COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, JANUARY 26, 1988

SESSION OF 1988 172D OF THE GENERAL ASSEMBLY No. 5

HOUSE OF REPRESENTATIVES

The House convened at 11:10 a.m., e.s.t.

THE SPEAKER (K. LEROY IRVIS) IN THE CHAIR

PRAYER

REV. DR. DAVID R. HOOVER, chaplain of the House of Representatives, from McConnellsburg, Pennsylvania, offered the following prayer:

Most Glorious Father, we know and honor Thee as the Father of all creation and recognize Thee as the God over all. Everything that is good and true Thou hast made for the children of men and dost desire that we expend our best talents in the use of all these blessings. Heavenly Father, continue Thy gracious presence to each of us so that we may be always conscious of the debt of gratitude we owe to Thee, open our eyes to the great opportunities of service envisioned in our society so that we may strengthen our talents for use in Thy name, and reach out to us with Thy guiding hand so that we may render laudable workmanship in Thy kingdom. Amen.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was delivered by members and visitors.)

JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Monday, January 25, 1988, in regular session will be postponed until that Journal is in print, and the Chair hears no such objection.

LEAVES OF ABSENCE

The SPEAKER. The Chair recognizes the gentleman from Lawrence, Mr. Fee. Do you have any requests for leaves of absence?

Mr. FEE. Yes, Mr. Speaker. The gentleman from Allegheny, Mr. SEVENTY, for the week, and the lady from Philadelphia, Ms. KITCHEN, for today.

The SPEAKER. The leaves are granted, there being no objection.

The Chair recognizes the minority whip. Do you have any requests for leaves?

Mr. HAYES. Thank you, Mr. Speaker.

I request a leave for the gentleman from Lebanon County, Mr. MOEHLMANN, for the day; the lady from Delaware County, Mrs. DURHAM, for the day; the gentleman from Lebanon County, Mr. JACKSON, for the day; and the gentleman from Washington County, Mr. FISCHER, for the day.

The SPEAKER. The leaves are granted, there being no objection.

BILLS REPORTED FROM COMMITTEES, CONSIDERED FIRST TIME, AND TABLED

HB 453, PN 491 By Rep. HUTCHINSON

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, further providing for bond issuance.

TRANSPORTATION.

HB 514, PN 2734 (Amended)

By Rep. HUTCHINSON

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the statute of limitations and for exceptions to the statute of limitations for actions under the Vehicle Code.

TRANSPORTATION.

HB 1150, PN 1298 By Rep. HARPER

An Act amending the act of June 23, 1931 (P. L. 932, No. 317), known as "The Third Class City Code," providing for the immediate vesting of certain disabled police officers in pension systems.

URBAN AFFAIRS.

HB 1151, PN 1299 By Rep. HARPER

An Act amending the act of June 23, 1931 (P. L. 932, No. 317), known as "The Third Class City Code," permitting interests in police pensions funds to vest after 12 years.

URBAN AFFAIRS.

HB 1338, PN 1549 By Rep. HARPER

An Act amending the act of May 28, 1937 (P. L. 955, No. 265), known as the "Housing Authorities Law," increasing the maximum amount for which authorities may contract or purchase without bids.

URBAN AFFAIRS.

HB 1350, PN 1561 By Rep. HUTCHINSON

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for costs of certain traffic-control devices.

TRANSPORTATION.

HB 1667, PN 2077 By Rep. HARPER

An Act amending the act of July 28, 1953 (P. L. 723, No. 230), known as the "Second Class County Code," further providing for the location and storage of public records; and making editorial changes.

URBAN AFFAIRS.

HB 1789, PN 2735 (Amended)
By Rep. HUTCHINSON

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for restrictions on alcoholic beverages.

TRANSPORTATION.

HB 1982, PN 2527 By Rep. HUTCHINSON

An Act declaring portions of State Route 32 (Legislative Route 326), State Route 611 (Legislative Route 168), State Route 209 (Legislative route 1103), and Legislative Routes 48025 and 48073 that follow adjacent to the Delaware River as the Delaware River Scenic Drive.

TRANSPORTATION.

HB 2095, PN 2714 By Rep. HUTCHINSON

An Act amending the act of July 5, 1984 (P. L. 587, No. 119), known as the "Rail Freight Preservation and Improvement Act," extending the Rail Freight Policy Committee for an additional five years.

TRANSPORTATION.

HB 2104, PN 2726 By Rep. HUTCHINSON

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for civil penalties for improperly meeting or overtaking a school bus.

TRANSPORTATION.

SB 1049, PN 1731 (Amended)
By Rep. HUTCHINSON

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for the maximum weight, size and load of vehicles on the Pennsylvania Turnpike; reestablishing the Pennsylvania Turnpike Commission; further providing for regulations, fees and audits; increasing the compensation of the members of the Pennsylvania Turnpike Commission; and making a repeal.

TRANSPORTATION.

BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.

Mr. MANDERINO. Mr. Speaker, I move that the following bills be lifted from the tabled calendar and placed on the active calendar:

HB 239;
HB 263;
HB 1738;
HB 1992;
SB 659;
SB 1066; and
SB 1133.

On the question,

Will the House agree to the motion?

Motion was agreed to.

HOUSE BILLS INTRODUCED AND REFERRED

No. 2112 By Representative PHILLIPS

An act designating certain bridges crossing the Susquehanna River at Sunbury as the Thomas A. Edison Bridge and the Joseph Priestley Bridge.

Referred to Committee on TRANSPORTATION, January 26, 1988.

No. 2113 By Representatives LUCYK, MRKONIC, VAN HORNE, CALTAGIRONE, STUBAN, SHOWERS and CORRIGAN

An act amending the act of November 4, 1983 (P. L. 217, No. 63), entitled "Pharmaceutical Assistance Contract for the Elderly Act," further providing for the definition of "income."

Referred to Committee on HEALTH AND WELFARE, January 26, 1988.

No. 2114 By Representatives COLE, BATTISTO, McCALL, LASHINGER, B. SMITH, HESS, STABACK, BELARDI and CAWLEY

An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for nonmedical good Samaritan civil immunity.

Referred to Committee on JUDICIARY, January 26, 1988.

No. 2115 By Representatives LETTERMAN, OLASZ, NOYE, PHILLIPS, DISTLER, McCALL and STABACK

An act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, removing the requirement to display a license.

Referred to Committee on GAME AND FISHERIES, January 26, 1988.

No. 2116 By Representatives DeLUCA, LAUGHLIN, RITTER, TRELLO, FOX, YANDRISEVITS, VEON, CORRIGAN, ACOSTA, MORRIS, STABACK, MELIO, PETRONE, KOSINSKI, DOMBROWSKI, KUKOVICH, TELEK, WOZNIAK, RICHARDSON, CARN, OLIVER, ROEBUCK, HAYDEN, PISTELLA, CALTAGIRONE, OLASZ, SALOOM, LETTERMAN, BURD, BOWLEY and LUCYK

An Act regulating the repair of motor vehicles; establishing and conferring powers and duties on the Motor Vehicle Repair Industry Board; providing for and establishing fees for the registration of motor vehicle repair dealers and mechanics; providing for enforcement; and establishing penalties for violations.

Referred to Committee on CONSUMER AFFAIRS, January 26, 1988.

HOUSE RESOLUTIONS INTRODUCED AND REFERRED

No. 214 By Representative HUTCHINSON

Memorializing Congress to amend the Budget Reconciliation Law of 1987 to exempt state and local governments from certain diesel fuel tax provisions.

Referred to Committee on RULES, January 26, 1988.

No. 215 By Representatives J. L. WRIGHT, COLE, WASS, HAYES, MORRIS, DEMPSEY, GODSHALL, TIGUE, STABACK, COY, DISTLER, CORRIGAN, FARMER, GRUPPO, ANGSTADT, FOX, NAHILL, HALUSKA, BURNS, CARLSON, PRESTON, SCHULER, MICHLOVIC, MARKOSEK, JOHNSON, ITKIN, KASUNIC, TRELLO, BATTISTO, McHALE, BELARDI, KENNEY, HESS, LANGTRY, HERMAN, HUGHES, CIVERA, PETRONE, B. SMITH, SAURMAN, CESSAR, HERSHEY, MRKONIC, E. Z. TAYLOR, MELIO, O'BRIEN, GEIST, DIETTERICK, RAYMOND, JADLOWIEC, DAWIDA, DeLUCA, McVERRY, BOOK, SEMMEL, FISCHER, SIRIANNI, HASAY, RITTER, OLASZ, BUNT, MILLER, PISTELLA, STAIRS, MAYERNIK, LASHINGER and BURD

Designating April 9, 1988, as "Ex-prisoner of War Recognition Day."

Referred to Committee on RULES, January 26, 1988.

SENATE MESSAGE

ADJOURNMENT RESOLUTION FOR CONCURRENCE

The clerk of the Senate, being introduced, presented the following extract from the Journal of the Senate, which was read as follows:

In the Senate, January 25, 1988

RESOLVED, (the House of Representatives concurring), That when the Regular Session of the Senate adjourns this week it reconvene on Monday, February 1, 1988, unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when the Regular Session of the House of Representatives adjourns this week it reconvene on Monday, February 1, 1988, unless sooner recalled by the Speaker of the House of Representatives.

Ordered, That the clerk present the same to the House of Representatives for its concurrence.

On the question,

Will the House concur in the resolution of the Senate?

Resolution was concurred in.

Ordered, That the clerk inform the Senate accordingly.

PETITION SUBMITTED

The SPEAKER. Pursuant to title 7 of the Pennsylvania Statutes, section 651.4, the Speaker acknowledges receipt of the undersigned petition with the request that the Speaker of the House of Representatives schedule a vote on the Surplus Property Disposition Plan No. 1 of 1987, dated December 1, 1987, not later than Wednesday, January 27, 1988. The clerk will file the petition.

The following petition was submitted:

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

Pursuant to Title 7, Pennsylvania Statutes, Section 651.4, the undersigned hereby request that the Speaker of the House of Representatives schedule a vote on the Surplus Property Disposition Plan No. 1 of 1987 dated December 1, 1987, not later than Wednesday, January 27, 1988.

Samuel W. Morris
Frank LaGrotta
Paul Wass
Howard L. Fargo
Edward J. Haluska
Joseph W. Battisto
Karen A. Ritter
Frank W. Yandrisevits
Paul W. Semmel
Camille George
Kenneth J. Cole
Russell P. Letterman
Henry Livengood
William R. Lloyd, Jr.
Jeffrey W. Coy
John H. Broujos
Arthur D. Hershey
John Showers
Thomas J. Murphy, Jr.
Keith R. McCall
J. Scot Chadwick
Carmel Sirianni
Edwin G. Johnson
Harry E. Bowser
Ruth C. Rudy
John E. Barley
Curt Bowley
Anthony J. Melio
Thomas C. Corrigan, Sr.
Paul McHale
Connie G. Maine

REMARKS SUBMITTED FOR THE RECORD

Mr. HASAY submitted the following remarks for the Legislative Journal:

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

December 17, 1987

Hon. George Hasay
House of Representatives
Main Capitol Building
Harrisburg, PA 17120

Dear George,

Kindly note that because of a sleet storm on December 15th I was required to take a "leave" from Harrisburg.

Accordingly, I ask you to submit my enclosed "Remarks for the Record" when the House convenes in January.

I also ask that after the remarks are inserted into the Legislative Journal that I be sent a copy of that particular legislative journal (with my remarks in it).

Thank you for your courtesy.

Very truly yours,
Correale F. Stevens

CFS/jc
enclosure

Remarks for the Record

I would like to take this opportunity to thank each and every resident of the 116th Legislative District in Luzerne County for giving me the opportunity to serve as their state representative since 1980.

The people of Luzerne County are good, honest, and hard-working people.

It is important to recognize that there is a need to reform the current system of taxation which relies too heavily on property tax, to help increase the PACE and rent/rebate benefits for area senior citizens, and to provide more funding for middle-income families who wish to send their children to college.

Also, the problem of garbage and waste disposal has been and continues to be a major problem in Luzerne County.

The issue of nepotism in government must be addressed.

Very simply put, too many government officials are using their positions to hire their own relatives.

Throughout my career in the legislature I have attempted to address these problems as well as the other serious problems that have occurred during my time in the legislature.

It has been specially gratifying to have participated in helping pass laws that have made it tougher for those who drive under the influence of alcohol or drugs, to protect the confidentiality of rape crisis counselors, to attempt to have hirings and promotions in the state police and in government based on merit and qualification without regard to race, to have helped to pass many other laws of great importance to the people of Luzerne County and to all the people of Pennsylvania.

I believe my greatest success as a legislator has been to provide full-time competent, courteous, and professional service to people in my legislative district who have problems with state government.

Through a full-time district office, and through a series of town meetings, I believe I have made access to government readily available for all people regardless of their status in life.

It is important that government be responsive to the people.

There have been many tough fights in the legislature on many tough issues. I believe I have represented the people to the very best of my ability and in a manner of which they can be proud.

To serve in the legislature is a privilege and an honor and the responsibilities are enormous.

It is with mixed feelings that I prepare to begin my duties as Luzerne County District Attorney.

I know firsthand how hard each and every member of the legislature works to provide, serve and to address the issues of importance to the people of Pennsylvania.

I wish each and every member of the House and of the Senate the very best of health and happiness in their chosen careers.

I look forward to serving the people of Luzerne County in a different capacity - as Luzerne County District Attorney.

And I will always cherish the moments I have had to spend in the legislature and on behalf of the people of my area.

MASTER ROLL CALL

The SPEAKER. The Chair is about to take the master roll call for the day. The members will proceed to vote.

The following roll call was recorded:

PRESENT—190

Acosta	Distler	LaGrotta	Richardson
Angstadt	Dombrowski	Langtry	Rieger
Argall	Donatucci	Lashinger	Ritter
Arty	Dorr	Laughlin	Robbins
Barley	Duffy	Leh	Roebuck
Battisto	Evans	Lescovitz	Rudy
Belardi	Fargo	Letterman	Ryan
Belfanti	Farmer	Levdansky	Rybak
Billow	Fattah	Linton	Saloom
Birmelin	Fee	Livengood	Saurman
Black	Flick	Lloyd	Scheetz
Blaum	Foster	Lucyk	Schuler
Book	Fox	McCall	Semmel
Bortner	Freeman	McClatchy	Serafini
Bowley	Freind	McHale	Showers
Bowser	Gallen	McVerry	Sirianni
Boyes	Gamble	Maiale	Smith, B.
Brandt	Gannon	Maine	Smith, S. H.
Broujos	Geist	Manderino	Snyder, D. W.
Bunt	George	Manmiller	Snyder, G.
Burd	Gladeck	Markosek	Staback
Burns	Godshall	Mayernik	Stairs
Bush	Gruitza	Melio	Steighner
Caltagirone	Gruppo	Merry	Stuban
Cappabianca	Hagarty	Michlovic	Sweet
Carlson	Haluska	Micozzie	Taylor, E. Z.
Carn	Harper	Miller	Taylor, F.
Cawley	Hasay	Morris	Taylor, J.
Cessar	Hayden	Mowery	Telek
Chadwick	Hayes	Mrkonic	Tigue
Civera	Heckler	Murphy	Trello
Clark	Herman	Noye	Van Horne
Clymer	Hershey	O'Brien	Veon
Cohen	Hess	O'Donnell	Vroon
Colafella	Honaman	Olasz	Wambach
Cole	Howlett	Oliver	Wass
Corrigan	Hughes	Perzel	Weston
Cowell	Hutchinson	Petrarca	Wiggins
Coy	Itkin	Petrone	Wilson
DeLuca	Jadlowiec	Phillips	Wogan
DeVerter	Jarolin	Piccola	Wozniak
DeWeese	Johnson	Pievsky	Wright, D. R.
Daley	Josephs	Pitts	Wright, J. L.
Davies	Kasunic	Pressmann	Wright, R. C.
Dawida	Kennedy	Preston	Yandrisevits
Dempsey	Kenney	Raymond	
Dietterick	Kosinski	Reber	Irvis,
Dininni	Kukovich	Reinard	Speaker

ADDITIONS—0

NOT VOTING—0

EXCUSED—10

Cornell	Jackson	Nahill	Punt
Durham	Kitchen	Pistella	Seventy
Fischer	Moehlmann		

LEAVES ADDED—2

Arty Belfanti

LEAVES CANCELED—1

Jackson

ANNOUNCEMENT BY SPEAKER

The SPEAKER. On the top of page 5, SB 409, which amends the Divorce Code, a number of the members have informed the Chair and the leaders on the floor that they have amendments to this. If you have amendments, you better shepherd them really fast. The bill will be called up for a vote this afternoon. And the Chair warns you, the bill will be called for a vote, so do not run up saying I have got an amendment and it is not down yet. If you have an amendment, make sure it is down, make sure it is duplicated, make sure the Chair knows about it. You have this morning to do that. This afternoon will be too late.

CALENDAR

BILL ON SECOND CONSIDERATION

The following bill, having been called up, was considered for the second time and agreed to, and ordered transcribed for third consideration:

HB 2099, PN 2718.

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 2061, PN 2657**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), known as "The Administrative Code of 1929," imposing additional powers and duties on the Department of Transportation relating to the inspection of certain bridges without regard to ownership and directing the State Treasurer to make certain deductions from county liquid fuel tax allocations.

On the question,

Will the House agree to the bill on third consideration?

Mr. PIEVSKY offered the following amendments No. A0157:

Amend Sec. 1 (Sec.1105), page 2, line 3, by inserting after "Costs.—"

(a)

Amend Sec. 1 (Sec. 1105), page 2, line 5, by striking out "2002(19)" and inserting

2002(a)(19)

Amend Sec. 1 (Sec. 1105), page 2, by inserting between lines 10 and 11

(b) Upon receipt from the Department of Transportation of a list concerning the nonreimbursed costs incurred in the inspection of municipal bridges under section 2002(a)(19) of this act, the State Treasurer shall deduct that appropriate amount of cost from the individual municipal allocation under the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law, and shall deposit that sum to the credit of the Department of Transportation.

On the question,

Will the House agree to the amendments?

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Philadelphia, Mr. Pievsky.

Mr. PIEVSKY. Thank you, Mr. Speaker.

Mr. Speaker, this amendment corrects an oversight in the original bill. The bill seemed to give the impression that the counties would have to pay a municipality's cost for an overdue bridge inspection. My amendment clarifies this by specifying that a municipality's share of the cost would be paid for from the municipality's liquid fuels tax allocation.

I ask for an affirmative vote, Mr. Speaker.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—181

Acosta	Dombrowski	LaGrotta	Reinard
Angstadt	Donatucci	Langtry	Richardson
Argall	Dorr	Lashinger	Rieger
Arty	Duffy	Laughlin	Ritter
Barley	Evans	Leh	Robbins
Battisto	Fargo	Lescovitz	Roebuck
Belardi	Farmer	Levdansky	Rudy
Belfanti	Fattah	Linton	Ryan
Billow	Fee	Livengood	Rybak
Birmelin	Flick	Lloyd	Saloom
Black	Foster	Lucyk	Saurman
Blaum	Fox	McCall	Schuler
Book	Freeman	McClatchy	Semmel
Bortner	Freind	McHale	Serafini
Bowley	Gallen	McVerry	Showers
Bowser	Gamble	Maiale	Sirianni
Boyes	Gannon	Maine	Smith, B.
Brandt	Geist	Manderino	Smith, S. H.
Bunt	George	Manmiller	Snyder, D. W.
Burd	Gladeck	Markosek	Snyder, G.
Burns	Godshall	Mayernik	Staback
Bush	Gruitza	Melio	Stairs
Caltagirone	Gruppo	Merry	Steighner
Cappabianca	Hagarty	Michlovic	Stuban
Carlson	Haluska	Micozzie	Sweet
Carn	Harper	Miller	Taylor, E. Z.
Cawley	Hasay	Morris	Taylor, J.
Cessar	Hayden	Mowery	Telek
Chadwick	Hayes	Mrkonic	Tigue
Civera	Heckler	Murphy	Trello
Clark	Herman	Noye	Van Horne
Clymer	Hershey	O'Brien	Veon
Colafella	Hess	O'Donnell	Vroon
Cole	Honaman	Olasz	Wambach
Corrigan	Howlett	Oliver	Wass
Cowell	Hughes	Perzel	Weston
Coy	Itkin	Petrarca	Wilson
DeLuca	Jadlowiec	Petrone	Wogan
DeWeese	Jarolin	Phillips	Wozniak
Daley	Johnson	Piccola	Wright, J. L.
Davies	Josephs	Pievsky	Wright, R. C.
Dawida	Kasunic	Pitts	Yandrisevits
Dempsey	Kennedy	Pressmann	
Dietterick	Kenney	Preston	Irvis,
Dininni	Kosinski	Raymond	Speaker
Distler	Kukovich	Reber	

NAYS—0

NOT VOTING—9

Broujos	Hutchinson	Scheetz	Wiggins
Cohen	Letterman	Taylor, F.	Wright, D. R.
DeVerter			

EXCUSED—10

Cornell	Jackson	Nahill	Punt
Durham	Kitchen	Pistella	Seventy
Fischer	Moehlmann		

The question was determined in the affirmative, and the amendments were agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS—186

Acosta	Distler	Kukovich	Reber
Angstadt	Dombrowski	LaGrotta	Reinard
Argall	Donatucci	Langtry	Richardson
Arty	Dorr	Lashinger	Rieger
Barley	Duffy	Laughlin	Ritter
Battisto	Evans	Leh	Robbins
Belardi	Fargo	Lescovitz	Roebuck
Belfanti	Farmer	Letterman	Rudy
Billow	Fattah	Levdansky	Ryan
Birmelin	Fee	Linton	Rybak
Black	Flick	Livengood	Saloom
Blaum	Foster	Lloyd	Saurman
Book	Fox	Lucyk	Schuler
Bortner	Freeman	McCall	Semmel
Bowley	Freind	McClatchy	Serafini
Bowser	Gallen	McHale	Showers
Boyes	Gamble	McVerry	Sirianni
Brandt	Gannon	Maiale	Smith, B.
Bunt	Geist	Maine	Smith, S. H.
Burd	George	Manderino	Snyder, D. W.
Burns	Gladeck	Manmiller	Snyder, G.
Bush	Godshall	Markosek	Staback
Caltagirone	Gruitza	Mayernik	Stairs
Cappabianca	Gruppo	Melio	Steighner
Carlson	Hagarty	Merry	Stuban
Carn	Haluska	Michlovic	Sweet
Cawley	Harper	Micozzie	Taylor, E. Z.
Cessar	Hasay	Miller	Taylor, F.
Chadwick	Hayden	Morris	Taylor, J.
Civera	Hayes	Mowery	Telek
Clark	Heckler	Mrkonic	Tigue
Clymer	Herman	Murphy	Trello
Cohen	Hershey	Noye	Van Horne
Colafella	Hess	O'Brien	Veon
Cole	Honaman	O'Donnell	Vroon
Corrigan	Howlett	Olasz	Wambach
Cowell	Hughes	Oliver	Wass
Coy	Hutchinson	Perzel	Weston
DeLuca	Itkin	Petrarca	Wilson
DeVerter	Jadlowiec	Petrone	Wogan
DeWeese	Jarolin	Phillips	Wozniak
Daley	Johnson	Piccola	Wright, J. L.
Davies	Josephs	Pievsky	Wright, R. C.
Dawida	Kasunic	Pitts	Yandrisevits
Dempsey	Kennedy	Pressmann	
Dietterick	Kenney	Preston	Irvis,
Dininni	Kosinski	Raymond	Speaker

NAYS—0

NOT VOTING—4

Broujos	Scheetz	Wiggins	Wright, D. R.

EXCUSED—10

Cornell	Jackson	Nahill	Punt
Durham	Kitchen	Pistella	Seventy
Fischer	Moehlmann		

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

* * *

The House proceeded to third consideration of **HB 1454, PN 2640**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for administration of support matters; providing for notice concerning judgments by operation of law; further providing for expedited procedure and for the duty to report; providing for arrears as judgments; and providing a penalty.

On the question,

Will the House agree to the bill on third consideration?

Mr. LASHINGER offered the following amendments No. A0231:

Amend Sec. 2 (Sec. 4352), page 4, line 6, by striking out "No" and inserting

Past due support obligations shall not become a lien upon the real and personal property of the person ordered to make such payments until the judgment or order has been filed with the prothonotary of the court of common pleas in the county where the real or personal property owned by the person obligated to pay support is located. Execution shall issue thereon pursuant to the Rules of Civil Procedure. The obligation for payment of arrears or past due support shall terminate by operation of law when all arrears or past due support has been paid.

(d) Retroactive modification of arrears.—No

Amend Sec. 2 (Sec. 4352), page 4, line 14 by inserting a period after "obligor"

Amend Sec. 2 (Sec. 4352), page 4, lines 14 through 16, by striking out ": or, in the case of an emancipated child, modification" in line 14, all of lines 15 and 16 and inserting

Provided, however, modification may be applied to a period prior to the date notice was given in the following cases:

(1) Where the obligee is an emancipated child. In such cases, the modification may be applied to the period beginning on the date the child became emancipated.

(2) Where the obligee is precluded from filing a petition for modification by reason of a significant physical or mental disability. In such cases, the modification may be applied to the period beginning on the date the disability occurred.

(3) Where, in the judgment of the court, failure to do so would be unconscionable. In such cases, the modification shall be applied to a period determined by the court.

On the question,

Will the House agree to the amendments?

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, I believe this is an agreed-to amendment by the sponsor of the legislation, Representative Kukovich. Very briefly for the membership who had some concerns about the way that these new support liens, these automatic judgments, would be filed in the counties across the Commonwealth, the first part of the amendment cleans up what the language had originally said that would disallow a judgment to enter automatically and be of record by operation of law against the support obligor. It now says that it will require an affirmative action on the part of the obligee or the dependent spouse, the person receiving the support, to take that judgment and to proceed to the prothonotary's office or to the appropriate place to index that judgment, to have it filed or recorded.

On the remittance of arrearages, which really was the heart and soul of this piece of legislation, the second part of the amendment takes care of some specific problems that were raised in the Judiciary Committee concerning retroactive modification of orders where there is an emancipated child. This language specifically addresses those concerns that I believe were valid concerns and needed to be handled in the committee.

There is also one other important factor—I do not want to mislead the membership—but there is something that was added additionally at the end. It would allow the court to continue to have some what I will call objective reasoning over when they can modify an order, and that is, where without modification the order might continue to be unconscionable, the court in those cases could proceed and remit arrearages in those cases or modify an order.

I believe it has the support of the prime sponsor of the bill. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Westmoreland, Mr. Kukovich, on the amendment.

Mr. KUKOVICH. I agree to this amendment. This is a bill that really has to move. It has been held up until we could work out this problem, and Representative Lashinger and Representative Reber have met with counsel from the Department of Public Welfare.

We can adopt this amendment and still remain in compliance with Federal law, so I would ask the members to vote "yes."

