

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

MONDAY, JUNE 12, 2006

SESSION OF 2006

190TH OF THE GENERAL ASSEMBLY

No. 35

HOUSE OF REPRESENTATIVES

The House convened at 1 p.m., e.d.t.

**THE SPEAKER (JOHN M. PERZEL)
PRESIDING**

PRAYER

REV. JULIANN V. WHIPPLE, Chaplain of the House of Representatives, offered the following prayer:

Let us pray:

Eternal Father, grant to the members and the officers of this body a sacred moment of quiet before they take up the duties of the week ahead. Turn their thoughts to You and open their hearts to Your spirit that they may have wisdom in their decisions, understanding in their thinking, love in their attitudes, and mercy in their judgments. Let them not think when this prayer is over that their dependence upon You is over and forget Your counsels for the rest of the day. Rather, from these moments of heart-searching may there come such a sweetness of disposition that all may know that You are in this place.

Deliver Your servants from personal worries, that they may be able to give themselves wholly to the challenges of this session. Bless them with good health and the sense to preserve it. Save these, our Representatives, from the tyranny of the nonessential, from the weary round of that which saps strength, frays nerves, shortens life, and adds nothing to their usefulness to You and to this State. Help them to give themselves to the important and to recognize the trivial when they see it. Give them the courage to say no to everything that makes it more difficult to say yes to You.

May we all remember that You are concerned about what is said and done here, and may we each have a clear conscience before You, that we need fear no man. Bless each of us according to our deepest need, and use us for Your glory. Amen.

PLEDGE OF ALLEGIANCE

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

JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Wednesday, June 7, 2006, will be postponed until printed.

JOURNALS APPROVED

The SPEAKER. Without objection, the following Journals are in print and will be approved:

Tuesday, January 3;
Monday, January 23;
Tuesday, January 24; and
Wednesday, January 25, 2006.

HOUSE BILLS INTRODUCED AND REFERRED

No. 2737 By Representatives DeLUCA, BIANCUCCI, MICOZZIE, BENNINGHOFF, BARRAR, BOYD, CALTAGIRONE, COSTA, CREIGHTON, DENLINGER, FABRIZIO, FLAHERTY, FRANKEL, FREEMAN, GOODMAN, GRUCELA, HANNA, HARHAI, HUTCHINSON, JOSEPHS, KOTIK, LEACH, LEVDANSKY, MANN, MARKOSEK, McILHATTAN, MUNDY, MUSTIO, PALLONE, PARKER, PETRONE, PISTELLA, READSHAW, SAINATO, SANTONI, SCHRODER, SHAPIRO, SIPTROTH, STABACK, TANGRETTI, THOMAS, TIGUE, WALKO and WHEATLEY

An Act amending Title 1 (General Provisions) of the Pennsylvania Consolidated Statutes, providing for a statutory database and for legislative process.

Referred to Committee on STATE GOVERNMENT, June 8, 2006.

No. 2739 By Representatives LEH, BEYER, CALTAGIRONE, CAPPELLI, DENLINGER, GEIST, GEORGE, PALLONE, ROHRER, SAINATO, SAYLOR, SIPTROTH, STERN, E. Z. TAYLOR and THOMAS

An Act amending the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, further providing for exemptions from continuing education requirements.

Referred to Committee on INSURANCE, June 8, 2006.

No. 2740 By Representatives McILHATTAN, BALDWIN, BASTIAN, BEBKO-JONES, BENNINGHOFF, BEYER, BOYD, CALTAGIRONE, CAPPELLI, CAUSER, COHEN, CORRIGAN, CRAHALLA, CREIGHTON, CRUZ, DALEY, DeLUCA, GEIST, GEORGE, GINGRICH, GOODMAN, HENNESSEY, HERSHEY, HESS, HICKERNELL, KAUFFMAN, KILLION, KOTIK, LEDERER, LEH, MAJOR,

MANN, MARKOSEK, MILLARD, MUSTIO, NAILOR, PALLONE, PARKER, PAYNE, PHILLIPS, PISTELLA, PYLE, RAMALEY, RAPP, READSHAW, REED, ROHRER, SAINATO, SATHER, SAYLOR, SCAVELLO, SIPTROTH, SOLOBAY, R. STEVENSON, SURRA, J. TAYLOR, THOMAS, TRUE, WALKO, WOJNAROSKI, YOUNGBLOOD, HARPER, FABRIZIO, FICHTER, M. KELLER and SONNEY

An Act designating the bridge to carry State Route 68 over the Allegheny River from East Brady Borough, Clarion County, to Bradys Bend Township, Armstrong County, as the Spc. Carl F. Curran II Memorial Bridge.

