referred to the Committee on Rules and Executive Nominations.

**HOUSE CONCURS IN SENATE AMENDMENTS BY AMENDING SAID AMENDMENTS TO HOUSE BILLS**

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate, by amending said amendments, to **HB 623** and **2105**, in which concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XIV, section 5, these bills will be referred to the Committee on Rules and Executive Nominations.

**SPECIAL ORDER OF BUSINESS ANNOUNCEMENT BY THE SECRETARY**

The SECRETARY. Consent has been given for the Committee on Rules and Executive Nominations to meet imminently in the Rules room to consider Senate Bill No. 705, House Bill No. 623, House Bill No. 2105, and House Resolution No. 851.

**RECESS**

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Madam President, I request a recess for a meeting of the Committee on Rules and Executive Nominations to be held immediately in the Rules room.

The PRESIDENT. Senator Piccola requests a brief recess for a meeting of the Committee on Rules and Executive Nominations in the Rules room. Without objection, the Senate stands in recess.

**AFTER RECESS**

The PRESIDENT. The time of recess having expired, the Senate will come to order.

**BILLS REPORTED FROM COMMITTEE**

Senator BRIGHTBILL, from the Committee on Rules and Executive Nominations, reported the following bills:

**SB 95 (Pr. No. 1939) (Rereported) (Concurrence)**

An Act amending Titles 20 (Decedents, Estates and Fiduciaries) and 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for right of surviving spouse to elective share; further defining "separate and apart" for purposes of divorce; providing for premarital agreements; further providing for decree of court in actions for divorce; further defining "marital property" for purposes of certain property rights; and further providing for equitable division of marital property, for disposition of property to defeat obligations and for statement of reasons for distribution.

**SB 255 (Pr. No. 1989) (Rereported) (Concurrence)**

An Act relating to alternative fuels; establishing the Alternative Fuels Incentive Fund; authorizing grants and rebates to promote the use of alternative fuels; imposing duties on the Department of Environmental Protection; providing for an annual report; allocating funds collected from the utilities gross receipts tax; making an appropriation; and abrogating regulations.

**SB 441 (Pr. No. 2004) (Amended) (Rereported) (Concurrence)**

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for persons qualified to solemnize marriages.

**SB 677 (Pr. No. 1996) (Rereported) (Concurrence)**

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further defining "common carrier by motor vehicle"; providing for consumer protection and information and for the protection of responsible customer of public utilities; abrogating regulations; and preempting local regulation.

**SB 705 (Pr. No. 2001) (Rereported) (Concurrence)**

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for deceptive or fraudulent business practices.

**HB 623 (Pr. No. 4800) (Rereported) (Concurrence)**

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for deceptive or fraudulent business practices.

**HB 2105 (Pr. No. 4801) (Rereported) (Concurrence)**

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, adding definitions; further defining "public venue"; further providing for general powers of the Pennsylvania Liquor Control Board, for when sales may be made by Pennsylvania Liquor Stores, for continuing care retirement community retail licenses, for repackaging by manufacturers, for renewal of licenses, for privately owned golf courses located in more than one county; providing for a point system for certain licensees, for unlawful acts relative to liquor, malt and brewed beverages and licensees and for limited wineries; and providing for distilleries.

**RESOLUTION REPORTED FROM COMMITTEE**

Senator BRIGHTBILL, from the Committee on Rules and Executive Nominations, reported the following resolution:

**HR 851 (Pr. No. 4413)**

A Concurrent Resolution memorializing the Congress of the United States to enact the Steel Industry National Historic Site Act establishing certain sites and structures in the Commonwealth of Pennsylvania as National Heritage Areas.

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

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 6**

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 2666 (Pr. No. 4808)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for period of registration; providing for commercial driver records; further providing for exemption from other fees and for the prohibition on expenditures for emission inspection program.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate 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.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 7**

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 2775 (Pr. No. 4809)** -- The Senate proceeded to consideration of the bill, entitled:

An Act establishing the Chesapeake Bay Watershed Education Program; providing for the issuance of grants and for the powers and duties of the Department of Education.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate 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.

**RECESS**

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator BRIGHTBILL.

Senator BRIGHTBILL. Madam President, I request a brief recess to caucus at the podium to discuss the bills coming up.

The PRESIDENT. Without objection, the Senate stands in recess.

**AFTER RECESS**

The PRESIDENT. The time of recess having expired, the Senate will come to order.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 4**

**SENATE CONCURS IN HOUSE AMENDMENTS  
AS AMENDED**

**SB 441 (Pr. No. 2004)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for persons qualified to solemnize marriages.

On the question,

Will the Senate concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 441?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House, as further amended by the Senate, to Senate Bill No. 441.

On the question,

Will the Senate agree to the motion?

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 9

SENATE CONCURS IN HOUSE AMENDMENTS  
TO SENATE AMENDMENTS

HB 623 (Pr. No. 4800) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for deceptive or fraudulent business practices.

On the question,

Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 623?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate amendments to House Bill No. 623.

On the question,

Will the Senate agree to the motion?

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS  
TO SENATE AMENDMENTS

HB 2105 (Pr. No. 4801) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, adding definitions; further defining "public venue"; further providing for general powers of the Pennsylvania Liquor Control Board, for when sales may be made by Pennsylvania Liquor Stores, for continuing care retirement community retail licenses, for repackaging by manufacturers, for renewal of licenses, for privately owned golf courses located in more than one county; providing for a point system for certain licensees, for unlawful acts relative to liquor, malt and brewed beverages and licensees and for limited wineries; and providing for distilleries.