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—187

Acosta	Dombrowski	LaGrotta	Reinard
Angstadt	Donatucci	Langtry	Richardson
Argall	Dorr	Lashinger	Rieger
Arty	Duffy	Laughlin	Ritter
Barley	Evans	Leh	Robbins
Battisto	Fargo	Lescovitz	Roebuck
Belardi	Farmer	Letterman	Rudy
Belfanti	Fattah	Levdansky	Ryan
Billow	Fee	Linton	Rybak
Birmelin	Flick	Livengood	Saloom
Black	Foster	Lloyd	Saurman
Blaum	Fox	Lucyk	Scheetz
Book	Freeman	McCall	Schuler
Bortner	Freind	McClatchy	Semmel
Bowley	Gallen	McHale	Serafini
Bowser	Gamble	McVerry	Showers
Boyes	Gannon	Maiale	Sirianni
Brandt	Geist	Maine	Smith, B.
Broujos	George	Manderino	Smith, S. H.
Bunt	Gladeck	Manmiller	Snyder, D. W.
Burd	Godshall	Markosek	Snyder, G.
Burns	Gruitza	Mayernik	Staback
Bush	Gruppo	Melio	Stairs
Caltagirone	Hagarty	Merry	Steighner
Cappabianca	Haluska	Michlovic	Stuban
Carlson	Harper	Micozzie	Sweet
Carn	Hasay	Miller	Taylor, E. Z.
Cawley	Hayden	Morris	Taylor, F.
Cessar	Hayes	Mowery	Taylor, J.
Chadwick	Heckler	Mrkonic	Telek
Civera	Herman	Murphy	Tigue
Clark	Hershey	Noye	Trello
Clymer	Hess	O'Brien	Van Horne
Colafella	Honaman	O'Donnell	Veon
Cole	Howlett	Olasz	Vroon
Corrigan	Hughes	Oliver	Wambach
Cowell	Hutchinson	Perzel	Wass
Coy	Itkin	Petrarca	Weston
DeLuca	Jadlowiec	Petrone	Wilson
DeVerter	Jarolin	Phillips	Wogan
DeWeese	Johnson	Piccola	Wozniak
Daley	Josephs	Pievsky	Wright, J. L.
Davies	Kasunic	Pitts	Wright, R. C.
Dawida	Kennedy	Pressmann	Yandrisevits
Dempsey	Kenney	Preston	
Dietterick	Kosinski	Raymond	Irvis,
Dininni	Kukovich	Reber	Speaker
Distler			

NAYS—0

NOT VOTING—3

Cohen	Wiggins	Wright, D. R.

EXCUSED—10

Cornell	Jackson	Nahill	Punt
Durham	Kitchen	Pistella	Seventy
Fischer	Moehlmann		

The question was determined in the affirmative, and the amendments were agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS—187

Acosta	Dombrowski	Langtry	Richardson
Angstadt	Donatucci	Lashinger	Rieger
Argall	Dorr	Laughlin	Ritter
Arty	Duffy	Leh	Robbins
Barley	Evans	Lescovitz	Roebuck
Battisto	Fargo	Letterman	Rudy
Belardi	Farmer	Levdansky	Ryan
Belfanti	Fattah	Linton	Rybak
Billow	Fee	Livengood	Saloom
Birmelin	Flick	Lloyd	Saurman
Black	Foster	Lucyk	Scheetz

Blaum	Fox	McCall	Schuler
Book	Freeman	McClatchy	Semmel
Bortner	Freind	McHale	Serafini
Bowley	Gallen	McVerry	Showers
Bowser	Gamble	Maiale	Sirianni
Boyes	Gannon	Maine	Smith, B.
Brandt	Geist	Manderino	Smith, S. H.
Broujos	George	Manmiller	Snyder, D. W.
Bunt	Gladeck	Markosek	Snyder, G.
Burd	Godshall	Mayernik	Staback
Burns	Gruitza	Melio	Stairs
Bush	Gruppo	Merry	Steighner
Caltagirone	Hagarty	Michlovic	Stuban
Cappabianca	Haluska	Micozzie	Sweet
Carlson	Harper	Miller	Taylor, E. Z.
Carn	Hasay	Morris	Taylor, F.
Cawley	Hayden	Mowery	Taylor, J.
Cessar	Hayes	Mrkonic	Telek
Chadwick	Heckler	Murphy	Tigue
Civera	Herman	Noye	Trello
Clark	Hershey	O'Brien	Van Horne
Clymer	Hess	O'Donnell	Veon
Colafella	Honaman	Olasz	Vroon
Cole	Howlett	Oliver	Wambach
Corrigan	Hutchinson	Perzel	Wass
Cowell	Itkin	Petrarca	Weston
Coy	Jadlowiec	Petrone	Wiggins
DeLuca	Jarolin	Phillips	Wilson
DeVerter	Johnson	Piccola	Wogan
DeWeese	Josephs	Pievsky	Wozniak
Daley	Kasunic	Pitts	Wright, J. L.
Davies	Kennedy	Pressmann	Wright, R. C.
Dawida	Kenney	Preston	Yandrisevits
Dempsey	Kosinski	Raymond	
Dietterick	Kukovich	Reber	Irvis,
Dininni	LaGrotta	Reinard	Speaker
Distler			

NAYS—0

NOT VOTING—3

Cohen	Hughes	Wright, D. R.

EXCUSED—10

Cornell	Jackson	Nahill	Punt
Durham	Kitchen	Pistella	Seventy
Fischer	Moehlmann		

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

The SPEAKER. SB 409 is an amendment to the Divorce Code. That will be handled this afternoon. Remember the Chair's announcement. It is the firm agreement of the floor leaders that this bill be moved today. If you have amendments to it, it is your responsibility to get those amendments duplicated and ready for the floor by this afternoon. Pass SB 409 over temporarily.

The Chair asks for your attention, please. Your attention, please.

The Chair has now twice advised you about getting your amendments ready for the Divorce Code. We are now informed that, as always, whenever we have a multiplicity of amendments, one of the duplicating machines fails. That has happened as usual. We have only one duplicating machine operative. So if you have amendments to the Divorce Code or to any other bill—we are going to take the low-level waste bill this afternoon and the Divorce Code, so it should be a fun afternoon on the floor of the House—but if you have amendments to either one of those two bills, the Chair advises you to get them as rapidly as you can down to the duplicating room.

We are going to recess until 1 o'clock. You are cautioned that the bills are going to be called up as soon as 1 o'clock comes, so if you are going to eat lunch, eat it rapidly, get back on the floor, and be prepared to stay here for a while.

RECESS

The SPEAKER. The House will stand in recess until 1 p.m.

AFTER RECESS

The time of recess having expired, the House was called to order.

WELCOMES

The SPEAKER. The Chair welcomes to the balcony a guest of Tom Fee, Mrs. Dorothy Crunkelton Taylor. Mrs. Taylor, are you there? Welcome to the hall of the House. We are delighted to have you here.

The Chair would like the three legislative fellows who are to the left of the Chair to stand to be recognized: from Bloomsburg University, Matthew Maturani; from Lock Haven, John Norton; and from Shippensburg, Thomas Phillips. Welcome to the hall of the House. We are delighted to have you here.

Is that Mrs. Suthers' group up there in the balcony? Deloris Suthers, why did you not bring them down to my office? I thought they were going to be down there.

Deloris Suthers and a group from the Speaker's own district are up in the balcony. Welcome to the hall of the House. We are delighted to have you here, children.

Deloris, if you can stay long enough to wait until after the session, bring the children down to the Speaker's Office. I would like to see them.

LEAVE OF ABSENCE

The SPEAKER. The Chair recognizes the gentleman from Lawrence, Mr. Fee. Why do you rise?

Mr. FEE. Mr. Speaker, would you please return to leaves of absence?

The SPEAKER. Without objection, the Chair returns to leaves of absence. What is your request, Mr. Fee?

Mr. FEE. To place Mr. BELFANTI from Northumberland County on leave for the remainder of the day.

The SPEAKER. Leave is granted, there being no objection.

Mr. FEE. Thank you, Mr. Speaker.

LEAVE OF ABSENCE CANCELED

The SPEAKER. Mr. Jackson, who was granted leave in the morning, has reported on the floor of the House, and his leave is canceled. He is back on the floor.

CALENDAR CONTINUED

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **SB 948, PN 1680**, entitled:

An Act amending the act of July 2, 1984 (P. L. 527, No. 106), entitled "Recreational Improvement and Rehabilitation Act," extending the period of time for certain expenditures.

On the question,

Will the House agree to the bill on third consideration?

Mr. GEORGE offered the following amendments No. A0234:

Amend Bill, page 1, lines 1 through 8, by striking out all of said lines and inserting

Providing for low-level radioactive waste disposal; further providing for powers and duties of the Department of Environmental Resources and the Environmental Quality Board; providing for the siting of low-level radioactive waste disposal facilities and for the licensing of operators thereof; establishing certain funds and accounts for the benefit of host municipalities and the general public; establishing the Low-Level Waste Advisory Committee and providing for its powers and duties; providing for membership on the Appalachian States Low-Level Radioactive Waste Commission; requiring certain financial assurances; providing enforcement procedures; providing penalties; making repeals; and making appropriations.

TABLE OF CONTENTS

Amend Bill, page 1, lines 11 through 19; page 2, lines 1 through 5, by striking out all of said lines on said pages and inserting

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Section 102. Legislative findings.

The General Assembly hereby determines, declares and finds that low-level radioactive wastes are generated within this Commonwealth; that these wastes must be isolated for the full hazardous life of the wastes in order to protect the public health and safety; that the Low-Level Radioactive Waste Policy Amendments Act of 1985 requires each state to be responsible for providing for the availability of capacity for disposal of low-level wastes generated within its borders; that shallow land burial is prohibited under the terms of the Appalachian States Low-Level Radioactive Waste Compact; that the illegal disposal of low-level radioactive waste poses severe risks to the health and safety of the public and the protection of the environment; that low-level radioactive waste disposal carried out in an environmentally sound manner to protect the health and safety of the public is in the public interest; and acknowledging that the Department of Environmental Resources shall be the Commonwealth agency with these responsibilities. It is the purpose of this act to:

(1) Implement Pennsylvania's duties and responsibilities arising under the Appalachian States Low-Level Radioactive Waste Compact.

(2) Establish and maintain, to the extent allowable under Federal law, a comprehensive and pervasive low-level waste disposal management, licensing and regulatory program in the Department of Environmental Resources for which all costs shall be borne by the low-level waste generators, brokers, carriers and the regional facility operator regulated by this act.

(3) To the extent allowed under Federal law, require the minimization of the amount of low-level waste generated and the reduction of the volume and toxicity of low-level waste requiring disposal.

(4) Protect the public health, safety and welfare, and the environment from the short and long-term dangers of low-level waste and its transportation, management and disposal.

(5) Establish an open public process to locate a regional facility in the Commonwealth, to determine the operator and

disposal technology and to license the regional disposal facility.

(6) Provide for benefits and guarantees for communities affected by the establishment, operation and presence of a low-level radioactive waste disposal facility.

(7) Assure the participation of the public and of elected and appointed officials at all levels of government in the decisionmaking process, create a Public Advisory Committee and assist in public education efforts related to low-level waste disposal.

(8) Prohibit shallow land burial of low-level radioactive waste; except that the department shall develop standards by regulation for the onsite handling and disposal of naturally occurring radioactive materials, ores and their waste products.

(9) Provide a comprehensive and effective strategy for the siting of commercial low-level waste compactors and other waste management facilities, and to ensure the proper transportation, disposal and storage of low-level radioactive waste.

(10) Assure that the low-level radioactive waste facility will be above grade of the land, unless other designs provide significant improvement in recoverability, monitoring, public health, and environmental protection.

(11) Prohibit the commercial incineration of radioactive wastes.

(12) Assure that waste disposed of at the regional facility does not include radioactive waste originating outside the Appalachian Compact states except as otherwise provided in this act.

(13) Provide that no low-level radioactive waste shall be disposed of at any disposal facility not licensed to accept low-level radioactive waste or at any municipal landfill or commercial incinerator.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The Long-Term Care Account.

"Affected municipalities." Any unit of local government other than the host municipality designated as an affected municipality pursuant to section 318. Affected municipalities may be counties, cities, boroughs, townships or school districts.

"Appalachian Compact" or "compact." A compact entered into by Pennsylvania under the terms of the Low-Level Radioactive Waste Policy Amendments Act of 1985, and as contained in the Appalachian States Low-Level Radioactive Waste Compact Law.

"Appalachian States Low-Level Radioactive Waste Compact Law." The act of December 22, 1985 (P.L.539, No.120).

"Atomic Energy Act of 1954." Public Law 83-703, 68 Stat 919, 42 U.S.C. § 2011 et.seq.

"Broker." Any intermediate person who collects, consolidates, handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste.

"Carrier." A person who transports low-level waste from or to any generator or waste management facility or to a regional facility.

"Commercial incinerator." An incinerator of low-level radioactive waste, except one which incinerates waste at the site of generation or at which only waste generated within the compact by the owner of the incinerator is incinerated.

"Commission." The Appalachian States Low-Level Radioactive Waste Commission.

"Compact states." The combined states including Pennsylvania which have entered into the Appalachian States Low-Level Radioactive Waste Compact.

"Curie." A unit of measure of radioactivity.

"Custodial agency." The government entity designated by the Governor other than the licensing agency responsible for the long-term monitoring and care of the regional facility.

"Department." The Department of Environmental Resources of the Commonwealth.

"Disposal." The isolation of low-level waste from the biosphere.

"Engineered structure." Man-made state-of-the-art barrier designed to provide additional measures for containment of radioactive waste from the environment, protection of the inadvertent intruder and stability of the disposal facility and designed to prevent any radioactive release.

"Facility." Any real or personal property and improvements thereof or thereon, and any and all plant, structures, machinery and equipment, acquired, constructed, operated, or maintained for the management or disposal of low-level waste.

"Fund." The Low-Level Waste Fund.

"Generate." To produce low-level waste requiring disposal.

"Generator." A person whose activity results in the production of low-level waste requiring disposal.

"Hazardous life." The time required for radioactive materials to decay to safe levels of radioactivity, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by the Federal law or by standards to be set by the host state, whichever is more restrictive.

"Hazardous wastes." As defined in the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and regulations adopted thereunder.

"Host municipality." One or more city, borough, incorporated town or township, excluding counties, in which the low-level waste disposal facility will be constructed, as designated by the department pursuant to section 318.

"Institutional control period." The time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency, which shall continue for the hazardous life of the waste.

"Low-level waste." Radioactive waste that:

(1) is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (68 Stat. 921, 42 U.S.C. § 2014(e)(2)), waste generated as a result of atomic energy defense activities of the Federal Government, and waste for which the Federal Government is responsible under section 3(b)(1) of the Low-Level Radioactive Waste Policy Amendments Act of 1985; and

(2) is classified by the Federal Government as low-level waste, consistent with the Low-Level Radioactive Waste Policy Amendments Act of 1985; or

(3) contains naturally occurring or accelerator produced radioactive material, which is not excluded by paragraph (1) or (2).

"Low-Level Radioactive Waste Policy Amendments Act of 1985." Public Law 99-240, 99 Stat. 1842, 42 U.S.C. § 2021b et seq.

"Management." The reduction, collection, consolidation, storage, processing, incineration, separation, minimization, compaction, segregation, solidification, evaporation, packaging or treatment of low-level waste.

"Operator." A person who operates a regional facility.

"Person." Any individual, corporation, partnership, association, public or private institution, cooperative enterprise, municipal authority, public utility, trust, estate, group, Federal Government or agency, other than the United States Nuclear Regulatory Commission or any successor thereto, state institution and agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of this act prescribing a fine, imprisonment or penalty, or

any combination of the foregoing, the term "person" shall include officers and directors of any corporation or other legal entity having officers and directors.

"Protection Fund." The Regional Facility Protection Fund.

"Radiation Protection Act." The act of July 10, 1984 (P.L.688, No.147).

"Regional facility." A facility which has been approved by the commission and licensed under this act for the disposal of low-level waste.

"Secretary." The Secretary of Environmental Resources of the Commonwealth.

"Separation." Segregation and isolation of all low-level radioactive waste in accordance with a waste classification system to be established by regulation by the department.

"Shallow land burial." The disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures and in proper packaging as determined under this act.

"Zero release capacity." The ability not to release radioactivity.

CHAPTER 3
LOW-LEVEL WASTE DISPOSAL

Section 301. Powers and duties of the Department of Environmental Resources.

The department shall have the power and its duty shall be to:

(1) Develop and implement a comprehensive program for the regulation of the generation, storage, handling, transportation, processing, minimization, separation, management and disposal of low-level radioactive waste to the extent allowable under Federal law or State law, whichever is more stringent.

(2) Implement a regulatory, inspection, enforcement and monitoring program consistent with the terms of an agreement between the United States Nuclear Regulatory Commission and the Commonwealth, as provided for in section 201 of the Radiation Protection Act, and this act.

(3) Enter into a contract with an operator-licensee designate to screen the state to locate potentially suitable sites, to study the sites in detail, and to submit a license application to operate the regional facility.

(4) License a regional facility operator in accordance with section 308 and regulations promulgated hereunder.

(5) Issue permits to generators, brokers and carriers of low-level waste for access to the regional facility in accordance with provisions of this act and with specific regulations promulgated under this act.

(6) Receive title to the land for use as a regional facility from the licensee for eventual transfer to the custodial agency or acquire land by eminent domain in the manner provided in the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, if the operator-licensee designate cannot acquire the property prior to submitting an application to the department for a license.

(7) Use Commonwealth property for the regional facility where such use is consistent with uses authorized under State law.

(8) Provide for the licensing and regulation of a custodial agency for the long-term care and monitoring of the regional facility for the duration of the institutional control period in accordance with regulations established by the Environmental Quality Board.

(9) Provide for the emergency care and monitoring of the regional facility, which may include the appointment of an interim operator if the department determines that:

(i) the licensee has failed to comply with the terms and conditions of the contract or is in violation of this act, regulation or license conditions, permits or order issued under this act, or the Radiation Protection Act, and a threat exists to the health or safety of the public or the environment; or

(ii) the licensee is in repeated or continuing violation of this act, regulations or the terms and conditions of any license, permit or order issued under this act, or the Radiation Protection Act.

(10) Implement policies, including fee schedules and other incentives, to the extent authorized by the Appalachian Compact, State and Federal law to reduce the volume and toxicity of low-level radioactive waste.

(11) Promulgate regulations establishing a low-level radioactive waste classification system which shall take into consideration curie concentration, toxicity, hazardous life and prior treatment of wastes.

(12) Promulgate regulations establishing standards for the hazardous life of low-level waste which shall be at least as restrictive as Federal standards.

(13) Provide for emergency response capability in cooperation with the Pennsylvania Emergency Management Agency.

(14) Do any and all other acts not inconsistent with the provisions of this act which are necessary and proper for the effective implementation and enforcement of this act and the Radiation Protection Act.

Section 302. Powers and duties of the Environmental Quality Board.

(a) Rules and regulations.—The Environmental Quality Board, exercising authority under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall have the power and its duty shall be to adopt regulations developed by the department for the implementation of this act. These regulations shall include, but are not limited to: generation, transportation, handling, separation, minimization, treatment and disposal of low-level radioactive waste; permit and license fees, standards and procedures; facility siting, including standards and siting regulations for new low-level waste incinerators and compactors and for the regional facility; facility design; manifest and reporting requirements; facility operational management; financial responsibility assurance; public participation; host and affected municipality benefits and guarantees; monitoring and inspection; compliance and enforcement; and any other regulatory requirements the department finds necessary or appropriate for the protection of the public health and the environment from low-level radioactive wastes, provided that the provisions of any siting regulations adopted under this section shall not apply to any commercial compactor facility which obtained a license from the United States Nuclear Regulatory Commission authorizing operation pursuant to the Atomic Energy Act prior to the effective date of this act.

(b) Site selection.—

(1) In addition to the authority to adopt regulations under this act, the Environmental Quality Board shall make the preliminary determination as to whether three proposed potentially suitable sites satisfy the applicable siting regulations.

(2) The effect of the board's preliminary approval of a site is to approve a potentially suitable site for further study. This preliminary approval assures access for further study of the site, in accordance with section 307(f), and public participation, especially by the potential host municipality during the evaluation and study of a potentially suitable site.

(3) The board's preliminary site approval is not a final action regarding the potentially suitable site. The board's preliminary approval is appealable only to the extent the owner of the land which constitutes the site can demonstrate immediate and present damages from further study activity to be undertaken on the site. The final determination as to whether the potentially suitable site meets the siting regulations shall

be made by the secretary after the further studies are completed, as part of the license application decision.

(c) Procedure.—The board shall establish procedures, including appropriate public participation, governing the preliminary site approval process. The public participation process shall include at least one public information meeting and one public hearing held by the board in each potential host municipality and an opportunity for comment on the public record. The host municipality and host county shall have a minimum of 180 days from the receipt of funds under section 318(a) to offer comments during the public participation process established under this section.

(d) Technical assistance.—

(1) The board may contract for the services of an independent consultant to assist the board in its review of all matters relating to the evaluation and preliminary approval of the sites proposed and submitted to the board by the operator-licensee designate under the provisions of section 307.

(2) The consultant shall be selected through a request-for-proposal process. The proposal shall include sufficient information to evaluate the consultant's expertise, competence and qualifications for assisting in the evaluation of the proposed sites.

(3) No consultant shall have a direct financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any associated industry, nor shall they have acted as a consultant to the department in any matter involving low-level radioactive waste within five years from the date of this act. Any consultant which may have a potential conflict of interest as described in the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, or other applicable statute or executive order shall reveal and explain the potential conflict as part of the request-for-proposal process.

Section 303. Generation, transportation, handling, management and disposal of low-level waste.

Each person who generates, transports, handles, manages or disposes of low-level waste shall:

(1) Maintain records to identify the volume and radioactivity content of low-level waste generated and shipped, the method of transportation, the origin and disposition of such low-level waste, and such additional records as the department may require.

(2) Furnish information as required by the department on such low-level waste to persons transporting, managing, storing or disposing of such wastes.

(3) Use a manifest system as specified in section 310(a)(1) for all low-level waste transported.

(4) Transport low-level waste for handling, management or disposal to the approved facilities which the generator or broker has designated on the manifest form.

(5) Submit reports to the department quarterly, listing the quantities, types and classes of low-level waste generated during a particular time period.

(6) Maintain such operation, train personnel and assure financial responsibility for such handling or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(7) Immediately notify designated public agencies of any accident away from the site of generation involving potential or actual spill or accidental discharge of such waste, and take immediate steps to contain and clean up the spill or discharge.

(8) Separate all low-level radioactive wastes in accordance with the waste classification system to be established by the department.

Section 304. Siting regulations.

The department shall develop siting regulations which shall be designed to allow for screening of the state by the operator-licensee designate and the selection of three potentially suitable sites. The regulations shall also contain detailed site specific provisions which the operator-licensee designate shall use to evaluate a potentially suitable site approved for further study. Potentially suitable sites shall not have any slopes for the disposal area of more than 15% as mapped on a scale of 1:24,000 with a contour interval of either 10 or 20 feet as available on published U.S.G.S. 7.5 minute quadrangles. The regulations shall include, but not be limited to, consideration for public health and safety, flooding, tectonics, protection of lands in the public trust, protection and exploitation and exploration of natural resources, demographics, transportation, wildlife, air quality, ecology, topography and hydrogeology. The regulations shall also provide that potentially suitable sites shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the above considerations or significantly mask the monitoring of the facility. The regulations shall be at least as stringent as those regulations adopted under the Atomic Energy Act of 1954. The Environmental Quality Board shall hold at least one public information meeting and at least one public hearing on the siting regulations, and shall solicit and take into consideration written public comments, prior to final adoption. There shall be 30 days' public notice before any hearing. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of general circulation in each county.

Section 305. Facility design and operational management regulations.

The department shall establish by regulation minimum engineering design and operational management criteria for the regional facility. These criteria shall be in addition to those required by regulations adopted under the Atomic Energy Act of 1954. Shallow land burial, as defined in this act, is prohibited. An above land grade facility is required unless other designs provide significant improvement in recoverability, monitoring, public health, and environmental protection. The facility shall have the goal of a zero release capacity. The criteria shall include, but not be limited to, provisions for enhanced containment, recoverability, long-term passive isolation, minimization of risks from water intrusion, protection from inadvertent intruders, monitoring and special requirements for various classes of wastes which shall include, but not be limited to, provisions for the segregation and recoverability of Class C waste. The Environmental Quality Board shall hold at least one public information meeting and at least one public hearing on the regulations, and shall solicit and take into consideration written public comments, prior to final adoption. There shall be 30 days' public notice before the hearings. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of general circulation in each county.

Section 306. Operator-licensee designate selection.

(a) Proposals.—The secretary shall, through a request-for-proposal process, select an operator-licensee designate. The proposals shall include detailed methods to be used for site screening and selection of potentially suitable sites; an explanation of how the operator plans to meet requirements of this act for public participation, including details of provisions for information to and solicitation of information from the public, the host municipality and the host county; the design of the proposed regional facility; the detailed site specific studies to be conducted to determine the environmental qualifications of the sites; a description of facility operational plans; a description of operator qualifications, including relevant experience, financial history, compliance history and current financial and compliance status of the operator; details of the method of operating the regional facility; a proposed method to determine the impact of the regional facility on

the potential host and affected municipalities; a proposal for a minimum host municipality benefits and guarantee package; a proposed fee schedule for disposal based on projected disposal costs and waste classification; and any other criteria the secretary may require.

(b) Qualifications.—

(1) The department shall develop standards for operator qualifications which shall be reviewed by the Low-Level Waste Public Advisory Committee prior to the start of the request-for-proposal process. The standards shall include, but not be limited to, provisions for consideration of the following:

(i) The relevant experience of the operator-licensee applicant.

(ii) The financial history of the operator-licensee applicant.

(iii) The compliance history of the operator-licensee applicant. *In reviewing the applicant's compliance history, the department:*

(A) shall require the applicant to provide a record of its compliance history with environmental protection statutes of the Commonwealth, other states and of the Federal Government, including, but not limited to, any violations of the provisions of this act, the Appalachian States Low-Level *Radioactive Waste Compact Law, the Radiation* Protection Act, or any other state or Federal statute relating to environment protection or to the protection of public health, safety and welfare or any rule or regulation, order or any condition of any license issued by the department or any major violations, orders or consent decrees or similar administrative enforcement actions, or civil or criminal litigation involving the requirements above; and

(B) may deny the applicant the opportunity for consideration as an operator if he has engaged in unlawful conduct, or if the applicant's partner, associate, officer, parent corporation, subsidiary corporation, contractor or agent has engaged in such unlawful conduct, or has shown a lack of ability or intention to comply with the requirements listed in clause (A), unless the applicant demonstrates to the satisfaction of the secretary that the applicant has the ability and intention to comply with requirements as referred to in clause (A). Evidence of the ability and intention to comply with these requirements shall include, but not be limited to, evidence that:

(I) the applicant does not have a pattern of major violations of the environmental requirements referred to in this section;

(II) the applicant does not have a record of continuing violations of the environmental requirements referred to in this section. For the purpose of this subclause, a continuing violation includes, but is not limited to, a violation that is not being abated or removed or a violation where the applicant is not cooperating in good faith with the appropriate State or Federal environmental agency to remedy or abate the violation;

(III) the applicant has complied or is complying with all orders or consent decrees of the department, or similar administrative enforcement actions of another state or of the Federal Government where pollution is being abated or removed; and

(IV) the applicant has made or is making full payment of any civil or criminal penalties imposed under the environmental statutes of the Commonwealth, another state or of the Federal Government.

(2) In no event shall any person who has committed a criminal violation of any state or Federal environmental statute resulting in a conviction of a first degree misdemeanor or a felony within ten years prior to the effective date of this act, be given an opportunity to be considered under this act as an operator.

