(G) Waterways, including, but not limited to, channel realignment, dredging and the construction or rehabilitation of locks.

(H) Airports, including, but not limited to, the construction or rehabilitation of runways, but not airport buildings.

(I) Pipelines transporting natural gas, but not vehicles associated with the operation of the pipelines.

(J) Facilities for the transmission of information, including, but not limited to, fiber-optic telecommunication lines.

(v) Water supply facilities, including, but not limited to, water lines and water storage, treatment and distribution facilities.

(2) The acquisition of land, rights-of-way and easements necessary to construct eligible infrastructure improvements.

(3) At former industrial sites:

(i) The acquisition of land and buildings by private developers.

(ii) The construction of new multitenant industrial or manufacturing buildings by developers.

(iii) The conversion of existing industrial or manufacturing buildings into multitenant buildings by private developers.

(3.1) At long-term vacant commercial sites:

(i) The acquisition of land and buildings by private developers.

(ii) The construction of new buildings for commercial use by developers.

(iii) The conversion of existing commercial buildings or structures by private developers.

(4) The demolition of buildings.

(5) The clearing and preparation of land.

(6) The cleanup of hazardous waste materials.

(7) The engineering, design and inspection costs associated with other eligible infrastructure improvements.

"Long-term vacant commercial site." Commercial property which has been unoccupied and unused for at least one year prior to the date of application.

* * *

"Private developer." Any person, partnership, corporation or other for-profit business entity, or any nonprofit corporation whose purpose is the promotion or construction of industrial development projects, that is engaged in the development of real estate, for use by more than one private company or for the reuse of long-term vacant commercial sites, and that is determined by the department to be financially responsible to assume all obligations proposed to be undertaken, including, but not limited to, acquisition, development, construction, leasing, sale, operation and financing.

* * *

Section 2. Section 4 of the act is amended by adding a subsection to read:

Amend Bill, page 1, by inserting between lines 19 and 20:

Section 3. Section 5 of the act are amended to read:

Section 5. Application procedure.

(a) Letter of intent.—An application for a grant, grant-to-loan or loan shall be initiated by a private company or private developer through a letter of intent to locate, expand, build or renovate a facility. The letter of intent shall be submitted to an applicant whose service area includes, at least in part, the site of the facility.

(b) Application.—Upon receipt of the letter of intent, an applicant may submit the letter of intent along with a request for an application to the department. Upon receipt of this information and a preliminary indication of project eligibility, the department shall provide an applicant with the application materials.

(c) Evaluation.—Upon receipt of a complete application, the department shall review the application based on the following criteria:

(1) The number of full-time equivalent jobs that will be created and retained and the amount of additional State and local tax revenue that will be directly generated by the private company's or private developer's new or expanded investment.

(2) In the case of a grant-to-loan or loan, the ability of the applicant, private company or private developer to repay the interest and principal.

(3) The increase in the Commonwealth's share of domestic and international commerce.

(4) For former industrial sites and long-term vacant commercial sites, the creation of opportunities to develop new facilities or expand existing facilities for private companies by eliminating, reducing or otherwise alleviating blight at the site.

Amend Sec. 2, page 1, line 20, by striking out "2" and inserting: 4

On the question,

Will the Senate agree to the amendment?

The PRESIDENT pro tempore. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, I just wanted to briefly explain that this amendment that has been agreed to does expand the eligibility for the Infrastructure Loan Fund to abandoned commercial properties. It is a major issue in many of our districts that not only industrial sites are often abandoned and need to be redeveloped, but we also have a number of commercial sites in our districts. I appreciate very much Senator Tomlinson and a number of other Senators who helped create agreement on this amendment and to be able to open the eligibility a bit to additional kinds of uses.

I thank you very much.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Mr. President, I just rise to support Senator Schwartz in this amendment. Many of us in suburban areas and rural areas and urban areas have commercial sites that are abandoned and need some attention, and for that reason I agree to this amendment.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

The PRESIDENT pro tempore. Senate Bill No. 491 will go over in its order as amended.

SB 555 CALLED UP

SB 555 (Pr. No. 585) -- 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 LOEPER.

BILL AMENDED

SB 555 (Pr. No. 585) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for trial by jury.

On the question,

Will the Senate agree to the bill on third consideration?