Referred to Committee on TRANSPORTATION, June 8, 2006.

No. 2741 By Representatives PETRONE, BEYER, CALTAGIRONE, CASORIO, CRAHALLA, FLAHERTY, GINGRICH, GRUCELA, HENNESSEY, HESS, KOTIK, LaGROTTA, LEDERER, PARKER, PISTELLA, SIPTROTH, J. TAYLOR, WANSACZ, YOUNGBLOOD, FABRIZIO and THOMAS

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for reports and removal of abandoned vehicles within the boundaries of a city of the first class.

Referred to Committee on TRANSPORTATION, June 12, 2006.

No. 2742 By Representatives TURZAI, REED, GERBER, EACHUS, ADOLPH, ALLEN, ARGALL, BAKER, BALDWIN, BASTIAN, BEBKO-JONES, BELARDI, BELFANTI, BENNINGHOFF, BEYER, BIANCUCCI, BIRMELIN, BISHOP, BLACKWELL, BLAUM, BOYD, BUXTON, CALTAGIRONE, CAPPELLI, CAUSER, CAWLEY, CLYMER, COHEN, CORRIGAN, COSTA, CRAHALLA, CREIGHTON, CRUZ, DALEY, DALLY, DeLUCA, DENLINGER, DERMODY, ELLIS, J. EVANS, FABRIZIO, FAIRCHILD, FEESE, FLAHERTY, FLICK, FORCIER, FRANKEL, GABIG, GANNON, GEIST, GEORGE, GERGELY, GILLESPIE, GINGRICH, GODSHALL, GOOD, GOODMAN, GRELL, GRUCELA, HALUSKA, HANNA, HARHAI, HARHART, HENNESSEY, HERMAN, HERSHEY, HICKERNELL, HUTCHINSON, JOSEPHS, KAUFFMAN, M. KELLER, W. KELLER, KENNEY, KILLION, KIRKLAND, KOTIK, LEACH, LEDERER, LESCOVITZ, MACKERETH, MAJOR, MANDERINO, MARKOSEK, MARSICO, McCALL, McILHATTAN, MELIO, METCALFE, MICOZZIE, MILLARD, R. MILLER, MUNDY, MUSTIO, MYERS, NAILOR, NICKOL, OLIVER, PAYNE, PERZEL, PETRARCA, PETRONE, PHILLIPS, PICKETT, PRESTON, PYLE, QUIGLEY, RAMALEY, RAPP, RAYMOND, READSHAW, REICHLEY, ROBERTS, ROEBUCK, ROHRER, ROONEY, ROSS, RUBLEY, SAINATO, SANTONI, SATHER, SCAVELLO, SHANER, SHAPIRO, SIPTROTH, S. H. SMITH, SOLOBAY, SONNEY, STABACK, STEIL, STERN, STETLER, R. STEVENSON, T. STEVENSON, STURLA, SURRA, TANGRETTI, E. Z. TAYLOR, J. TAYLOR, TIGUE, TRUE, WALKO,

WANSACZ, WATERS, WILLIAMS, WILT, YEWCIC, YOUNGBLOOD and YUDICHAK

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing, in corporate net income, for the definition of "taxable income."

Referred to Committee on FINANCE, June 12, 2006.

No. 2743 By Representatives HERSHEY, McCALL and HARPER

An Act amending the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law, further providing for Commonwealth appropriations.

Referred to Committee on ENVIRONMENTAL RESOURCES AND ENERGY, June 12, 2006.

No. 2744 By Representatives VITALI, CALTAGIRONE, COHEN, CURRY, FABRIZIO, FRANKEL, FREEMAN, GOODMAN, JOSEPHS, LaGROTTA, LEACH, PETRONE, PISTELLA, RUBLEY, SHAPIRO, SIPTROTH, TANGRETTI, WALKO, WANSACZ and WOJNAROSKI

An Act amending Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, providing for municipal climate change action plans and for grants to municipalities; and making an appropriation.

Referred to Committee on ENVIRONMENTAL RESOURCES AND ENERGY, June 12, 2006.

No. 2745 By Representatives FLICK, SIPTROTH, SCAVELLO, TIGUE, CALTAGIRONE, DeLUCA, DONATUCCI, FREEMAN, PALLONE, PISTELLA, TANGRETTI, J. TAYLOR, THOMAS and BEYER

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, prohibiting mobile phone use while operating a vehicle; and imposing penalties.

Referred to Committee on TRANSPORTATION, June 12, 2006.