(3) If all applicants are found unacceptable by the secretary, the secretary shall recommend to the Governor, that the Governor with the advice and consent of the General Assembly shall designate an agency or authority of the Commonwealth to operate the regional facility at the site selected by the secretary in compliance with all regulations of the department.

(c) Procedure.—All proposals from potential site operator-licensee designates shall be open for public inspection and comment for at least 90 days prior to the selection of the operator by the secretary. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of wide general circulation of the availability of the proposals, and the proposals shall be available for public inspection. At least two public meetings *shall be held in conjunction with the Low-Level* Waste Advisory Committee to discuss the proposals. All written comments received during the comment period will be taken into consideration and become part of the public record.

(d) Contract.—The secretary shall enter into a contract with the operator-licensee designate authorizing the operator to complete the site screening process, the selection of three potentially suitable sites, the detailed evaluation of each potentially suitable *site, and the license application process, and to operate and close* the regional facility only if issued a license from the department under this act. The contract shall include, but not be limited to, any applicable provisions of the proposal. The contract shall contain provisions regarding funding sources to be utilized for the facility, liability agreements, the establishment of a reasonable and adequate fee structure, expenses for events which are beyond the control of the operator-licensee designate and cancellation or modification of the contract *if the operator-licensee designate* is not complying with the provisions of the contract or is unable or unwilling to properly carry out the site screening and evaluation process.

(e) Appeal.—Any affected person may appeal the selection of the operator-licensee to the Environmental Hearing Board based solely on the qualifications in this section of the operator-licensee designate.

Section 307. Site selection.

(a) Screening report.—The operator-licensee designate shall conduct a study screening the Commonwealth for potentially suitable sites in accordance with the siting regulations adopted pursuant to section 304 and shall prepare a screening report which documents the findings of the study. A municipality or group of municipalities may, through their duly authorized governing body or bodies, request consideration as a potentially suitable site under this section. Such offering municipality or group of municipalities shall be included in the screening study to be conducted by the operator-licensee designate, the screening report required by subsection (b) and the other applicable provisions of this section.

(b) Submission.—The operator-licensee designate shall propose three potentially suitable sites and submit those sites to the Environmental Quality Board for approval. The proposal shall be accompanied by:

(1) the site screening report;

(2) a site justification explaining the reasons for choosing the potentially suitable sites compared to other sites considered; and

(3) a study of the short-term and long-term environmental effects on the potentially suitable sites and affected areas.

(c) Social and economic impact study.—At the same time as the submission of the application for potentially suitable sites required in subsection (b), the operator shall submit to the department a study of the short and long-term social and economic impacts of a regional facility on the municipalities surrounding the potentially suitable sites. The study shall include, but not be limited to, the impacts on tax revenue, public infrastructure, emergency management capabilities, compatibility with regional and local economic goals, other demographic characteristics, loss of resources and social service demands. The study shall propose each host municipality and affected municipalities.

(d) Evaluation.—The department shall evaluate the proposal and submit conclusions and siting recommendations to the Environmental Quality Board.

(e) Procedure.—The Environmental Quality Board shall hold at least one public information meeting and one public hearing in each of the potentially suitable areas as required in section 302(c), evaluate the three proposed potentially suitable sites and determine if they satisfy the applicable siting regulations. If any site does not satisfy the applicable siting regulations, the board shall so inform the operator-licensee designate who shall propose another potentially suitable site and submit another site justification pursuant to subsection (b), and another social and economic impact study pursuant to subsection (c). If a proposed potentially suitable site satisfies the applicable siting regulations, the board shall give preliminary site approval to allow for further site evaluation. The board shall make a determination that the screening process has identified three of the best potential locations in the host state, based on the administrative record before the board. The administrative record shall consist of the screening report, site justification report, the study of short-term and long-term environmental effects on the potentially suitable sites, the conclusions and siting recommendations of the department and the testimony presented at the board's public hearings and comments received during the comment period.

(f) Preliminary approval.—

(1) Upon the preliminary approval of the three sites by the Environmental Quality Board, the operator-licensee designate shall obtain access to those sites for further study. The operator-licensee designate shall have the right to enter provided to a condemnor under section 409 of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

(2) Property owners of any site which has received preliminary approval by the Environmental Quality Board, but which is not selected as the final site, shall have the rights of a condemnee under section 408 of the Eminent Domain Code, as are therein granted to condemnees subject to a revocation of condemnation proceedings. When the preliminary site has been rejected by the action of the secretary in issuing a permit for another site, notice of such relinquishment shall be served upon the affected property owners in the same manner as provided for in a declaration of taking under the Eminent Domain Code. The affected property owners shall be reimbursed by the operator-licensee designate for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred because of the preliminary approval of the site by the Environmental Quality Board. Such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the affected property owners, whose award shall be subject to appeal as provided in the Eminent Domain Code.

(g) Purchase of site.—Upon receiving a license to operate the regional facility at the site, the operator shall purchase the site and transfer title to all land to the Commonwealth. If the operator-licensee designate is unable to purchase the site, the Commonwealth shall acquire the site by eminent domain and the operator-licensee designate shall reimburse the Commonwealth for all costs of acquisition.

(h) Final approval.—The issuance of a license by the secretary pursuant to section 308 shall constitute final approval of the site. The Commonwealth shall hold title to the land until at least the end of the institutional control period.

(i) Appeal.—The issuance of the license is appealable to the Environmental Hearing Board pursuant to section 1921-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. This appeal shall take precedence over other appeals pending before the board and shall be handled in an expedited manner. The decision of the board is appealable to Commonwealth Court. A citizen of this Commonwealth, a host municipality, or a host county, who or which makes an appeal on his or its own behalf under this section shall not be required to post a bond nor shall they be required to pay a fee for filing the appeal.

Section 308. Operator licensing.

(a) Regulations.—The department shall establish by regulation the procedure and requirements for licensing of the regional facility operator. The regulation shall provide, without limitation:

(1) Authority for the amendment, suspension or revocation of the license.

(2) Consent for entry into the regional facility.

(3) Requirements for the form of the application and the information to be provided.

(4) Requirements for submission of a decommissioning plan for the regional facility.

(5) Requirements that the application and all submissions be in writing and signed.

(b) Further statements and inspections.—The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department deems necessary to determine whether the license should be granted, modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee.

(c) Impact analysis.—The license applicant shall prepare a written analysis of the impact of such licensed activity. The analysis shall be available to the public at least 120 days before the commencement of hearings held pursuant to subsection (d) and shall include:

(1) A detailed assessment of the radiological and nonradiological impacts to the public health and on the environment.

(2) A detailed assessment of the impact on the quality and quantity of the surface and groundwater within a five-mile radius of the site.

(3) Consideration of the short-term and long-term public health and environmental impacts from closure, decommissioning, decontamination and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination and reclamation. These impacts shall include, but not be limited to, adverse effects due to prior activities and conditions, including water and air quality problems, a health survey of cancer and other disease rates and birth defects, and prior mining.

(4) Consideration of the short and long-term social and economic impacts of the regional facility on the host municipality and affected municipalities, to create a minimum set of items to be considered as part of the host and affected municipality benefit negotiations. At a minimum the study should include the impacts on local tax revenues, public infrastructure, emergency management capabilities and social service demands.

(5) A preoperational environmental radiation survey and a preoperational health survey of cancer and other disease rates and birth defects within five miles of the site.

(6) Justification for the choice of the proposed site over the other two potentially suitable sites.

(d) Duty of secretary.—Before approving or disapproving the license application, the secretary shall provide:

(1) The public with the opportunity to review and inspect the license application at a publicly available location in the area where the regional facility is proposed to be located.

(2) A 90-day public comment period, one public information meeting and one public hearing, not within 30 days of each other, after adequate public notice, in the area where the regional facility is proposed to be located. All written comments and comments contained in a transcript of the hearing shall be considered in the secretary's decision on the application and become part of the public record.

(3) A written determination of the action to be taken, including a response to comments, which is based upon findings included in the determination and upon evidence presented during the public comment period.

(e) Terms and conditions of license.—The terms and conditions of all licenses issued under this act shall be subject to amendment, revision or modification by regulations or orders. The department shall provide by regulation for public notice of license amendment requests and for a public participation process.

(f) Financial assurance.—No license shall be issued by the department unless the operator provides the financial assurances required by section 316.

(g) License denial, suspension, etc.—In carrying out this act, the secretary may deny, suspend, modify or revoke any license if he finds that the applicant or licensee has failed or continues to fail to comply with any provision of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of license issued by the department; or if the department finds that the applicant or licensee has shown a lack of ability or intention to comply with any provision of this act or of any acts referred to in this section, or any rule or regulation of the department or order of the department, or any condition of any license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant or licensee, the department shall deny the issuance of a license if the secretary finds that a principal of the corporation was a principal of another corporation which committed past violations of any of the above laws, unless the principal has demonstrated that the violations are not relevant to issuing the license or permit or there are other mitigating circumstances which demonstrate the applicant has the ability and intent to comply with the law.

Section 309. Out-of-compact waste.

(a) Source of waste.—No low-level waste shall be accepted for disposal at the regional facility unless the waste was generated within the Appalachian Compact States or the commission has entered into a reciprocal contingency agreement for the emergency disposal of out-of-compact low-level waste. Waste generated within the Appalachian Compact States shall not include radioactive waste shipped from outside the Compact States to a waste generator or management facility within the Compact States. For the purposes of this section, an emergency shall include the temporary shutdown of a regional or state low-level radioactive waste disposal facility for a period of time which the commission reasonably projects will extend beyond the time when the low-level radioactive waste storage at the generator's facility and the disposal facility will reach maximum capacity, and additional storage would constitute a threat to the health and safety of the public or the environment. The reciprocal contingency agreement shall provide that the regional or State low-level waste disposal facility with the emergency will accept from the Appalachian Regional Facility or from generators, brokers or carriers licensed or permitted by the department, immediately at the termination of the emergency, an amount of low-level radioactive waste equal to the volume and toxicity of the low-level radioactive waste shipped to the Appalachian Regional Facility during the emergency.

(b) Approval of certain agreements.—No agreement shall permit the disposal of out-of-compact waste for a period exceeding three months unless a continuation of the agreement is approved by the General Assembly or the Governor. The Speaker of the House of Representatives and the President pro tempore of the Senate shall cause to be placed on the calendars of the House and Senate a concurrent resolution approving the proposed continuation. If the General Assembly fails to approve or disapprove the concurrent resolution within ten legislative days or 30 calendar days, whichever occurs first, the Governor may approve the continuation of the reciprocal agreement by executive order. The commission shall notify the General Assembly and the Governor when it has determined that a continuation of the reciprocal agreement is recommended and the date on which disposal will cease.

(c) Limited permit.—The department shall review an application and shall issue a limited permit for each low-level waste generator from outside the compact that meets the criteria for use of the regional facility. The department shall only issue the permit upon a determination by the commission that an emergency exists in the state or region in which the permittee is located. The permit shall not be valid for a period exceeding three months, unless a continuation is approved by the General Assembly or the Governor as provided in subsection (b).

Section 310. Permitting of generators, brokers and carriers.

(a) Regulations.—The department shall provide by regulation for the permitting of generators, brokers and carriers for access to the regional facility. Such regulations shall establish, without limitation:

(1) Requirements for packaging, separation, waste form, routing, manifesting, financial assurance, recordkeeping, emergency planning and length of term of the permit.

(2) Limits on the types, quantities and origins of radioactive waste allowed for disposal.

(3) That each application for a permit or amendment shall be in writing and signed by the applicant.

(4) The form of the application and the information it should contain.

(5) Requirements for applicant's consent for entry to facilities, vehicles and equipment.

(6) Procedures for suspension, revocation and amendment of permits.

(7) That each generator have a plan for reduction of toxicity and volume with stated reduction goals.

(8) Any other requirements the department deems necessary or proper to implement the provisions of this act and the Radiation Protection Act.

(b) Issuance of permit.—Upon approval of the application and receipt of fees, the department shall issue a permit to the applicant as set forth in the application and further conditioned by the department as necessary.

(c) Permit denial, suspension, etc.—In carrying out this act, the department may deny, suspend, modify or revoke any permit if it finds that the applicant or permittee has failed or continues to fail to comply with any provision of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of any permit or license issued by the department; or if the department finds that the applicant or permittee has shown a lack of ability or intention to comply with any provision of this act or any act referred to in this section or any rule or regulation of the department or order of the department, or any condition of any permit or license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant or permittee, the department shall deny the issuance of a permit if it finds that a principal of the corporation was a principal of another corporation which committed past violations of any of the above laws, unless the principal has demonstrated that the violations are not relevant to issuing the license or permit or there are other mitigating circumstances which demonstrate the applicant has the ability and intent to comply with the law.

Section 311. Decommissioning.

When the regional facility is to be closed, the department shall require that the regional facility is properly decommissioned by the operator-licensee, that all remaining property is transferred to the Commonwealth and that control is transferred to the custodial agency. The cost of decommissioning shall be borne by the operator-licensee. The department shall make a determination that the site has been properly decommissioned and that the site, along with the license responsibilities, is suitable for transfer to the custodial agency, at which time the operator license shall be terminated. A decommissioning plan shall be submitted as part of the license application, be incorporated into the license and be periodically reviewed and amended as necessary over time.

Section 312. Low-Level Waste Fund.

(a) Establishment.—There shall be established within the State Treasury a separate account to be known as the Low-Level Waste Fund.

(b) Deposits.—All fines, penalties, fees and surcharges not designated for other purposes, collected under this act shall be paid into this fund. Additionally all funds received from the United States Department of Energy or from the Appalachian Compact Commission or Compact States for low-level radioactive waste activities shall be deposited into the fund.

(c) Appropriation and purpose.—Moneys in the fund, except those received from the United States Department of Energy, are hereby appropriated to the department on a continuing basis to be used, upon approval of the Governor, solely for the administration and enforcement of this act, for site development, for emergency operations, for any liability of the Commonwealth, and to repay the General Fund for any appropriation made to the fund.

Section 313. Long-Term Care Account.

(a) Establishment.—There shall be established within the fund an interest-bearing restricted account to be known as the Long-Term Care Account.

(b) Surcharges.—Surcharges on disposal rates shall be imposed by the department for the expected costs of activities under this account.

(c) Purpose.—The account shall be used for no other purpose than to provide for the following:

(1) The long-term care and monitoring for the duration of the institutional control period and any emergency or remedial work that might become necessary at any regional facility by the department or the custodial agency.

(2) The assumption by the department or the custodial agency for early direct responsibility for the care and monitoring at the regional facility.

(d) Appropriation.—All moneys in the account are hereby appropriated to the department on a continuing basis to carry out this section.

Section 314. Regional Facility Protection Fund.

(a) Establishment and purpose.—There shall be established within the State Treasury a separate account to be known as the Regional Facility Protection Fund. All moneys in this fund are hereby appropriated to the department on a continuing basis for the following purposes:

(1) To pay claims for personal injury and property damage against the Commonwealth, host municipality and host county arising from their responsibilities under this act.

(2) To pay claims for personal injury and property damage against the regional facility licensee made at any time after the termination of the license arising from operation of the regional facility.

(b) Administration.—The Environmental Quality Board shall promulgate regulations, prepared by the department, to administer the Regional Facility Protection Fund. Such regulations shall include, but are not limited to, scope of coverage, further limits of liability, procedures for filing claims, presumptions and burdens of proof.

(c) Deposits.—All surcharges on waste disposed of at the regional facility under section 315(c)(1)(iv) and all interest earned thereon shall be deposited in the Regional Facility Protection Fund.

(d) Appeals.—All appeals from denial of a claim shall be to the Board of Claims. The department shall represent the Regional Facility Protection Fund in any such action.

Section 315. Fees, rates and surcharges.

(a) Establishment by department.—The department shall establish reasonable fees for licensing of the operator-licensee designate and permitting of generators, brokers and carriers. In setting the fees, the department shall consider disposal costs and classification of the waste.

(b) Approval of rates charged by operators.—The department shall require that all proposed rates charged by the operator for the disposal of low-level waste in the regional facility be submitted to the department prior to their implementation. The department shall determine if the rates are consistent with the fee structure established in the contract entered into under section 306(d) and may require the operator to modify the proposed rates if the department determines that they are not consistent with the fee structure established in the contract entered into under section 306(d). The rates shall be based on actual disposal cost and waste classification. Rates shall be adequate to assure protection of public health and safety and the environment, the retirement of facility debt plus an adequate return on capital invested and future site closure, and stabilization and decommissioning expenses.

(c) Surcharges.—

(1) The department shall assess surcharges on low-level radioactive waste disposed of at the regional facility as follows:

(i) A surcharge imposed adequate to return to the General Fund over a five-year period any appropriations expended by the department from the General Fund from July 1, 1987, to the date the regional facility begins operation, and shall expire when the General Fund is fully reimbursed.

(ii) A continuing surcharge imposed to be adequate to support the Commonwealth's expenses related to this act and the compact, including, but not limited to, the surveillance of packages, inspection, decontamination, decommissioning and postclosure maintenance of the regional facility, recordkeeping systems and such other activities as the department finds necessary to ensure the safe operation of the regional facility.

(iii) A surcharge imposed to be adequate to fund the Long-Term Care Account as provided in section 313.

(iv) A surcharge that shall be adequate to fund the Regional Facility Protection Fund to a level of not less than $100,000,000, indexed to increase with cost-of-living adjustments, upon the date of termination of the operator's license.

(2) These surcharges and fees shall be reviewed annually by the department to determine if they are adequate and revised accordingly. The method shall be determined by regulation.

(3) These surcharges shall be collected by the operator at no cost to the Commonwealth and shall be transmitted to the department no less frequently than monthly.

(d) Host and affected municipality benefits.—The department shall review and approve all surcharges for host and affected municipality benefits as provided in section 318.

Section 316. Financial assurance and liability.

(a) Financial assurance requirements.—The department shall establish by regulation detailed financial assurance requirements for the operator for the operation, closure, postclosure monitoring and maintenance, and emergencies related to the regional facility.

(b) Proof of coverage of all costs.—The operator shall, prior to receipt of a license, show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or a combination of the two, to cover all estimated costs of conducting all licensed activities over the planned operating life of the regional facility, including costs of construction and operation.

(c) Emergency actions, closure, etc.—The operator shall, prior to receipt of a license, provide assurance that sufficient funds are available to carry out emergency actions, site closure, decommissioning and stabilization, in accordance with the financial assurance regulations established by the department.

(d) Indemnification.—

(1) Generators, brokers and carriers for which a permit is required under sections 309 and 310 shall comply with the financial assurance regulations established by the department. Each broker, carrier and generator shall hold the Commonwealth, the host municipality, host county and their agents harmless, defend and indemnify the Commonwealth, the host municipality, host county or their agents against any and all claims, actions, demands, liabilities and losses by reason of any injury or damage to person or property arising out of any handling, management, shipping, transportation or generation of low-level waste.

(2) The operator-licensee shall hold the Commonwealth, the host municipality, host county and their agents harmless, defend and indemnify the Commonwealth, host municipality and host county and their agents against any and all claims, actions, demands, liabilities and losses for personal injury or property damage at law and equity.

(e) Limitations on liability.—In any action against the operator-licensee by any person for damages, there shall be no limit to the operator-licensee's liability if it can be shown that the operator-licensee acted in a manner that was negligent, grossly negligent, willful, reckless or intentional. In all other claims and actions for damages against the operator-licensee, there shall be a total and cumulative limit of liability which shall be no more than $100,000,000, plus the amount of insurance or other financial assurance applicable to the obligation or liability as required by the department.

(f) Sovereign immunity.—No provision of this act shall constitute a waiver of sovereign immunity except as provided by 42 Pa.C.S. Ch. 85 Subch. B (relating to actions against Commonwealth parties).

(g) Insurance.—The operator shall provide evidence of commercial insurance or other financial assurance as approved by the department to compensate persons for bodily injury or property damage arising from sudden and nonsudden incidents from the operation of the facility. The department shall determine the minimum amount of insurance or financial assurance, but in no case shall the minimum amount be less than the capital cost of the regional facility. For purposes of this subsection, "capital cost" means the cost of bidding for, siting, acquiring, licensing, planning, developing, constructing, equipping and promoting the regional facility and improvements made over the operating life of the facility.

Section 317. Low-Level Waste Advisory Committee.

(a) Appointment.—The secretary shall appoint a Low-Level Waste Advisory Committee. The committee shall consist of at least 23 members, 19 of whom shall represent local government, environmental, health, engineering, business, academic and public interest groups and four members of the General Assembly, two from the Senate, one member from the majority party and one member from the minority party, or their designees, who shall be appointed by the President pro tempore, and two from the House of Representatives, one from the majority party and one from the minority party, or their designees, who shall be appointed by the Speaker of the House of Representatives. The secretary shall designate a representative of the department who shall be a nonvoting member of the committee. Representatives of the host municipality and host county shall also be appointed as additional voting members of the committee. No member of the committee shall be employed by or hold a financial interest in the operator company or any of its subsidiaries or parent companies, and no more than three of the members of the committee shall be employed by or hold a financial interest in a company which serves as a subcontractor to the operator company or in any entity that utilizes the regional facility for disposal of its low-level radioactive wastes.

(b) Review of draft regulations, advice, etc.—The committee shall have an opportunity to review draft regulations under this act and advise the department prior to proposal. The committee shall have an opportunity to review and comment on operator selection, including the proposed standards developed by the department for the qualifications and compliance history of the operator. The committee may also advise the department regarding policies and issues related to the implementation of this act as may be submitted by the department to the committee for review.

(c) Chairman.—The committee shall elect a member to serve as chairman.

(d) Policies and procedures.—The committee shall establish policies and procedures for the conduct of business which shall include a policy regarding potential conflicts of interest of members.

(e) Meetings.—Meetings shall be held at least annually. After a site is designated, at least one meeting shall be held in the host municipality each year.

(f) Expenses and support services.—Members shall serve without salary or compensation except for reimbursement by the department for reasonable and necessary expenses incurred in connection with their duties as approved by the secretary. The department shall also provide necessary administrative support services, budget and staff to the committee for the carrying out of its responsibilities under this section.

(g) Termination.—The Low-Level Waste Advisory Committee shall cease to exist when the department's responsibility for the regulation of low-level radioactive waste is terminated.

Section 318. Host and affected municipality benefits and guarantees.

(a) Funding for evaluation of proposal.—Upon submission of the potentially suitable sites application to the Environmental Quality Board for approval, the department shall provide a reasonable amount of funds, not to exceed $100,000 per site, to the proposed host municipalities in the study under section 307(c), and upon the request of such county, the department shall provide a reasonable amount of funds, not to exceed $100,000 per site, to the proposed host county in the study under section 307(c) to evaluate the proposal submitted by the operator-licensee. The host municipality and the host county shall present their findings to the board not more than 180 days after receipt of funds under this subsection. Strict accounting and verification of expenditures for activities related to this topic shall be provided by the potential host municipalities to the department in accordance with their municipal codes. All unused moneys shall be returned to the department.

(b) Funding for evaluation of application.—Upon receipt of a license application from the operator-licensee designates, the department shall provide a reasonable amount of funds, not to exceed $150,000, to the potential host municipality to carry out an independent evaluation of the application, and upon the request of such county, the department shall provide a reasonable amount of funds, not to exceed $150,000, to the potential host county to carry out an independent evaluation of the application. The potential host municipality and county, within 180 days after receipt of funds under this subsection, shall present its findings to the department for inclusion in the licensing proceedings. Strict accounting and verification of expenditures for activities related to this topic shall be provided by the host municipality to the department in accordance with its municipal code. All unused moneys shall be returned to the department.

(c) Additional members of advisory committee.—After the license application has been received, the potential host municipality and potential host county will be requested to nominate one additional member each to the department's Low-Level Waste Advisory Committee.

(d) Petition for designation as affected municipality.—After the license application has been received, a municipality may petition the department to be designated as an affected municipality. The department shall designate affected municipalities based upon, but not limited to, the contents of the petition, the results of the social and economic impact and environmental impact studies submitted as part of the potentially suitable site proposal under section 307, and the license application under section 308. This shall not preclude the department from designating a municipality as affected even though the municipality has not submitted a petition. At least 30 days prior to taking final action, the department shall publish for comment in the Pennsylvania Bulletin a notice of its intent to grant or deny designation of a municipality as an affected municipality under this act, including the reasons for its action.

(e) Designation as component of license.—The department shall designate host and affected municipalities as a part of the license.

(f) Surcharge for municipalities.—With the approval of the department, the operator shall establish a reasonable surcharge on rates charged for waste disposed at the regional facility to be paid to the host municipality, host county and affected municipalities for the following purposes:

(1) Training and equipping the first responding fire, police and ambulance services to handle anticipated emergency events at the regional facility or on the transportation routes serving the site within the host or affected municipalities.

(2) Support for affected county emergency management planning, training and central dispatch facilities as may be required to handle anticipated emergency events at the regional facility.

(3) A minimum dollar amount guaranteed annually regardless of the volume of waste received at the regional facility and any additional amount per unit of waste (cubic foot, curie content or a combination of the two) the operator and host municipality may agree upon. These funds will go directly to the host municipality.

(4) Payment of school district and municipal property taxes for individuals whose primary residence is within two miles of the regional facility for the operational life of the facility. For purposes of this section, a primary residence is the property in which the owner resides for at least nine months of each year. Payments under this section shall be prorated based on the assessed value of property located within two miles of the facility.

(5) The hiring by the host municipality of two full-time qualified inspectors, as determined by the department, to perform inspections of all activities at the regional facility under a written agreement with the department. The inspectors shall have the right of independent access to inspect any and all records and activities at the site and to carry out joint inspections with the department. The department shall respond immediately to any emergency complaint of the host municipality inspector. The department shall respond to any written complaint of the inspector within 24 hours.

(6) The hiring, upon the request of the host county, of two full-time qualified host county inspectors, to perform inspections of all activities at the regional facility under a written agreement with the department. The inspectors shall have the same authority and responsibilities as the host municipality inspector as outlined in sections 318(f)(5) and 502.

(7) The development of an educational program for host inspectors and interested parties.

(8) Funds for the expenses incurred by an Environmental Advisory Council serving the host municipality or the affected municipalities, which has been set up pursuant to the act of December 21, 1973 (P.L.425, No.148), referred to as the Municipal Environmental Advisory Council Law, for the purpose of advising government agencies, elected officials and the public on matters dealing with the protection and conservation of the environment, including the immediate area of the disposal site.

(g) Authority of municipality.—The host and affected municipalities' governing bodies shall have the exclusive power, authority and duty to determine how to utilize any funds received under this section, provided that such expenditures or utilization shall be consistent with the provisions of the prevailing municipal code in effect at the time of the expenditure.

(h) Additional duties of operator.—The operator shall also provide for the following:

(1) An independent periodic well and surface water sampling program and soil and plant sampling program which will provide analyses for radioactive and specified chemical contamination for properties within three miles of the boundary of the regional facility. Test results shall be supplied to the host or affected municipality, homeowner and the department.

(2) An independent, continuous, air, well water, surface water and soil sampling program which will provide analyses for radioactive and specified chemical contamination at the regional facility boundary. Test results shall be supplied to the host county, host municipality, affected municipality landowners, homeowners and the department.

(3) A property purchase program as follows:

(i) Any landowner will be guaranteed the sale of his property or purchase by the site operator at property values immediately prior to the time operator-licensee designate's potentially suitable site application is submitted to the department, and any subsequent improvements since that date provided that the real property and improvements thereto are located within two miles from the boundary of the regional facility.