On the question,

Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 2105?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate amendments to House Bill No. 2105.

On the question,

Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Madam President, I know the hour is late, and all that kind of stuff, but I have to tell you what, I am looking at House Bill No. 2105, and when we sent it over to the House, it had Sunday sales in there. It has been sent back to us, and Sunday sales are out and now repackaging is in. I have a very serious set of questions on this repackaging, and I just want to know, and I wish someone could answer for me in detail where the definition for repackaging is in the bill, because I cannot find it. It contains all the other things we want and what we had in terms of a definition of repackaging before, but I am looking for my old one. "For purposes of this section, 'repackage' shall mean

any change or alteration to the containers or container configuration of a case." That is the one that was proposed, but the one we were using was defined as anything that was damaged, salvageable goods, that is what you could repackage. So I guess what I am asking is what are we doing with this repackaging, what is it supposed to do, and why is it here at this time?

And then there is another section I underlined in here. "...in quantities of not less than a case or original containers containing one hundred twenty-eight ounces," and I guess I have to ask how much one hundred twenty-eight ounces is, "or more may be sold separately as prepared for the market by the manufacturer at the place of manufacture." I am asking on that one, what are we going to repackage with this, how much, is it really allowable to do, what is the definition for repackaging? Another issue comes up on this, too. Who pays the taxes on this? Is it the one who repackages it, the one who put the original product in? We have a whole series of questions on that. Who retains the title on beer, the manufacturer or the ID warehouse? If the manufacturer retains the title, is the State tax on that beer paid immediately, or is the tax payment delayed until the warehouse bill is shipped out to the distributors for sale? And if the out-of-State manufacturer retains title, is not that beer, in their position sitting on a Pennsylvania warehouse floor, in fact a corporate asset, and should then corporate taxes be paid? I mean, these are some of the issues.

I think the other thing I am concerned about is how it is going to affect the breweries. I have a Yuengling Brewery and they said they are neutral on this. I do not know if they are neutral because the numbers were not with them or whether they just felt they were rolled in, but where is the Malt Beverage Distributors Association on this? I have not seen any letters saying they favor it. Where is the Pittsburgh Brewery, Straub's Brewery, Lion Brewery, or the Southeastern Pennsylvania Importing Distributors that are going to be affected by this? How is it going to affect the small IDs and the large IDs? And the question I am asking is, for whom are we doing this? I mean, I would like to know specifically. Is it for the breweries of Pennsylvania or is it for competition? I mean, there is an ongoing thing here that one of the large manufacturers out of State wants to come in, be able to get two places to store, keep all this material in, repackage it from the standpoint that when they become competitive or compete with our breweries, our breweries do not have the facilities and personnel to handle this, to compete, so they can put a special on with whatever package size they want, and our people cannot compete with that because they do not have the personnel.

I have some very grave concerns with this, and that is why I cannot support it and I will not support it. I would really prefer that we pass it over and wait until we could get some answers, some clear answers before we make any move on this.

The PRESIDENT. So you are requesting that we defer a vote on House Bill No. 2105?

Senator RHOADES. Madam President, I would prefer to have Senator Conti answer, if he would. I think he wants to speak, and then maybe I will make a motion after that.

The PRESIDENT. The Chair recognizes the gentleman from Bucks, Senator Conti.

Senator CONTI. Madam President, obviously, tonight at this hour I cannot respond to the litany of questions that my friend and colleague has just proposed. I think it is very important for

the assembly here tonight to understand that this does not in any way get into the three-tier beer system in Pennsylvania. The Senator has articulated concerns of a Pennsylvania brewery in his district. I have been up there with the Senator, I have met with these folks. My colleagues on the committee have fully vetted this. This issue began in the still of the night on July 4, and we have been working on it all summer. I did not expect it to come to resolution this morning, but it took place in the House and I want the Members to know that they can vote for this bill in full confidence that it does not in any way tamper with the three-tier beer system. I also want the Members to understand that this issue is really out of a repackaging desire for a product, a malt product, not beer, that is produced in Pennsylvania to be repacked in a variety pack in Pennsylvania and retain ownership by the proper companies throughout that whole process within the three-tier system.

So there are a lot of concerns about repackaging, there are a lot of concerns about the three-tier system of beer. I suspect in the next Session of the General Assembly we are going to talk about these issues an awful lot in the Senate Committee on Law and Justice, but they are not contained within this piece of legislation this evening. I guess the best way to sum up my thoughts are that the beer interests and every interest and every stakeholder involved in House Bill No. 2105 is either for this bill or neutral. I am not aware of any stakeholder, the distributors I have not heard from directly, but the big brewers and the Pennsylvania brewers and all the stakeholders involved in this legislation are either for the legislation or in a neutral position on it. So I can understand, frankly, the desire to take a small issue to help a Pennsylvania company repackage into a variety pack that the public wants, and I can understand the desire to take that into repackaging, because the packaging laws of the Commonwealth of Pennsylvania are from back in the Pinchot days, that is for sure. But we are going to look at that next Session. It is not in this bill, and I urge an affirmative vote on concurrence on something that our committee has worked long and hard on.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Madam President, having listened to the answers, and I respect Senator Conti as chairman of the committee, and I am also a member of that committee, but I still do not have definitive answers. What is this going to do? What is repackaging? How is this going to affect the others? We are saying it will not. I have not seen any letters of support saying this is good, go with it. I would like to see that in place. In terms of the three tiers, no, it is not supposed to affect them, let me say effect them, but how is it going to affect them? And that is the other thing I am concerned about.