No. 2746 By Representatives HALUSKA, S. H. SMITH, CALTAGIRONE, DALEY, FLAHERTY, GOODMAN, HERSHEY, KOTIK, McILHATTAN, PYLE, R. STEVENSON and WOJNAROSKI

An Act authorizing the Department of Transportation, with the approval of the Governor, to grant and convey to AMFIRE Mining Company, LLC, the right to remove coal underlying certain highway right-of-way situate in Cresson Township, Cambria County.

Referred to Committee on TRANSPORTATION, June 12, 2006.

No. 2747 By Representatives FLEAGLE, B. SMITH, CRAHALLA and MARSICO

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for unlawful devices and methods.

Referred to Committee on GAME AND FISHERIES,
June 12, 2006.

No. 2748 By Representatives MCGILL, BASTIAN, BOYD, CAPPELLI, CORNELL, FRANKEL, GINGRICH, GODSHALL, LEACH, MANN, PAYNE, REED, SAYLOR, SCAVELLO, SIPTROTH and E. Z. TAYLOR

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for sale of tobacco.

Referred to Committee on JUDICIARY, June 12, 2006.

No. 2749 By Representative MAITLAND

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, providing for bail intercept.

Referred to Committee on JUDICIARY, June 12, 2006.

HOUSE RESOLUTION INTRODUCED AND REFERRED

No. 783 By Representatives GEORGE, DeWEESE, BELARDI, BEYER, CALTAGIRONE, FABRIZIO, FREEMAN, GOODMAN, GRUCELA, JAMES, JOSEPHS, LaGROTTA, McILHATTAN, MUNDY, MYERS, PALLONE, PARKER, SHANER, SIPTROTH, SURRA, THOMAS, TIGUE, WALKO and YOUNGBLOOD

A Resolution directing the Legislative Budget and Finance Committee to conduct a study on the effect of electric utility deregulation in this Commonwealth.

Referred to Committee on CONSUMER AFFAIRS, June 8, 2006.

SENATE BILL FOR CONCURRENCE

The clerk of the Senate, being introduced, presented the following bill for concurrence:

SB 1200, PN 1713

Referred to Committee on JUDICIARY, June 8, 2006.

CALENDAR

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 808, PN 2990**, entitled:

An Act amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, providing for a study to make recommendations for redesigning the contribution rate notice form and related documents.

On the question,
Will the House agree to the bill on third consideration?

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 808 be placed upon the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 808 be taken off the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

* * *

The House proceeded to third consideration of **HB 1484, PN 2991**, entitled:

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, providing for appeals concerning the State Workers' Insurance Fund; and establishing the State Workers' Insurance Appeal Board.

On the question,
Will the House agree to the bill on third consideration?

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 1484 be placed upon the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 1484 be taken off the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

* * *

The House proceeded to third consideration of **HB 1549, PN 1906**, entitled:

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, further providing for the Workers' Compensation Advisory Council.

On the question,
Will the House agree to the bill on third consideration?

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 1549 be placed upon the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 1549 be taken off the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that SB 243 and HB 1346 be taken from the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILLS ON SECOND CONSIDERATION

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

SB 243, PN 244; and HB 1346, PN 1604.

BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that SB 243 and HB 1346 be recommitted to the Committee on Appropriations.

On the question,
Will the House agree to the motion?
Motion was agreed to.

ACTUARIAL NOTE

The SPEAKER. The Chair recognizes the receipt of an actuarial note for amendment No. 7786 to SB 811, PN 1234.

(Copy of actuarial note is on file with the Journal clerk.)

BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND RECOMMITTED TO COMMITTEE ON RULES

HB 2273, PN 4188 (Amended) By Rep. HERMAN

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, consolidating and amending the Third Class County Assessment Board Law, The Fourth to Eighth Class County Assessment Law and provisions of The County Code relating to auxiliary board of assessment appeals; and making related repeals.

LOCAL GOVERNMENT.

BILLS REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND TABLED

SB 811, PN 1814 (Amended) By Rep. HERMAN

An Act amending the act of August 31, 1971 (P.L.398, No.96), known as the County Pension Law, further providing for transfers between certain classes and for additional class options.

LOCAL GOVERNMENT.

SB 1114, PN 1782

By Rep. HERMAN

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, further providing for county associations; and authorizing appropriations by townships to counties for land acquisitions.

LOCAL GOVERNMENT.