Senator LOEPER offered the following amendment No. A2589:

Amend Sec. 2, page 1, lines 15 through 17; page 2, lines 1 through 6, by striking out "(a) Upon the first passage by the General" in line 15, all of lines 16 and 17, page 1, all of lines 1 through 5 and "(b) Upon the second" in line 6, page 2 and inserting: Upon

Amend Sec. 2, page 2, line 16, by striking out "primary,"

On the question,

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 KUKOVICH offered the following amendment No. A1964:

Amend Sec. 1 (Sec. 6), page 1, lines 12 through 14, by striking out "Furthermore, in criminal cases" in line 12, all of lines 13 and 14 and inserting: Furthermore, in all criminal cases, the Commonwealth may petition the court for a trial by jury, however the determination of the court presiding over the matter shall be plenary.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Westmoreland, Senator Kukovich.

Senator KUKOVICH. Mr. President, historically, our constitutional Bill of Rights protects the individual. Under our Constitution, a defendant has the right to a jury trial. What this bill does is amend the Constitution to give the Commonwealth, the prosecution, the right to have a jury trial, in essence to negate that defendant's right. My concern is that by shifting power away from the judiciary to the DAs, away from the individual to the State, we are having a shift in the balance of power which can be too easily subject to abuse and manipulation.

This amendment basically says that in all criminal cases, not other types but just in criminal cases, to be very clear, the Commonwealth for the first time would have in the Constitution language where they could petition the court for a trial by jury. However, the trial court would still have the ultimate plenary power. The compromise that I am trying to reach in this language is that for the first time the district attorneys, the prosecution, would have a voice. Part of their argument for this bill is that they have had no voice. Under this amendment they would have a voice, yet the ultimate control over the trial process would still reside with the judge. I think that is a reasonable compromise under the circumstances, and I ask for an affirmative vote.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.

Senator GREENLEAF. Mr. President, I rise in opposition to the amendment for the purpose that by adopting this language we would be placing the court in absolute control of whether the Commonwealth would have the right to a jury trial or not, and in fact we would negate everything in the proposed constitutional amendment by saying that you have the right but the court can override that right.

In fact, we would be right back to where we are now in a situation where there is judge-shopping going on by defendants. They will search out who they feel will be a sympathetic judge, and when they find that person, that judge, they will waive their jury trial and be tried by that trial judge. On many occasions the result is not to the benefit of the victim or to the people of this Commonwealth, and so this amendment, in effect, negates the Commonwealth's right to have a jury trial. I ask that a "no" vote be cast.

And the question recurring,

Will the Senate agree to the amendment?

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

YEA-19

Belan	Kasunic	Musto	Wagner
Bodack	Kitchen	O'Pake	White
Costa	Kukovich	Schwartz	Williams
Fumo	LaValle	Stapleton	Wozniak
Hughes	Mellow	Tartaglione	

NAY-31

Afflerbach	Gerlach	Madigan	Slocum
Armstrong	Greenleaf	Mowery	Stout
Bell	Hart	Murphy	Thompson
Brightbill	Helfrick	Piccola	Tilghman
Conti	Holl	Punt	Tomlinson
Corman	Jubelirer	Rhoades	Uliana
Delp	Lemmond	Robbins	Wenger
Earll	Loeper	Salvatore	

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?

Senator KUKOVICH offered the following amendment No. A1969:

Amend Sec. 1 (Sec. 6), page 1, lines 13 and 14, by striking out all of said lines and inserting: the accused may waive the right to a jury trial only with the approval of the court and the consent of the Commonwealth.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Westmoreland, Senator Kukovich.

Senator KUKOVICH. Mr. President, this amendment is different from the first in that it does give more power directly to the prosecution. It states that the accused may waive the right to a jury trial only with the approval of the court and the consent of the Commonwealth.

This is the language that has been used by many of the States in the Federal system. There is a U.S. Supreme Court case, *United States v. Patton*, which has said that this language is acceptable. I would suggest that if this amendment does not go in and this bill passes, we will be tied up with litigation on this issue for some years to come. As a matter of fact, of the 25 States cited in the District Attorneys Association's testimony and materials, 11 of those States have used this language.