That being the case, I do not think we should move on with this repackaging idea until it is clear just what is repackaging? Who is going to pay the taxes on it and how is it going to affect all of those breweries? Let them specifically answer to each and every one of us so that we know this is a safe procedure, it is going to protect our jobs, and I am not going to have to worry about outsourcing to other State areas the jobs where that beer is going to be sent in.

MOTION TO TABLE HB 2105

Senator RHOADES. Madam, President, that being said, I move to table House Bill No. 2105.

The PRESIDENT. Senator Rhoades moves to table House Bill No. 2105. The motion is not debatable.

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

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for a negative vote.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Logan.

Senator LOGAN. Madam President, I also request a negative vote from our side of the aisle on tabling.

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

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

YEA-1

Rhoades

NAY-46

Armstrong	Hughes	Orie	Tomlinson
Boscola	Jubelirer	Piccola	Wagner
Brightbill	Kasunic	Pileggi	Waugh
Conti	Kitchen	Pippy	Wenger
Corman	Kukovich	Punt	White, Donald
Costa	LaValle	Rafferty	White, Mary Jo
Dent	Lemmond	Robbins	Williams, Anthony H.
Earll	Logan	Scarnati	Williams, Constance
Erickson	Madigan	Stack	Wonderling
Ferlo	Mellow	Stout	Wozniak
Fumo	Mowery	Tartaglione	
Gordner	Musto	Thompson	

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 motion to concur in the amendments made by the House to Senate amendments to House Bill No. 2105?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Logan.

Senator LOGAN. Madam President, real briefly, unfortunately the Sunday sales provision was ripped out in the House, but it is our commitment to the Members who voted that we would have ongoing discussions next year, and on concurrence I ask my Members for an affirmative vote.

And the question recurring,  
Will the Senate agree to the motion to concur in the amendments made by the House to Senate amendments to House Bill No. 2105?

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

YEA-41

Boscola	Hughes	Orie	Thompson
Brightbill	Jubelirer	Piccola	Tomlinson
Conti	Kasunic	Pileggi	Wagner
Corman	Kitchen	Pippy	Waugh
Costa	Kukovich	Punt	White, Mary Jo
Dent	LaValle	Rafferty	Williams, Anthony H.
Earll	Lemmond	Robbins	Williams, Constance
Erickson	Logan	Scarnati	Wozniak
Ferlo	Mellow	Stack	
Fumo	Mowery	Stout	
Gordner	Musto	Tartaglione	

NAY-6

Armstrong	Rhoades	White, Donald	Wonderling
Madigan	Wenger		

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

SB 705 (Pr. No. 2001) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for deceptive or fraudulent business practices.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 705?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 705.

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0



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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**HOUSE CONCURRENT RESOLUTION  
No. 851, ADOPTED**

Senator BRIGHTBILL, without objection, called up from page 2 of Supplemental Calendar No. 9, **House Concurrent Resolution No. 851**, entitled:

A Concurrent Resolution memorializing the Congress of the United States to enact the Steel Industry National Historic Site Act establishing certain sites and structures in the Commonwealth of Pennsylvania as National Heritage Areas.

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

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in House Concurrent Resolution No. 851.

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

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Madam President, I rise to ask for the immediate adoption of House Resolution No. 851. Madam President, it is a concurrent resolution memorializing the Congress of the United States to enact the Steel Industry National Historic Site Act establishing certain sites and structures in the Commonwealth of Pennsylvania as national heritage areas. I ask for its immediate adoption, Madam President.

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

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 11**

**SENATE CONCURS IN HOUSE AMENDMENTS**

**SB 95 (Pr. No. 1939)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 20 (Decedents, Estates and Fiduciaries) and 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for right of surviving spouse to elective share; further defining "separate and apart" for purposes of divorce; providing for premarital agreements; further providing for decree of court in actions for divorce; further defining "marital property" for purposes of certain property rights; and further providing for equitable division of marital property, for disposition of property to defeat obligations and for statement of reasons for distribution.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 95?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 95.

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

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

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earl	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SENATE CONCURS IN HOUSE AMENDMENTS**

**SB 255 (Pr. No. 1989)** -- The Senate proceeded to consideration of the bill, entitled:

An Act relating to alternative fuels; establishing the Alternative Fuels Incentive Fund; authorizing grants and rebates to promote the use of alternative fuels; imposing duties on the Department of Environmental Protection; providing for an annual report; allocating funds collected from the utilities gross receipts tax; making an appropriation; and abrogating regulations.

On the question,  
Will the Senate concur in the amendments made by the House to Senate Bill No. 255?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 255.

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

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

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.  
 Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SENATE CONCURS IN HOUSE AMENDMENTS**

**SB 677 (Pr. No. 1996)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further defining "common carrier by motor vehicle"; providing for consumer protection and information and for the protection of responsible customer of public utilities; abrogating regulations; and preempting local regulation.

On the question,  
 Will the Senate concur in the amendments made by the House to Senate Bill No. 677?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 677.