LEAVES OF ABSENCE

The SPEAKER. The Chair recognizes the minority whip, who moves for a leave of absence for the gentleman from Philadelphia, Mr. ROEBUCK; the gentleman from Montgomery, Mr. LEACH, for the week; the gentleman from Philadelphia, Mr. CRUZ; the gentleman from Allegheny, Mr. GERGELY; and the gentleman from Philadelphia, Mr. RIEGER. Without objection, those leaves will be granted.

MASTER ROLL CALL

The SPEAKER. The Chair is about to take the master roll.

(Members proceeded to vote.)

HARRISBURG LEGISLATIVE LEAVE

The SPEAKER. The Chair recognizes the gentleman, Mr. GRUCELA.

Mr. GRUCELA. Thank you, Mr. Speaker.

Request Capitol leave for the gentleman from Allegheny County, Mr. READSHAW.

The SPEAKER. Without objection, that leave will be granted.

Mr. GRUCELA. Thank you.

MASTER ROLL CALL CONTINUED

The following roll call was recorded:

PRESENT—196

Adolph	Feese	Maitland	Sainato
Allen	Fichter	Major	Samuelson
Argall	Flaherty	Manderino	Santoni
Armstrong	Fleagle	Mann	Sather
Baker	Flick	Markosek	Saylor
Baldwin	Forcier	Marsico	Scavello
Barrar	Frankel	McCall	Schroder
Bastian	Freeman	McGeehan	Semmel
Bebko-Jones	Gabig	McGill	Shaner
Belardi	Gannon	McIlhattan	Shapiro
Belfanti	Geist	McIlhinney	Siptroth
Benninghoff	George	McNaughton	Smith, B.
Beyer	Gerber	Melio	Smith, S. H.
Biancucci	Gillespie	Metcalfe	Solobay
Birmelin	Gingrich	Micozzie	Sonney
Bishop	Godshall	Millard	Staback
Blackwell	Good	Miller, R.	Stairs
Blaum	Goodman	Miller, S.	Steil
Boyd	Grell	Mundy	Stern
Bunt	Grucela	Mustio	Stetler
Buxton	Gruitza	Myers	Stevenson, R.
Caltagirone	Haluska	Nailor	Stevenson, T.
Cappelli	Hanna	Nickol	Sturla
Casorio	Harhai	O'Brien	Surra
Causer	Harhart	Oliver	Tangretti
Cawley	Harper	O'Neill	Taylor, E. Z.
Civera	Harris	Pallone	Taylor, J.
Clymer	Hasay	Parker	Thomas
Cohen	Hennessey	Payne	Tigue
Cornell	Herman	Petrarca	True
Corrigan	Hershey	Petri	Turzai
Costa	Hess	Petrone	Veon
Crahalla	Hickernell	Phillips	Vitali
Creighton	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnaroski
DiGiroloamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Lederer	Roberts	Yudichak
Ellis	Leh	Rohrer	Zug
Evans, D.	Lescovitz	Ross	
Evans, J.	Levdansky	Rubley	
Fabrizio	Mackereth	Sabatina	Perzel,
Fairchild	Maher		Speaker

ADDITIONS—1

Rooney

NOT VOTING—1

Ruffing

EXCUSED—5

Cruz	Leach	Rieger	Roebuck
Gergely			

LEAVES ADDED—5

Benninghoff	LaGrotta	Pallone	Youngblood
Killion			

LEAVES CANCELED—2

Pallone	Roebuck
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RULES COMMITTEE MEETING

The SPEAKER. The Chair recognizes the majority leader, who calls for an immediate meeting of the Rules Committee.

BILL REREPORTED FROM COMMITTEE

HB 2670, PN 4164

By Rep. S. SMITH

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for grounds for involuntary termination of parental rights; and, in child protective services, further providing for definitions, further providing for release of information in confidential reports, providing for citizen review panels, further providing for annual reports; and providing for mandatory reporting of substance abuse births.

RULES.**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 2670, PN 4164.

BILL RECOMMENDED

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that HB 2670 be recommitted to the Committee on Appropriations.

On the question,
Will the House agree to the motion?
Motion was agreed to.

GUESTS INTRODUCED

The SPEAKER. The Chair would like to welcome a guest of Representative John Payne. He is hosting a page today, Brianna Clark. She is the daughter of Thomas and Debra Clark of Middletown. Would that guest please rise and be recognized. She is in front of the Speaker.

The Chair would like to welcome to the hall of the House the winner of Representative Tom Stevenson's "There Ought To Be a Law" contest, John Bridge. His legislation would require AED (automatic external defibrillator) machines to be present at all fields and gymnasiums where school sports are played. John is the son of John and Diane Bridge of Scott Township and is a student at Our Lady of Grace School. John is seated to the left of the Speaker with his parents and his aunt, Meg Connors. John, please rise and be recognized.