Basically, what we are doing is agreeing to cede a certain amount of power to the prosecution but at least allowing the trial court some say-so in the process. Hopefully, reasonable minds will be able to agree. In those cases where a defense counsel is truly forum shopping, they will be able to use this in an equitable way. Hopefully, in those cases where it is a very emotional, high-profile case, a district attorney might not be able to use it for improper or political reasons.

I would be hopeful that because the language explicitly provides deference to the trial court superior authority pursuant to Article V of the Constitution, we will not have any legal entanglements which are sure to come up if this bill passes as amended. For all those reasons, I ask for an affirmative vote.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.

Senator GREENLEAF. Mr. President, I rise to oppose this amendment. As the previous amendment did, it would again not accomplish the purpose of the offerer of the amendment. In this amendment, what it does is basically accomplish what the bill accomplishes now. There is really no need for this amendment. And what it causes me to believe then, if that is the case, then are we just trying to derail the process by offering this amendment?

The proposal provides that the Commonwealth will have the same right to a jury trial as the defendant has the right to a jury trial, and in fact what it does is gives the Commonwealth the ability to block a judge-shopping defendant, which happens all too often, and gives the victim and the district attorney equal power and levels the playing field in regard to their ability to thwart that type of judge-shopping activity. This amendment is not needed. It says basically in another way what this bill does, and, in fact, though, the bill provides a much stronger right. It says specifically that the Commonwealth has the right to a jury trial.

The District Attorneys Association, in a letter addressed to the Committee on Judiciary--and, by the way, this amendment was offered in the Committee on Judiciary as well and it was defeated--the District Attorneys Association set forth a number of instances throughout the Commonwealth in all size counties, whether it be Montgomery, Westmoreland, Lackawanna, Wyoming, Philadelphia, or Cumberland, in case after case in which a defendant chose a bench trial, or trial without a jury in front of a judge, the results were really outrageous. I think it is important for us to give the district attorney the right when they feel that an injustice will occur to have that right to stop the defendant from having a trial just in front of a judge but to ask for a trial in front of a jury.

What we are really doing here is giving the defendant what he is entitled to under the Constitution, a jury trial. What is so terrible about that? The allegations that there is going to be misuse by district attorneys, I have no evidence of that, but what we do have evidence of is defendants judge-shopping for the judge they want and then trying to get a favorable reaction or verdict. Why not require, in appropriate circumstances, to allow the Commonwealth to insist that that case be heard by a jury?

This is not the first time that the Commonwealth will have this right. This goes back many years, and most recent history goes back to 1935 in which the Commonwealth did have the right to a jury trial, and that right continued on until in a Pennsylvania Supreme Court decision in the early 1980s, *Commonwealth vs. Sorrell,* in a 4 to 3 decision, they held that the legislature, when they passed the law giving the Commonwealth the right to a jury trial, they found that that was in conflict with the Supreme Court's rights and struck that law down. A dissenting opinion by Justice McDermott at the time indicated that he felt there was no precedent for it and that the Supreme Court was wrong. So we are in a situation now that this is why we have this need for a constitutional amendment, because of the Pennsylvania Supreme Court's previous decision.

In addition, this recognizes victim's rights, because in every prosecution there is a victim, and the Commonwealth is representing those victims. And it is important to recognize that that victim should not be subject to the whims of the defendant, and it puts that victim on an equal playing field with the defendant. In addition, Federal law, 24 other States, the District of Columbia, and the American Bar Association recently recommended that the Commonwealth have the right to a jury trial.

I just want to mention one case in Montgomery County that was mentioned in the Pennsylvania District Attorneys Association's letter in which they said that in 1997 in Montgomery County, a 7-year-old girl was pummelled by her mother's boyfriend. He crushed her spleen and her colon and caused her to be hospitalized for 28 days. The judge convicted only of misdemeanor charges, effectively agreeing that the defendant had committed the crime but found that he had not intentionally or recklessly caused serious bodily injury.

Also mentioned here is a case very similar in nature in 1996 in Westmoreland County in which the father beat his son, a 7-month-old boy, broke his skull, 16 other bones, and the judge convicted the defendant of only simple assault and lesser misdemeanors, asserting that the boy had not suffered serious bodily injury.