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

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

**YEA-45**

Armstrong	Hughes	Pileggi	Wagner
Boscola	Jubelirer	Pippy	Waugh
Brightbill	Kasunic	Punt	Wenger
Conti	Kukovich	Rafferty	White, Donald
Corman	LaValle	Rhoades	White, Mary Jo
Costa	Lemmond	Robbins	Williams, Anthony H.
Dent	Madigan	Scarnati	Williams, Constance
Earll	Mellow	Stack	Wonderling
Erickson	Mowery	Stout	Wozniak
Ferlo	Musto	Tartaglione	
Fumo	Orie	Thompson	
Gordner	Piccola	Tomlinson	

**NAY-2**

Kitchen	Logan
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A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.  
 Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**RECONSIDERATION OF VOTE ON SB 677**

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Anthony Williams.

Senator A.H. WILLIAMS. Madam President, I move to reconsider the vote by which Senate Bill No. 677 was concurred in House amendments.

The motion was agreed to.

And the question recurring,

Will the Senate agree to the motion to concur in the amendments made by the House to Senate Bill No. 677?

The yeas and nays were required by Senator A.H. WILLIAMS and were as follows, viz:

**YEA-39**

Armstrong	Jubelirer	Pileggi	Tomlinson
Boscola	Kasunic	Pippy	Wagner
Brightbill	Kukovich	Punt	Waugh
Conti	Lemmond	Rafferty	Wenger
Corman	Madigan	Robbins	White, Donald
Costa	Mellow	Scarnati	Williams, Anthony H.
Dent	Mowery	Stack	Williams, Constance
Earll	Musto	Stout	Wonderling
Erickson	Orie	Tartaglione	Wozniak
Fumo	Piccola	Thompson	

**NAY-8**

Ferlo	Hughes	LaValle	Rhoades
Gordner	Kitchen	Logan	White, Mary Jo

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

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**LETTERS SUBMITTED**

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask unanimous consent to submit for the record a letter from the Honorable Edward G. Rendell dated November 20, 2004, which relates to Senate Bill No. 689 and Senate Bill No. 677, and I ask that that be part of the record.

The PRESIDENT. Without objection, the letter will be submitted for the record.

*(The following letter was made a part of the record at the request of the gentleman from Lebanon, Senator BRIGHTBILL.)*

COMMONWEALTH OF PENNSYLVANIA  
 Office of the Governor  
 Harrisburg, PA

The Honorable Robert Thompson  
 Senate of Pennsylvania  
 281 Main Capitol Building  
 Harrisburg, PA 17120

Dear Senator Thompson:

On July 2, the House took action on a bill intended to address the crushing financial impact of delinquent payers on the Philadelphia Gas Works.

I was troubled by the content of this bill (Senate Bill 689) because I did not believe appropriate protections of low-income consumers were reflected in the bill. However, I also knew that PGW was on the brink of collapse due to rampant abuse of existing rules governing payment plans and shut-offs. Because I was not willing to sign the bill that passed the House, I put forward a set of conditions for signing of a bill to address the problems that our utility companies face in cutting off those who seek to cheat the system and therefore drive up the costs of heat, electricity and water for good customers who pay their bills. These conditions were:

1. Specific deposit protections for low income Pennsylvanians.
2. Specific winter shut-off protections for the elderly, sick, children and those who are making a good faith effort to pay toward their bills.
3. Specific improvements in shut-off notification, verification for individuals seeking protection from shut-off or renegotiation of payment plans.
4. Reasonable time periods for low-income individuals to pay toward arrearages.

After consultation with people around the state concerned about these issues and extensive negotiations as to the content of the bill, I believe the bill now under consideration in the Senate (Senate Bill 677) meets the thresholds I set.

I believe this bill improves the stability of our public utilities and increases fairness in the treatment of public utility customers. It contains a balanced set of measures designed to address the problem of rising utility bill delinquencies while at the same time ensuring that service remains available under reasonable terms to customers with legitimate financial, medical and other problems.

However, enactment of SB 677 should not be our final word on these issues. We should all pay close attention to how these new rules are used by the utilities and enforced by the PUC. We should all press for more low income energy assistance funding in Pennsylvania, just as I have done in my communication to our federal legislative delegation.

In conclusion, I respectfully ask the Senate to consider this legislation and upon its passage, I will sign it into law.

Sincerely,

EDWARD G. RENDELL  
 Governor

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Madam President, I would like to submit a letter for the record signed by 23 Members of the Pennsylvania Senate in relationship to petitioning the Governor to support LIHEAP.

The PRESIDENT. Senator Hughes requests that a letter be submitted for the record. Without objection, the letter will be submitted for the record.

*(The following letter was made a part of the record at the request of the gentleman from Philadelphia, Senator HUGHES:)*

Senate of Pennsylvania

November 15, 2004

Hon. Edward G. Rendell  
 Governor of Pennsylvania  
 Room 225 Main Capitol Building  
 Harrisburg, PA 17120

Dear Governor Rendell:

Now that the average heating bill is predicted to rise by at least 15% this winter, the Commonwealth must consider appropriating specific funding for LIHEAP.

Thousands of Pennsylvanians have been able to maintain their home heating bills thanks to this key grant program, and LIHEAP funds often have prevented utility shutoffs in many households across the Commonwealth.

Therefore, we the undersigned Senators, urge you to appropriate \$50 million in state funds to supplement the LIHEAP program by 40%. This supplement would allow the program to reach an additional 160,000 households, or provide more meaningful relief by increasing individual grant amounts.

The Commonwealth of Pennsylvania has never allocated state funds to LIHEAP, it functions solely on federal funds. By contrast, New York supplements federal dollars with \$72 million in state funds, New Jersey with \$84 million and California with \$39 million.

