

COMMONWEALTH OF PENNSYLVANIA
Legislative Journal

WEDNESDAY, JUNE 4, 2008

SESSION OF 2008 192ND OF THE GENERAL ASSEMBLY

No. 36

SENATE

WEDNESDAY, June 4, 2008

The Senate met at 10:30 a.m., Eastern Daylight Saving Time.

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

PRAYER

The Chaplain, the Very Reverend WILLIAM C. FORREY, of Saint Patrick's Catholic Church, Carlisle, offered the following prayer:

Let us pray.

O God, You are the source of all that exists. In You, there is no falsehood. Make us realistic in our faith. Free us from illusions about ourselves and our world of importance. Help this Senate, by our prayer this day, to build consistent priorities for the Commonwealth and legislate justice which will lead to greater prosperity, concord, and peace. Open our eyes to see the wonders of the world around us. Open our hearts to the needs of our brothers and sisters who seek the understanding and guidance of this legislative body. Together, enable us to read the signs of the times and respond with prudence, according to Your wisdom and provident love, both now and forever. We pray these things in Your holy name. Amen.

The PRESIDENT. The Chair thanks Father Forrey, who is the guest today of Senator Vance.

PLEDGE OF ALLEGIANCE

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

COMMUNICATIONS FROM THE GOVERNOR

NOMINATIONS REFERRED TO COMMITTEE

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

**MEMBER OF THE STATE HORSE
RACING COMMISSION**

June 4, 2008

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 B. (Jeb) Hannum III, 545 Upland Road, Kennett Square 19348, Chester County, Nineteenth Senatorial District, for appointment as a member of the State Horse Racing Commission, to serve for a term of three years and until his successor is appointed and qualified, vice Larry Kent, Ardmore, resigned.

EDWARD G. RENDELL
Governor

**MEMBER OF THE STATE HORSE
RACING COMMISSION**

June 4, 2008

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, Corinne Raphael Sweeney, 112 Barnview Road, Kennett Square 19348, Chester County, Nineteenth Senatorial District, for appointment as a member of the State Horse Racing Commission, to serve for a term of three years and until her successor is appointed and qualified, vice F. Eugene Dixon, Jr., Lafayette Hill, deceased.

EDWARD G. RENDELL
Governor

**MEMBER OF THE STATE HARNESS
RACING COMMISSION**

June 4, 2008

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

**RECALL COMMUNICATIONS
REFERRED TO COMMITTEE**

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

MEMBER OF THE STATE HORSE RACING COMMISSION

June 4, 2008

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 February 22, 2008, for the appointment of B.J. Clark, 611 East Darby Road, Havertown 19083, Delaware County, Seventeenth Senatorial District, as a member of the State Horse Racing Commission, to serve for a term of three years and until his successor is appointed and qualified, vice F. Eugene Dixon, Jr., Lafayette Hill, deceased.

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

EDWARD G. RENDELL Governor

MEMBER OF THE STATE HORSE RACING COMMISSION

June 4, 2008

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 April 15, 2008, for the appointment of Nina Tinari, 6401 Church Road, Philadelphia 19151, Philadelphia County, Seventh Senatorial District, as a member of the State Horse Racing Commission, to serve for a term of three years and until her successor is appointed and qualified, vice Larry Kent, Ardmore, resigned.

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

EDWARD G. RENDELL Governor

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 1281.

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

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

Weekly recess.

BILL SIGNED

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

HB 1281.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Pileggi.

Senator PILEGGI. Madam President, I request temporary Capitol leaves for Senator Armstrong and Senator Punt.

The PRESIDENT. Senator Pileggi requests temporary Capitol leaves for Senator Armstrong and Senator Punt.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Madam President, I request legislative leaves for Senator Fumo, Senator Tartaglione, Senator Washington, and Senator Connie Williams.

The PRESIDENT. Senator Mellow requests legislative leaves for Senator Fumo, Senator Tartaglione, Senator Washington, and Senator Connie Williams.

Without objection, the leaves will be granted.

SPECIAL ORDER OF BUSINESS JOURNALS APPROVED

The PRESIDENT. The Journals of the Sessions of May 5, 2008, May 6, 2008, May 7, 2008, and May 8, 2008, are now in print.

The Clerk proceeded to read the Journals of the Sessions of May 5, 2008, May 6, 2008, May 7, 2008, and May 8, 2008.

Senator PILEGGI. Madam President, I move that further reading of the Journals be dispensed with and that the Journals be approved.