(ii) The guarantee shall be in effect for a two-year period, this period to begin on the date of issuance of the license by the department.

(4) Prior to acceptance of waste at the regional facility, and every three years thereafter, the operator will provide updated information for the health survey related to cancer and other disease rates and birth defects of the population within a five mile radius of the facility, and shall offer without charge whole-body radioactivity measurements and other measures appropriate to assess the presence of internal radioactive emitters to all permanent residents within the host municipality or within five miles of the boundary of the regional facility. All data shall be provided to the individual with a full explanation of the results and copies made available to the host or affected municipality and the department. Tests other than the above shall also be made available, subject to the approval of the department. Results of all such tests shall be considered confidential medical records. The department shall retain copies of all records provided to it.

(i) Additional duties of department.—In addition, the department shall:

(1) Submit all final inspection reports to the host municipality and host county within five working days.

(2) Notify the host municipality and host county of all enforcement or emergency actions at the regional facility immediately.

(j) Benefit sharing.—Where there are two or more host municipalities, the benefits under this section shall be shared according to an agreement to be reached between these host municipalities. If an agreement cannot be reached, the department will decide upon a final division of the benefits, which decision shall not be reviewable.

(k) Local ordinances.—The host municipality shall have the authority to adopt reasonable ordinances, including, but not limited to, ordinances concerning the hours and days of operation of the facility and traffic. Such ordinances may be in addition to, but not less stringent than, not inconsistent with, and not in violation of any provision of this act, any regulation promulgated pursuant to this act or any license issued pursuant to this act. Such ordinances found to be inconsistent and not in substantial conformity with this act shall be superseded pursuant to section 503. Appeals under this section may be brought before a court of competent jurisdiction.

Section 319. Rebuttable presumption.

(a) Liability of operator.—It shall be presumed as a rebuttable presumption of law that the operator of a regional facility is liable and responsible for all damages and radioactive contamination within three miles of the boundary of the regional facility without proof of fault, negligence or causation.

(b) Defenses.—In order to rebut the presumption of liability, the operator must affirmatively prove by clear and convincing evidence that the operator did not contribute to the damage, or in the case of radioactive contamination, one of the following three defenses:

(1) The radioactive contamination existed prior to any disposal operations on the site as determined by a pre-operational survey.

(2) The landowner has refused to allow the operator access to conduct a pre-operational survey.

(3) The radioactive contamination occurred as a result of some cause other than regional facility operations.

Section 320. Protection from contamination.

(a) Water supply.—The operator shall restore or replace any water supply which has been found or presumed pursuant to section 319 to be contaminated with radioactive material as a result of operations at the regional facility.

(b) Contamination in general.—Any landowner experiencing radioactive contamination within three miles of the boundary of the regional facility may notify the department and request that an investigation be conducted. Within ten days of such notification, the department shall investigate any such claims, and shall, within 60 days of the notification, make a determination. If the department finds that the radioactive contamination was caused by the operation of the regional facility or if it presumes the operator of a regional facility responsible for contamination, then it shall issue such orders to the operator as are necessary to abate the radioactive contamination and replacement of any contaminated water supply.

Section 321. Low-level waste compaction.

(a) Siting regulations.—No license or permit to construct, alter, own or operate a commercial low-level radioactive waste compactor shall be issued until the Environmental Quality Board has promulgated siting regulations for such facilities. No such license or permit shall be issued unless the applicant has demonstrated with clear and convincing evidence that the site selected for the commercial compactor satisfies the siting regulations. This subsection shall not apply to any commercial compactor facility which obtained a license from the United States Nuclear Regulatory Commission authorizing operation pursuant to the Atomic Energy Act prior to the effective date of this act, provided that such compactor facility shall comply with all applicable Federal and State requirements relating to operations and monitoring and shall obtain all applicable State environmental permits. For purposes of this section, a commercial compactor is any compactor of low-level waste except:

(1) One which compacts waste at the site of generation, including one situated on the premises of a hospital or research laboratory.

(2) One which only compacts waste generated by the facility owner.

(3) A compactor which compacts waste at the regional facility.

(b) Nonexclusive.—Nothing in this act shall prempt or prevent any political subdivision from enacting or enforcing ordinances otherwise within its powers to enact which are adopted pursuant to the political subdivisions' powers reserved under the act of January 8, 1960 (P.L.2119, No.787), known as the Air Pollution Control Act and other environmental protection statutes of this Commonwealth.

Section 322. Noncommercial low-level waste incinerators.

(a) Standards and regulations.—The department shall develop standards and siting regulations under this act for noncommercial low-level waste incinerators which shall include requirements for compliance with this act, the Atomic Energy Act of 1954, the Radiation Protection Act, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 8, 1960 (P.L.2119, No.787), known as the Air Pollution Control Act and the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(b) Existing facilities.—Those facilities which are licensed under Federal law to incinerate low-level radioactive waste on the effective date of this act may continue to operate.

Section 323. Limitation on actions.

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this act, or civil actions arising from conduct regulated under this act may be commenced at any time within a period of 20 years from the date the alleged wrongdoing is discovered.

CHAPTER 5
ENFORCEMENT AND PENALTIES

Section 501. Unlawful conduct.

It shall be unlawful for any person:

(1) To construct, alter, own or operate a low-level radioactive waste disposal facility without a license or in violation of a license or in violation of this act or the Radiation Protection Act.

(2) To ship or transport low-level radioactive waste to the regional facility without first obtaining a permit as required by the act and any rule or regulation promulgated hereunder.

(3) To generate, transport, handle, manage or dispose of low-level radioactive waste unless such person complies with this act, the Radiation Protection Act and other state and Federal statutes relating to environmental protection, radiological protection and the protection of the public health, safety and welfare, and with the regulations of the department and the terms and conditions of any applicable permit, license or order of the department or other appropriate state or Federal agency.

(4) To deposit, inject, dump, spill, leak or place low-level radioactive waste so that low-level radioactive waste or a constituent of low-level radioactive waste enters the environment, is emitted into the air or is discharged into the waters of the Commonwealth, in violation of State or Federal statutes.

(5) To refuse, hinder, obstruct, delay or threaten any agent or employee of the department or host municipality or host county inspector in the course of performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.

(6) To cause or assist in the violation of any provision of this act, any rule, regulation, order, permit condition or license condition of the department under this act.

(7) To incinerate low-level waste at a commercial incinerator.

Section 502. Inspection.

(a) Authority.—Host municipality and host county inspectors shall have the power to enter the regional facility, and the department or its duly authorized representatives shall have the power to enter each and every facility at any time for the purpose of inspection and the power to enter at any time upon any public or private property, building, premise or place, for the purpose of determining compliance with this act, any permit or license conditions or regulations or orders issued under this act. In the conduct of any investigation, the department or its duly authorized representatives shall have the authority to conduct tests and inspections and examine any book, record, document or other evidence related to the generation, management, transportation or disposal of low-level waste. In the conduct of any investigation, the host municipality inspector shall have the authority, at the regional facility, to conduct tests and inspections and examine any book, record, document or other evidence related to the generation, management, transportation or disposal of low-level waste.

(b) Halt in operations.—The host municipality and host county inspectors, as authorized under section 318(f)(5) and (6), shall have the authority to halt operation of the facility if the inspector determines there is an immediate threat to health and safety. This halt in operations shall remain in effect until the department evaluates the situation and determines whether there is a continuing need for the halt in operations. If the department determines there is no continuing need for the halt in operations, the host municipality has the right to appeal this determination to the Environmental Hearing Board, which shall consider the matter immediately.

(c) Search warrant.—An agent or employee of the department, may apply for a search warrant, to an issuing authority, for the purposes of testing, inspecting or examining any radioactive material or any public or private property, building, premise, place, book, record or other evidence related to the generation, management, transport or disposal of low-level waste. The host municipality inspector may similarly apply for a search warrant to inspect at the regional facility. It shall be sufficient probable cause to show any of the following:

(1) The test, inspection or examination is pursuant to a general administrative plan to determine compliance with this act.

(2) The agent, employee or inspector has reason to believe that a violation of this act has occurred or may occur.

(3) The agent, employee or inspector has been refused access to the low-level waste, property, building, premise, place, book, record, document or other evidence related to the generation, management, transport or disposal of low-level waste, or has been prevented from conducting tests, inspections or examinations to determine compliance with this act.

(4) The host municipality or host county inspector has made a written complaint to the department.

(5) A landowner has experienced radioactive contamination within three miles of the boundary of the regional facility and he has notified the department pursuant to section 319.

Section 503. Conflicting laws.

Ordinances, resolutions or regulations of any agency or political subdivision of this Commonwealth relating to low-level waste shall be superseded by this act if such ordinances, resolutions or regulations are not in substantial conformity with this act and any rules or regulations or license requirements issued hereunder.

Section 504. Penalties.

(a) Summary offense.—Any person who violates any provisions of this act or any regulations or order promulgated or issued hereunder commits a summary offense and shall, upon conviction, be sentenced to pay a fine not less than $100 nor more than $1,000 for each separate offense and in default thereof shall be imprisoned for a term of not more than 90 days. All summary proceedings under this act may be brought before any district justice or magistrate in the county where the offense was committed, and to that end jurisdiction is hereby conferred upon district justices and magistrates, subject to appeal by either party in the manner provided by law.

(b) Misdemeanor.—Any person who violates any provision of this act or any regulation or order promulgated or issued hereunder, within two years after having been convicted of any summary offense under this act, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $1,000 nor more than $25,000 for each separate offense or imprisonment in the county jail for a period of not more than one year, or both.

(c) Felony.—Any person who intentionally, knowingly or recklessly violates any provision of this act or any regulation or order of the department or any term or condition of any permit or license, and whose acts or omissions cause or create the possibility of a public nuisance or bodily harm to any person, commits a felony of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $2,500 nor more than $100,000 per day for each violation, or to a term of imprisonment of not less than one year nor more than ten years, or both.

(d) Separate offense for each day.—Each day of continued violation of any provisions of this act or any regulation or order promulgated or issued pursuant to this act or any term or condition of any permit or any license shall constitute a separate offense.

(e) Civil penalty.—

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of this act or a reg-

ulation or order of the department promulgated or issued hereunder, the department may assess a civil penalty upon the person for the violation. This penalty may be assessed whether or not the violation was willful or negligent. The civil penalty shall not exceed $25,000 for each violation.

(2) In determining the civil penalty, the department shall consider, where applicable, the willfulness of the violation, gravity of the violation, good faith of the person charged, history of the previous violations, danger to the public health and welfare, damage to the air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration or abatement, savings resultant to the person in consequence of the violation and any other relevant facts.

(3) The person charged with the penalty shall have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, to file within a 30-day period an appeal of the action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(4) Civil penalties shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for collection of debts. If any person liable to pay a penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person, but only after same has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit to prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed.

Section 505. Enforcement and abatement.

(a) Public nuisance.—Any violation of this act or of any regulation or order of the department or of any term or condition of any license or permit issued under this act shall constitute a public nuisance. Any person committing the violation shall be liable for the costs of abatement of the nuisance. The Environmental Hearing Board is hereby given jurisdiction over actions to recover the costs of the abatement and civil penalties.

(b) Orders.—In addition to other remedies provided under this act or any other act, to aid in the enforcement of this act, the department may issue orders to persons as it deems necessary to protect health and safety and the environment. These orders may include an order modifying or revoking licenses or permits, orders to cease unlawful activities or other acts involving low-level waste that are determined by the department to be detrimental to the public health and safety, orders prohibiting access to the regional facility, and such other orders as the department deems necessary to abate public nuisances. An order issued under this subsection shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not automatically act as a supersedeas unless so granted by the board. It shall be the duty of any person to comply with any order issued under this subsection unless and until a supersedeas has been obtained. Any person who fails to comply with an order lawfully issued under this subsection shall be guilty of contempt and shall be punished in an appropriate manner by the Commonwealth Court, which court is hereby granted jurisdiction, upon application by the department.

(c) Injunction.—In addition to any other remedies provided for in this act, the department may institute a suit in equity in the name of the Commonwealth for an injunction to restrain a violation of this act or the regulations or order adopted or issued under this act, or to restrain the maintenance or threat of a public nuisance. In any such proceeding the court shall, upon motion by the department, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct or is engaged in conduct which is causing immediate and irreparable harm to the public or the environment. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings.

(d) Impoundment, etc.—The department shall have the authority to impound temporarily any low-level waste or to take other actions as are necessary to abate a public nuisance wherever the department believes that this action is necessary to protect the health and safety of the public and the environment.

(e) Emergency.—Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety or the environment, the department is authorized, without notice or hearing, to issue an order to any person reciting the existence of such emergency and requiring that appropriate action be taken to meet the emergency. Notwithstanding any provision of this act, such order shall be effective immediately, unless a supersedeas is granted by the Environmental Hearing Board.

Section 506. Construction of act.

The penalties and remedies prescribed by this act shall be deemed concurrent, and the existence of or exercise of any remedy shall not prevent the department or any person from exercising any other remedy at law or in equity. No provision of this act or any action taken by virtue of this act, including the granting of a permit or license, shall be construed as estopping the Commonwealth from proceeding in courts of law or equity to abate nuisances under existing law; nor shall this act in any other manner abridge or alter rights of action or remedies now or hereafter existing in equity or under the common law or statutory law, criminal or civil, exercised by the Commonwealth or any person to enforce their rights or to abate any nuisance, now or hereafter existing, in any court of competent jurisdiction.

Section 507. Right of citizen to intervene in proceedings.

Any citizen of this Commonwealth having an interest which is or may be adversely affected shall have the right on his own behalf, without posting bond, to intervene in any action brought pursuant to section 505(c).

Section 508. Citizen suits.

(a) Authority to bring civil action.—Except as provided in subsection (c), any affected person may commence a civil action on his own behalf against any person who is alleged to be in violation of this act.

(b) Jurisdiction.—The Environmental Hearing Board is hereby given jurisdiction over citizen suit actions brought under this section against the department. Actions against any other persons under this section may be taken in a court of competent jurisdiction. Such jurisdiction is in addition to any rights of action now or hereafter existing in equity, or under the common law or statutory law.

(c) Notice.—No action may be commenced under this section prior to 60 days after the plaintiff has given notice of the violation to the secretary, to the host municipality and to any alleged violator of the act, of other environmental protection acts, or of the regulation or order of the department which has allegedly been violated, or if the secretary has commenced and is diligently prosecuting an administrative action before the Environmental Hearing board, or a civil or criminal action in a court of the United States or a state to require compliance with such permit, standard, regulation, condition, requirement, prohibition or order.

(d) Award of costs.—The Environmental Hearing Board or a court of competent jurisdiction, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the board determines such award is appropriate.

Section 509. Whistleblower provisions.

(a) Adverse action prohibited.—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing.

(b) Discrimination prohibited.—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

(c) Remedies.—The remedies, penalties and enforcement procedures for violations of this section shall be provided in the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

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

"Appropriate authority." A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement or regulatory violations; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the department, host county, host municipality or other public agency whose functions include public health and safety.

"Employee." A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for an employer.

"Employer." An operator of a low-level waste facility, a contractor developing such a facility or a contractor developing procedures or regulations associated with the Appalachian Compact low-level nuclear waste facility.

"Good faith report." A report of conduct defined in this section as wrongdoing which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"Wrongdoing." A violation which is not of a merely technical or minimal nature of a Federal or State statute, regulation, license, permit or order relating to the operation of low-level waste facilities or relating to the preservation of the public health and safety in relation to such facilities.

CHAPTER 7

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Section 701. Appointment and qualification of commissioners.

As an initial host state under the compact, Pennsylvania's delegation to the commission shall consist of five members. Upon passage of this act, the Governor shall immediately appoint four voting members and four alternates. Each of the members and alternates shall be appointed by and serve at the pleasure of the Governor and be confirmed by a majority vote of the members elected to the Senate. Each appointee shall be a resident and citizen of this Commonwealth at the time of his appointment and for the duration of his term. No appointee shall, for three years prior to appointment, have a financial interest in or be employed by the operator of any low-level waste disposal facility, a subsidiary of the operator, parent company of the operator, a subcontractor of the operator, or in any corporation that utilizes the facility for disposal of its wastes. No member or alternate shall accept employment from any regional facility operator, a subsidiary of the operator, parent company of the operator, a subcontractor of the operator, any corporation that utilizes the facility for disposal of its wastes, brokers or carriers during his term of office and three years after leaving office. In the event that a member or alternate resigns, the Governor shall, subject to Senate confirmation, appoint a replacement to serve. Following selection of the site of the regional facility, the Governor shall appoint a voting member and alternate who shall be residents of the host municipality. The Governor shall notify the commission in writing of the identities of the members and the alternates.

Section 702. Authority of the commission.

(a) General rule.—The commission is authorized:

(1) To enter into reciprocal contingency agreements with noncompact states or other regional boards for the emergency disposal of low-level waste generated outside the compact region. Any such agreement shall include a provision that the quantity of waste for which the parties are responsible under the agreement shall be equal based on the volume of waste and/or total curie count.

(2) To establish regulations to specifically govern and define exactly what would constitute an emergency which requires the disposal of out-of-compact low-level waste at the regional facility.

(3) To determine whether an emergency exists outside the compact region and that a contingency agreement should be implemented.

(4) To request the General Assembly and the Governor to approve an extension of a reciprocal-contingency agreement, and to provide the date when out-of-compact waste disposal will cease under the agreement.

(b) Out-of-compact waste.—No agreement shall permit the disposal of out-of-compact low-level waste for a period exceeding four months, unless an extension is granted by the General Assembly or the Governor.

CHAPTER 9

MISCELLANEOUS PROVISIONS

Section 901. Annual report.

The department shall provide an annual report to the General Assembly detailing all the current activities of the Appalachian Low-Level Waste Compact, compact commissioners and facility operators. The department shall also include in the report a list of all low-level waste generators, brokers and carriers, the amounts of waste generated by each source by volume, toxicity, product and use, including curie content, hazardous life and radionuclide. A geographic breakdown shall also be included. The department shall also furnish financial statistics relating to all aspects of the Appalachian Compact and its associated facility. The department shall also furnish statistics relating to volume reduction, waste minimization, separation and related processing.

Section 902. Liberal construction.

The terms and provisions of this act are to be liberally construed so as to best achieve and effectuate the goals and purposes thereof.

Section 903. Construction with other laws.

(a) Other acts.—This act shall be construed in para materia with the Appalachian States Low-level Radioactive Waste Compact and the Radiation Protection Act.

(b) Authority of department.—The authority given the department under this act over the regulation of low-level radioactive waste shall be construed as complementary to the department's authority over radiation sources established under the Radiation Protection Act. This act shall not be construed to limit the department's authority under the Radiation Protection Act to license the generation, management, handling or transportation of low-level waste.

Section 904. Appropriations.

(a) Initial funding of program.—It is the intent of the General Assembly to fund this program initially through annual General Fund appropriation for transfer to the Low-Level Waste Fund.

(b) Disposition of General Fund appropriation.—The funds remaining of the appropriation made to the department for the low-level radioactive waste control program under section 213 of the act of July 3, 1987 (P.L. , No.9A), known as the General Appropriation Act of 1987, are hereby transferred to the Low-Level Waste Fund.

(c) Repayment of General Fund.—The sum appropriated under section 213 of the General Appropriation Act of 1987 for the low-level radioactive waste control program shall be repaid to the General Fund under section 315(c)(1)(i) of this act.

Section 905. Repeals

(a) Absolute repeals.—The following acts and parts of acts are repealed:

Act of September 8, 1959 (P.L.807, No.302), entitled "An act empowering the Department of Health to regulate the burial of radioactive material and to issue permits therefor; and prescribing penalties."

Act of October 26, 1959 (P.L.1380, No.480), entitled "An act empowering the Commonwealth to acquire land and operate burial grounds for the disposal of radioactive materials."

(b) Inconsistent repeal.—The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

Act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(c) Construction of section.—This section shall not be construed to repeal jurisdiction over radioactive wastes that are also hazardous wastes under the Solid Waste Management Act, and it is hereby declared to be the legislative intent of the Solid Waste Management Act to regulate such radioactive wastes that are also listed or characteristic hazardous wastes or are mixed with hazardous waste.

Section 906. Effective date.

This act shall take effect immediately.

On the question,

Will the House agree to the amendments?

The SPEAKER. On the George amendment, the Chair now recognizes the gentleman from Clearfield, Mr. George.

Mr. GEORGE. Thank you, Mr. Speaker.

Mr. Speaker, the purpose of this amendment—which, incidentally, in most instances is identical to HB 1808 which had been brought from the Conservation Committee—the main purpose is for the expediency in that it is thought, as everyone here knows, that we are under a commitment to the Federal Government to meet the obligation of the mandate, and that was the purpose thereof of HB 1808. What we have today is a composite in an amendment which is in every way basically identical to HB 1808. I know that the context of this is very long and lengthy, but I say emphatically that this Conservation Committee, regardless of the politics within, worked diligently and it provided more than 30 amendments that the public saw fit that were necessary for environmental control.

I would daresay that never is there a bill that everyone can agree with. To start with, as a personal note, I firmly believe that we should not be involved in what we are in, but the fact of the matter is we are. We have a mandate, we have an obligation, and I ask that the members of this House approve this amendment so that the bill can be sent to the Senate for their concurrence and hopefully approval. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Allegheny, Mr. Cowell.

Mr. COWELL. Would the gentleman, Mr. George, consent to interrogation, please?

The SPEAKER. Mr. George indicates he will stand for interrogation. You are in order, and you may proceed, Mr. Cowell.

Mr. COWELL. Thank you, Mr. Speaker.

Mr. Speaker, this is a comprehensive amendment, obviously, and it is for many of us the first opportunity to look at this particular set of papers.

I would just like the gentleman to clarify, you indicated in your introductory remarks with reference to HB 1808 that this language on one occasion is basically the same and then initially you said in most instances it is the same. Are there any substantial differences between this amendment which you are offering and HB 1808 which we would want to be aware of before we vote on this?

Mr. GEORGE. Mr. Speaker, I had said what I had said because I would not want anybody to think that every word was identical, but there are only certain phases which are basically technical and certain areas in which the Federal mandate insists upon certain guidelines. Other than that, if you read HB 1808, you will read this amendment.

Mr. COWELL. Okay. Thank you, Mr. Speaker.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—188

Acosta	Donatucci	Langtry	Richardson
Angstadt	Dorr	Lashinger	Rieger
Argall	Duffy	Laughlin	Ritter
Arty	Evans	Leh	Robbins
Barley	Fargo	Lescovitz	Roebuck
Battisto	Farmer	Letterman	Rudy
Belardi	Fattah	Levdansky	Ryan
Billow	Fee	Linton	Rybak
Birmelin	Flick	Livengood	Saloom
Black	Foster	Lloyd	Saurman
Blaum	Fox	Lucyk	Scheetz
Book	Freeman	McCall	Schuler
Bortner	Freind	McClatchy	Semmel
Bowley	Gallen	McHale	Serafini
Bowser	Gamble	McVerry	Showers
Boyes	Gannon	Maiale	Sirianni
Brandt	Geist	Maine	Smith, B.
Broujos	George	Manderino	Smith, S. H.
Bunt	Gladeck	Manmiller	Snyder, D. W.
Burd	Godshall	Markosek	Snyder, G.
Burns	Gruitza	Mayernik	Staback
Bush	Gruppo	Melio	Stairs
Cappabianca	Hagarty	Merry	Steighner
Carlson	Haluska	Michlovic	Stuban
Carn	Harper	Micozzie	Sweet
Cawley	Hasay	Miller	Taylor, E. Z.
Cessar	Hayden	Morris	Taylor, F.
Chadwick	Hayes	Mowery	Taylor, J.
Civera	Heckler	Mrkonic	Telek
Clark	Herman	Murphy	Tigue
Clymer	Hershey	Noye	Trello
Cohen	Hess	O'Brien	Van Horne
Colafella	Honaman	O'Donnell	Veon
Cole	Howlett	Olasz	Vroon
Corrigan	Hughes	Oliver	Wambach
Cowell	Hutchinson	Perzel	Wass
Coy	Itkin	Petrarca	Weston
DeLuca	Jackson	Petrone	Wiggins
DeVerter	Jadlowiec	Phillips	Wilson

DeWeese	Jarolin	Piccola	Wogan
Daley	Johnson	Pievsky	Wozniak
Davies	Josephs	Pitts	Wright, J. L.
Dawida	Kasunic	Pressmann	Wright, R. C.
Dempsey	Kennedy	Preston	Yandrisevits
Dietterick	Kenney	Raymond	
Dininni	Kosinski	Reber	Irvis,
Distler	Kukovich	Reinard	Speaker
Dombrowski	LaGrotta		

NAYS—0

NOT VOTING—2

Caltagirone	Wright, D. R.

EXCUSED—10

Belfanti	Fischer	Nahill	Punt
Cornell	Kitchen	Pistella	Seventy
Durham	Moehlmann		

The question was determined in the affirmative, and the amendments were agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS—188

Acosta	Donatucci	Langtry	Richardson
Angstadt	Dorr	Lashinger	Rieger
Argall	Duffy	Laughlin	Ritter
Arty	Evans	Leh	Robbins
Barley	Fargo	Lescovitz	Roebuck
Battisto	Farmer	Letterman	Rudy
Belardi	Fattah	Levdansky	Ryan
Billow	Fee	Linton	Rybak
Birmelin	Flick	Livengood	Saloom
Black	Foster	Lloyd	Saurman
Blaum	Fox	Lucyk	Scheetz
Book	Freeman	McCall	Schuler
Bortner	Freind	McClatchy	Semmel
Bowley	Gallen	McHale	Serafini
Bowser	Gamble	McVerry	Showers
Boyes	Gannon	Maiale	Sirianni
Brandt	Geist	Maine	Smith, B.
Broujos	George	Manderino	Smith, S. H.
Bunt	Gladeck	Manmiller	Snyder, D. W.
Burd	Godshall	Markosek	Snyder, G.
Burns	Gruitza	Mayernik	Staback
Bush	Gruppo	Melio	Stairs
Caltagirone	Hagarty	Merry	Steighner
Cappabianca	Haluska	Michlovic	Stuban
Carlson	Harper	Micozzie	Sweet
Carn	Hasay	Miller	Taylor, E. Z.
Cawley	Hayden	Morris	Taylor, F.
Cessar	Hayes	Mowery	Taylor, J.
Chadwick	Heckler	Mrkonic	Telek
Civera	Herman	Murphy	Tigue
Clark	Hershey	Noye	Trello
Clymer	Hess	O'Brien	Van Horne
Colafella	Honaman	O'Donnell	Veon
Cole	Howlett	Olasz	Vroon
Corrigan	Hughes	Oliver	Wambach
Cowell	Hutchinson	Perzel	Wass
Coy	Itkin	Petrarca	Weston
DeLuca	Jackson	Petrone	Wiggins
DeVerter	Jadlowiec	Phillips	Wilson

DeWeese	Jarolin	Piccola	Wogan
Daley	Johnson	Pievsky	Wozniak
Davies	Josephs	Pitts	Wright, J. L.
Dawida	Kasunic	Pressmann	Wright, R. C.
Dempsey	Kennedy	Preston	Yandrisevits
Dietterick	Kenney	Raymond	
Dininni	Kosinski	Reber	Irvis,
Distler	Kukovich	Reinard	Speaker
Dombrowski	LaGrotta		

NAYS—0

NOT VOTING—2

Cohen	Wright, D. R.