We also advocate several administrative changes in the 2004-2005 LIHEAP PROGRAM:

- Restoration of the maximum income eligibility to 150% of the federal poverty level (up from 135%). This level is in line with the maximum eligibility for the LIHEAP-funded weatherization program and most utilities' low-income customer assistance program.
- Reinstatement of "Option 4," which enables utility customers whose payment agreements are in arrears to receive Crisis Grants. DPW's policy of excluding these customers penalizes those who respond to PUC and utility efforts by enrolling in customer assistance programs.
- Extend the program availability to at least April 30. Low-income utility customers without payment agreements are unfairly penalized by DPW's rule that make them ineligible for Crisis Grants during the PUC's "winter moratorium" on termination of heating services. Though technically protected by the moratorium, they face service shutoffs for unpaid bills as of April 1. By that time, Crisis Grants are unavailable.

Pennsylvanians have endured utility rate increases up to 150% over the last three years. They need the support these changes will provide. Your immediate consideration is urgently requested.

We look forward to your response.

Senator Vincent J. Hughes      Senator Jay Costa  
 7th District, Philadelphia County      43rd District, Allegheny County

Senator Anthony Williams      Senator Robert J. Mellow  
 8th District, Philadelphia County      22nd District, Lackawanna,  
 Luzerne and Monroe Counties

Senator Vincent J. Fumo      Senator Shirley Kitchen  
 1st District, Philadelphia County      3rd District, Philadelphia County

Senator Christine Tartaglione      Senator Michael Stack  
 2nd District, Philadelphia County      5th District, Philadelphia County

Senator Allyson Schwartz      Senator Raphael Musto  
 4th District, Philadelphia County      14th District, Luzerne County

Senator Michael A. O'Pake      Senator Lisa Boscola  
 11th District, Berks County      18th District, Monroe and  
 Northampton Counties

Senator Connie Williams      Senator John Wozniak  
 17th District, Delaware and  
 Montgomery Counties      35th District, Cambria  
 County

Senator Richard Kasunic  
32nd District, Fayette County

Senator Allen Kukovich  
39th District, Westmoreland  
County

Senator James Ferlo  
38th District, Allegheny  
County

Senator Sean Logan  
45th District, Allegheny  
County

Senator Jack Wagner  
42nd District, Allegheny  
County

Senator Gerald LaValle  
47th District, Beaver and  
Lawrence Counties

Senator J. Barry Stout  
46th District, Washington  
County

Senator Mary Jo White  
21st District, Butler, Clarion  
Erie, Forest, Venango and  
Warren Counties

Senator Joe Conti  
10th District, Bucks and  
Montgomery Counties

**REQUEST FOR RECESS**

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I think at this point we have outrun the printers, so I ask for a 15-minute recess and hopefully by then we will have some product and we can continue.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, with all due respect to the Majority Leader, can we get a clarification from the Majority Leader on the evening's events relative to any transportation and transit funding bill.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, my understanding is that an amendment will be offered to a bill dealing with transit funding, and Representative Smith and I are in the process of drafting a letter to the Governor to urge him to use mechanisms he currently has to make the money available. If the gentleman wants additional details, I invite him to talk to Senator Madigan.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, is the gentleman suggesting a letter that would not require Senate action?

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, the letter does not. I think the General Assembly needs to approve a small transfer of funds, I think it is in the neighborhood of \$6 million, which can be used to fund smaller transit agencies. There is no question that we are going to have to come back to do some serious looking at this, but at this point in time, we believe that--

**MOTION TO ADJOURN**

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, if that is the case, I would like to respectfully make a motion that we adjourn this sine die Session of the legislature and not deal with any pay grab. That is my motion.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I would suggest that the motion is out of order because the sine die motion can only be done by concurrent resolution of both bodies.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. I amend my motion to a motion to adjourn, Madam President.

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

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for a negative vote.

The PRESIDENT. Senator Ferlo moves to adjourn. Under the rules we would come back at 10 a.m. tomorrow morning.

The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, my motion is clear. I am making a motion to adjourn.

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

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

YEA-6			
Earl Ferlo	Kasunic Mellow	Tartaglione	Wagner
NAY-41			
Armstrong	Jubelirer	Pileggi	Waugh
Boscola	Kitchen	Pippy	Wenger
Brightbill	Kukovich	Punt	White, Donald
Conti	LaValle	Rafferty	White, Mary Jo
Corman	Lemmond	Rhoades	Williams, Anthony H.
Costa	Logan	Robbins	Williams, Constance
Dent	Madigan	Scarnati	Wonderling
Erickson	Mowery	Stack	Wozniak
Fumo	Musto	Stout	
Gordner	Orie	Thompson	
Hughes	Piccola	Tomlinson	

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

**ANNOUNCEMENT BY MAJORITY LEADER**

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I think before Senator Ferlo made his motion to adjourn, which I think was 35 minutes ago, I requested a 15-minute recess, which I no longer need.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 8**

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 197 (Pr. No. 4802)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, further providing for delegation of taxing powers and restrictions thereon; providing for nonresident sports facility usage fee, for parking tax rates and for payroll taxes; further providing for limitations on rates of specific taxes and for the appointment of a single collector of taxes; further providing for the applicability of petitions under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act; and making a repeal.

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 PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, for the information of the Members, there has been plenty of debate about House Bill No. 197 as the amendments were offered. This is the bill that is intended to deal with a situation in Pittsburgh.