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

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

YEA-50

Table with 4 columns of names: Armstrong, Baker, Boscola, Browne, Brubaker, Corman, Costa, Dinniman, Earll, Eichelberger, Erickson, Ferlo, Folmer, Fontana, Fumo, Gordner, Greenleaf, Hughes, Kasunic, Kitchen, LaValle, Logan, Madigan, McIlhinney, Mellow, Musto, O'Pake, Orié, Piccola, Pileggi, Pippy, Punt, Rafferty, Regola, Rhoades, Robbins, Scarnati, Stack, Stout, Tartaglione, Tomlinson, Vance, Washington, Waugh, White, Donald, White, Mary Jo, Williams, Anthony H., Williams, Constance, Wonderling, Wozniak

NAY-0

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

The PRESIDENT. The Journals are approved.

SPECIAL ORDER OF BUSINESS GUESTS OF SENATOR ROBERT WONDERLING PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Wonderling.

Senator WONDERLING. Madam President, I am sorry, I am chuckling because I just noticed you have your Stanley Cup Penguins hat in a place of prominence.

Indeed, Madam President, it is my honor today to introduce a young gentleman from Coopersburg, which is in the heart of my Senate district. Justin Simmons is spending time working in our Bucks County office this summer as one of our summer interns, and much like our Majority Leader, Justin is a Hawk. He will be graduating from Saint Joseph's University within the coming year with a degree in political science. Justin is very interested in public policy and politics and perhaps will continue his education with a master's in such, and also perhaps aspire someday to run for elected office.

So Madam President, I ask that you and the entire Senate body offer Justin a hearty welcome this morning.

The PRESIDENT. Will the Senate please welcome Justin Simmons. Please rise.

(Applause.)

GUESTS OF SENATOR ELISABETH J. BAKER PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentlewoman from Luzerne, Senator Baker.

Senator BAKER. Madam President, it is a privilege for me to introduce a family that is visiting from Luzerne County, Fred and Diane Lombardo. Fred is a respected pharmacist and businessman in Luzerne County, and he and his wife brought along their three grandchildren today, Joseph, Vincenzo, and Santino Gaudino. Please join me in welcoming the Lombardos and their three grandchildren from Luzerne County. Thank you.

The PRESIDENT. Fred and Diane Lombardo, Joseph, Vincenzo, and Santino, welcome.

(Applause.)

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Pileggi.

Senator PILEGGI. Madam President, I request a recess of the Senate for the purpose of a brief meeting of the Republican Caucus in the Rules room.

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

Senator MELLOW. Madam President, I request a Democratic caucus.

The PRESIDENT. For purposes of Republican and Democratic caucuses, without objection, the Senate stands in recess.

AFTER RECESS

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

CALENDAR

REPORT OF COMMITTEE OF CONFERENCE

REPORT DEFEATED

SB 246 (Pr. No. 2099) -- The Senate proceeded to consideration of the bill, entitled:

An Act regulating smoking in this Commonwealth; imposing powers and duties on the Department of Health and local boards of health; providing penalties; preempting local action; and making a related repeal.

Senator PILEGGI. Madam President, I move that the Senate adopt the Report of the Committee of Conference on Senate Bill No. 246.

On the question,

Will the Senate agree to the motion to adopt the Report of the Committee of Conference on Senate Bill No. 246?

PARLIAMENTARY INQUIRY

Senator MELLOW. Madam President, I rise for a parliamentary inquiry.

The PRESIDENT. The gentleman from Lackawanna, Senator Mellow, will state it.

Senator MELLOW. Madam President, my parliamentary inquiry is very simple. Madam President, in dealing with the Clean Air-- and I have to just make a little bit of a point so that I can express what my concern is to you. In dealing with the Clean Air Act, the city of Philadelphia, under the Fire and Panic Act of 1927, was originally exempted as a city of the first class, giving them authority to be able to pass a local ordinance in dealing with clean air. And they in fact did that, Madam President. They passed that ordinance.

The county of Allegheny does not have that same exemption under the Fire and Panic Act of 1927. When they passed their ordinance, very similar to what took place in the city of Philadelphia, there was a Commonwealth Court decision in 2007 that was filed by two owners of bars in Allegheny County, and the Commonwealth Court struck down the county ban, the county ordinance. They said it was invalid because there was no statutory authority under the statute that was the Fire and Panic Act of 1927. In doing so, Madam President, the city of Scranton, which had already passed their own ordinance, decided, instead of having the court throw out their ordinance also because it followed under the rule of what took place in Allegheny County, they went ahead and no longer enforced their own ordinance dealing with smoking.

Now my question, Madam President, on parliamentary procedure, is with Mason's Manual of Legislative Procedure. Section 771, paragraph 4, says, "The report of a committee on conference may be taken up immediately," number one, "delayed," number two, "or returned to a committee" on conference. Under Mason's Manual, Madam President, I now would like to move that the Report of the Committee of Conference on Senate Bill No. 246 be returned to the committee on conference, based on Mason's Manual, plus what has taken place with ordinances that were passed prior to the enactment of Senate Bill No. 246 in the Senate and then action in the House. The action for Philadelphia, Pittsburgh, Allegheny County, and the city of Scranton was done prior to the enactment of the bill.