EXCUSED—10

Belfanti	Fischer	Nahill	Punt
Cornell	Kitchen	Pistella	Seventy
Durham	Moehlmann		

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

* * *

The House proceeded to third consideration of **SB 409, PN 1679**, entitled:

An Act amending the act of April 2, 1980 (P. L. 63, No. 26), entitled "Divorce Code," further providing for grounds for divorce, procedure, jurisdiction, marital property, relief and alimony; providing for agreements between parties; making editorial changes; and making a repeal.

On the question,

Will the House agree to the bill on third consideration?

Mrs. HAGARTY offered the following amendments No. A0186:

Amend Bill, page 18, by inserting between lines 8 and 9

Section 6. The reduced time period in section 1 (section 201(d)) shall apply to final separations which begin on or after the effective date of this act. For final separations beginning prior to the effective date of this act, the three-year time period shall apply.

Amend Sec. 6, page 18, line 9, by striking out "6" and inserting

7

On the question,

Will the House agree to the amendments?

The SPEAKER. The Chair recognizes the lady from Montgomery, Mrs. Hagarty, on the amendment.

Mrs. HAGARTY. Thank you, Mr. Speaker.

Mr. Speaker, one of the most significant provisions of SB 409, which is a comprehensive amendment to our no-fault divorce law, is that currently under Pennsylvania law, if one party agrees to a divorce and the other party does not, there is a time period with which the parties must wait until they are entitled to the divorce. The time period under current law is 3 years. This bill reduces that time period to 2 years, so that where one party does not agree to a divorce—the term used is

a "unilateral" no-fault divorce - one party agrees, one party does not—this bill changes that time to 2 years.

There is an issue in many of our minds, though, as to although we agree that 2 years is a reasonable time period and makes more sense than 3, there is an issue in many of our minds as to whether or not it is fair to apply it to people who today are separated for some period of time, let us say close to 2 years, and have assumed that they would have an additional year in order to adjust either emotionally or financially before they are forced into being divorced.

The bill as it passed the Senate unanimously said that the reduced 2-year time period only applied to new divorces filed after the effective date of this act. The House Judiciary Committee reversed that and said that effective immediately is this new reduced time period of 2 years. I do not agree with that. I think it is unfair to force people tomorrow, if this became law tomorrow, to suddenly find themselves divorced when they thought they had the full 3 years.

So what this amendment does—and it is supported by the Catholic Conference and the other groups that have endorsed this bill, the Pennsylvania Bar Association, the American Association of University Women—is it says that the reduced time period section of this bill only applies to final separations beginning after the effective date of this act, and I ask for the support of the members on this amendment. Thank you.

The SPEAKER. For debate on the amendment, the Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, I think this is an important issue, as is all of SB 409, and I hope the membership will bear with us this afternoon as we go through some very serious and what I consider to be some very sensitive debate.

The issue that is in front of us now is whether we are going to take the provisions of SB 409, which in some cases are procedural changes and some are substantive changes, and have them apply to all of the divorces that are in the mill, where a complaint has been filed.

What we did in the Judiciary Committee was to make the decision, as we made the decision in 1979 in this General Assembly under the 1980 Divorce Code, that parties should be prepared, if a complaint has been filed in a divorce action, to face the realities of what the Divorce Code will hold at that time. We made a decision to say that it should apply to all of those cases that are not just filed subsequent to this but also to those cases that are pending. I can see no protection on the economic side for dependent spouses that is lost by putting this legislation into effect in the next few weeks or next few months or sometime in 1988. The equitable distribution provisions, the alimony provisions, all still apply, and the economic protections are contained in the legislation and I think protect what Representative Hagarty talked about.

Let me point out what I think might be the most important thing, however. You are telling that person who has filed the complaint that all of the other provisions - gifts, permanent alimony, all of the other items that we substantively changed - apply. So in most cases, if a man has filed a complaint, he is going to be bound—and I hate to use sexist terms, but in most cases let us say the disadvantaged is the female—the petitioner will have filed the complaint, the new alimony section will apply to that male petitioner, the new equitable distribution sections will apply to that petitioner; however, what Representative Hagarty is saying is the separation period should not apply. By accepting the Hagarty amendment, we set up two different sets of rules in one statute. Everything is going to apply that is good for the dependent spouse, but what is considered to be evil for the nondependent or petitioner spouse, which is this separation period in the case of what Representative Hagarty talked about, is not good, so it will not apply. If you are going to be fair, then what we should say is, if Representative Hagarty was going to be completely fair, we should say that everything in SB 409 applies to all new complaints filed. Do not say half of SB 409 applies but the separation period does not apply. I think we made that decision in the Judiciary Committee, and what you are seeing in front of you today is the work effort of the Judiciary Committee that made a decision to put in the bill what Representative Hagarty is attempting to change.

I would oppose the amendment on that basis. Thank you, Mr. Speaker.

The SPEAKER. On the Hagarty amendment, the Chair recognizes the gentleman from Montgomery, Mr. Reber.

Mr. REBER. Thank you, Mr. Speaker.

Mr. Speaker, very briefly, I would concur in the remarks of Representative Lashinger and simply say to the members of this body that in 1980 when the entire new concept of no-fault divorce was enacted in Pennsylvania, there was no bifurcation, there was no double standard, there was no such aspect of looking at this from two particular concepts as we are being asked to do in this amendment.

In 1980 individuals had been separated for 18, 19, 20, 25 years and were immediately affected by the unilateral divorce provision of 3 years. We are only asking by the actions of the Judiciary Committee that the bill in its current form, without this amendment, be consistent with what has been done in divorce reform in Pennsylvania over the years.

I would strongly ask for a negative vote on this amendment. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Greene, Mr. DeWeese.

Mr. DeWEESE. Mr. Speaker, I would concur with the gentleman, Mr. Reber, and the gentleman, Mr. Lashinger.

We discussed this at length in our committee, and we decided as a committee that the reduction of 2 years was appropriate and that it should take effect immediately. I think in fairness to the men and women, and obviously I am not an expert on divorce, but nevertheless, I am confident that the language our committee came up with and that the argumentation delivered by Mr. Reber and by Mr. Lashinger is sound, and I would ask that the Hagarty amendment be opposed. Thank you very much, sir.

The SPEAKER. On the Hagarty amendment, the Chair recognizes the lady from Philadelphia, Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I rise to support the Hagarty amendment. I know that dependent spouses, most of whom are women and many of whom have children that they have to take care of, experience a very dramatic and sharp reduction in their income after they are separated or divorced from their spouse. I think minimal protection of these people requires that we support Mrs. Hagarty's amendment, and I ask my colleagues to do that. Thank you.

The SPEAKER. The Chair recognizes the gentleman from Delaware, Mr. Freind, on the Hagarty amendment.

Mr. FREIND. Thank you, Mr. Speaker.

Mr. Speaker, I think you are witnessing a first today. Babette Josephs and Steve Freind agree on an issue. I also rise to support the Hagarty amendment.

I think what you have to remember is that the rest of the bill that is retroactive is really only dealing in the financial area. With respect to the waiting period, you are dealing in far more than finances; you are dealing in the psychological area, you are dealing in the whole stability area. If we make this retroactive, quite literally, the day after this bill goes into law, people who assumed that they had another year in the waiting period to get their lives together, to attempt to negotiate for a better settlement, they are going to find themselves divorced.

Now, I know a number of groups, including the Catholic Conference, worked very hard on this legislation. They were concerned with reducing the waiting period, but they felt that the overall benefits to the woman particularly and to the whole institution of marriage in the bill outweighed the shrinking of the waiting period. They are adamantly opposed, however, to making this retroactive. It would be switching horses in midstream. It would cause chaos. For that reason I sincerely hope that we support, strenuously, the Hagarty amendment. Thank you, Mr. Speaker.

The SPEAKER. For the second time on the Hagarty amendment, the Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Very briefly for the members, and again, despite the arguments, I continue to strongly oppose the Hagarty amendment. We are mixing apples and oranges.

Representative Josephs made some very valid remarks, and I agree with what she is saying. Nothing in the Hagarty amendment or in anything that we are attempting to do later today affects the economic justice that we are attempting to promote in SB 409. This strictly relates to whether 2 years should affect those complaints that have been filed and those divorces that are proceeding or, for those that have filed, should a waiting period continue to be 3 years.

My comment to Representative Freind is, if it becomes 2 years today, if this were signed by the Governor today and became effective today, that spouse that still wanted time for counseling would merely say—and you will hear this argument later when we talk about further reducing the time period—would merely say, this marriage is not irretrievably broken, and the court would then say, I compel both of you to go get counseling for a minimum of 90 days, maybe a maximum of 120 days, and come back to this court and let this court, after hearing the counselor's testimony, decide if this marriage is irretrievably broken.

So it does not happen automatically. This is not an automatic no-fault State despite this legislation being characterized as automatic no-fault. The only real, true no-fault in this State is where there is mutual consent of the parties. In this area where there is the consent of only one party, it does not happen automatically, and it has been a misnomer, I think, for some time.

All I am saying, though, is, if you are going to make the new economic provisions applicable to the one spouse, then the other spouse should also be bound by the shortened time period. Let us put this on a level playing field. Let us make the rules evenly. Let us not have half of them apply to one spouse and not have the new rule on the waiting period not apply to the other.

I would ask for rejection of the amendment. Thank you, Mr. Speaker.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—161

Acosta	Donatucci	LaGrotta	Robbins
Angstadt	Dorr	Langtry	Roebuck
Argall	Duffy	Leh	Rudy
Arty	Evans	Lescovitz	Ryan
Barley	Fargo	Letterman	Rybak
Belardi	Farmer	Levdansky	Saloom
Billow	Fattah	Linton	Saurman
Birmelin	Fee	Livengood	Scheetz
Black	Flick	Lloyd	Schuler
Blaum	Foster	Lucyk	Serafini
Book	Fox	McClatchy	Showers
Bowley	Freeman	McHale	Sirianni
Bowser	Freind	McVerry	Smith, B.
Boyes	Gallen	Maiale	Smith, S. H.
Brandt	Gannon	Manderino	Snyder, G.
Broujos	Geist	Manmiller	Stairs
Burd	George	Markosek	Steighner
Burns	Gruitza	Mayernik	Stuban
Bush	Gruppo	Melio	Sweet
Caltagirone	Hagarty	Merry	Taylor, E. Z.
Cappabianca	Haluska	Micozzie	Taylor, F.
Carlson	Hasay	Miller	Taylor, J.
Carn	Hayden	Morris	Telek
Cawley	Hayes	Mowery	Tigue
Cessar	Heckler	Mrkonic	Trello
Civera	Herman	Noye	Van Horne
Clark	Hershey	O'Brien	Veon
Clymer	Honaman	O'Donnell	Vroon
Colafella	Howlett	Olasz	Wambach
Cole	Hughes	Perzel	Wass
Corrigan	Hutchinson	Petrarca	Weston
Cowell	Jackson	Petrone	Wilson
Coy	Jadlowiec	Phillips	Wogan
DeLuca	Jarolin	Piccola	Wozniak
DeVerter	Johnson	Pievsky	Wright, J. L.
Daley	Josephs	Pitts	Wright, R. C.
Davies	Kasunic	Pressmann	Yandrisevits
Dietterick	Kennedy	Preston	
Dininni	Kenney	Raymond	Irvis,
Distler	Kosinski	Reinard	Speaker
Dombrowski	Kukovich	Rieger	

NAYS—25

Battisto	Gamble	Laughlin	Reber
Bortner	Gladeck	McCall	Richardson
Bunt	Godshall	Maine	Ritter
Chadwick	Hess	Michlovic	Semmel
DeWeese	Itkin	Murphy	Snyder, D. W.
Dawida	Lashinger	Oliver	Staback
Dempsey			

NOT VOTING—4

Cohen	Harper	Wiggins	Wright, D. R.

EXCUSED—10

Belfanti	Fischer	Nahill	Punt
Cornell	Kitchen	Pistella	Seventy
Durham	Moehlmann		

The question was determined in the affirmative, and the amendments were agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Mrs. HAGARTY offered the following amendments No. A0191:

Amend Sec. 1 (Sec. 401), page 12, line 7, by striking out "or"

Amend Sec. 1 (Sec. 401), page 12, line 8, by removing the period after "costs" and inserting a semicolon

Amend Sec. 1 (Sec. 401), page 12, by inserting between lines 8 and 9

(8) attach wages; or

(9) find the party in contempt.

Amend Sec. 5 (Sec. 508), page 18, line 2, by striking out "either party, any obligation to pay and" and inserting

the payee party, the

Amend Sec. 5 (Sec. 508), page 18, line 3, by inserting after "cease"

. Upon the death of the payor party, the obligation to pay alimony shall cease

On the question,

Will the House agree to the amendments?

The SPEAKER. On the amendment, the Chair recognizes the lady from Montgomery, Mrs. Hagarty.

Mrs. HAGARTY. Thank you, Mr. Speaker.

Mr. Speaker, this amendment is technical in nature. It simply switches the section in which remedies for enforcing an equitable distribution order are lifted in one part of the amendment, and in the other part of the amendment there was a mistake in drafting in the section that has to do with the court considering the consequences of tax law in awarding alimony.

It is technical, and I am not aware of any objections to it. Thank you.

The SPEAKER. The Chair recognizes the gentleman from Montgomery, Mr. Lashinger. No objection?

Mr. LASHINGER. No objection. Thank you.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—184

Acosta	Dombrowski	Lashinger	Rieger
Angstadt	Donatucci	Laughlin	Ritter
Argall	Dorr	Leh	Robbins
Arty	Duffy	Lescovitz	Roebuck
Barley	Evans	Letterman	Rudy
Battisto	Fargo	Levdansky	Ryan
Belardi	Farmer	Linton	Rybak
Billow	Fattah	Livengood	Saloom
Birmelin	Fee	Lloyd	Saurman
Black	Flick	Lucyk	Scheetz
Blaum	Foster	McCall	Schuler
Book	Fox	McClatchy	Semmel
Bortner	Freeman	McHale	Serafini
Bowley	Freind	McVerry	Showers
Bowser	Gallen	Maiale	Sirianni
Boyes	Gamble	Maine	Smith, B.
Brandt	Gannon	Manderino	Smith, S. H.
Broujos	Geist	Manmiller	Snyder, D. W.
Bunt	George	Markosek	Snyder, G.
Burd	Gladeck	Mayernik	Staback
Burns	Godshall	Melio	Stairs
Bush	Gruitza	Merry	Steighner
Caltagirone	Gruppo	Michlovic	Stuban
Cappabianca	Hagarty	Micozzie	Sweet
Carlson	Haluska	Miller	Taylor, E. Z.
Carn	Hasay	Morris	Taylor, F.
Cawley	Hayes	Mowery	Taylor, J.
Cessar	Heckler	Mrkonic	Telek
Chadwick	Herman	Murphy	Tigue
Civera	Hershey	Noye	Trello
Clark	Hess	O'Brien	Van Horne
Clymer	Honaman	O'Donnell	Veon
Colafella	Howlett	Olasz	Vroon
Cole	Hutchinson	Oliver	Wambach
Corrigan	Itkin	Perzel	Wass
Cowell	Jackson	Petrarca	Weston
Coy	Jadlowiec	Petrone	Wiggins
DeLuca	Jarolin	Phillips	Wilson
DeVerter	Johnson	Piccola	Wogan
DeWeese	Josephs	Pievsky	Wozniak
Daley	Kasunic	Pitts	Wright, J. L.
Davies	Kennedy	Pressmann	Wright, R. C.
Dawida	Kenney	Preston	Yandrisevits
Dempsey	Kosinski	Raymond	
Dietterick	Kukovich	Reinard	Irvis,
Dininni	LaGrotta	Richardson	Speaker
Distler	Langtry		

NAYS—1

Reber

NOT VOTING—5

Cohen	Hayden	Hughes	Wright, D. R.
Harper			

EXCUSED—10

Belfanti	Fischer	Nahill	Punt
Cornell	Kitchen	Pistella	Seventy
Durham	Moehlmann		

The question was determined in the affirmative, and the amendments were agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. BOWLEY offered the following amendment No. A0116:

Amend Sec. 1 (Sec. 401), page 8, line 3, by inserting brackets before and after "without regard to marital misconduct"

On the question,

Will the House agree to the amendment?

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Warren, Mr. Bowley.

Mr. BOWLEY. Thank you, Mr. Speaker.

Mr. Speaker, my amendment is very simple, although it will be somewhat controversial. I am attempting to amend section 1, page 8, line 3, by removing the words "without regard to marital misconduct" in the section of the bill which deals with division of marital property.

The SPEAKER. On this very simple amendment, the Chair recognizes the gentleman from Allegheny, Mr. DeLuca, first.

Mr. DeLUCA. Thank you, Mr. Speaker.

Would the maker of the amendment stand for interrogation, please?

The SPEAKER. Mr. Bowley indicates he will so stand. You are in order, and you may proceed, Mr. DeLuca.

Mr. DeLUCA. Mr. Speaker, since this is a very simple amendment, can you explain to the House what your amendment really does?

Mr. BOWLEY. I will attempt to.

In reading the legislation, it is my understanding that when alimony is decided by the court, marital misconduct can be used in determining the amount of alimony the spouse will receive. However, under division of the property, as I read the legislation, marital misconduct cannot be used when the court determines who receives what percent of the assets of the marriage.

My feeling is we are living by two different standards. If we are going to use marital misconduct as a factor in determining alimony, then I feel that marital misconduct should also be a factor that can be used by the court in determining division of marital property. My amendment is not drafted to say that the court has to use marital misconduct. All I am saying is that the court may use marital misconduct when it determines, along with a host of approximately 11 other factors, division of marital assets, and I am saying the court should be allowed to use marital misconduct when it determines what the marital assets division should be.

Mr. DeLUCA. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the lady from Montgomery, Mrs. Hagarty, on the amendment.

Mrs. HAGARTY. Thank you.

Mr. Speaker, I believe it is important to oppose the Bowley amendment. I understand and sympathize with feelings of people when a party does not want to get divorced, the other party was at fault, we have no-fault divorce now, and they do not want to be divorced is the real issue. But we have made the decision, I guess for the good of everyone, that we have no-fault divorce in Pennsylvania.

We have preserved, and I think rightly so, in the alimony section, with the thought that alimony is something that one party is giving to the other party, while it may be necessary for them to live, that still it really grates to give alimony if there has been misconduct. So we have preserved it there, and this bill does not attempt to change that.

But to suggest that we should now consider fault when we divide the property is totally misplaced. A division of property has to take into account the position of the parties, their earning capacities, how long they have been married, and a whole host of factors, essentially so that both parties can leave the marriage with some kind of distribution that will allow them to go on, to take care of children, to lead their lives, and to have a job. If we put fault into this section, number one, we will create—and I think as everyone here knows, divorce is now terribly bitter, destructive, the process itself can be even more destructive than the divorce for the family—if we start now making fault an integral part of every proceeding of how we split the property, we are going to irreparably further harm children and parties and put something into place that really has no bearing when we are trying to determine how to effectuate this couple and their children going on living.

I think it is important, while it may sound sympathetic, and there is a certain appeal to thinking about fault when we divide the property, and I understand that appeal, I think it is misplaced, would be destructive, and we have already fought the fight of whether we should have no-fault divorce and have agreed to that. So I ask for a "no" vote on this amendment.

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Westmoreland, Mr. Kukovich.

Mr. KUKOVICH. Thank you, Mr. Speaker.

First I think we need to draw a distinction between the concept of marital misconduct for alimony and the concept of marital misconduct as it relates to the equitable distribution of property. When we talk about alimony, we are talking about something new that is being created after the divorce. With marital property, with the distribution of that property, we are talking about legal ownership that happens at the time of or during the marriage. It has no relation to a finding of fault or the marital misconduct which Representative Hagarty addressed.

Inadvertently, just a couple of days ago, I ran into two common pleas judges from Westmoreland County, and I happened to mention this concept that is embodied in this amendment, and they were appalled. The thought that we would try to use marital misconduct to overturn legal rights in property that people already had vested was anathema to them. The problem, the pragmatic problem, is that if we adopt this amendment, we are going to create another burden within the legal system. We are going to create another fiction in which spouses are going to allege marital misconduct in almost every case to try to get the advantage of the distribution of property. It is not something the judiciary wants to deal with. It is bad public policy, and again Representative Hagarty alluded to the fact that what we are trying to do with this divorce reform is lessen the trauma on couples that are getting divorced, lessen the emotional baggage that they have to accept and go through. It is very trying. To put this into the bill is going to do just the opposite. It is going to create new problems, new divisions, new harsh feelings on the part of those people. I think it is a mistake. I think one of the things we have to do is make sure that elements like this that make the system more divisive do not occur.

Representative Bowley said the court does not have to use it; that is true, but you had better believe that those individuals who want to use this to their advantage will do so, and again, the practical effect is that it is very difficult to prove exactly what marital misconduct is. We are going to cause more hearings with more people exaggerating, lying, and causing more hard feelings. That is something we cannot afford to do. That is something that does not belong in this bill. That is something that does not belong in the concept of equitable distribution of property, and I would ask the members to vote "no."

The SPEAKER. The Chair recognizes the gentleman from Montgomery, Mr. Bunt.

Mr. BUNT. Mr. Speaker, the previous speaker indicated that this type of an amendment would not be good for equitable distribution, but yet it is still good enough for determining alimony. Now, I do not think you can have your cake and eat it too. I think if we are going to talk about true equity, if we are really going to talk about fairness without determining who was right and who was wrong, we are going to narrow the definition and we are going to make it fair. We are going to make it fair in the granting of divorces and reducing the separation time. We are going to make it fair for alimony. We are going to make it fair for distribution of marital property. And until we start talking about being fair, we are going to have bad legislation.

This bill as written—and I wish the members would take the time—is a bad piece of legislation. This bill was initiated by and is supported by and is debated for the attorneys who represent and who try most of the family court law in this Commonwealth. I do not think—

POINT OF ORDER

Mr. DeWEESE. A point of order, Mr. Speaker. Point of order.

My friend and colleague is debating the bill. I would appreciate it if the gentleman, Mr. Bunt, would stay with the amendment.

Mr. BUNT. The gentleman is correct.

The SPEAKER. The gentleman is certainly correct. But do you reiterate your statement about the attorneys being the ones who sponsored this amendment?

Mr. BUNT. Well, I would not want my remarks to be deleted, but I will support the Bowley amendment and urge my colleagues to do likewise.

The SPEAKER. The Chair recognizes the gentleman from Cumberland, Mr. Broujos, on the amendment.

Mr. BROUJOS. Mr. Speaker, the fault in the prior speaker's observation about attorneys is that if in fact the Curt Bowley amendment were adopted, it would create a Pandora's box of legal opportunities in which there would be fault determinations for property all over the Commonwealth. The cost in legal fees and the cost in time and the cost in anxiety and disruption and the cost of the court's time and administrative time would be astronomical. The impact of this amendment would be devastating if we got into fault on the distribution.

Distribution of property is retroactive, because for 20 years the husband and wife could have contributed to the property that belongs to the marital entity, and because one scintilla of marital misconduct may have occurred in the last year, then the whole question of marital misconduct is discussed and is considered with respect to marital distribution, property distribution, and that is wrong. It should not be. We should retain it the way it is, and I ask for the defeat of the Bowley amendment.

The SPEAKER. The Chair recognizes the gentleman from Dauphin, Mr. Piccola.

Mr. PICCOLA. Thank you, Mr. Speaker.

I also agree that the Bowley amendment should be defeated. If those of you who were here in 1980 go back to what the law was prior to the adoption of the Divorce Code, you will recall that we did not have alimony in Pennsylvania, and when we adopted this Divorce Code, we were creating a new right to certain assets of one spouse in the other. It was the thinking of the General Assembly, and I believe accurately so, that that right to receive alimony should be contingent upon the lack of marital misconduct; that is, marital misconduct should be a factor in determining whether and how much alimony a spouse should receive.

When we statutorily created the equitable distribution of property, we really were not creating anything new except we were writing it into the statute. There had always been a common-law right to have marital property or property owned by husband and wife distributed or divided at the time of divorce. At no time during that common-law history was there ever any determination of fault required with respect to how that property was divided, and so that is why we did not place that into the law. I think that was a wise decision then, and I think that continues to be a wise direction in which to go.

I think Mr. Broujos also hit upon another reason for the defeat of this amendment. Hearings under the Divorce Code oftentimes digress into many, many issues that would better be left alone in terms of division of property. These issues revolve around fault in the marriage, and they only revolve around fault in the marriage when one party or the other thinks they have a chance of getting alimony and attempts to do that.

I think if we put fault or marital misconduct into the equitable-distribution-of-property section of the law, we are going to have these hearings just digress into all sorts of issues, and it will be, as someone here on the floor characterized, a jobs bill for lawyers, because it will make these hearings go out longer and longer than they already do and require the payment of excessive attorney's fees.

For those reasons, Mr. Speaker, I would urge that the amendment be defeated.

The SPEAKER. The Chair recognizes the gentleman from Allegheny, Mr. McVerry.

Mr. McVERRY. Mr. Speaker, I rise in opposition to the Bowley amendment. The entire philosophy behind the Divorce Code of 1980—and it continues to be in 1988—is the removal of fault and acrimony between parties as far as being able to terminate a marital relationship and to divide property. If we insert the concept of marital misconduct into equitable distribution of property, we have effectively destroyed the no-fault concept of the Divorce Code of 1980, because every case will turn into a trial on misconduct for property advantage.

We have 11 factors in the law to be considered by the court in determining the fairness and equitable division of property. Those factors are more than enough to assure that people are treated fairly and that the decision as to property division is made on a relevant basis so that both parties can get on with their lives. We really should not complicate the process by inserting marital misconduct into property division. Your conduct has nothing to do with your rights of property ownership, and I urge the defeat of the Bowley amendment.

The SPEAKER. The Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, I would also urge opposition. Most of the previous speakers have already addressed the important points regarding alimony theory versus equitable distribution theory. I think all of the speakers touched on why it appears in alimony and does not appear in equitable distribution. Harkening back, however, to 1979, some of the things I remember this body discussing were the need to quickly resolve the economic issues, to reduce the cost, reduce the time frames that divorces drag out over, and most importantly, care for the future economic needs of the parties.

A lot of cases, especially in the equitable distribution area of a divorce case, interestingly enough settle by agreement. I know my practical experience has been that it is easy at an early part of the divorce action to settle those issues, the economic issues, reduce the cost to the parties, and let those parties who have decided to divorce to get on with it. Putting this provision into the equitable distribution section, I think, will drive all of those agreements that normally occur away. It will add to the time frame, and what it does is it really returns us to pre-1980 Divorce Code and puts fault and puts the punitive nature of some of the sections back into the code. I do not think we want to do that, and I think we want to progress forward.

I would urge opposition. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Greene, Mr. DeWeese.

Mr. DeWEESE. I would politely urge the defeat of the Bowley amendment. I believe, as Mr. Kukovich and others have stated, that there is a significant differential between alimony and distribution. Alimony grows out of the marital relationship. I do not believe that distribution does. If a bachelor has a home, a log cabin as I have, and a year or two later I would enter a nuptial agreement and then subsequently I would be caught in a moment of mischief and the distribution of property that I would bring to the marriage would be taken into consideration by the judge, I would consider that inappropriate. I do think there is a significant differential, a significant differential, between alimony and distribution, and I think that Mr. Bowley's amendment would seriously attack the equity that we are trying to achieve.