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:

**YEA-27**

Armstrong	Jubelirer	Orie	Tomlinson
Brightbill	Kukovich	Pileggi	Waugh
Conti	LaValle	Pippy	Wenger
Costa	Lemmond	Punt	White, Donald
Earll	Logan	Rhoades	White, Mary Jo
Erickson	Madigan	Robbins	Williams, Anthony H.
Gordner	Mowery	Thompson	Williams, Constance

**NAY-20**

Boscola	Hughes	Piccola	Tartaglione
Corman	Kasunic	Rafferty	Wagner
Dent	Kitchen	Scarnati	Williams, Anthony H.
Ferlo	Mellow	Stack	Williams, Constance
Fumo	Musto	Stout	Wonderling

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

Ordered, That the Secretary of the Senate 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.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 5**

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 873 (Pr. No. 4807)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for suspension of operating privilege and for careless driving; providing for spilled cargo and for accident scene clearance; and for exemption from additional requirements for highway occupancy permits for agricultural purposes; and further providing for penalties for violation of school zone speed limits, for powers of the department and local authorities, for surcharges and for removal of vehicles and spilled cargo from roadway.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate 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.

**SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 10**

**BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE**

**HB 2664 (Pr. No. 4810)** -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, further providing for distribution of funding; and providing for temporary public transportation assistance funding and for flying while impaired; and imposing penalties.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earli	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate 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.

**REPORT FROM COMMITTEE ON  
RULES AND EXECUTIVE NOMINATIONS**

Senator ROBBINS, from the Committee on Rules and Execu-  
tive Nominations, reported the following nominations made by  
His Excellency, the Governor of the Commonwealth, which were  
read by the Clerk as follows:

**MEMBER OF THE STATE HARNESS  
RACING COMMISSION**

July 7, 2004

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, Richard J. Bolte, Sr., 510 Walnut  
Street, Philadelphia 19106, Philadelphia County, First Senatorial Dis-  
trict, for appointment as a member of the State Harness Racing Com-  
mission, to serve for a term of three years and until his successor is  
appointed and qualified, vice George Patterson, Naples, Florida, re-  
signed.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE STATE HARNESS  
RACING COMMISSION**

November 10, 2004

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, The Honorable Roy W. Wilt, 262  
Leech Road, Greenville 16125, Mercer County, Fiftieth Senatorial  
District, for reappointment as a member of the State Harness Racing  
Commission, to serve for a term of three years and until his successor  
is appointed and qualified.

EDWARD G. RENDELL  
Governor

**MEMBER OF THE BOARD OF TRUSTEES  
OF THE PENNSYLVANIA STATE UNIVERSITY**

July 12, 2004

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, Ira M. Lubert, 220 West Rittenhouse  
Square, Apartment 21 AC, Philadelphia 19103, Philadelphia County,  
First Senatorial District, for appointment as a member of the Board of  
Trustees of the Pennsylvania State University, to serve until July 1,  
2007, and until his successor is appointed and qualified, vice Robert A.  
Fortinsky, Kingston, whose term expired.

EDWARD G. RENDELL  
Governor

**NOMINATIONS LAID ON THE TABLE**

Senator ROBBINS. Madam President, I request that the nomi-  
nations just read by the Clerk be laid on the table.

The PRESIDENT. The nominations will be laid on the table.

**EXECUTIVE NOMINATIONS**

**EXECUTIVE SESSION**

Motion was made by Senator ROBBINS,

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

Which was agreed to by voice vote.

**NOMINATIONS TAKEN FROM THE TABLE**

Senator ROBBINS. Madam President, I call from the table  
certain nominations and ask for their consideration.

The Clerk read the nominations as follows:

**MEMBER OF THE STATE HARNESS  
RACING COMMISSION**

July 7, 2004

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, Richard J. Bolte, Sr., 510 Walnut  
Street, Philadelphia 19106, Philadelphia County, First Senatorial Dis-  
trict, for appointment as a member of the State Harness Racing Com-  
mission, to serve for a term of three years and until his successor is

appointed and qualified, vice George Patterson, Naples, Florida, resigned.

EDWARD G. RENDELL  
Governor

MEMBER OF THE STATE HARNESS  
RACING COMMISSION

November 10, 2004

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, The Honorable Roy W. Wilt, 262 Leech Road, Greenville 16125, Mercer County, Fiftieth Senatorial District, for reappointment as a member of the State Harness Racing Commission, to serve for a term of three years and until his successor is appointed and qualified.

EDWARD G. RENDELL  
Governor

MEMBER OF THE BOARD OF TRUSTEES  
OF THE PENNSYLVANIA STATE UNIVERSITY

July 12, 2004

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, Ira M. Lubert, 220 West Rittenhouse Square, Apartment 21 AC, Philadelphia 19103, Philadelphia County, First Senatorial District, for appointment as a member of the Board of Trustees of the Pennsylvania State University, to serve until July 1, 2007, and until his successor is appointed and qualified, vice Robert A. Fortinsky, Kingston, whose term expired.

EDWARD G. RENDELL  
Governor

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

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

YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earl	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.  
Ordered, That the Governor be informed accordingly.

EXECUTIVE SESSION RISES

Senator ROBBINS. Madam President, I move that the Executive Session do now rise.

The motion was agreed to by voice vote.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, at this time I request a brief recess for the purpose of a Republican caucus to be held in the Rules room at the rear of the Chamber. I expect it will not be more than about 10 minutes. We have a little bit of business yet, and we will come back and do it.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Madam President, I request that our Democratic Members report to our caucus room at the rear of the Chamber for a very brief caucus.

The PRESIDENT. For purposes of Republican and Democratic caucuses, without objection, the Senate stands in recess.