Based on what Mason's Manual deals with in paragraph 4, Section 771, which again I will read, "The report of a committee on conference may be taken up immediately," number one, "delayed," number two, "or returned" to the committee on confer-

ence, I move that the Senate return Senate Bill No. 246 to the committee on conference for the purpose of addressing the issues of local governments that have already enacted an ordinance prior to us dealing with the legislation, similar to what took place in Philadelphia, although Philadelphia's was upheld by the court, and Allegheny County's was stricken down by the Commonwealth Court, and because of that, the city of Scranton, Madam President, chose not to enforce their ordinance as opposed to having it thrown out by the court, and I ask for a roll-call vote.

The PRESIDENT. The gentleman's motion is in order. The motion is to return the bill to the committee on conference to address the local government issues. On this motion, the debate is limited as to the propriety of the reference and not to the merits of the bill.

On the question,

Will the Senate agree to the motion to recommit the Report of the Committee of Conference on Senate Bill No. 246 to the committee of conference?

Senator PILEGGI. Madam President, I would like to comment on the motion, if it is appropriate at this time.

The PRESIDENT. Please.

Senator PILEGGI. Madam President, I ask for a negative vote on the motion. I think the conference committee report has been the product of a process that is longer than any conference committee process in recent memory. There have been a number of public hearings, a number of different attempts to issue a report. There is no indication that, if the conference committee again went back to work and tried to produce a different report, they would be able to do so. For that reason, I request a negative vote on the motion.

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

Senator FONTANA. Madam President, I rise to ask my colleagues to vote "yes" on Senator Mellow's motion and send this bill back to the conference committee. And here is why, Madam President. In the bill as it exists right now, Senate Bill No. 246, as it has come out of conference, there is one county, just one county, Madam President, in this whole State of 67 counties, that was carved out to be able to keep its own stricter ordinance. The question is, Madam President, why can the other counties not be given the same consideration? It is unfair that this bill does not let that happen, especially in light of what happened in Allegheny County, which I represent. They passed their own stricter ordinance, but it was thrown out, as Senator Mellow indicated, by a judge who said the State needs to give them the right to have a stricter ordinance. Madam President, that one county is able to keep their stricter ordinance, but Allegheny County is not. Senate Bill No. 246 continues that unfairness and that inequity.

Madam President, the conference committee has the ability to remedy this inequity, this unfairness, by at least permitting Allegheny County to also have their stricter ordinance. Madam President, I want to thank Senator Mellow, Senator Greenleaf, and Representative Gerber for recognizing this unfairness and inequity in a reference to carve out Allegheny County.

POINT OF ORDER

Senator PILEGGI. Madam President, I rise to a point of order. The PRESIDENT. The gentleman from Delaware, Senator Pileggi, will state it.

Senator PILEGGI. Madam President, it is my understanding that statements and debate on this motion are not appropriate, that the only thing appropriate is what the Chair said was appropriate, which is whether or not the motion was in order in the first place.

Senator MELLOW. Madam President.

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

Senator MELLOW. Madam President, my understanding is that the debate, there is limited debate as to the reason why the gentleman would be supporting the motion to send this particular conference report back to a conference committee. It is not an open debate, but it is a limited debate as to the reasons why the gentleman feels, or any Member of this body feels, that the motion is in order, and the reasons why it should go back to a conference committee.

The PRESIDENT. It is limited debate as to the propriety and the reference, not as to the meaning and the merits.

Senator MELLOW. Madam President, the only thing that cannot be discussed would be the merits of the bill.

The PRESIDENT. I understand that.

Senator PILEGGI. Madam President, I did not hear any discussion as to the propriety of the motion. I heard debate and argument as to how the vote should go in favor of the motion and why the vote should be in favor of the motion. I think they are completely different things.

The PRESIDENT. The gentleman will confine his remarks.

Senator FERLO. Madam President, I feel very strongly that this bill should be sent back to the conference committee, per Senator Mellow's motion, so that Allegheny County, the second largest county in the State, be allowed to live up to the higher standard that it set for itself, as the other county that is in this bill was allowed to do.

Senator PILEGGI. Madam President--

Senator FERLO. The least that we could do--

Senator PILEGGI. --point of order.

Senator FERLO. --is let Allegheny County have that option. Thank you, Madam President.

POINT OF ORDER

Senator PILEGGI. Madam President, I rise to a point of order.

The PRESIDENT. The gentleman from Delaware, Senator Pileggi, will state it.