I would also agree with the gentleman, Mr. Broujos, who indicated this would be an absolute El Dorado for attorneys. If the Bowley amendment passes, litigation, argumentation, and obfuscation will dominate the court system, and I would call for the annihilation of the Bowley amendment. Thank you.

The SPEAKER. On the Bowley amendment for the second time, the Chair recognizes the gentleman from Warren, Mr. Bowley.

Mr. BOWLEY. Thank you, Mr. Speaker.

I would indulge the other members of the House to try to look at this amendment with some reasoning for fair and just legislation.

Both the previous speaker and myself are not in the best of positions to talk on this issue since, to the best of my knowledge, neither one of us has been married and neither one of us has been divorced, and I was not here in 1980 as this law was written. However, it is my feeling that if marital misconduct can be used in the alimony section, it also should be used in the distribution of property. Using Mr. DeWeese's example, he may be correct. However, using that same example, however the cabin was not built before the time of marriage and the cabin was built right after the marriage, if one of the spouses was guilty of marital misconduct, that property then becomes property that the court can use in distribution of the property, and more than likely that log cabin would have to be sold for fair distribution of property regardless of who was guilty of marital misconduct. I think that is wrong.

My amendment, if you look at it closely, does not say that the court has to use marital misconduct when deciding the division of property. All it is saying is the court may use it. And I again say that if we are using marital misconduct under the alimony section, it seems to me only fair and right that marital misconduct can be used in the distribution of property.

I ask for an affirmative vote. Thank you.

The SPEAKER. The Chair recognizes the majority whip.

Mr. O'DONNELL. Thank you, Mr. Speaker.

Just in brief reply to the gentleman. He indicated he was not here when this law was created. I was here and I am familiar with the debate at that time. I offered the amendment in committee that made fault relevant to alimony. Up until that time, no-fault divorce through our considerations had been truly no-fault; it was not relevant. At that time we debated both in committee and subsequently on the floor the relevance of fault to both property distribution and alimony, and the consideration or the conclusion of the House as well as the committee at that time was that nobody should be able to use a divorce for the purpose of profiting by their own misbehavior, that no one should be permitted to misbehave in the

context of a marriage and then turn that misbehavior into a divorce and then turn it into alimony and, in effect, be paid for their destruction of that relationship.

The argument on property is entirely different. The function of the property division, it seems to me and it seemed to the House at that time, was simply to separate out the contributions of the parties and to put both parties in a position where they had the opportunity to kind of get a fresh start on life. At that time the debate about no-fault divorce was tempered by the experience of lawyers and nonlawyers - married and nonmarried, divorced and nondivorced - in observing a process where people had an economic incentive to tear at each other for the purpose of making a few bucks out of the dissolution of this marriage, and the net result was a number of lives were significantly hurt, especially those of the children. So the compromise—and if this system has any genius, it is surely compromise—the compromise that was achieved at that time was that fault surely was relevant to alimony but certainly was not relevant to property division.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—9

Belardi	Cawley	LaGrotta	Mrkonic
Bowley	Duffy	Lloyd	Tigue
Bunt			

NAYS—178

Acosta	Dorr	Lashinger	Rieger
Angstadt	Evans	Laughlin	Ritter
Argall	Fargo	Leh	Robbins
Arty	Farmer	Lescovitz	Roebuck
Barley	Fattah	Letterman	Rudy
Battisto	Fee	Levdansky	Ryan
Billow	Flick	Linton	Rybak
Birmelin	Foster	Livengood	Saloom
Black	Fox	Lucyk	Saurman
Blaum	Freeman	McCall	Scheetz
Book	Freind	McClatchy	Schuler
Bortner	Gallen	McHale	Semmel
Bowser	Gamble	McVerry	Serafini
Boyes	Gannon	Maiale	Showers
Brandt	Geist	Maine	Sirianni
Broujos	George	Manderino	Smith, B.
Burd	Gladeck	Manmiller	Smith, S. H.
Burns	Godshall	Markosek	Snyder, D. W.
Bush	Gruitza	Mayernik	Snyder, G.
Caltagirone	Gruppo	Melio	Staback
Cappabianca	Hagarty	Merry	Stairs
Carlson	Haluska	Michlovic	Steighner
Carn	Hasay	Micozzie	Stuban
Cessar	Hayden	Miller	Sweet
Chadwick	Hayes	Morris	Taylor, E. Z.
Civera	Heckler	Mowery	Taylor, F.
Clark	Herman	Murphy	Taylor, J.
Clymer	Hershey	Noye	Telek
Colafella	Hess	O'Brien	Trello
Cole	Honaman	O'Donnell	Van Horne
Corrigan	Howlett	Olasz	Veon
Cowell	Hughes	Oliver	Vroon
Coy	Hutchinson	Perzel	Wambach
DeLuca	Itkin	Petrarca	Wass
DeVerter	Jackson	Petrone	Weston
DeWeese	Jadlowiec	Phillips	Wiggins
Daley	Jarolin	Piccola	Wilson
Davies	Johnson	Pievsky	Wogan
Dawida	Josephs	Pitts	Wozniak
Dempsey	Kasunic	Pressmann	Wright, J. L.
Dietterick	Kennedy	Preston	Wright, R. C.
Dininni	Kenney	Raymond	Yandrisevits
Distler	Kosinski	Reber	
Dombrowski	Kukovich	Reinard	Irvis,
Donatucci	Langtry	Richardson	Speaker

NOT VOTING—3

Cohen	Harper	Wright, D. R.

EXCUSED—10

Belfanti	Fischer	Nahill	Punt
Cornell	Kitchen	Pistella	Seventy
Durham	Moehlmann		

The question was determined in the negative, and the amendment was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. LASHINGER offered the following amendments No. A0143:

Amend Sec. 1 (Sec. 201), page 3, line 13, by striking out "] two"

Amend Sec. 1 (Sec. 201), page 3, line 14, by inserting after "~~years~~"

] one year

Amend Sec. 1 (Sec. 201), page 3, line 21, by striking out "two years" and inserting

one year

On the question,

Will the House agree to the amendments?

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, this is an amendment that is being offered both by myself and Representative Reber. It goes to the heart of a previous discussion about reducing the waiting period in a unilateral no-fault divorce. We are proposing a reduction of what is now in SB 409 from a 2-year waiting period to a 1-year waiting period.

What we are really trying to do— It is interesting. In all of my activity involving divorce actions, I have never heard anyone describe a divorce as being favorable or fun or a happy divorce. Instead I have always heard the terminology, gee, it was a bloody divorce; it was a messy divorce; it was a costly divorce. What, in my opinion, reducing the waiting period from 2 years to 1 year does is takes a lot of those unnecessary costs—and I am telling you this as a practitioner—a lot of those costs will be costs that come out of our pockets as practitioners, because the longer these cases wear on, the one guarantee in most of these cases, while the parties might lose money, virtually the one guarantee is that generally the lawyers will get paid in these cases, so reducing the 2 years to 1 year will satisfy part of that problem. What we will be doing by reducing it from 2 years to 1 year is we will be reducing the cost; we will be increasing the value of the property, because as these divorces wear on, the property continues not to increase in value but it continues to decrease in value because the parties are not paying for the mortgage and they

are not paying the utility bills and they are not paying the sewer and water bills. The husband or wife at that point in time is paying temporary alimony and becoming awfully frustrated, paying child support and continuing to be frustrated, not very willing to continue to make those payments, and hostility continues to grow. The dependent spouse generally during that time frame finds out that the support is insufficient and continues to go back and ask for increased support.

Let me, if I could, Mr. Speaker, very briefly, just give you an example—I thought that was the best way to let the membership know—and I have changed the names and the facts somewhat of a recent case. Let us call them Bob and Doris. Bob, in this divorce case, had a drinking problem. A classic divorce action in southeastern Pennsylvania where Bob has a drinking problem; Doris is a deeply religious woman; there are two children in the marriage, ages 5 and 9. Doris has decided, as a result of her perception of Bob's drinking problem, that she will file for a divorce. She thinks it has affected the marriage. They both live in an $85,000 house. Doris works part time as a teacher's aide. Bob works as a data processor. Both of them have sought counseling; both parties have been through counseling, marriage counseling. Bob says he does not have a drinking problem; Doris continues to believe that Bob does. Bob starts drinking more and more heavily because of the stress of the divorce. Bob becomes more abusive; however, his abuse does not rise to the level where Doris can get a protection-from-abuse petition. Doris goes and gets a support order for $125 a week for both children. Bob then moves out of the house.

Doris now has attorney's fees of about $1,500 after maybe 4 months of this bickering between Bob and Doris. Doris then decides that she cannot afford her counsel fees and she needs some temporary alimony to get over this stressful situation, or at least to get through this divorce. She tries for temporary alimony and counsel fees, and she gets really an inconsequential award. She gets $500 for counsel fees; she owes $1,500. The mortgage payments are well overdue. The bank starts a foreclosure action. And Bob just says, I do not have a drinking problem, Doris; I am not going to agree to a divorce. So Doris says, well, I guess I have to wait for 3 years for Bob to agree to a divorce, because Doris is sensitive to the fact that she does not want to go through that situation that we all just described - the old indignities section, the old fault-based section, in the Divorce Code. She does not want to take Bob through that. She continues to like Bob if not love Bob. Bob decides it is still his house; he still has title to it; he has not been driven out of the house. So during this 3-year period Bob is back and forth - in the house, out of the house.

So what happens is we attorneys in the field decide to use this somewhat archaic system that exists out there to try to help Doris through these 3 years and we decide that we are going to file for protection from abuse to keep Bob from coming in and out of the house when he wants to. We decide that we are going to try to leverage Bob and promote him to file consent by saying, Bob, we are going to increase the support order; we are going to increase the alimony award.

What I am trying to point out, Mr. Speaker, is that no justice is served by this long, protracted waiting period. Sometimes I think maybe I am just looking at this too practically. When a divorce is filed or when the parties have seen an attorney, they have generally made a decision to proceed with a divorce. If they want counseling, if the parties want help, there are circuit breakers built into the Divorce Code today that allow them to ask the court to require counseling. It is mandatory if there are minor children. In Doris and Bob's case, if one of the parties requests it—they have two kids, 5 and 9—the court can compel them to go get counseling. All that is happening is attorney's fees are running up; the bills are not being paid. We are now ready to equitably distribute the property, and there is nothing left because the interest and penalty from the bank's part has consumed all of the equity in the house. The liens and judgment from the utility companies have really eaten up virtually all of the assets.

What I am saying then is, we need to move the process up, face reality that those parties have decided that they want a divorce—that is the real world—let them proceed but with the recognition that the wife will still be getting the property in an equitable fashion, hopefully. Alimony is still a consideration. Child support is still there and custody is still there for the spouse that warrants any of those.

Let me just rhetorically say something, and I think you should look in the bill because I am fascinated by it and I do not have an answer for it. We made a decision elsewhere in SB 409 to allow a party— Right now in the Divorce Code, if you are a mental patient, if you are committed to a mental hospital, there is a 3-year waiting period in the Divorce Code where a party can unilaterally petition for a divorce because the superintendent of that mental hospital has said this person is a patient here, the likelihood of release is not good, and therefore, you can proceed after 3 years and get a divorce in a unilateral fashion against that individual. What the sponsors of SB 409 have decided is just is that for a mental patient we are reducing it from 3 years to 18 months, so if a person is now in a mental hospital and you want to proceed on a unilateral basis for a divorce, you only have to wait 18 months. But in the case where you have got what I will assume are logical, rational parties desirous of moving forward, at least one of the parties in moving forward and the other has protection—where I do not think a mental patient would have much in the way of protection—we have decided to keep it at 2 years. I do not understand the logic of reducing mental patients on a unilateral basis to 18 months and not, at minimum, accepting a unilateral no-fault provision of 18 months. At least let it align itself with that for mental patients.

If you want to reduce the cost, if you want to cut down on this bitterness, if you really want to promote economic justice, then we should be at 1 year, not 2 years. Representative Reber will point out some startling data about other States that we thought we were comparable with as regards the 1-year provision.

I will end with this; I made this point earlier: This is not a no-fault State where after 3 years you are magically divorced

or after the end of 2 years you are magically divorced. After the time period expires, you must still prove that the marriage is irretrievably broken, so it does not happen automatically. So at the end of 1 year, a court could still say, this marriage is not broken, couple; Doris and Bob, go out and work it out among yourselves; we are not going to grant a divorce. It does not happen in a lot of cases. It could happen under the Divorce Code, however, in Pennsylvania.

I would ask for the support in the reduction from 2 years to 1 year. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the lady from Montgomery, Mrs. Hagarty, on the amendment.

Mrs. HAGARTY. Thank you, Mr. Speaker.

Mr. Speaker, I oppose reducing the unilateral no-fault divorce period any further. I am going to turn my attention to something other than the practicalities and the economics and the lawyers and the money and talk about the marriage and the family a minute.

For many years I resisted moving the unilateral period from 3 years even to 2 years. I resisted that because I believed that if a person wanted to leave a marriage and the other party did not want to and they knew that they had to face 3 years of waiting or if they had 3 years to wait, that perhaps we could better protect marriages, something that we all want to do. The reason I finally have sponsored a bill that went to 2 years is I have come to believe that there is merit to the argument that after at least some period of time it is unlikely that the parties will reconcile and that by keeping the situation in an advocacy posture, it probably hurts the children and the family further, and so I now stand behind the 2 years.

To move it to 1 year, though, I think would be a tragic mistake. There are many couples— And divorce practitioners have told me that frequently when a party comes to the divorce lawyer, he has been separated about 9 months. That may be the period in which he may wish to reconsider. He may think about counseling. He or she may really think about what life is going to be like without that spouse or what that is doing to that family. Do we really want to let them out that quickly? What policy are we really serving by letting them out of a marriage so quickly? So I believe that if we want to think about our goal of preserving the marriage where we can, that to require the parties to be separated for 2 years is certainly a reasonable period of time and that no real public policy is served by allowing quicker divorces.

Secondly, there is an economic side, and I disagree with Representative Lashinger as to how the economic side hurts the parties. There certainly are cases in which a party would have been better off economically if he or she could have gotten divorced faster. And keep in mind that where there is real fault, you still can proceed to a fault divorce in Pennsylvania. But in most cases I believe and the statistics bear out that support is better and that the party who needs support is better off during the marriage with a support award than after the marriage with the property decided and possibly with alimony. Additionally, it is important to keep in mind that for parties who have been married many, many years, they may need more time both financially and emotionally to adjust before they are in that state of being all alone.

Finally, we are already reducing by going from 3 years to 2 years, an enormous reduction of one-third. It is not necessary to go further. We will accomplish a great deal in the direction of those parties who feel this time should be reduced by reducing it. Let us not reduce it any more. Let us vote "no" on this amendment. Thank you.

The SPEAKER. The Chair recognizes the gentleman from Montgomery, Mr. Reber.

Mr. REBER. Thank you, Mr. Speaker.

Mr. Speaker, I think the members should give some very strong consideration to this particular amendment, because if past history is any indication, it may be some time before this particular body has a chance to address and undo a long-standing wrong in the Commonwealth of Pennsylvania.

Mr. Speaker, Representative Hagarty was earlier speaking about her concern for the family unit, for the situation that comes about with a divorce as to the family unit. I do not think anyone is standing here advocating the 1-year unilateral divorce for anything to do with tearing apart the family unit. That determination of tearing apart of the family unit takes place because of numerous circumstances in marriages with individuals who ultimately become involved in the divorce process.

Mr. Speaker, one of the problems we have is that the adversarial justice system surrounding divorce is just the particular circumstance that causes much pain for the individuals involved. I would submit that it is almost raw, almost scarring, and some practitioners have likened the divorce proceeding, once it begins, to similar to guerrilla warfare, and I think what we are doing here, Mr. Speaker, by continuing this long, drawn-out scenario where the parties have already, as this amendment proposes, been separated for 1 year, to move forward to allow the individuals that at one time, at one time, were a family unit but no longer have been a family unit for far in excess of the 1-year period, I would daresay.

Additionally, Mr. Speaker, I think if you want to be totally honest on this particular subject, you have to look to the economic argument that was made. I would submit, Mr. Speaker, that every member better take a hard look at this bill on final passage, because there is a lot of eye-opening that ought to be done on that issue as well, and that issue is the economic aspects that are covered in this bill on permanent alimony, on the extension of permanent alimony, for the first time in the Commonwealth of Pennsylvania. If there is a concern for the economic justice issue as a basis for not voting for the 1-year unilateral consideration on this amendment, then I would say that all the other goodness that is contained in this bill, all the other reform that is contained in this bill, vitiates that concern, vitiates that argument.

Additionally, Mr. Speaker, I am going to enter into the record a four-page document which is a compilation of an update on the grounds for divorce in all of the 50 States in the United States.

Mr. Speaker, I would submit to the members, if you have not read these statistics, that there are 38 States that simply allow for unilateral divorce on the allegation of irretrievable breakdown, time period notwithstanding other than what it takes to get through the judicial process. In short, Mr. Speaker, we are not treading on any kind of new ground. As a matter of fact, we are way behind the pack when it comes to addressing this issue. And what is that issue? It is the issue I earlier spoke about, by keeping spouses together when they do not want to be together, and more importantly, keeping children in a situation where there are spouses, mothers and fathers, that no longer want to be together. The die has been cast. The situation has manifested itself. Let those individuals, the individual spouses as well as the children as well as the relatives, move on about their lives, and do not let them be subjected to the guerrilla warfare - to the messy, bloody divorces that Representative Lashinger was talking about.

I would submit to the members of the body that if you have concerns, those concerns, those safeguards, are appropriately contained in various fashions in the bill. The attempt to keep people together that have already made the determination that that is not going to take place in various ways is not in the best interest of the people most directly affected.

I would respectfully urge adoption of this particular amendment. Thank you, Mr. Speaker.

REMARKS SUBMITTED FOR THE RECORD

Mr. REBER. I would submit these remarks in this document for the record.

The SPEAKER. The gentleman will send the document forward. They will be filed for the record.

Mr. REBER submitted the following remarks for the Legislative Journal:

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

M E M O R A N D U M

TO: House Judiciary Committee Members

FROM: Robert D. Reber, Jr.

RE: UPDATE, Grounds for Divorce in the Fifty States (Unilateral Divorce - 201(d))

DATE: January 25, 1988

Fourteen states have a unilateral no-fault ground commonly referred to as "irretrievable breakdown" of the marriage as their sole ground for divorce. They are:

1. Arizona
2. California
3. Colorado
4. Delaware
5. Florida
6. Iowa
7. Kentucky
8. Michigan
9. Minnesota
10. Missouri
11. Montana
12. Nebraska
13. Oregon
14. Washington

Fourteen states have irretrievable breakdown as their unilateral no-fault ground in addition to the traditional fault grounds. They are:

1. Alabama
2. Alaska
3. Georgia
4. Indiana
5. Kansas
6. Maine
7. Massachusetts
8. Mississippi
9. New Hampshire
10. New Mexico
11. North Dakota
12. Oklahoma
13. South Dakota
14. Wyoming

Ten states have irretrievable breakdown as a ground for divorce and a living separate and apart no-fault ground in addition to the traditional fault grounds. They are:

1. Connecticut (18 months)
2. Hawaii (2 years) (no traditional grounds listed)
3. Idaho (5 years)
4. Nevada (1 year)
5. Rhode Island (3 years)
6. Tennessee (3 years)
7. Texas (3 years)
8. Utah (3 years)
9. West Virginia (1 year)
10. Wisconsin (1 year)

Twelve states have living separate and apart no-fault grounds as their unilateral no-fault ground for divorce in addition to the traditional fault grounds. They are:

1. Arkansas (3 years)
2. Illinois (2 years or 6 months by agreement)
3. Louisiana (1 year)
4. Maryland (1 year voluntary separation or 2 years separate and apart)
5. New Jersey (18 months)
6. New York (1 year)
7. North Carolina (1 year)
8. Ohio (1 year)
9. Pennsylvania (3 years)
10. South Carolina (1 year)
11. Vermont (6 months)
12. Virginia (1 year or 6 months where there is a separation agreement)

NOTE: The District of Columbia has 6 months mutually and voluntarily separate and apart without cohabitation or 1 year separate and apart grounds.

The following lists the various types of grounds for no-fault divorce and the corresponding number of states which have those grounds. As you can see, Pennsylvania is in an extreme minority:

Irretrievable Breakdown 38	After 18 months of separation 1
After 5 years of separation 1	After 1 year of separation 11
After 3 years of separation 6	After 6 months of separation 4
After 2 years of separation 3	

The following list is a state-by-state summary of grounds for divorce by either a period of separation and/or irretrievable breakdown:

Alabama	Irretrievable breakdown.
Alaska	Irretrievable breakdown.
Arizona	Irretrievable breakdown.
Arkansas	After 3 years of separation.
California	Irretrievable breakdown.
Colorado	Irretrievable breakdown.
Connecticut	Irretrievable breakdown or after 18 months of separation.
Delaware	Irretrievable breakdown.

District of Columbia	After 6 months of a mutual and voluntary period of separation or after 1 year of unilateral separation.
Florida	Irretrievable breakdown.
Georgia	Irretrievable breakdown.
Hawaii	Irretrievable breakdown or after 2 years of separation.
Idaho	Irretrievable breakdown or after 5 years of separation.
Illinois	After 2 years or 6 months by agreement.
Indiana	Irretrievable breakdown.
Iowa	Irretrievable breakdown.
Kansas	Irretrievable breakdown.
Kentucky	Irretrievable breakdown.
Louisiana	After 1 year of separation.
Maine	Irretrievable breakdown.
Maryland	After 1 year of a voluntary period of separation or after 3 years of unilateral separation.
Massachusetts	Irretrievable breakdown.
Michigan	Irretrievable breakdown.
Minnesota	Irretrievable breakdown.
Mississippi	Irretrievable breakdown.
Missouri	Irretrievable breakdown.
Montana	Irretrievable breakdown.
Nebraska	Irretrievable breakdown.
Nevada	Irretrievable breakdown or after 1 year of separation.
New Hampshire	Irretrievable breakdown.
New Jersey	After 18 months of separation.
New Mexico	Irretrievable breakdown.
New York	After 1 year of separation.
North Carolina	After 1 year of separation.
North Dakota	Irretrievable breakdown.
Ohio	After 1 year of separation.
Oklahoma	Irretrievable breakdown.
Oregon	Irretrievable breakdown.
Pennsylvania	After 3 years of separation.
Rhode Island	Irretrievable breakdown or after 3 years of separation.
South Carolina	After 1 year of separation.
South Dakota	Irretrievable breakdown.
Tennessee	Irretrievable breakdown or after 3 years of separation.
Texas	Irretrievable breakdown or after 3 years of separation.
Utah	Irretrievable breakdown or after 3 years of separation.
Vermont	After 6 months of separation.
Virginia	After 1 year of separation or 6 months by agreement.
Washington	Irretrievable breakdown.
West Virginia	Irretrievable breakdown or after 1 year of separation.
Wisconsin	Irretrievable breakdown or after 1 year of separation.
Wyoming	Irretrievable breakdown.

The SPEAKER. The Chair recognizes the gentleman from Allegheny, Mr. McVerry.

Mr. McVERRY. Mr. Speaker, I oppose the Lashinger amendment to reduce the period to 1 year, and I find fallacious the argument that by reducing it to 2 years and not to 1 year we are keeping people together who have already made a decision to not be together. That is not correct. When people make a bipartisan decision to not be together, the code provides that they can be divorced within 90 days. All they need do is file affidavits of consent after the expiration of 90 days. If within that period they can negotiate the equitable distribution of property, it can be all over in that period of time, and that can take place anytime within that 2-year period of time.

As long as people are willing to be reasonable and agree to disagree—by that I mean agree to be divorced and not married—and agree to divide their property, fine; our law protects them and allows them to do it. The issue is when one wants a unilateral divorce, irrespective of there being any fault, and the other does not. That other party needs some economic and some psychological protection, and a 1-year period of time simply does not afford enough psychological protection, if not economic, for the person who is not ready, willing, and able to run to the divorce court. It does not give that party enough time to readjust. It very well may be that that party had no idea that the marriage was on the rocks until the other party picked up and moved out. That is a tremendous adjustment and a tremendous emotional time that a party goes through, be that the female component of the marriage or the male. And very oftentimes within that first 9 or 12 months, that person is not emotionally equipped to be able to make lifetime decisions relative to custody of children, support of children, division of property; and if the person is emotionally equipped to do that, they are free to do it and to agree either through their lawyers or personally.

One of the fiercest of battles that was fought on this floor in 1979 and 1980 during the adoption of the Divorce Code of 1980 was to permit in Pennsylvania law the granting of a divorce irrespective of good guy, bad guy - the no-fault concept. That battle was fought for days and days and days, and finally, as a last resort, we were able to keep a 3-year no-fault separation period in the law to allow that concept to be part of Pennsylvania law. We have now had 7 years of working with that law, and it is the consensus of groups who are affected by the law - by practitioners, by judges - that we should give a shorter period of time, that 2 years really should be enough for a person to be psychologically equipped and have the economic protections that are otherwise afforded in the law. One year is simply too brief a period of time.

Argument has been made that we have 38 States that have no period of time and have irreconcilable differences. That does not mean that you can have a divorce automatically irrespective of fault. That means you have to go to court and fight out the issues of whether there are irreconcilable differences or not. There is no magic panacea in irreconcilable differences with no time period.

I believe that the people of the Commonwealth of Pennsylvania deserve to have a period of time within which they can expect stability from a psychological and an economic perspective, and I think that the 2-year period is a fair and reasonable one. I would urge rejection of the Lashinger amendment.

The SPEAKER. The Chair recognizes the gentleman from Chester, Mr. Vroon.

Mr. VROON. Mr. Speaker, I rise to oppose this amendment, and I would remind the members that years ago when we passed the first no-fault bill, there was a great deal of debate and it was a hard thing to do at that time, and it is mainly because of the fact that the people in the State of Pennsylvania are the kind of people who believe in the family unit. The people of Pennsylvania in your area and my area generally, in my opinion, want us to do everything we can to preserve the family unit and to discourage the practice of easy divorce. I will say this, that as far as I am concerned, when we did pass it, we put a good waiting period in there, of three years. As Mr. Lashinger has often stated, the 3-year waiting period resulted in no acceleration of divorces, and I submit to you that that is the reason why we did not go to extremes, because we had that deterrent of a 3-year waiting period. Now we are going to go to the other extreme and going to try to make it a real nice and easy no-fault divorce law.

I do not think, frankly, that the people of Pennsylvania want us to do this. I think the people of Pennsylvania are still very particular about the sanctity of the family unit, and I would say please think very carefully before you encourage this practice to the extreme of cutting down the waiting period to 1 year. I do not think this is the right thing to do, and I plead with you all, stick to the 2 years; do not go any further. Do what we can to preserve marriage in this State.

The SPEAKER. The Chair recognizes the gentleman from Bradford, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

I, like many of my attorney colleagues here in the House, have handled a number of divorce cases, and perhaps the single practice that appalled me the most was the holding of a divorce as hostage for an improved property settlement. All too often I would pick up the telephone and call the other attorney and say, both of our clients agree the marriage is over; why do we not go ahead and get the divorce through; my client wants to remarry. And the response in so many words would be, what is it worth to you. Many times it was a small case and it was nothing more than refinance this for us, or we want the furniture, up to a case I recently became aware of where one party paid the other party $1 million in order to be able to get out of the marriage in less than 3 years.