AFTER RECESS

The PRESIDING OFFICER (Senator Mary Jo White) in the Chair.

The PRESIDING OFFICER. The time of recess having expired, the Senate will come to order.

HB 709 TAKEN FROM THE TABLE

Senator BRIGHTBILL. Madam President, I move that House Bill No. 709, Printer's No. 2707, be taken from the table and placed on the Calendar.

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

The PRESIDING OFFICER. The bill will be placed on the Calendar.

SPECIAL ORDER OF BUSINESS  
SUPPLEMENTAL CALENDAR No. 12

BILL ON THIRD CONSIDERATION  
AND FINAL PASSAGE

HB 709 (Pr. No. 2707) -- The Senate proceeded to consideration of the bill, entitled:

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

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:

## YEA-47

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

## NAY-0

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

Ordered, That the Secretary of the Senate 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.

## SENATE AT EASE

The PRESIDING OFFICER. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, for the information of the Members, we are waiting for one bill to come over from the House and I think there is a recall, so I ask that we stand at ease.

The PRESIDING OFFICER. Without objection, the Senate will stand at ease.

(The Senate was at ease.)

The PRESIDENT pro tempore (Robert C. Jubelirer) in the Chair.

### UNFINISHED BUSINESS CONGRATULATORY RESOLUTIONS

The PRESIDENT pro tempore laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Congratulations of the Senate were extended to the members of the 1185th Terminal Transportation Brigade of the United States Army Reserve by Senator Armstrong.

Congratulations of the Senate were extended to Mr. and Mrs. Juan Manuel Rodriguez, Mr. and Mrs. Ernest Hoffner, Mr. and Mrs. John T. Yanders, Mr. and Mrs. John Kercksmar and to Matthew Paul A'Hearn by Senator Boscola.

Congratulations of the Senate were extended to James Wagner by Senators Boscola and Dent.

Congratulations of the Senate were extended to Richard Ray Fetterman by Senator Brightbill.

Congratulations of the Senate were extended to Mr. and Mrs. Robert Carl Heimbaugh, Clyde Edward Resides and to Rodney L. Solt, Jr., by Senator Corman.

Congratulations of the Senate were extended to Nancy H. Fullam by Senators Erickson and Tartaglione.

Congratulations of the Senate were extended to Clarence Mason by Senator Ferlo.

Congratulations of the Senate were extended to Mr. and Mrs. Elwood M. Reese, Mr. and Mrs. Bill Beishline, Mr. and Mrs. Fred Strouse, Mr. and Mrs. Carl W. Swartz, Mr. and Mrs. George F. Snyder, Geraldine Runge Davis and to Viola Stadler by Senator Gordner.

Congratulations of the Senate were extended to Irv Muchnick, Hedwig Emma Heinzmann Buhner, Bryan Nuss, Frances Sahutsky, James Herbert, Christopher Carroll, Shaun M. Betit and to the Greater Warminster Chamber of Commerce by Senator Greenleaf.

Congratulations of the Senate were extended to Richard Steven Charles Severin by Senator Hughes.

Congratulations of the Senate were extended to Mr. and Mrs. Cletus Imler, Mr. and Mrs. Fred Perrin, Mr. and Mrs. Wesley Pleshko, Mr. and Mrs. Tom Russell and to Tonya Osman by Senator Jubelirer.

Congratulations of the Senate were extended to Leon A. King II by Senator Kitchen.

Congratulations of the Senate were extended to Madeline JoAnne Shiel by Senator LaValle.

Congratulations of the Senate were extended to Mr. and Mrs. Gerald Sheldon by Senator Lemmond.

Congratulations of the Senate were extended to Reverend and Mrs. William E. Rall, Mr. and Mrs. George Ed Ammerman, Mr. and Mrs. Kenneth Porter, Mr. and Mrs. Jack B. Redden, Mr. and Mrs. Theodore James Brown, Mr. and Mrs. Joseph R. Waltz, Mr. and Mrs. John Hubiak, James William Chadwick II, Beulah Mae Brown and to Daniel Homet Howard by Senator Madigan.

Congratulations of the Senate were extended to Leo Moskovitz by Senator Mellow.

Congratulations of the Senate were extended to Raymond L. Gover and to Judy Bard Eichelberger by Senator Mowery.

Congratulations of the Senate were extended to Esther L. Lapi by Senator O'Pake.

Congratulations of the Senate were extended to the Reverend Dr. Lawrence C. Hood by Senator Pileggi.

Congratulations of the Senate were extended to Justin H. Bartolomucci and to Kevin Charles Varga by Senator Pippy.

Congratulations of the Senate were extended to Improved Benevolent Protective Order of Elks of the World, Lincoln Temple No. 1400, of Gettysburg, by Senator Punt.

Congratulations of the Senate were extended to Michael R. Bartoszek by Senator Rafferty.

Congratulations of the Senate were extended to Mr. and Mrs. John W. Sonon, Frank P. Davidavage and to Charles B. Adukaitis by Senator Rhoades.

Congratulations of the Senate were extended to Mark R. Fullerton and to Lynda P. Holm by Senator Robbins.

Congratulations of the Senate were extended to Daniel Dellaquila by Senator Scarnati.

Congratulations of the Senate were extended to Edythe Liptak Stutts by Senator Stout.

Congratulations of the Senate were extended to Carl Eugene Mullner by Senator Thompson.



Congratulations of the Senate were extended to Mr. and Mrs. Herbert Daskal by Senator Tomlinson.