Senator PILEGGI. Madam President, same point of order. This is either something we are going to be debating or not. I think the ruling from the Chair was clear. The only comment is on the propriety of the motion, not whether or not Members should vote in favor of the motion or why they should vote in favor of or against the motion.

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

Senator FERLO. Madam President, I realize, appropriately, as the Majority Leader pointed out, we are being hamstrung here to some extent, the propriety being that we have limited debate and discourse on just the procedural matter that is before us relative to the appropriateness of Senator Mellow's motion and not, indeed, the substantive issues involved in why we even want to have a more comprehensive, uniform, and aggressive smoking ban in public places in Pennsylvania. So I will not comment on all that.

Obviously, that debate hopefully will come later, but there is a little bit of an intertwined relationship in the two issues, so I will try to be clear in not crossing that line. But it is clear that Senator Mellow deserves a lot of credit, as well as the working committee, Senator Greenleaf in particular, and others who have taken a progressive vision on the bill itself, but as it relates to the procedural matter before us, we cannot run roughshod over the rights, aspirations, and prerogatives of over a million residents of Allegheny County. And I raise--

Senator PILEGGI. Madam President.

Senator FERLO. --the issue of some sense of uniformity here.

Senator PILEGGI. Madam President.

Senator FERLO. The uniformity being legally going to--

POINT OF ORDER

Senator PILEGGI. Madam President, I rise to a point of order.

The PRESIDENT. The gentleman from Delaware, Senator Pileggi, will state it.

Senator PILEGGI. Madam President, I hate to interrupt my friend from Allegheny County, but again, we are getting into a debate as to the merits of the motion and why the motion should be supported, not whether or not the motion is appropriate under the rules.

Senator FERLO. I think there is a substantive issue that is before us as to the appropriateness of Senator Mellow's motion, which I am supporting, and I am supporting it because of the procedural basis of the issue of uniformity, that this is an unfinished symphony that needs to go back to the working committee of the Senate and the House. It is not appropriate for it to be in front of us today in its form that ran roughshod on law and uniformity on the part of Allegheny County, which is no different than Philadelphia. Why is--

Senator PILEGGI. Madam President, I ask for a ruling from the Chair.

Senator FERLO. Why would Allegheny County legally--

Senator PILEGGI. We are just going around in circles.

Senator FERLO. --be treated differently than the Philadelphia ordinance? Now, they have their genesis--

The PRESIDENT. The motion--

Senator FERLO. They have their genesis historically in different authorization, but I am sure the people--

Senator PILEGGI. Madam President.

Senator FERLO. --in Allegheny County thought that--

Senator PILEGGI. Are you going to rule on the point of order, Madam President?

Senator FERLO. --when they approved the homerule charter--

The PRESIDENT. Will the gentleman please yield.

Senator FERLO. --and it was passed in a bipartisan way, with Republicans and Democrats alike--

The PRESIDENT. Will the gentleman please yield.

Senator FERLO. --in the Allegheny County council.

Senator PILEGGI. Madam President, I have called a point of order three times--

Senator FERLO. I am trying to get to that crescendo.

Senator PILEGGI. --and there has been absolutely no ruling from the Chair or any action. I ask that the Chair--

The PRESIDENT. Well, it says the motion to commit or recommit to committee is debatable as to the propriety of the reference, and the main question is not open to debate. It is too bad we did not do this before.

Senator FERLO. Just to clarify the Majority Leader's point--

The PRESIDENT. What happened before?

Senator FERLO. --what is debatable--

Senator PILEGGI. Madam President, are you going to rule on my point of order?

Senator FERLO. There has to be some element of debate here. We are not debating the fact that Senator Mellow got up and made a motion and quoted a section of Mason's prerogatives. We clearly have accepted that. Now we have the right to debate the appropriateness of Senator Mellow's initiative, which is that this conference committee report is a work in progress and needs to go back, and it is certainly in order.

The PRESIDENT. Will the gentleman yield.

Senator FERLO. And it is in order because of the substantive merits of what Senator Mellow is attempting to do.

Senator PILEGGI. Madam President, have we suspended the rules?

The PRESIDENT. Will the gentleman please yield.

I mean, actually, this should have been done before. It should have been debated before, and you cannot bring it up now. I think at this point, we have to take the vote.

Senator PILEGGI. Thank you, Madam President.

Senator FERLO. I think there is a real issue here about why--

Senator PILEGGI. Madam President, I ask that you rule the gentleman out of order.

Senator FERLO. --about why we are running roughshod--

The PRESIDENT. I agree, but we let it go too far. What do you suggest?

Senator FERLO. I implore all of us to be procedurally democratic in the spirit of the law and allow the opportunity for Allegheny County to have its law be respected by this State legislature, equal to what the--

The PRESIDENT. The gentleman is out of order. This should have been done before.