There was a 1997 Lackawanna case very similar to this and also similar situations in Philadelphia and Cumberland Counties. In Philadelphia, for example, 69 percent of defendants charged with first- or second-degree murder were given life sentences when tried by a jury. When tried by a judge alone, only 17 percent of such defendants were sentenced to life.

I believe that we have in this Commonwealth overall a good judiciary, but there are times when the Commonwealth can see that there may be a judge who has a predilection toward a particular type of offense and will be more sympathetic than possibly they should be. In those cases, the Commonwealth, in a very limited amount of cases, should be able to exercise the ability to say no in that case in order to have a fair hearing and the Commonwealth should be able to say we want a jury trial. For those reasons, I ask that we vote "no" on this amendment.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Westmoreland, Senator Kukovich.

Senator KUKOVICH. Mr. President, I feel compelled to respond on at least three points. Let me start by addressing the fact situations of the cases that we just heard. Now, keep in mind that for many years every time, especially if there is a high-profile case that does not go the way a prosecutor wants, we end up usually facing some constitutional amendment. That is all right. My concern is that I saw those six cases that were cited by the DA Association's letter. I have had the opportunity to talk to the judge in one of the cases, who sent me a transcript of the medical testimony that showed that under the current definition of serious bodily injury, he was probably right in that case.

In one of the cases cited, I have a letter from the defense attorney that shows that in that case it was the prosecuting attorney who first suggested that the case be tried before a judge instead of a jury, and the District Attorneys Association just sort of left out the fact that the Commonwealth's key witness recanted his story. The point is this: You can trot out these horror stories, but it is not fair to the people on this floor who have to vote not to give us the whole story. I would submit that we are not being given the whole fact situation but just frightened into voting for whatever the District Attorneys Association wants to amend the Constitution.

Secondly, I am surprised that this language is not acceptable, since early last Session this same language was proposed by the District Attorneys Association, sponsored by Senator Shaffer, and passed by this Chamber. This amended language was voted on by this Chamber. Eventually it was changed by the House and came back and on final passage it was different, but this language has been supported before.

Thirdly, on the argument that my real attempt is to derail this legislation, when we amend the Constitution, there is a reason why we need to do it in two successive bills passed in identical form by successive legislative delegations, and that is so we do not rush to judgment too quickly to amend the Constitution. The purpose of this amendment is not to kill the bill. And we have had instances before where we have changed the amendment, passed it this Session, had the proper public notification, and we could come back early next Session and have this on the ballot in May.

The purpose is to prevent protracted litigation. That is why this Chamber, in a bill sponsored by Senator Shaffer a couple of years ago, passed this language, and that is why I am offering this amendment now because it conforms to the standards set by the United States Supreme Court in the opinion of *United States v. Patton*, and it is something that I am sure, if it goes into law, is above challenge.

Now, if you really want to do something to protect victims, I would suggest that if we are going to amend the Constitution that we do it in a way that will be effective, but, most importantly, looking at some of the cases cited by the District Attorneys Association, maybe instead of just amending the Constitution to shift the balance of power in our criminal justice system we should amend the statutes and maybe amend the definition of serious bodily injury so we can give judges the power to make decisions that are in the long-term best interest of victims. Maybe that is what we should do instead of changing the Constitution every time a case goes the wrong way for a prosecutor.

I think this is a very reasonable amendment, and I ask for an affirmative vote.

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.

Senator GREENLEAF. Mr. President, I would say in regard to the facts, I suppose that is what jury trials are all about, that we are going to resolve the facts of the issue, and there are always two sides and maybe more in regard to what happened in any particular incident. I certainly would accept the version that has been written and signed by the Pennsylvania District Attorneys Association and signed by the president of that association of what the facts are in these cases, and probably many more throughout the Commonwealth.

In regard to the language of this proposal, the problem with it is that we are accomplishing what this amendment proposes to accomplish, but in a better way, because we make it clear that the Commonwealth has the right to a jury trial.

Thirdly, if we do amend this legislation now, the language of the proposed constitutional amendment, that will end a 3-year effort to amend the Constitution in this way because, as we know, in order to change the Constitution, we must pass the same language in two successive legislative Sessions. If we change this language now, it will not go on the ballot this fall, and then we will have to wait at least a year or probably several years more before we can have this on the ballot. And how many more injustices will occur, how many more years will pass without victims and the people having the right to say that they want a jury trial? I would ask for a "no" vote.