ARCHIVAL INTERNS INTRODUCED

The SPEAKER. The Chair would like to announce that there are three students who were selected this summer to participate in the Archival Internship Program, sponsored by the House of Representatives through the Bipartisan Management Committee. These bright and dedicated interns are processing and inventorying committee records. Their work will be helping the House Archives better document the historical significance of this institution.

I would like to welcome to the hall of the House today Aaron Biichle, a law student at Widener University School of Law, who is working toward his J.D. (jurum doctor). Aaron is working on the Consumer Affairs records and is a constituent of Representative Ron Marsico.

Eben Henderson, a graduate student at Indiana University of Pennsylvania, is working toward his M.A. (master of arts) in public affairs. Eben is working on the Health and Welfare Committee records and is a constituent of Representative David Reed.

Tracy Pedron, a senior at West Chester University, will be graduating with a degree in political science. Tracy is working on the records of the Insurance Committee and is a constituent of Representative Neal Goodman.

Would those guests please rise and be recognized. They are in the back of the hall of the House. Would those three please rise.

GUEST INTRODUCED

The SPEAKER. The Chair would like to welcome to the hall of the House Ken Lynch, who is the guest today of Representative Jerry Birmelin. The guest page is located in front of the Speaker. Would that guest please rise and be recognized.

The Chair is about to take up a condolence resolution.

RESOLUTIONS PURSUANT TO RULE 35

Mr. PISTELLA called up **HR 755, PN 4058**, entitled:

A Resolution recognizing the outstanding achievements, service and patriotism of Michael J. Novosel, Sr., who died on April 2, 2006.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—196

Adolph	Feese	Maitland	Sainato
Allen	Fichter	Major	Samuelson
Argall	Flaherty	Manderino	Santoni
Armstrong	Fleagle	Mann	Sather
Baker	Flick	Markosek	Saylor
Baldwin	Forcier	Marsico	Scavello
Barrar	Frankel	McCall	Schroder
Bastian	Freeman	McGeehan	Semmel
Bebko-Jones	Gabig	McGill	Shaner
Belardi	Gannon	McIlhattan	Shapiro
Belfanti	Geist	McIlhinney	Siptroth
Benninghoff	George	McNaughton	Smith, B.

Beyer	Gerber	Melio	Smith, S. H.
Biancucci	Gillespie	Metcalf	Solobay
Birmelin	Gingrich	Micozzi	Sonney
Bishop	Godshall	Millard	Staback
Blackwell	Good	Miller, R.	Stairs
Blaum	Goodman	Miller, S.	Steil
Boyd	Grell	Mundy	Stern
Bunt	Grucela	Mustio	Stetler
Buxton	Gruitza	Myers	Stevenson, R.
Caltagirone	Haluska	Nailor	Stevenson, T.
Cappelli	Hanna	Nickol	Sturla
Casorio	Harhai	O'Brien	Surra
Causar	Harhart	Oliver	Tangretti
Cawley	Harper	O'Neill	Taylor, E. Z.
Civera	Harris	Pallone	Taylor, J.
Clymer	Hasay	Parker	Thomas
Cohen	Hennessey	Payne	Tigue
Cornell	Herman	Petrarca	True
Corrigan	Hershey	Petri	Turzai
Costa	Hess	Petrone	Veon
Crahalla	Hickernell	Phillips	Vitali
Creighton	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnarowski
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Lederer	Roberts	Yudichak
Ellis	Leh	Rohrer	Zug
Evans, D.	Lescovitz	Ross	
Evans, J.	Levdansky	Rubley	
Fabrizio	Mackereth	Sabatina	Perzel, Speaker
Fairchild	Maher		

NAYS—0

NOT VOTING—2

Rooney Ruffing

EXCUSED—5

Cruz Leach Rieger Roebuck
Gergely

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

* * *

Mr. SOLOBAY called up **HR 767, PN 4099**, entitled:

A Resolution supporting the International Association of Fire Chiefs on the occasion of the second National Firefighter Safety Stand Down scheduled for June 21 through 28, 2006, encouraging Pennsylvania fire departments to participate in the event and calling for renewed efforts to reduce firefighter fatalities and injuries and establish firefighter safety as a priority in this Commonwealth.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—196