Senator FERLO. --committee report did in accepting the Philadelphia ordinance.

The PRESIDENT. What happened to the meetings before, that you did not cover this?

Senator FERLO. I do not know about any meetings before, but I am sure there will be a lot of meetings after.

Senator O'PAKE. Madam President.

Senator COSTA. Madam President.

The PRESIDENT. Okay, Senator O'Pake, you are the last one.

Senator FERLO. No, Madam President.

Senator MELLOW. Madam President, that can only be done if someone moves the previous question.

The PRESIDENT. Senator O'Pake.

Senator O'PAKE. Madam President, respectfully, our motion to send this back to committee is for the reason that we cannot amend this on the floor. It is a conference committee report. We want this sent back for a stronger bill.

The PRESIDENT. Do you agree to send this back to committee?

Senator PILEGGI. Madam President, there has been a motion, as I recall, from Senator Mellow, and we have had an attempt to have you enforce the rules in regard to some Members trying to debate that motion. I think that stopped, I hope that stopped now, and I think we are ready to vote on that motion.

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

Senator COSTA. Madam President, I rise, very briefly, just to make a couple of points that I think go to what our colleague, the Majority Leader, is referencing with respect to the procedural nature, I suspect, of this motion. Madam President, our motion is not to kill the bill. That is not our intent here today. The intent is to, as my colleague, Senator O'Pake, said, send the report back to the committee so that it could address what a number of us on this side of the aisle believe are answers to questions that have not been answered properly, in our opinion.

The only mechanism we have to do that is to send it back to committee. That is what we are trying to do. We want smoking banned in this Commonwealth. We advocated for it. We will continue to do so. Senator Mellow did an outstanding job representing our Caucus at that table. And he put forth amendments at that time that we believe are very important. But the bill that came out of that conference committee is different than the version that passed here in the Senate, that went over to the House before it reached the conference committee, and a very important part of that was the local option provided to Philadelphia.

And as Senator Mellow said very eloquently at that committee meeting earlier this week, it is important that that discussion take place. It cannot take place on this floor. It must take place in the committee. And that is all we are asking for, the opportunity to send it back to the committee, allow that committee to get the work done that needs to be done to treat some of these communities and these counties fairly and properly and, most importantly, equitably.

Thank you, Madam President.

The PRESIDENT. Senator, do you agree to send this back to the conference committee?

Senator PILEGGI. Madam President, that is up to the body, I believe, and I think the way to determine that would be to call a roll.

The PRESIDENT. So we are not going to send it back. We are going to take the vote on it now.

The Chair recognizes the gentleman from Allegheny, Senator Logan.

Senator LOGAN. Madam President, I rise to support Senator Mellow's motion to recommit Senate Bill No. 246 to the committee on conference. And not to belabor the point but to echo my colleagues, you know, I thought the goal of this bill was to provide a comprehensive smoking ban across the Commonwealth.

And here in one hand, we are saying Philadelphia can do that, but for the life of me, Madam President, I cannot understand why folks are turning their backs on the second-largest county--

POINT OF ORDER

Senator PILEGGI. Madam President.

Senator LOGAN. --in the Commonwealth, of 1.2 million people. It just does not make sense. The folks in Allegheny County, Allegheny Council--

Senator PILEGGI. Madam President, I rise to a point of order.

Senator LOGAN. --and the county executive want a stricter--

The PRESIDENT. Will the gentleman please yield.

Senator LOGAN. --a more strict ban, Madam President.

The PRESIDENT. Okay.

Senator LOGAN. --and what this motion does is to send it back.

Madam President, you can rule me out of order, and people can get up and say procedural things, but this should not be wrapped up in some procedural gimmick about debate, Madam President.

The PRESIDENT. I am trying to get you--

Senator LOGAN. This is very serious. Bang your gavel all you want, but I am not going to stop talking until you turn off my mike, Madam President. If that is what you must do, that is what you must do--

The PRESIDENT. That is not what I am trying to do. I am trying to get the Senators to agree to another meeting.

Senator LOGAN. This cannot be wrapped up in some procedural gimmick, Madam President, respectfully. So we cannot allow this, just to say you cannot debate this. This is very important, and folks cannot turn their backs on the second-largest county in the Commonwealth.

The PRESIDENT. Thank you.

Senator LOGAN. It is not as if the Allegheny County Senators--

Senator PILEGGI. Madam President.

Senator LOGAN. --want a weaker law. We want to be able to enforce a more strict law, Madam President.

Thank you.

The PRESIDENT. Very well. Now, shall we put it to a vote. We have gone enough on this.

And the question recurring,

Will the Senate agree to the motion to recommit the Report of the Committee of Conference on Senate Bill No. 246 to the committee of conference?