I was not here in 1980, but I do not believe that it was the intention of this General Assembly to make it a common practice to hold a divorce hostage for an improved property settlement as a strategy technique. I think a year is a long time. By the time a year is over, the parties know whether or not there is any chance to put their marriage back together. I think a year is long enough, and for those reasons I strongly support this amendment, and I urge an affirmative vote. Thank you, Mr. Speaker.

MR. ITKIN REQUESTED TO PRESIDE

The SPEAKER. The Chair asks the gentleman from Allegheny, Mr. Itkin, to preside temporarily. The Chair has some guests from his hometown down at the office and wishes to say hello to them.

Mr. Itkin, will you please come forward.

THE SPEAKER PRO TEMPORE (IVAN ITKIN) IN THE CHAIR

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the minority whip.

Mr. HAYES. Thank you, Mr. Speaker.

If we could, while we have just a break in the proceedings, I wonder if you would return to leaves of absence.

The SPEAKER pro tempore. Without objection, the Chair returns to leaves of absence.

Mr. HAYES. Thank you very much, Mr. Speaker.

I would request a leave for the lady from Delaware, Mrs. ARTY, for the remainder of today's session.

The SPEAKER pro tempore. The leave is granted.

Mr. HAYES. Thank you.

CONSIDERATION OF SB 409 CONTINUED

The SPEAKER pro tempore. The Chair recognizes the gentleman from Northampton, Mr. Gruppo.

Mr. GRUPPO. Thank you, Mr. Speaker.

I rise to oppose the Lashinger amendment, Mr. Speaker, and I disagree with the previous speaker. A year is not a long time. In fact, when we discussed the divorce reform bill in 1980, we, here in this body, did not think that 3 years was a long time, and today we have reduced it from 3 to 2. In my opinion and in the opinion of many people, that is not long enough, but we are agreeable to the 2 years. In fact, the Catholic Conference, as was pointed out, agrees to the 2 years.

But as my mother once told me, time heals many wounds. And to rush— Yes, there are many divorces that will not be healed. Divorce is a traumatic and disruptive event in people's lives, and we must not rush into disrupting it even further. I think we must use good judgment today and think of the best interests of both parties. I would not want to see any lawyer have to install swinging doors on his or her office in order to accommodate those people seeking divorces if we were to reduce this time even further.

I am hopeful that you have made up your minds by now and will vote to oppose the Lashinger amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Bucks, Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, just a few brief remarks for the other side of the aisle, and I shared these comments in our caucus.

I oppose the Lashinger amendment. I recently came across a news article that said "England's divorce rate soars," and they put part of that blame on a 1984 "quickie divorce" law that reduced from 3 years to 1 year the period a couple had to

wait before filing for a divorce. In fact, the statistics from the European Economic Community mentioned that Britain had the highest divorce rate among the 12 member nations as of 1986, and they were on the bottom poll prior to that regulation that was achieved. Jack Dominian, a consultant psychiatrist and director of the Marriage Research Center in London, in a recent article in the London Times explained that unless something is done, that social instability was coming to England.

And so, Mr. Speaker, as others have risen today to oppose this amendment, I, too, urge a "no" vote on this amendment. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, I found some of the comments interesting. I heard one speaker say, why should we let them out of the marriage? Well, it is that attitude that I continue to see in negotiating and handling actions like this; it is that hostile we-want-leverage-in-this-divorce action, that you are not getting out, where one of the parties has made a decision that they want out of the marriage. What the hostility does is it creates crying children, abused spouses; it creates insufficient support; it promotes poverty on the part of dependent spouses; and it does nothing to promote economic justice, fairness, love, and affection, what love and affection might still be left, between the parties.

You know, 2 years—currently 3 years, but what will be 2 years at minimum, hopefully—in some counties does not necessarily mean 2 years. If you live in Lehigh County—let me use that as an example—if you live in Lehigh County and you have not resolved the economic issues, if you have not resolved equitable distribution, 2 years might be 5 years; 2 years might be 6 years; 2 years might be 2 years, but decrees in some counties will not be final until all of the issues are resolved, and if couples hang out there forever on some of the issues and specifically property issues, it might not be 2 years; it might be a lot longer than 2 years.

In the case of Mr. McVerry's example where there is an unsuspecting party, my response to the party who is shocked that a divorce complaint is filed and does not know how to react and does not know what to do is to say, as I have said earlier, that this marriage obviously is not broken; we need counseling; we want the court to tell us to go get counseling and request counseling, and the court will attempt to preserve the party, in my opinion. It sounds great to say to keep them together, but it is my opinion that whatever we do here does not promote divorce, which some have indicated, and as Representative Vroon stated, it does not deter. So the symptoms, the problems, are societal in nature. Whatever we do, people are still going to get divorces, in my opinion, in the same numbers. Whether it was 1 year or 3 years 8 years ago here in Harrisburg did not matter. The rate did not change conditioned upon the time frame that we chose.

Those of us who are for 1 year are no less profamily than those people who are for 2 years. Representative Reber said that. Instead, what we are trying to point out to you as the practical side is that if you are really interested in alleviating those custody battles and stopping the one party who leaves that courthouse— I will not forget, because it has only been a few days, one party who did not get the support award that the party had wanted and turned to my client and said, at the end of 3 years, after we wait this out for 3 years and you are out of money, we will see if you should not have settled for the amount that I wanted today. It is that kind of hostility that reducing the time frame will do.

One year is not promale; it is not profemale. This issue cuts both ways. One year takes care of all the parties, and the party that we have not talked about, interestingly enough, at all today are the children born of these marriages, and if anything—and I do not know any magical way to resolve that problem—but if anything, moving this forward when the parties have decided that they want a divorce helps alleviate the problem that children have to confront in divorces and it cuts down on the bickering between mom and dad.

I will close with this: It is interesting; I took a quick look at over 100 cases in 1987 where divorce complaints had been filed, and it was interesting. Whenever a complaint had been filed in any of those cases, there was no reconciliation. I am hearing Representative McVerry and others say that we have got to give them time to reconcile. Instead, what I am telling you is that when a party has made a decision to divorce, more often, much more often than not, reconciliations do not occur; parties do proceed to divorces, and why disadvantage a whole lot of people who have made that decision by hopefully saving the one marriage. So I guess the theory is, hurt 99 other people to help the one marriage.

I would ask for support for reduction to 1 year. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

WELCOME

The SPEAKER pro tempore. The Chair would like to pause in the proceedings of the House at this time to welcome to the House a group from the Homewood-Brushton YWCA in Pittsburgh. The group is led by their president, Thelma Skinner, who is visiting today with our distinguished colleague, Representative Joseph Preston. They are here today with others who are lobbying in the Capitol on behalf of the Women's Agenda. Will the ladies please rise? We appreciate your visit today. Thank you.

CONSIDERATION OF SB 409 CONTINUED

The SPEAKER pro tempore. The Chair now would like to recognize the gentleman from Greene, Mr. DeWeese.

Mr. DeWEESE. I shall be brief, Mr. Speaker.

I believe that Mr. Lashinger offers the modern perspective. I believe that the gentleman, Mr. Gruppo, does not. Mr. Gruppo in his remarks indicated that his mother said time heals all wounds. Mr. Gruppo and I are friends but I am not

certain quite how long ago his mother made that statement about time healing all wounds, but I have a feeling it was when Len Gruppo was a little boy, and that was at least a generation or two ago.

We have, in my opinion, a very clear-cut case about whether to move forward with the language that Mr. Lashinger has inserted into this bill or to stay behind, to dawdle. I believe that Mr. Gruppo's perspective is sophistical and naive and dubious, and I cannot align myself with the thinking of Mr. Vroon. I feel that Mr. Chadwick and Mr. Lashinger are correct in their argumentation. I believe that it is modern for us to realize that 1 year, 1 year for two unhappy souls is enough time, from spring training to spring training, 365 days. I believe that there is a lot of time, to paraphrase the gentleman, Mr. Reber, for things to grow raw and for things to become scarred.

I believe that 1 year is enough time, and I believe that in 1988 it is time for us to make a decision to advance and to pass the Lashinger amendment. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Northampton, Mr. Gruppo, for the second time.

Mr. GRUPPO. Thank you, Mr. Speaker.

The gentleman is correct. My mother did make those comments to me a long time ago. But in her generation and in fact part of my generation, when men and women married, they did go through those hard times and take the bumps and time did heal, and many of them, including my parents and my wife and I, have stuck these problems out and have overcome these problems. Now, I do not expect that everyone is going to be that fortunate, but I do not want to make it easy to be divorced. I have four children, three of them right now are old enough to be married, and I do not want to see them enter into a marriage contract that because of some difficulty, because of some problem, they can just rush off to one of those swinging-door lawyers's offices and get a divorce.

Two years is plenty of time, and I would urge you, Mr. Speaker, to think about it and search your conscience before voting on this amendment, and I ask you to vote "no." Thank you.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—17

Bortner	DeWeese	Lashinger	Serafini
Bunt	Fattah	Reber	Veon
Carn	Itkin	Ritter	Wilson
Chadwick	Kukovich	Roebuck	Wright, R. C.
Clark			

NAYS—167

Acosta	Evans	Laughlin	Raymond
Angstadt	Fargo	Leh	Reinard
Argall	Farmer	Lescovitz	Richardson
Barley	Fee	Letterman	Rieger
Battisto	Flick	Levdansky	Robbins
Belardi	Foster	Linton	Rudy
Birmelin	Fox	Livengood	Ryan
Black	Freeman	Lloyd	Rybak
Blaum	Freind	Lucyk	Saloom
Book	Gallen	McCall	Saurman
Bowley	Gamble	McClatchy	Scheetz
Bowser	Gannon	McHale	Schuler
Boyes	Geist	McVerry	Semmel
Brandt	George	Maiale	Showers
Broujos	Gladeck	Maine	Sirianni
Burd	Godshall	Manderino	Smith, B.
Burns	Gruitza	Manmiller	Smith, S. H.
Bush	Gruppo	Markosek	Snyder, D. W.
Caltagirone	Hagarty	Mayernik	Snyder, G.
Cappabianca	Haluska	Melio	Staback
Carlson	Hasay	Merry	Stairs
Cawley	Hayden	Michlovic	Steighner
Cessar	Hayes	Micozzie	Stuban
Civera	Heckler	Miller	Sweet
Clymer	Herman	Morris	Taylor, E. Z.
Colafella	Hershey	Mowery	Taylor, F.
Cole	Hess	Mrkonic	Taylor, J.
Corrigan	Honaman	Murphy	Telek
Cowell	Howlett	Noye	Tigue
Coy	Hughes	O'Brien	Trello
DeLuca	Hutchinson	O'Donnell	Van Horne
DeVerter	Jackson	Olasz	Vroon
Daley	Jadlowiec	Oliver	Wambach
Davies	Jarolin	Perzel	Wass
Dawida	Johnson	Petrarca	Weston
Dempsey	Josephs	Petrone	Wogan
Dietterick	Kasunic	Phillips	Wozniak
Dininni	Kennedy	Piccola	Wright, J. L.
Distler	Kenney	Pievsky	Yandrisevits
Dombrowski	Kosinski	Pitts	
Donatucci	LaGrotta	Pressmann	Irvis,
Dorr	Langtry	Preston	Speaker
Duffy			

NOT VOTING—5

Billow	Harper	Wiggins	Wright, D. R.
Cohen			

EXCUSED—11

Arty	Durham	Moehlmann	Punt
Belfanti	Fischer	Nahill	Seventy
Cornell	Kitchen	Pistella	

The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. McVERRY offered the following amendment No. A0248:

Amend Sec. 1 (Sec. 401), page 9, lines 12 and 13, by striking out all of line 12 and "DONOR SPOUSE" in line 13

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman from Allegheny, Mr. McVerry.

Mr. McVERRY. Mr. Speaker, I urge the favorable consideration of the House of amendment A0248. It has to do with marital property and the potential distribution of marital property.

Marital property was a new concept introduced into the law in the code of 1980. Prior to that time, property followed its title. If property was titled in the name of the husband spouse, the wife had, frankly, no claim to it. If it was titled in the name of the wife spouse, the husband had no claim to it, and courts had no authority to award property to one or the other,

other than following its title. By the adoption of the marital property concept in 1980, we established that all property of either spouse acquired during marriage is marital property. All marital property is to be equitably divided between the spouses upon the granting of a divorce.

There are certain exceptions to what constitutes marital property and what does not constitute marital property. One of the exceptions is a gift or a devise or a bequest. A devise or a bequest is something that you get from another person's will. A gift is obviously something that is given to one or the other parties by another party. A dispute has arisen in the law as to whether or not gifts between spouses should be marital or nonmarital property. The effect of my amendment is to say that gifts between spouses retain their character as marital property so that when there is a divorce, all property owned by either spouse, either gifted between them or acquired otherwise, retains its character as marital property to be equitably divided between the spouses by the courts.

I urge your favorable adoption of the amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, pay attention carefully to this. This is a very interesting public policy question for all the members to consider.

In 1980 this chamber made a decision, as Representative McVerry indicated, that a gift as between spouses, between husband and wife, was not divisible. It was a gift. The Superior Court later in the mid part of this decade said very succinctly—in fact, it was one of our former distinguished colleagues who was a part of a later decision—that a gift is a gift is a gift, and if you give it as between parties, it should remain a gift. The intent was, the donative intent was, I gave my wife a fur coat; she gave me an onyx ring with a diamond in it; it was a gift. If we divorce, I should leave with the ring; she should leave with the fur coat. We do not put it back in the pot and whack it up and say, well, that is marital property; it really was not a gift, which is what Representative McVerry is saying. It was not a gift; I did not mean it to be a gift; it was really our joint assets that went to buy that gift, so it was a gift when I told you, but now that we are getting divorced, it is not a gift and we are going to divide it up.

An interesting case: What do you do in the classic case where a person did not buy an engagement ring for his wife? If it were an engagement ring, it would be premarital property; it would not be subject to division. So the guy says, gee, I did not buy her an engagement ring; I will buy her a nice diamond ring 5 or 10 years into our marriage. All of a sudden that replacement ring for the engagement ring is now divisible as marital property.

I am not sure. I heard the comments in the Judiciary Committee. We ran an amendment that I thought was a compromise on this issue. The language in the bill says it is not excluded in the marital pot; it is included in the marital pot if the gift between the husband and wife - wife to husband or husband to wife - was for investment purposes. Maybe in some of the rural counties this is not a good example but in some of the more affluent counties you will hear these cases where art collections are given as a gift between spouses. That art collection, in most courts' opinions, was not a gift. It was designed as an investment practice of the couple. The fact that the husband gave an art collection, a $100,000 art collection, is taken care of in this bill. It says it is a gift unless the intent of the parties was for investment purposes. So in those cases it is not a gift, but believe me, I will be surprised if this body agrees that if parties exchange gifts, that all of a sudden now that they are getting divorced, we say, no, they were not gifts; instead, they were joint, they were acquired with the joint assets, so let us whack it up. And you will not whack up the diamond ring or the fur. Instead, what you will do is you will trade off assets and you will say, take this as a part of the marital pot, keep your ring, but still I will trade you off an asset for that. I know it is contrary to what we did in 1979-80. Why we are attempting to reverse it is beyond me to this day, and I believe the easy public policy decision for this body is to say a gift is a gift.

I would ask for the rejection of the McVerry amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the lady from Montgomery, Mrs. Hagarty.

Mrs. HAGARTY. Thank you, Mr. Speaker.

Mr. Speaker, to clarify, the way the bill reads now, in order for the court to determine whether or not a gift is marital property, you have to decide whether or not it was an investment practice. If it is an investment practice, it is not a gift. I think that no matter whether you believe gifts should be marital property or not, we do not really want to determine in each case whether each gift was an investment practice. I think that is going to create litigation. The purpose of this bill is to reduce it, and so we ought to vote for this amendment if for no other reason.

Secondly, this amendment will make clear that gifts are marital property, and I think that the reason that should be the policy that we decide on is—and we are only talking about gifts between spouses—the 1980 Divorce Code did not section out gifts between spouses. It just said that gifts were not marital property, and that makes sense. If my mother gives me her china, that should not be marital property. That was a gift to me.

I think the reason that gifts between spouses are different, though, is because what we are talking about when we decide to split up property is what is the overall property picture. And if, for example, that husband has purchased extensive, you know, jewels, cars, or furs for his wife and therefore she is in a good economic position because she has all of those items, is it really fair to discount that when you are trying to figure out what the position of the two of them is with regard to how much property they have? I think it just makes sense that the court, for purposes of figuring out how much property they have and splitting it up, has to count it as marital property.

I do not really think that we are talking about those cases that you and I participate in gift giving. We give, you know, a gift at Christmas or a gift at a birthday. Those values are not so monumental that they are, frankly, going to affect the overall distribution. Nobody is going to ask her to, per se, give back her diamond heart necklace. But what we are talking about and the cases where the litigation comes in is where there is a practice of gift giving that puts one person in a position that it just does not seem fair to then say, well, that was a gift; we are going to split up the property, but we are not going to count the fact that you have, you know, what may be thousands and thousands of dollars' worth of what were given as gifts.

So I support the McVerry amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the lady.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—123

Argall	Distler	Josephs	Reinard
Battisto	Dombrowski	Kennedy	Richardson
Belardi	Donatucci	Kenney	Rieger
Billow	Dorr	Kukovich	Robbins
Black	Duffy	LaGrotta	Roebuck
Blaum	Evans	Langtry	Rudy
Book	Farmer	Leh	Ryan
Bowley	Fee	Lescovitz	Saloom
Bowser	Flick	Linton	Saurman
Boyes	Foster	Livengood	Semmel
Brandt	Fox	Lloyd	Serafini
Broujos	Freind	McClatchy	Sirianni
Burd	Gallen	McHale	Smith, B.
Burns	Gamble	McVerry	Smith, S. H.
Bush	Gannon	Manmiller	Stairs
Caltagirone	Geist	Markosek	Steighner
Cappabianca	George	Mayernik	Taylor, J.
Carlson	Gruitza	Merry	Telek
Cawley	Gruppo	Micozzie	Tigue
Cessar	Hagarty	Mowery	Trello
Civera	Hasay	Mrkonic	Van Horne
Clymer	Hayes	Noye	Veon
Colafella	Heckler	O'Brien	Vroon
Cole	Herman	O'Donnell	Wambach
Corrigan	Hess	Olasz	Wass
Cowell	Honaman	Oliver	Weston
Coy	Hughes	Perzel	Wilson
DeVerter	Hutchinson	Piccola	Wogan
Dempsey	Jadlowiec	Pitts	Wright, J. L.
Dietterick	Jarolin	Pressmann	Wright, R. C.
Dininni	Johnson	Raymond	

NAYS—58

Acosta	Freeman	Lucyk	Scheetz
Angstadt	Gladeck	McCall	Schuler
Barley	Godshall	Maine	Showers
Birmelin	Haluska	Manderino	Snyder, D. W.
Bortner	Harper	Melio	Snyder, G.
Bunt	Hayden	Michlovic	Staback
Carn	Hershey	Miller	Stuban
Chadwick	Itkin	Morris	Sweet
Clark	Jackson	Murphy	Taylor, E. Z.
DeLuca	Kasunic	Petrarca	Taylor, F.
DeWeese	Kosinski	Phillips	Wozniak
Daley	Lashinger	Pievsky	Yandrisevits
Davies	Laughlin	Reber	
Dawida	Letterman	Ritter	Irvis,
Fargo	Levdansky	Rybak	Speaker

NOT VOTING—8

Cohen	Howlett	Petrone	Wiggins
Fattah	Maiale	Preston	Wright, D. R.

EXCUSED—11

Arty	Durham	Moehlmann	Punt
Belfanti	Fischer	Nahill	Seventy
Cornell	Kitchen	Pistella	

The question was determined in the affirmative, and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. BROUJOS offered the following amendments No. A0247:

Amend Sec. 1 (Sec. 201), page 3, line 13, by striking out the bracket before "three"

Amend Sec. 1 (Sec. 201), page 3, line 13, by striking out "] TWO"

Amend Sec. 1 (Sec. 201), page 3, line 20, by striking out the bracket before "three"

Amend Sec. 1 (Sec. 201), page 3, line 21, by striking out "] two years"

On the question,

Will the House agree to the amendments?

The SPEAKER pro tempore. The Chair recognizes the gentleman from Cumberland, Mr. Broujos.

Mr. BROUJOS. Mr. Speaker, this amendment increases the period of separation from 2 to 3 years.

During the prior discussion of the reduction to 1 year, a number of things were really overlooked in relationship to the marriage and any breakup that occurs. To many persons a separation is really not irretrievable. The marriage is not necessarily irretrievably broken. There are many people, male and female, that come into an attorney's office and simply say, I do not want a divorce; I do not believe in it; I need time. The 1-year time, obviously, is not sufficient; the 2-year time is not sufficient.

When we examine the manner in which divorces are obtained, you can obtain a divorce where there is consent. If the wife consents, for instance, she has no problem, she says yes. If the husband insists on a divorce and wants a fault divorce and there are no grounds, the wife can say no and the husband cannot get it. The only recourse available then is the separation period. That separation period, if it is reduced to 2 years, to 1 year, to 6 months, to 3 months, suddenly results in divorce at will at any time anybody wants it. It is like two people standing and making vows to be married; they stand and say, we are now divorced.

I think that we should move in the other direction from the 2 years that is in the bill and in fact keep the 3 years that is in there now. I ask for support.

The SPEAKER pro tempore. The Chair recognizes the lady from Montgomery, Mrs. Hagarty.

Mrs. HAGARTY. Thank you, Mr. Speaker.

Mr. Speaker, I oppose this amendment. This is the first time I had any inclination that there was any member in this

body who wanted to keep the time period for unilateral divorce at 3 years. I will tell you that I have worked on divorce reform for two sessions, have had a bill in for two sessions, and I have not heard really from just about anyone I can think of that there was any real support for staying at 3 years. Let me share with you those reasons, although we have debated some of this over the 2-year-to-1-year issue.

I think what the finding has been under 3 years is that we have had a time period of extended litigation with possibilities for no change in circumstance, no ability, in some instances, for spouses to be able to get a share of the property, and so those examples that Joe Lashinger gave you when he urged to go to 1 year can go on for 3 years where a person can deplete the assets, cannot pay the mortgage on the home, and so substantially hurt the other person economically.

Additionally, I think that the reality has shown that it just does not seem that you are going to reconcile marriages significantly by waiting the full 3-year period of time. I think that 2 years, while I do not believe there is a magic number, I just think the consensus that has been reached by really all parties who have had input into this legislation is that the time period ought to be reduced to better serve harmony in the family, still to protect the spouses, still to give the parties a significant period of time in order to adjust, and the time period that has passed the Senate unanimously is 2 years.

I would like to defeat the amendment and stay with 2-year unilateral. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Greene, Mr. DeWeese.

Mr. DeWEESE. In my several years in the General Assembly, Mr. Speaker, I have come to recognize political reality. In spite of my impassioned encomiums about Mr. Lashinger and Mr. Chadwick, the last measure was defeated. It is generally the perspective of the men and women that serve in this chamber that 1 year is not acceptable. However, I hope it is the general perspective of the men and women who serve in this chamber that 3 years is unacceptable.

We have forged a compromise in the Judiciary Committee, working with the bar association—I am sure that would impress Mr. Gamble and others—and also, and also with the Catholic Conference. So in this rather unique amalgam of forces we have come to a compromise, and I would ask that that compromise be maintained and that Mr. Broujos' amendment be defeated. Thank you.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—25

Barley	Duffy	Johnson	Robbins
Belardi	Fargo	LaGrotta	Rybak
Birmelin	Foster	Laughlin	Schuler
Boyes	Geist	Lloyd	Tigue
Broujos	Hayes	Mrkonic	Van Horne
Caltagirone	Jarolin	Petrarca	Yandrisevits
Cawley			

NAYS—157

Acosta	Dorr	Lescovitz	Rieger
Angstadt	Evans	Letterman	Ritter
Argall	Farmer	Levdansky	Roebuck
Battisto	Fattah	Linton	Rudy
Billow	Fee	Lucyk	Ryan
Black	Flick	McCall	Saloom
Blaum	Fox	McClatchy	Saurman
Book	Freeman	McHale	Scheetz
Bortner	Freind	McVerry	Semmel
Bowley	Gallen	Maiale	Serafini
Bowser	Gamble	Maine	Showers
Brandt	Gannon	Manderino	Sirianni
Bunt	George	Manmiller	Smith, B.
Burd	Gladeck	Markosek	Smith, S. H.
Burns	Godshall	Mayernik	Snyder, D. W.
Bush	Gruitza	Melio	Snyder, G.
Cappabianca	Gruppo	Merry	Staback
Carn	Hagarty	Michlovic	Stairs
Cessar	Haluska	Micozzie	Steighner
Chadwick	Hasay	Miller	Stuban
Civera	Hayden	Morris	Sweet
Clark	Heckler	Mowery	Taylor, E. Z.
Clymer	Herman	Murphy	Taylor, F.
Colafella	Hershey	Noye	Taylor, J.
Cole	Hess	O'Brien	Telek
Corrigan	Honaman	O'Donnell	Trello
Cowell	Howlett	Olasz	Veon
Coy	Hughes	Oliver	Vroon
DeLuca	Itkin	Perzel	Wambach
DeVerter	Jackson	Petrone	Wass
DeWeese	Jadlowiec	Phillips	Weston
Daley	Josephs	Piccola	Wilson
Davies	Kasunic	Pievsky	Wogan
Dawida	Kennedy	Pitts	Wozniak
Dempsey	Kenney	Pressmann	Wright, J. L.
Dietterick	Kosinski	Preston	Wright, R. C.
Dininni	Kukovich	Raymond	
Distler	Langtry	Reber	Irvis,
Dombrowski	Lashinger	Reinard	Speaker
Donatucci	Leh	Richardson	

NOT VOTING—7

Carlson	Harper	Livengood	Wright, D. R.
Cohen	Hutchinson	Wiggins	

EXCUSED—11

Arty	Durham	Moehlmann	Punt
Belfanti	Fischer	Nahill	Seventy
Cornell	Kitchen	Pistella	

The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mrs. HAGARTY, for Mrs. DURHAM, offered the following amendments No. A0228:

Amend Title, page 1, line 4, by inserting after "divorce,"
enforcement of foreign decrees,

Amend Bill, page 17, by inserting between lines 29 and 30

Section 5. Section 506 of the act is amended to read:

Section 506. Enforcement of foreign decrees.

Whenever a person subject to a valid decree of a sister state or territory for the distribution of marital property or for the payment of alimony, temporary alimony, or alimony pendente lite, or his or her property is found within this Commonwealth, the obligee of such a decree may petition the court, where the obligor or his or her property is found, to register, adopt as its own, and to enforce the said decree as a duly issued and authenti-

cated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided for at law, in equity, or by court rule, in similar cases originally commenced in this Commonwealth, shall be available, and a copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor, in such actions to register, adopt, and enforce, shall have such defenses and relief as are available to him in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in such cases originally commenced in this Commonwealth. Where property of the obligor, but not his person, is found within this Commonwealth, there shall be jurisdiction quasi in rem and, upon registration and adoption of the decree of the sister state or territory, such relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

Amend Sec. 5, page 17, line 30, by striking out "5" and inserting

6

Amend Sec. 6, page 18, line 9, by striking out "6" and inserting

7

On the question,

Will the House agree to the amendments?