Adolph	Feese	Maitland	Sainato
Allen	Fichter	Major	Samuelson
Argall	Flaherty	Manderino	Santoni
Armstrong	Fleagle	Mann	Sather
Baker	Flick	Markosek	Saylor
Baldwin	Forcier	Marsico	Scavello
Barrar	Frankel	McCall	Schroder
Bastian	Freeman	McGeehan	Semmel
Bebko-Jones	Gabig	McGill	Shaner
Belardi	Gannon	McIlhattan	Shapiro
Belfanti	Geist	McIlhinney	Siproth
Benninghoff	George	McNaughton	Smith, B.
Beyer	Gerber	Melio	Smith, S. H.
Biancucci	Gillespie	Metcalfe	Solobay
Birmelin	Gingrich	Micozzie	Sonney
Bishop	Godshall	Millard	Staback
Blackwell	Good	Miller, R.	Stairs
Blaum	Goodman	Miller, S.	Steil
Boyd	Grell	Mundy	Stern
Bunt	Grucela	Mustio	Stetler
Buxton	Gruitza	Myers	Stevenson, R.
Caltagirone	Haluska	Nailor	Stevenson, T.
Cappelli	Hanna	Nickol	Sturla
Casorio	Harhai	O'Brien	Surra
Causar	Harhart	Oliver	Tangretti
Cawley	Harper	O'Neill	Taylor, E. Z.
Civera	Harris	Pallone	Taylor, J.
Clymer	Hasay	Parker	Thomas
Cohen	Hennessey	Payne	Tigue
Cornell	Herman	Petrarca	True
Corrigan	Hershey	Petri	Turzai
Costa	Hess	Petrone	Veon
Crahalla	Hickernell	Phillips	Vitali
Creighton	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnaroski
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Lederer	Roberts	Yudichak
Ellis	Leh	Rohrer	Zug
Evans, D.	Lescovitz	Ross	
Evans, J.	Levdansky	Rubley	
Fabrizio	Mackereth	Sabatina	Perzel,
Fairchild	Maher		Speaker

NAYS—0

NOT VOTING—2

Rooney	Ruffing
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EXCUSED—5

Cruz	Leach	Rieger	Roebuck
Gergely			

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

LEAVE OF ABSENCE

The SPEAKER. The gentleman, Mr. PALLONE, requests leave for the remainder of the day. Without objection, that leave is granted.

This is a condolence resolution.

SUPPLEMENTAL CALENDAR A

RESOLUTION PURSUANT TO RULE 35

Mr. PISTELLA called up **HR 784, PN 4174**, entitled:

A Resolution expressing profound sorrow and condolences for the death of Army Specialist Mark W. Melcher, who died of wounds suffered on April 15, 2006, in Iraq while courageously serving our nation in Operation Iraqi Freedom.

On the question,

Will the House adopt the resolution?

The SPEAKER. On that question, the Chair recognizes Representative Pistella.

Mr. PISTELLA. Thank you, Mr. Speaker.

Mr. Speaker, I have had the opportunity in my 27-plus years of service here to speak to this House on a number of different occasions, on a number of different issues. Today I stand before you humbled by the actions I am asking you to take today. I am humbled by the actions of the man we are going to honor, and I am humbled by the sacrifice that his family has made.

GUESTS INTRODUCED

Mr. PISTELLA. I would like to take a moment to introduce to you John and Kathy Melcher, the parents of Spc. Mark W. Melcher of C Company, 1st Battalion, 103d Armored Regiment. Accompanying them is his brother John's son, his nephew, Luke. In addition, they are accompanied by Mr. and Mrs. Weiss – Mrs. Weiss was his godmother – and Mr. and Mrs. William Linkenheimer, Bill Linkenheimer being the specialist's great-uncle, not just an uncle but a great-uncle. I would like to ask them all to stand and be recognized by the House of Representatives.

Accompanying them are Deputy Adjutant General of the Army National Guard, Maj. Gen. Robert P. French, and two casualty assistance officers, Sergeant Major Bogner and M. Sgt. Charles Mort.

On April 15, 2006, Specialist Melcher's unit was asked to perform the duty of providing route security in a small town known as Khalidiyali in the Al Anbar Province in Iraq. At around 12:35 p.m. local time, small-arms fire focused upon his tank. Specialist Melcher was hit and ultimately succumbed to his wounds.

The men and women that I introduced you to earlier knew him as a loving son, a devoted brother, and a doting uncle. The men and women back home in Ross Township knew him as a man who loved certain things. Childhood friend and coworker at Mellon Financial, Sean Steinmetz, talked about the year 2000 when he and Mark Melcher decided to go west and visit Yellowstone National Park, Crazy Horse Monument, and spent

a magnificent Fourth of July at Mount Rushmore in South Dakota.