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

YEA-23

Boscola	Hughes	Musto	Tartaglione
Costa	Kasunic	O'Pake	Washington
Dinniman	Kitchen	Orie	Williams, Anthony H.
Ferlo	LaValle	Pippy	Williams, Constance
Fontana	Logan	Stack	Wozniak
Fumo	Mellow	Stout	

NAY-27

Armstrong	Erickson	Pileggi	Tomlinson
Baker	Folmer	Punt	Vance
Browne	Gordner	Rafferty	Waugh
Brubaker	Greenleaf	Regola	White, Donald
Corman	Madigan	Rhoades	White, Mary Jo
Earll	McIlhinney	Robbins	Wonderling
Eichelberger	Piccola	Scarnati	

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

The PRESIDENT. The motion fails.

And the question recurring,

Will the Senate agree to the motion to adopt the Report of the Committee of Conference on Senate Bill No. 246?

LEGISLATIVE LEAVES

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

Senator ORIE. Madam President, I request a legislative leave for Senator Pileggi.

The PRESIDENT. Senator Orié requests a legislative leave for Senator Pileggi.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Madam President, I request a legislative leave for Senator Musto.

The PRESIDENT. Senator Mellow requests a legislative leave for Senator Musto.

Without objection, the leaves will be granted.

And the question recurring,

Will the Senate agree to the motion to adopt the Report of the Committee of Conference on Senate Bill No. 246?

The PRESIDENT. Is there any more discussion on the vote?

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

Senator M.J. WHITE. Madam President, I was wondering whether Senator Mellow would stand for brief interrogation.

Senator MELLOW. Absolutely, Madam President.

The PRESIDENT. He indicates he will.

Senator M.J. WHITE. Madam President, is it not correct that the Senator was a member of this conference committee that prepared this report?

The PRESIDENT. Were you a member of the conference committee?

Senator MELLOW. Yes, Madam President, I was.

The PRESIDENT. Did you know they were avoiding Pittsburgh?

Senator M.J. WHITE. That was my next question, Madam President. Thank you.

Senator MELLOW. Is that in the form of a question from Senator White or from the Lieutenant Governor?

Senator M.J. WHITE. Actually, it is from both of us, Madam President.

The PRESIDENT. She is representing western Pennsylvania, too.

Senator MELLOW. Could the gentlewoman please tell me what her question is?

Senator M.J. WHITE. Madam President, my question is whether or not the matter of the exemption for Allegheny County was discussed and considered by the conference committee and, in fact, rejected?

The PRESIDENT. Was it discussed?

Senator MELLOW. Madam President, I offered the amendment to reinstate, to give both the city of Scranton, which is a second class-A city, and the second class county of Allegheny the opportunity, in the conference report, to be able to, if they so choose, to be able to reenact their legislation or their ordinance. I offered that. There was much discussion on it. The vote was 3-3, and obviously, if it did not receive the fourth vote, it could not pass.

In conference reports, you have to have two Members of the House and two Members of the Senate. The two Senate Members voted in the affirmative, both myself and Senator Greenleaf, and Representative Gerber voted in the negative. Also, Madam President, one of the conferees from the House, Representative Miller, I believe, stated for the record, and I do not know if there was an official record actually taken, that the reason why he was not going to vote for it was because he did not think it should be done for all 2,700, if you will, municipalities in the Commonwealth. And I think he might have voted a little bit under a misapprehension, because the amendment that I offered did not deal with the 2,700 municipalities of the Commonwealth. It only dealt with the municipalities that, prior to legislative approval, had passed their own ordinance.

In the case of Allegheny County, the Commonwealth Court decision in 2007, which challenged the Allegheny County ban, made that ordinance invalid. With regard to the city of Scranton, because of what took place in Allegheny County, the city of Scranton decided not to further enforce their ordinance after that court decision was made. So my resolution, a little bit different than what was stated by Representative Miller, would only have affected the city of Scranton, the second class-A city, and the second class county of Allegheny County. They are the only two local governments that would have been affected under my amendment, and only if they decided to go ahead and readopt their resolution.

Senator M.J. WHITE. Thank you, Madam President.

If I may make a brief remark, then, for the record based on the interrogation.

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

Senator M.J. WHITE. I think this matter was thoroughly vetted by the conference committee. It was discussed, debated, and voted upon, and therefore, I think the procedural request to send this back to the conference committee would simply be a delaying tactic and would really have no impact on the outcome. Thank you.

Senator MELLOW. Madam President.

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

Senator MELLOW. I can go along with some of the things that Senator White said, but it is not a delaying tactic to do anything, and I believe that is a statement that either is taken out of

context, or I do not believe that is a valid statement on the floor of this Senate, because there is not one Member of this Senate, especially on this side of the aisle, who wants to delay the enactment of the passage of any legislation dealing with banning smoking in Pennsylvania.