The SPEAKER pro tempore. On the question, the Chair recognizes the lady from Montgomery, Mrs. Hagarty.

Mrs. HAGARTY. Thank you, Mr. Speaker.

This amendment, which was brought to my attention by Representative Durham, I had no idea that this was the case and clears up something in law that I think we ought to do.

Apparently, if a foreign jurisdiction, another State, enters an order in alimony and equitable distribution and the property lies in Pennsylvania, you can enforce the alimony order in Pennsylvania but for some peculiar reason not the equitable distribution order. I do not know why that is the case.

This amendment simply makes clear that our courts can also enforce an equitable distribution order from a foreign jurisdiction, and I ask for support.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Greene, Mr. DeWeese.

Mr. DeWEESE. I would rise to support the gentle lady from Montgomery County.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—183

Acosta	Donatucci	Lashinger	Rieger
Angstadt	Dorr	Laughlin	Ritter
Argall	Duffy	Leh	Robbins
Barley	Fargo	Lescovitz	Roebuck
Battisto	Farmer	Letterman	Rudy
Belardi	Fattah	Levdansky	Ryan
Billow	Fee	Linton	Rybak
Birmelin	Flick	Livengood	Saloom
Black	Foster	Lloyd	Saurman
Blaum	Fox	Lucyk	Scheetz
Book	Freeman	McCall	Schuler
Bortner	Freind	McClatchy	Semmel
Bowley	Gallen	McHale	Serafini
Bowser	Gamble	McVerry	Showers
Boyes	Gannon	Maiale	Sirianni
Brandt	Geist	Maine	Smith, B.
Broujos	George	Manderino	Smith, S. H.
Bunt	Gladeck	Manmiller	Snyder, D. W.
Burd	Godshall	Markosek	Snyder, G.
Burns	Gruitza	Mayernik	Staback
Bush	Gruppo	Melio	Stairs
Caltagirone	Hagarty	Merry	Steighner
Cappabianca	Haluska	Michlovic	Stuban
Carlson	Hasay	Micozzie	Sweet
Carn	Hayden	Morris	Taylor, E. Z.
Cawley	Hayes	Mowery	Taylor, F.
Cessar	Heckler	Mrkonic	Taylor, J.
Chadwick	Herman	Murphy	Telek
Civera	Hershey	Noye	Tigue
Clark	Hess	O'Brien	Trello
Clymer	Honaman	O'Donnell	Van Horne
Colafella	Howlett	Olasz	Veon
Cole	Hughes	Oliver	Vroon
Corrigan	Hutchinson	Perzel	Wambach
Cowell	Itkin	Petrarca	Wass
Coy	Jackson	Petrone	Weston
DeLuca	Jadlowiec	Phillips	Wiggins
DeVerter	Jarolin	Piccola	Wilson
DeWeese	Johnson	Pievsky	Wogan
Daley	Josephs	Pitts	Wozniak
Davies	Kasunic	Pressmann	Wright, J. L.
Dawida	Kenney	Preston	Wright, R. C.
Dempsey	Kosinski	Raymond	Yandrisevits
Dietterick	Kukovich	Reber	
Dininni	LaGrotta	Reinard	Irvis,
Distler	Langtry	Richardson	Speaker
Dombrowski			

NAYS—1

Miller

NOT VOTING—5

Cohen	Harper	Kennedy	Wright, D. R.
Evans			

EXCUSED—11

Arty	Durham	Moehlmann	Punt
Belfanti	Fischer	Nahill	Seventy
Cornell	Kitchen	Pistella	

The question was determined in the affirmative, and the amendments were agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. LASHINGER offered the following amendment No. A0190:

Amend Sec. 1 (Sec. 401), page 9, lines 11 through 14, by striking out all of said lines and inserting

(3) Property acquired by gift, bequest, devise or descent [except for the increase in value during the marriage].

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. On the question, the Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, this is something of a rehash of the gift issue. I want to take one more crack at this issue, because I think it is important. I believe the members are starting to understand the concern of many in this area.

What we are doing— Representative Hagarty voiced what might be a valid complaint. The language that we had agreed upon in the Judiciary Committee - that it would not be a gift if it were made for investment purposes; therefore, the art collection and the shopping center and the real estate that were given from a husband to a wife would come back in and be divided up because they were for investment purposes - that might have led to litigation, might not have led to litigation, who knows, but this clears it up. What this language does is say, what we did in 1980, that a gift as between spouses remains a gift, what the Superior Court, what the Supreme Court in this Commonwealth have said, a gift as between spouses continues to be a gift, not divisible as to marital property, will prevail. We uphold what we did in 1980; we uphold what both appellate courts in the Commonwealth have done by adopting this language. I will just give you another example, a little shock value, hopefully.

The husband who gives the wife the Jaguar, the $40,000 Jaguar as a Valentine's gift or an anniversary gift, all of a sudden at the time of divorce that Jaguar, or its value, comes back into the marital pot and gets divided up. The worst case scenario under this is, if the Jaguar, for whatever purposes, appreciates in value, even if we make a decision today that it is a gift between the two of them and it stays out of the marital property, the husband, if it went up in value, could still say, I get the appreciated value; I get the new increase in value; I do not get the value of the gift but I get the appreciated value of that gift. So in some cases he could still get some value even though he created a gift in the wife or the wife created a gift in the husband.

But Representative Hagarty was correct. You will not get the ring back but you will get something of comparable value, and wife or husband will be punished for accepting a gift, and I think the intent of the parties was, this is yours, husband; this is yours, wife, and it has nothing to do with the marriage state and should not be divided when we divorce, and I would ask for your support.

If you want to return to what has been working for 8 years and what both appellate courts said is pretty clear, then you want to vote for this amendment. I would ask for the support of the membership. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Montgomery, Mr. Reber.

Mr. REBER. Thank you, Mr. Speaker.

Mr. Speaker, we have been hearing a lot of debate today with Representatives from Montgomery County - attorneys from Montgomery County - dominating a good bit of that time. I would submit, though, Mr. Speaker, although I am an attorney and from Montgomery County, I do not come from that silk-stocking area that my other fellow colleagues do. So talking about Jaguars as gifts and shopping centers as gifts, that does not mean too much to me and my clients and my constituents. Let me be a little bit more specific and tell you what this means.

This Christmas I got a Remington 7600 .30-06 as a gift from my wife to me. I do not walk away with that, God forbid, if divorce happens. The gun goes back in. That gun that I shot all those bears and deer with goes back in. So just keep in perspective the actual, practical aspect of this legislation if it goes through without the Lashinger amendment. A gift is a gift is a gift. So be it; so let it. Thank you.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Allegheny, Mr. McVerry.

Mr. McVERRY. Mr. Speaker, the .30-06 that Representative Reber got for Christmas was purchased with marital assets. So all that happened was a little transformation of the bucks that came into the bank account, which were marital; put it into a gun, marital. That is all this means. So everything that either party has, whether they have exchanged it by gift or not, is marital. It is not that you have to chop the gun in half; it is just that everything that is between the spouses goes into the pot, the value of it, and it gets divided equally. It is a fair way to go.

I urge the rejection of the Lashinger amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from York, Mr. Bortner.

Mr. BORTNER. Thank you, Mr. Speaker.

In considering this amendment and some of the other amendments that have been offered, I think we sometimes forget the context that this is being offered in. This particular amendment is an exception to an exception, and the double negative, I think, is somewhat confusing. So I would just like to remind everybody of what we are really talking about here.

The presumption is that any property that you acquire during a marriage is marital property and subject to division at the time of a divorce. The exceptions to that are gifts, bequests, or devise, so that if somebody gives you a gift during your marriage, whether it is a relative or a friend, that property does not become comingled with other marital assets. That remains your property, and at the time of a divorce, that would continue to be your property and would not be subject to division as a marital asset.

There is another exception to that, however - the exception to the exception which says that except if that gift is between spouses. So if it is a gift that your spouse has given you, that then does come back in and become a joint asset. I think that is contrary to public policy, and I think, frankly, it is really kind of illogical. The argument from Representative McVerry is that, well, this was purchased presumably from joint assets. The gift that you gave your wife for Christmas came from joint assets, and therefore, that ought to come back in. It seems to me that if you want to reallocate your marital assets, you ought to be able to do that, and you ought to be able to do that in such a way that the property becomes the property of the spouse that you are giving it to. If you decide to reallocate those assets by giving your wife a gift, or I suppose I should say reallocate your half or your percentage of your marital assets by giving your spouse a gift, you ought to be able to do that.

Frankly, I think this is really contrary to the concepts of a modern marriage where spouses do not have any property of their own. I think spouses do have property. I think things

that are given that clearly are personal property of a spouse, not a joint gift—not a gift that is for the use of both spouses but something that is truly personal, whether it is the automobile that was referred to or the shotgun or another piece of personal property—that ought to remain the property of that spouse at the time of a divorce, if that is clearly the intent. The argument about using gifts for purposes of investment and for tax benefits really is an evidentiary matter and that can be handled at the time the issue of equitable distribution comes up. At that time, if there is this argument that it was used purely for investment purposes, that certainly is an argument that can be made, and if you can substantiate the fact that there was no intent for a gift, then you do not have a gift.

I would urge you to support the Lashinger amendment. I think it is a good amendment, and I think it reflects more clearly the intent of what spouses do when they give gifts to each other during the time of a marriage. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the lady from Montgomery, Mrs. Hagarty.

Mrs. HAGARTY. Thank you, Mr. Speaker.

Mr. Speaker, I am going to return to my prior argument, so I think we still have to focus on what we are talking about.

I do not think it matters whether the small gift for purposes of marital property and distribution is termed a gift or not. Nobody is going to ask you to give it back. But what the court has to do, if you do not agree on how to divide your property, is they have to determine how much property there is to split up, and in making that determination of how much property there is to split up, they have to decide whether the gifts the one person gave the other ought to be included.

I think it is just fair. Think about the situation where you have given your wife expensive property. Maybe you have given paintings that are worth a lot of money, even more than furs or jewels or cars, but whatever they are, you could have given things— And mainly this becomes an issue with wealthier couples, not with couples who are exchanging gifts at birthdays or Christmas. So you have given your wife lots and lots and lots of assets. Let us say you have fallen on harder times since then and you do not have a lot of individual property. The court then determines how much there is to split up. Do you really think it is fair to take out all of her property? Let us say she has 100,000 dollars' worth of gifts. The court cannot consider that, but they have to consider what is left, which might be small, and divide that equitably.

I suggest to you that the fair result is the property is marital property if it was acquired after the marriage. The fact that one person chose to typically use their marital property to purchase a gift for the other person should not mean then that if you ultimately get divorced, the court cannot consider it as marital property in dividing the property, and I ask for a "no" vote.

THE SPEAKER (K. LEROY IRVIS) IN THE CHAIR

The SPEAKER. The Chair thanks the gentleman, Mr. Itkin, for presiding in the absence of the Chair.

CONSIDERATION OF SB 409 CONTINUED

The SPEAKER. On the Lashinger amendment for the second time, the Chair recognizes the gentleman from Montgomery, Mr. Lashinger.

Mr. LASHINGER. Thank you, Mr. Speaker.

Mr. Speaker, let us use the example where the couple does have a lot of debt. Maybe they were in a small business, the business failed, the only thing left is mortgages on properties and loans from banks, and the couple comes to a divorce and says, one thing we have left that we have paid for is the jewelry. Representative Hagarty said you will not lose that jewelry; you will still be able to keep that gift. I disagree. I think what the court will say is, sell the jewelry and whack up the assets under the percentages that the court has said, either 50-50, whatever percentage the court decides, and that jewelry that is a gift between you will be gone. If that is the only asset, then I believe she is incorrect in saying that she does not see any likelihood of losing that actual gift.

And I think Representative Reber blamed us for talking about the silk-stocking districts. I did not mean a Jaguar; I meant a Ford Escort, Mr. Speaker. But in those smaller cases where there might only be a gift left in a marriage, I could see that being a case where it gets whacked up and the couple cashes out and then distributes the property.

I do not think marriage is an investment. You know, you should not look at this as everything we do, despite the fact that I have said, here, I love you or happy anniversary or happy Valentine's Day, here is a gift, but in your mind it is still an investment and you know you are really not giving it to her or she is not giving it to you; you are really just giving it to each other. I agree with Representative Bortner - it is illogical. There is no such thing as a gift inside of a marriage then if you vote against this amendment and go back to more primitive times.

I would ask for support of the amendment. Thank you, Mr. Speaker.

The SPEAKER. On the Lashinger amendment, the Chair recognizes the gentleman from Chester, Mr. Vroon.

Mr. VROON. Mr. Speaker, may I interrogate Mr. Lashinger, please?

The SPEAKER. Mr. Lashinger indicates he will stand for interrogation. You are in order, and you may proceed, Mr. Vroon.

Mr. VROON. Mr. Speaker, this amendment says "Property acquired by gift, bequest, devise or descent [except for the increase in value during the marriage]." Is that right?

Mr. LASHINGER. That is correct, Mr. Speaker, in the context of "as between spouses." You have to read it in the context of that total paragraph. That is correct.

Mr. VROON. So this amendment says that these items will be excluded in the property division?

Mr. LASHINGER. If the amendment does not go—and this is really complicated, because it is a double negative the way the law is written—if it goes in, if this amendment goes in, then anything between husband and wife with the intent of it being a gift when the divorce is filed does not get divided up between husband and wife. The wife leaves with her gifts, the husband leaves with his gifts, if this amendment goes in.

Mr. VROON. So it has to be property that was the subject of a gift between the man and his wife. Is that right?

Mr. LASHINGER. That is correct, Mr. Speaker.

Mr. VROON. It does not mean property as a whole that was acquired in this way? In other words, if a person inherited a sizable estate, that would not be excluded. Is that right?

Mr. LASHINGER. That is correct, Mr. Speaker. And it is interesting, the cases in this area all look at the intent of the parties. That case was a real case that I told you about where the person did not buy the wife an engagement ring and decided later on, I will make up for it and I will buy her a nice diamond ring inside of the marriage. The court then said the intent clearly was that that was a gift between the two of them. He does not get any share of it. She keeps it. And that is what I am trying to do, to continue to uphold the court that is saying, you got the ring, keep it.

Mr. VROON. All right. But it is strictly between the spouses?

Mr. LASHINGER. Clearly only between spouses, Mr. Speaker.

Mr. VROON. All right. Thank you, Mr. Speaker.

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Bradford, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

Will Mr. Lashinger stand for interrogation?

The SPEAKER. Mr. Lashinger indicates he will stand for interrogation. You may proceed, Mr. Chadwick.

Mr. CHADWICK. Thank you, Mr. Speaker.

I apologize; I am trying to follow this. My understanding is that the bill as it currently stands with the amendments that we have passed says that all gifts are subject to distribution and are marital property. Is that correct?

Mr. LASHINGER. Yes. With the McVerry amendment *in— Let me correct myself, Mr. Speaker. It is important,* when you say gifts, you mean interspousal gifts.

Mr. CHADWICK. Between spouses.

Mr. LASHINGER. Yes. With the McVerry amendment in, gifts between spouses go into the pot and get divided up.

Mr. CHADWICK. And that is regardless of whether they were made for investment purposes or purely as a gift or whatever. All gifts between spouses are marital property. Is that right?

Mr. LASHINGER. If it is the shopping center, it is in the pot. If it is a $5 wristwatch, it is in the pot.

Mr. CHADWICK. All right. And does your amendment then say that no gifts are marital property subject to distribution between spouses?

Mr. LASHINGER. That is correct, Mr. Speaker. I go back to current law which says that gifts do not get divided up in equitable distribution; they stay as gifts. What she gives you, what you give her, you leave with.

Mr. CHADWICK. All right. So the question of investment purposes is no longer at issue?

Mr. LASHINGER. Unfortunately, Mr. Speaker, it is not, and I had originally introduced it in the Judiciary Committee to take care of what I think is a legitimate concern, and we took it out. I think Representative Hagarty was partly correct - it could have led to litigation. So the easiest way to resolve it is just to go back to what we have been working with for 8 years and working pretty well with for 8 years, by the way. There have not been any major problems in this area.

Mr. CHADWICK. I thank you for answering my questions. I understand now.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Greene, Mr. DeWeese, on the amendment.

Mr. DeWEESE. Very quickly, like Gertrude Stein or Robert Reber, I would agree that a gift is a gift is a gift. I think that the language that Mr. Lashinger has asked for is reasonable, and if we think about it and get to the bottom line quickly, and Dick Olasz gives his wife a fur coat and they get divorced, she ought to be able to keep the coat.

Vote with Lashinger. Thank you.

The SPEAKER. On the amendment, the Chair recognizes the gentleman from Lehigh, Mr. Snyder.

Mr. D. W. SNYDER. Thank you, Mr. Speaker.

May I interrogate Mr. Lashinger, please?

The SPEAKER. Mr. Lashinger indicates he will stand for further interrogation. You may proceed, sir.

Mr. D. W. SNYDER. Mr. Speaker, under the scenario of a husband creating a trust for his wife, if your amendment is approved, can a judge or a court consider the amount of that trust, say it is $500,000, in consideration of the division of the property?

Mr. LASHINGER. Mr. Speaker, like most lawyers that practice in this area, when you hear tax questions and estate and trust questions, you cringe and you look for answers from other people. The answer is, if it is a gift in the form of a trust to the wife or to the husband and the McVerry language stays *in, yes, it would be possible to divide that trust up and attack* the provisions of the trust. That is my opinion, and whether the domestic court would prevail, the family court would prevail, I am not sure, Mr. Speaker; but I would tell you that I would make a case that it was subject to equitable distribution if the McVerry amendment went in.

A good example—I do not want to make the water any more muddy than it already is—but it would not be, I guess, unlike a pension which the courts have decided that while there is a named beneficiary in the pension, it is still possible for the court to attack that pension for the benefit of one's spouse.

Mr. D. W. SNYDER. Mr. Speaker, do you have a copy of the bill in front of you?

Mr. LASHINGER. I do.

Mr. D. W. SNYDER. Mr. Speaker, using my example of a husband who perhaps sells stock that was in his name only and creates this $500,000 trust and gives it to his wife—on page 8 are the factors in which the court determines how property is to be divided—would that trust be able to be considered by the court in determining how property is to be divided as far as what the need is? Specifically, item No. 8, which is on line 22 of page 8, would that trust be able to be considered under those provisions there before we even get into deciding what property is available for distribution?

Mr. LASHINGER. Mr. Speaker, with the McVerry amendment in, the value of the property set apart to each party would not be a factor anymore, so I do not think that that would be a consideration. I think it is possible to say it is a consideration under my amendment, however, and would be a factor and might take care of Representative Hagarty's ongoing concern in that area.

Mr. Speaker, in having the question clarified, yes, the trust would be separate property and, yes, would be a consideration under that factor.

Mr. D. W. SNYDER. If your amendment is approved.

Mr. LASHINGER. If my amendment is approved.

Mr. D. W. SNYDER. Thank you, Mr. Speaker.

Mr. LASHINGER. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Dauphin, Mr. Piccola, on the amendment.

Mr. PICCOLA. Thank you, Mr. Speaker.

This debate is getting a little bit confusing, but I think if we can summarize it, I think the Lashinger amendment will basically reenact existing law. It will take this bill back to what the current law is with respect to gifts.

I guess the question that each member has to ask and then answer in his vote is whether or not they are satisfied with existing law. The existing law is that all gifts are not marital property, whether or not they come from a spouse or from some third party. I have not received personally enough complaints about the existing law to determine that we ought to change it, and therefore, I would urge that we adopt the Lashinger amendment.

The SPEAKER. On the Lashinger amendment, the Chair recognizes the gentleman from Allegheny, Mr. McVerry.

Mr. McVERRY. Mr. Speaker, I simply urge rejection of the Lashinger amendment, based upon those same arguments that my amendment was earlier adopted. I simply believe that marital property should include all property of either spouse acquired during marriage whether it was acquired by the interchange between the spouses.

Keep in mind, any gift that any individual gets from someone that is not their spouse retains its character as nonmarital personal property, but the interchange of gifts between spouses, I think, should be a relevant factor when you are deciding the equitable distribution of marital property, and marital property should include everything that either party has, even if they got it as a gift from their spouse. It does not have to be given back, keep in mind. It simply is a matter to be considered in the total division of the pie.

I urge the rejection of the Lashinger amendment.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—64

Angstadt	Fox	Melio	Sirianni
Barley	Freeman	Morris	Smith, B.
Birmelin	Gladeck	Mowery	Smith, S. H.
Bortner	Harper	Murphy	Snyder, D. W.
Brandt	Hayden	O'Donnell	Snyder, G.
Broujos	Herman	Petrarca	Staback
Bunt	Hershey	Petrone	Sweet
Bush	Honaman	Phillips	Taylor, E. Z.
Caltagirone	Howlett	Piccola	Van Horne
Carn	Jackson	Raymond	Veon
Clark	Johnson	Reber	Wright, J. L.
Cohen	Lashinger	Ritter	Wright, R. C.
Coy	Letterman	Rybak	Yandrisevits
DeWeese	Livengood	Saurman	
Davies	McClatchy	Schuler	Irvis,
Dietterick	Maiale	Semmel	Speaker
Distler	Maine		

NAYS—118

Acosta	Dombrowski	Josephs	Perzel
Argall	Donatucci	Kasunic	Pievsky
Battisto	Dorr	Kennedy	Pitts
Belardi	Duffy	Kenney	Preston
Billow	Evans	Kosinski	Reinard
Black	Fargo	Kukovich	Richardson
Blaum	Farmer	LaGrotta	Rieger
Book	Fee	Langtry	Robbins
Bowley	Flick	Laughlin	Roebuck
Bowser	Foster	Leh	Rudy
Boyes	Freind	Lescovitz	Ryan
Burd	Gallen	Levdansky	Saloom
Burns	Gamble	Lloyd	Scheetz
Cappabianca	Gannon	Lucyk	Showers
Carlson	Geist	McCall	Stairs
Cawley	George	McHale	Steighner
Cessar	Godshall	McVerry	Stuban
Chadwick	Gruitza	Manderino	Taylor, F.
Civera	Gruppo	Manmiller	Taylor, J.
Clymer	Hagarty	Markosek	Telek
Colafella	Haluska	Mayernik	Tigue
Cole	Hasay	Merry	Trello
Corrigan	Hayes	Michlovic	Vroon
Cowell	Heckler	Micozzie	Wambach
DeLuca	Hess	Mrkonic	Wass
DeVerter	Hughes	Noye	Weston
Daley	Hutchinson	O'Brien	Wilson
Dawida	Itkin	Olasz	Wogan
Dempsey	Jadlowiec	Oliver	Wozniak
Dininni	Jarolin		

NOT VOTING—7

Fattah	Miller	Serafini	Wright, D. R.
Linton	Pressmann	Wiggins	

EXCUSED—11

Arty	Durham	Moehlmann	Punt
Belfanti	Fischer	Nahill	Seventy
Cornell	Kitchen	Pistella	

The question was determined in the negative, and the amendment was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS—179

Acosta	Dombrowski	Kosinski	Reinard
Angstadt	Donatucci	Kukovich	Richardson
Argall	Dorr	LaGrotta	Rieger
Barley	Duffy	Langtry	Ritter
Battisto	Evans	Lashinger	Robbins
Belardi	Fargo	Leh	Roebuck
Billow	Farmer	Lescovitz	Rudy
Birmelin	Fattah	Letterman	Ryan
Black	Fee	Levdansky	Rybak
Blaum	Flick	Linton	Saloom
Book	Foster	Livengood	Saurman
Bortner	Fox	Lloyd	Scheetz
Bowley	Freeman	Lucyk	Schuler
Bowser	Freind	McCall	Semmel
Boyes	Gallen	McClatchy	Serafini
Brandt	Gamble	McHale	Showers
Broujos	Gannon	McVerry	Sirianni
Burd	Geist	Maiale	Smith, B.
Burns	George	Maine	Smith, S. H.
Bush	Gladeck	Manderino	Snyder, D. W.
Caltagirone	Godshall	Manmiller	Snyder, G.
Cappabianca	Gruppo	Markosek	Staback
Carlson	Hagarty	Mayernik	Stairs
Carn	Haluska	Melio	Steighner
Cawley	Harper	Merry	Stuban
Cessar	Hasay	Michlovic	Sweet
Chadwick	Hayden	Micozzie	Taylor, E. Z.
Civera	Hayes	Miller	Taylor, F.
Clark	Heckler	Morris	Taylor, J.
Clymer	Herman	Mowery	Telek
Cohen	Hershey	Mrkonic	Trello
Colafella	Hess	Murphy	Van Horne
Cole	Honaman	Noye	Veon
Corrigan	Howlett	O'Brien	Wambach
Cowell	Hughes	O'Donnell	Wass
Coy	Hutchinson	Olasz	Weston
DeLuca	Itkin	Oliver	Wilson
DeVerter	Jackson	Perzel	Wogan
DeWeese	Jadlowiec	Petrarca	Wozniak
Daley	Jarolin	Petrone	Wright, J. L.
Davies	Johnson	Piccola	Wright, R. C.
Dawida	Josephs	Pievsky	Yandrisevits
Dempsey	Kasunic	Pressmann	
Dietterick	Kennedy	Preston	Irvis,
Dininni	Kenney	Raymond	Speaker
Distler			

NAYS—8

Bunt	Laughlin	Pitts	Tigue
Gruitza	Phillips	Reber	Vroon

NOT VOTING—2

Wiggins	Wright, D. R.

EXCUSED—11

Arty	Durham	Moehlmann	Punt
Belfanti	Fischer	Nahill	Seventy
Cornell	Kitchen	Pistella	

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

JUDICIARY COMMITTEE MEETING

The SPEAKER. The Chair recognizes the gentleman from Greene, Mr. DeWeese.

Mr. DeWEESE. Mr. Speaker, I would like to announce that the House Judiciary Committee will reconvene immediately, immediately, in the majority caucus room. Thank you.

BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND TABLED

HB 2000, PN 2745 (Amended)

By Rep. LAUGHLIN

An Act creating the Electric Power Transmission Task Force and providing for its powers and duties; and making an appropriation.

CONSUMER AFFAIRS.

BILL REPORTED AND REREFERRED TO COMMITTEE ON APPROPRIATIONS

HB 244, PN 265 By Rep. LAUGHLIN

An Act amending the act of March 4, 1971 (P. L. 6, No. 2), known as the "Tax Reform Code of 1971," providing for excess utilities gross receipts tax to be placed into the Commonwealth Weatherization and Energy Assistance Fund.

CONSUMER AFFAIRS.

COMMITTEE MEETING POSTPONED

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Richardson. Why do you rise?

Mr. RICHARDSON. Thank you very much, Mr. Speaker.

Mr. Speaker, I rise for a cancellation of a meeting and I wanted to say it for the record. The cancellation is the House Health and Welfare Committee public hearing that was scheduled for January 29. It has been rescheduled for February 5 at the YMCA in Philadelphia.

The SPEAKER. The Chair thanks the gentleman.

BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER. Without objection, all remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

ADJOURNMENT

The SPEAKER. There being no further business to be brought before the regular session today, the Chair recognizes the gentleman from Berks, Mr. Leh.

Mr. LEH. Mr. Speaker, I move that this House do now adjourn until Wednesday, January 27, 1988, at 11:10 a.m., e.s.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 3:34 p.m., e.s.t., the House adjourned.