When Mark was a little boy, like some little boys he dreamed of growing up driving a tank. It was his childhood dream. As an adult, he enjoyed throwing darts and camping in Cook's Forest in Clarion County, and the one thing that he loved was the home team, the Pittsburgh Pirates. That love was so strong that the Pittsburgh Pirates saw fit this past Memorial Day to have an honorary battery to throw out the first pitch on Memorial Day that consisted of his father, John Melcher, and his brother, John, Jr. It is a battery that I am sure their family will always remember and never forget.

I am asking you to demonstrate what I think is in each and every one of your hearts: the sincere wish to Kathy and John Melcher and their family that they will find comfort in only the happiest thoughts and memories of their son, their brother, and their uncle. I would ask your support in adopting this resolution. Thank you.

On the question recurring,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—195

Adolph	Feese	Maher	Sainato
Allen	Fichter	Maitland	Samuelson
Argall	Flaherty	Major	Santoni
Armstrong	Fleagle	Manderino	Sather
Baker	Flick	Mann	Saylor
Baldwin	Forcier	Markosek	Scavello
Barrar	Frankel	Marsico	Schroder
Bastian	Freeman	McCall	Semmel
Bebko-Jones	Gabig	McGeehan	Shaner
Belardi	Gannon	McGill	Shapiro
Belfanti	Geist	McIlhattan	Sipthoth
Benninghoff	George	McIlhinney	Smith, B.
Beyer	Gerber	McNaughton	Smith, S. H.
Bianucci	Gillespie	Melio	Solobay
Birmelin	Gingrich	Metcalfe	Sonney
Bishop	Godshall	Micozzie	Staback
Blackwell	Good	Millard	Stairs
Blaum	Goodman	Miller, R.	Steil
Boyd	Grell	Miller, S.	Stern
Bunt	Grucela	Mundy	Stetler
Buxton	Gruitza	Mustio	Stevenson, R.
Caltagirone	Haluska	Myers	Stevenson, T.
Cappelli	Hanna	Nailor	Sturla
Casorio	Harhai	Nickol	Surra
Causar	Harhart	O'Brien	Tangretti
Cawley	Harper	Oliver	Taylor, E. Z.
Civera	Harris	O'Neill	Taylor, J.
Clymer	Hasay	Parker	Thomas
Cohen	Hennessey	Payne	Tigue
Cornell	Herman	Petrarca	True
Corrigan	Hershey	Petri	Turzai
Costa	Hess	Petrone	Veon
Crahalla	Hickernell	Phillips	Vitali
Creighton	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnaroski
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Lederer	Roberts	Yudichak

Ellis	Leh	Rohrer	Zug
Evans, D.	Lescovitz	Ross	
Evans, J.	Levdansky	Rubley	Perzel,
Fabrizio	Mackereth	Sabatina	Speaker
Fairchild			

NAYS—0

NOT VOTING—2

Rooney	Ruffing
--------	---------

EXCUSED—6

Cruz	Leach	Rieger	Roebuck
Gergely	Pallone		

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

APPROPRIATIONS COMMITTEE MEETING

The SPEAKER. The Chair recognizes the gentleman, Mr. Feese, for the purpose of an announcement.

Mr. FEESE. Thank you, Mr. Speaker.

Mr. Speaker, at the declaration of the recess, there will be an immediate meeting of the House Appropriations Committee in the conference room.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Appropriations Committee will meet immediately at the recess in the conference room.

LABOR RELATIONS COMMITTEE MEETING

The SPEAKER. The Chair recognizes the gentleman, Mr. Allen, for the purpose of a committee announcement.

Mr. ALLEN. Thank you, Mr. Speaker.

At 2 p.m. the Labor Relations Committee will meet in room 205 of the Ryan Office Building. Thank you very much — at 2 p.m.

The SPEAKER. How long does the gentleman need for that particular meeting?

Mr. ALLEN. About 35 minutes.

The SPEAKER. The Chair thanks the gentleman.

The Labor Relations Committee will meet at 2 p.m. in room 205 of the Ryan Building.

LEAVE OF ABSENCE CANCELED

The SPEAKER. The Chair notes the presence on the floor of the House of the gentleman, Mr. Roebuck. His name will be added to the master roll.

FINANCE COMMITTEE MEETING

The SPEAKER. For what purpose does the gentleman, Mr. Leh, rise?

Mr. LEH. Mr. Speaker, to announce a committee meeting for tomorrow.

The SPEAKER. The gentleman is in order.

Mr. LEH. I would like to announce a committee meeting of the House Finance Committee in room 205 at the break tomorrow.

The SPEAKER. The Finance Committee will meet tomorrow at the break in room 205.