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

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

YEA-20

Belan	Jubelirer	Mellow	Stout
Bodack	Kasunic	Musto	Tartaglione
Costa	Kitchen	O'Pake	Wagner
Fumo	Kukovich	Schwartz	Williams
Hughes	LaValle	Stapleton	Wozniak

NAY-30

Afflerbach	Gerlach	Mowery	Thompson
Armstrong	Greenleaf	Murphy	Tilghman
Bell	Hart	Piccola	Tomlinson
Brightbill	Helfrick	Punt	Uliana
Conti	Holl	Rhoades	Wenger
Corman	Lemmond	Robbins	White
Delp	Loeper	Salvatore	
Earll	Madigan	Slocum	

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?

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Westmoreland, Senator Kukovich.

Senator KUKOVICH. Mr. President, I would like to respond once again to an argument that was previously made about the delay it would cause. I spoke earlier about how we could speed this process up. To those Members who are worried about how long it would take, I would ask them to look back to 1992 and 1993.

POINT OF ORDER

Senator LOEPER. Point of order, Mr. President.

The PRESIDENT pro tempore. The gentleman from Delaware, Senator Loeper, will state his point.

Senator LOEPER. Mr. President, not to interrupt the gentleman, but I believe if the gentleman is on the substance of the bill, the bill should go over at this point, because a technical amendment already was inserted in the bill and we cannot consider final passage at this time.

BILL OVER IN ORDER

The PRESIDENT pro tempore. The Chair accepts responsibility for that. I called on him, and the gentleman is absolutely correct. The bill will go over in its order, as amended, a technical amendment having been adopted. Senate Bill No. 555 is hereby placed over in its order, as amended.

RECONSIDERATION OF SB 962

BILL ON FINAL PASSAGE

SB 962 (Pr. No. 1945) -- Senator LOEPER. Mr. President, I move that the Senate do now reconsider the vote by which Senate Bill No. 962 passed finally.

The motion was agreed to.

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-41

Afflerbach	Holl	Mowery	Tartaglione
Armstrong	Hughes	Murphy	Thompson
Belan	Jubelirer	Musto	Tilghman
Bodack	Kasunic	O'Pake	Tomlinson
Conti	Kitchen	Piccola	Uliana
Costa	Kukovich	Punt	Wagner
Delp	LaValle	Rhoades	Williams
Fumo	Lemmond	Salvatore	Wozniak
Gerlach	Loeper	Schwartz	
Greenleaf	Madigan	Stapleton	
Helfrick	Mellow	Stout	

NAY-9

Bell	Earll	Robbins	Wenger
Brightbill	Hart	Slocum	White
Corman			

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

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

RECONSIDERATION OF SB 888

SENATE NONCONCURS IN HOUSE AMENDMENTS

SB 888 (Pr. No. 1640) -- Senator MELLOW. Mr. President, I move to reconsider the vote by which the Senate concurred in House amendments to Senate Bill No. 888, on Supplemental Calendar No. 1.

The motion was agreed to.

And the question recurring,
Will the Senate concur in the amendments made by the House to Senate Bill No. 888?

Senator LOEPER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 888.

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

LEGISLATIVE LEAVES

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, Senator Salvatore and Senator Hart have been called to their offices, and I request temporary Capitol leaves for them.

The PRESIDENT pro tempore. Senator Loeper requests temporary Capitol leaves for Senator Salvatore and Senator Hart. Without objection, those leaves will be granted.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request a temporary Capitol leave for Senator Fumo.

The PRESIDENT pro tempore. Senator Mellow requests a temporary Capitol leave for Senator Fumo. Without objection, that leave will be granted.

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

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

YEA-25

Armstrong	Greenleaf	Madigan	Thompson
Brightbill	Hart	Mowery	Tilghman
Conti	Helfrick	Murphy	Wenger
Corman	Holl	Piccola	White
Delp	Jubelirer	Punt	
Earll	Lemmond	Robbins	
Gerlach	Loeper	Slocum	

NAY-25

Afflerbach	Kasunic	Rhoades	Uliana
Belan	Kitchen	Salvatore	Wagner
Bell	Kukovich	Schwartz	Williams