In fact, if we really want to ban smoking in Pennsylvania, we will not pass this particular piece of legislation. We will go one step further and make it a much stronger proposal. But Madam President, the only thing that we want to do in sending it back to a conference committee is not vote against the proposal, but give the conference committee the opportunity to make it a stronger bill, and to be able to enact the ordinance that was passed by 1.4 million people in the county of Allegheny and the individuals, the people in the city of Scranton, who want to be able to go ahead and make their ordinance just a little bit stronger than what is taking place in Pennsylvania. But to say that it is a delaying tactic is a statement that, quite frankly, is being a little bit intellectually dishonest on the floor of the Senate, because this is not a delaying tactic.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Armstrong has returned, and his temporary Capitol leave is cancelled.

And the question recurring,

Will the Senate agree to the motion to adopt the Report of the Committee of Conference on Senate Bill No. 246?

Senator MELLOW. Madam President, one other thing--

The PRESIDENT. Senator McIlhinney, you want to speak--

Senator MELLOW. Madam President, if I can, and I know that we are going to have a problem here with how many times one can speak on the floor today, but it is important to note that the majority-- conference committees today are two separate committees, so that we understand this completely, because things have changed.

It is a committee of the House and a committee of the Senate. The committee of the Senate voted, the majority Members of the committee of the Senate voted for the amendment that I offered. It was the committee of the House that did not. But the committee of the Senate--so if we really want to reflect what the majority Members on that committee wanted, we would be reconsidering the vote that just failed, but we would be sending this back to the conference committee to have them reconsider that vote that the majority Members of the Senate said was an appropriate amendment.

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

Senator McILHINNEY. Madam President, if I could briefly read into the record a letter that I received. *(Reading:)*

To the Honorable Members of the General Assembly:

I want to express my strong support for the Report of the Committee of Conference on SB 246. This legislation represents a giant step forward in protecting the public health of the *[sic]* ALL citizens of the Commonwealth. Our citizens, who live in places that had ordinances before, but lost those protections through litigation, will once again be protected by a strong state law. Those who have long needed and

wished for similar protections will finally have them.

I urge the members of the General Assembly to vote in favor of this legislation.

Sincerely,
Edward G. Rendell
Governor

Thank you, Madam President.

Senator MELLOW. Madam President.

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

Senator MELLOW. Madam President, I would only like to remind the Governor, and I hope he is listening, that he is the Governor of 67 counties of Pennsylvania, not 1.

The PRESIDENT. Would you like to call the vote, Senator Orie?

Senator ORIE. Yes, Madam President.

The PRESIDENT. Oh, Senator Greenleaf, you are waiting. I apologize.

The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.

Senator GREENLEAF. Madam President, I rise to ask for an affirmative vote for this legislation. To put some history into this, I first introduced this legislation in 1993, and since then, we really have not even been able to get this bill out of committee until about a year and a half ago.

It has now been released from committee, and we tried to pass legislation that would have no exceptions in the legislation. We tried that in the committee process, we tried that on the Senate floor here, and we were not successful in doing that. It went over to the House. We tried to keep the exceptions out in the House, and that did not happen. And we tried it in the committee.

The reason the committee report took so long is that we spent two hearings that were at least 8 hours each. We held probably five to six committee meetings on this, in an attempt to discuss it, to work on it, to get the best bill we possibly could that would protect the people of the Commonwealth of Pennsylvania.

I do not like everything that is in this legislation. For example, I would like to have local control. If we are going to pass a bill with exceptions, then we should have provisions in it that every community in the Commonwealth of Pennsylvania could pass a stronger bill. That is not in it. There are exceptions in this legislation that I do not like to see in this legislation, but it was clear to me that we have had votes, two votes on this floor, and there has been opposition to a bill without exceptions here, on both sides of the aisle. And it was also a battle in the House of Representatives as well.

So it was clear to me that if we did not pass this legislation, the best piece of legislation that could come out of this legislature, then we were going to have no legislation. I am disappointed that Allegheny County is not included. I am disappointed, as I said, that every community in this State does not have that right. But that was the best that we could do. I voted to put Allegheny County and Erie and other communities in this bill. We did not have the votes to do that in the committee.

So I have come to that realization. I think it is important for us to move on, to protect the people of this Commonwealth. If this legislation passes, 95 percent of the people who go to work and who are in a public building or in a public workplace are

going to be protected. The other 5 percent, unfortunately, are not going to have that ability. There are exceptions. We are certainly not finished with this legislation. I believe that we will continue, at least I will, and I am sure others, too, to work on this to provide additional protections for the people of the Commonwealth of Pennsylvania.