Congratulations of the Senate were extended to Benjamin Simon Johnston by Senator D. White.

Congratulations of the Senate were extended to Mr. and Mrs. Dwight Weeter by Senator M.J. White.

Congratulations of the Senate were extended to James Alex Ramsay Miller and to St. Luke United Methodist Church of Bryn Mawr by Senator C. Williams.

Congratulations of the Senate were extended to Mr. and Mrs. John West and to Mr. and Mrs. Joseph H. Case by Senator Wonderling.

Congratulations of the Senate were extended to Violet Johnson by Senator Wozniak.

**CONDOLENCE RESOLUTION**

The PRESIDENT pro tempore laid before the Senate the following resolution, which was read, considered, and adopted by voice vote:

Condolences of the Senate were extended to the family of the late William J. Murphy, Jr., by Senator C. Williams.

**POSTHUMOUS CITATION**

The PRESIDENT pro tempore laid before the Senate the following citation, which was read, considered, and adopted by voice vote:

A posthumous citation honoring the late Henry J. Furrrie was extended to the family by Senator Logan.

**HOUSE MESSAGES**

**HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILLS**

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to **HB 447, 850, 1113, 1954, 2029, 2066, 2442, 2666 and 2775.**

**HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE AMENDMENTS TO SENATE BILLS**

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to House amendments to **SB 72, 109, 441, 959 and 1209.**

**SENATE BILLS RETURNED WITH AMENDMENTS**

The Clerk of the House of Representatives returned to the Senate **SB 584 and 997,** with the information the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT pro tempore. Pursuant to Senate Rule XIV, section 5, these bills will be referred to the Committee on Rules and Executive Nominations.

**BILLS SIGNED**

The PRESIDENT pro tempore (Robert C. Jubelirer) in the presence of the Senate signed the following bills:

**SB 72, SB 92, SB 95, SB 109, SB 255, SB 441, SB 668, SB 677, SB 705, SB 856, SB 892, SB 912, SB 959, SB 1030, SB 1041, SB 1099, SB 1102, SB 1209, HB 248, HB 250, HB 447, HB 850, HB 1113, HB 1954, HB 2029, HB 2066, HB 2442, HB 2666, HB 2749 and HB 2775.**

**CONSIDERATION OF CALENDAR RESUMED**

**HB 2528 CALLED UP**

**HB 2528 (Pr. No. 3671)** -- Without objection, the bill was called up, from page 4 of the Third Consideration Calendar, by Senator BRIGHTBILL.

**BILL ON THIRD CONSIDERATION AND FINAL PASSAGE**

**HB 2528 (Pr. No. 3671)** -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the capital budget for the fiscal year 2004-2005.

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:

**YEA-47**

Armstrong	Hughes	Orie	Thompson
Boscola	Jubelirer	Piccola	Tomlinson
Brightbill	Kasunic	Pileggi	Wagner
Conti	Kitchen	Pippy	Waugh
Corman	Kukovich	Punt	Wenger
Costa	LaValle	Rafferty	White, Donald
Dent	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fumo	Mowery	Stout	Wozniak
Gordner	Musto	Tartaglione	

**NAY-0**

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

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

**EXECUTIVE NOMINATION**

**EXECUTIVE SESSION**

Motion was made by Senator BRIGHTBILL,

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

Which was agreed to by voice vote.

**NOMINATION TAKEN FROM THE TABLE**

Senator BRIGHTBILL. Mr. President, I call from the table a certain nomination and ask for its consideration.

The Clerk read the nomination as follows:

JUDGE, COURT OF COMMON PLEAS,  
ALLEGHENY COUNTY

June 23, 2004

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, Edward J. Borkowski, Esquire, 243 Fisk Street, Pittsburgh 15201, Allegheny County, Thirty-eighth Senatorial District, for appointment as Judge of the Court of Common Pleas of Allegheny County, to serve until the first Monday of January 2006, vice The Honorable Joseph A. Jaffe, resigned.

EDWARD G. RENDELL  
Governor

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

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Mr. President, I would like to put on the record some remarks about Mr. Borkowski and the situation that we find ourselves in relative to his nomination.

Mr. President, Mr. Borkowski's nomination is currently on the 25th day, and we are about to adjourn this day of the legislative Session. Unfortunately, we had hoped that Mr. Borkowski's name would have been recalled by the Governor, but the Governor has not done that yet, so therefore, we would like to place on the record that the outcome of the vote on his nomination is no reflection on this Chamber's understanding of his capacity or ability to be a judge in the Court of Common Pleas. We are very hopeful that when we reconvene back here this upcoming January of 2005, that Mr. Borkowski, in fact, will be renominated by the Governor and also that we will proceed with his confirmation thereafter.

Thank you, Mr. President.

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

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

The PRESIDENT pro tempore. The nomination of Mr. Borkowski to be a judge of the Court of Common Pleas of Allegheny County not having received the required two-thirds affirmative votes fails confirmation, the Governor will be so advised.

**RECONSIDERATION OF VOTE**

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I move that the Senate reconsider the vote by which the nomination of Ira Lubert was

confirmed for the Board of Trustees of Penn State and that it be laid on the table.

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

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

**EXECUTIVE SESSION RISES**

Senator BRIGHTBILL. Mr. President, I move that the Executive Session do now rise.

The motion was agreed to by voice vote.

**ADJOURNMENT**

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I move that the Senate do now adjourn until Sunday, November 21, 2004, at 2:45 a.m., Eastern Standard Time.

The motion was agreed to by voice vote.

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