The only thing I can say in regard to the Allegheny County issue is that the bill that we had before us had many of the provisions that were in the Allegheny County ordinance. And so I believe that it does provide some protections that their ordinance originally had.

So I ask for an affirmative vote on this legislation, because this is our opportunity. This is our chance. The Governor has indicated that he will sign it. I thank the Governor for his support for this. I thank the Members of this body who support this legislation and have worked with us, and the Members of the House of Representatives as well, Senator McIlhinney, and Representative Gerber in the House, and others, and the members of the conference committee. They are all good people who have different views, and that is the problem here. We all have different views on this piece of legislation. When you have a situation like that, you have to compromise and come up with a proposal, and so I ask for a positive vote on the legislation.

The PRESIDENT. Thank you, Senator Greenleaf, for your meaningful comments after 15 years of study in the conference committee.

One more. The Chair recognizes the gentleman from Philadelphia, Senator Anthony Williams.

Senator A.H. WILLIAMS. Madam President, my comments go to the institution of the Senate. You know, the Governor wrote a letter, which I think is totally appropriate. I do not have a problem with the Governor writing a letter and addressing us as a body and saying he supports it. I do have a problem with acting as if Members who stand up from their respective counties are annoying us, and pushing them along. This is our job. We are supposed to be out of here, I think, by 11 o'clock tonight. They are supposed to fight until 11 o'clock tonight.

I come from Philadelphia County, the county which was exempted. I want to make it very clear to the Members of this body that we are a body that respects those who fight for their constituencies. And as such, those of us who come from Philadelphia County are, frankly, elated that we have reached a point that we are protected. But we are not going to protect anybody else by throwing them under the bus. So we stand as a collective body to make Pennsylvania smoke-free. So while the Governor has spoken to the progress we have made, there are those in other counties who will not make the progress of Philadelphia County. That is what we are speaking about today.

I do not think that should be an annoyance to anybody. I do not think anybody should be hurried along. I do not think anybody should say they are the last speaker. If somebody else chooses to stand to say similar comments, it is their right, prerogative, and their responsibility as an elected official of the Senate to do such.

I was not going to say anything, because I thought it was the responsibility of those from Allegheny County to speak on behalf of themselves. But I have felt the tyranny of the majority before, coming from Philadelphia County, where we are isolated. I un-

derstand what it means when we talk about guns, when Members from central Pennsylvania talk about the fact that they cannot seek cable connections or Internet connections that we seek. We are all isolated with our respective constituencies. That is why you have a Senate.

So the least we can do is listen to their claims. If we choose to vote one way or the other, that is what we are here to do. But I am not going to sit here in silence because we have gotten something in Philadelphia County, and they have not gotten it in Allegheny County, and actually scurry them along. That is not what we are here to do. So I suggest that those who want to do this and get it done--all of us, I am sure, are concerned about clean air--do it in a way that respects the Senate and respects our Members and our colleagues.

Thank you, Madam President.

The PRESIDENT. Thank you, Senator Williams. I am sure Allegheny County and Lackawanna County respect your comments.

Are there any more before we take the vote? Senator Ferlo, you are waiting?

Senator FERLO. Madam President, I will be brief. I think this previous discussion kind of laid the groundwork for where many of us are inclined to be voting, having expressed some of our opinions.

In regard to the letter that has been read, I do not know that the rest of us have gotten the letter. Maybe it arrived this morning. I am always pleased to see a letter from the Governor. I hope, in the future, that we could have more letters read on the opposite aisle when the Governor sends letters in support of various pieces of legislation, and not selectively.

Obviously, a couple of weeks ago, I was extremely critical and disappointed in the Governor for making a pronouncement about not being willing to sign any piece of legislation if it precluded the ability of Philadelphia to maintain its ordinance. While I respected that, it was extremely disheartening and disappointing, because I do not know if the Governor had temporary amnesia, but he should have recognized that there is a very large political body out in the southwest, namely Allegheny County, similar to the great city/county of Philadelphia that likewise took its political democratic process to heart and passed a strong smoking ban in Allegheny County, including banning it on casino floors. Scranton, as well, has been mentioned, and I believe there are a couple of other smaller communities that also took legislative action. Allegheny County did that based on their broad police powers under the home rule prerogatives that they have as a second class county.

Certainly, in Philadelphia, the genesis of their bill dates back much earlier and may be statutorily more clear to the court. But I think both large communities should have been respected and should have been the basis for any conference report, regardless of what the actual bill parameters were on all of the given points of what will or will not be allowed in the no-smoking area. So that is extremely disheartening, and that is a fatal flaw to this process.

So I, for one, am taking to the podium. I am adamantly and vociferously clear that I want a comprehensive, uniform smoking ban much stronger than the one that, I guess, is about to be voted on. So I come from the viewpoint, very clearly, that we should