REPUBLICAN CAUCUS

The SPEAKER. The Chair recognizes the gentlelady from Chester, Mrs. Taylor.

Mrs. TAYLOR. Thank you, Mr. Speaker.

At the declaration of recess, there will be an immediate Republican caucus – immediate Republican caucus.

The SPEAKER. The Chair thanks the lady.

DEMOCRATIC CAUCUS

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, there will also be a Democratic caucus immediately upon the call of the recess.

The SPEAKER. The Chair thanks the gentleman.

Are there any other further announcements?

RECESS

The SPEAKER. This House will be in recess until 3:30.

AFTER RECESS

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

**THE SPEAKER PRO TEMPORE
(MATTHEW E. BAKER) PRESIDING****SENATE MESSAGE****HOUSE BILL
CONCURRED IN BY SENATE**

The clerk of the Senate, being introduced, returned **HB 1834, PN 3169**, with information that the Senate has passed the same without amendment.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the minority whip, who requests a leave of absence for the gentlelady, Ms. YOUNGBLOOD. Without objection, the leave of absence is granted.

BILLS REREPORTED FROM COMMITTEE**HB 529, PN 4033**

By Rep. FEESE

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for classes of income.

APPROPRIATIONS.**HB 1746, PN 4036**

By Rep. FEESE

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for establishment of fees and charges; eliminating the expiration of provisions on access to justice; and making a related repeal.

APPROPRIATIONS.**HB 1944, PN 4037**

By Rep. FEESE

An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for a Statewide registry of protective orders; further providing for protective orders, for notice on protective orders and for violation of orders; providing for civil protective orders; and making editorial changes.

APPROPRIATIONS.**HB 2096, PN 4034**

By Rep. FEESE

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for classes of income.

APPROPRIATIONS.**HB 2285, PN 3197**

By Rep. FEESE

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for the illegal dumping of methamphetamine waste.

APPROPRIATIONS.**HB 2330, PN 3318**

By Rep. FEESE

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, prohibiting the purchase, sale and use of alcohol vaporizing devices; and imposing a penalty.

APPROPRIATIONS.**HB 2596, PN 3914**

By Rep. FEESE

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, enacting provisions to comply with Federal law relating to child abuse by further providing for grounds for involuntary termination, for definitions relating to child protective services and for release of information in confidential reports; providing for citizen review panels; further providing for annual reports to Governor and General Assembly; and providing for mandatory reporting of infants born and identified as being affected by illegal substance abuse.

APPROPRIATIONS.

HB 2639, PN 3993

By Rep. FEESE

An Act amending the act of September 26, 1951 (P.L.1539, No.389), known as The Clinical Laboratory Act, providing for glomerular filtration rate testing.

APPROPRIATIONS.

SB 243, PN 244

By Rep. FEESE

An Act amending the act of June 28, 1935 (P.L.477, No.193), referred to as the Enforcement Officer Disability Benefits Law, extending the payment of the salary, medical and hospital expenses to sheriffs and deputy sheriffs under certain circumstances.

APPROPRIATIONS.

SB 332, PN 1777

By Rep. FEESE

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for foreign decree of adoption.

APPROPRIATIONS.

SB 874, PN 1815 (Amended)

By Rep. FEESE

A Supplement to the act of December 8, 1982 (P.L.848, No.235), known as the Highway-Railroad and Highway Bridge Capital Budget Act for 1982-1983, itemizing additional local and State bridge projects.

APPROPRIATIONS.

SB 1150, PN 1679

By Rep. FEESE

An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for offense of protesting at a commemorative service and for commemorative service protest action.

APPROPRIATIONS.

SB 1169, PN 1756

By Rep. FEESE

An Act designating a portion of State Route 279 in Allegheny County as the Pennsylvania State Police Cpl. Joseph R. Pokorny, Jr., Memorial Highway.

APPROPRIATIONS.

SUPPLEMENTAL CALENDAR A CONTINUED

RESOLUTION PURSUANT TO RULE 35

Mr. McGILL called up **HR 788, PN 4178**, entitled:

A Resolution designating the week of May 7 through 13, 2006, as "Building Safety Week" in Pennsylvania.

On the question,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—195

Adolph	Feese	Maher	Sabatina
Allen	Fichter	Maitland	Sainato
Argall	Flaherty	Major	Samuelson
Armstrong	Fleagle	Manderino	Santoni
Baker	Flick	Mann	Sather
Baldwin	Forcier	Markosek	Saylor
Barrar	Frankel	Marsico	Scavello
Bastian	Freeman	McCall	Schroder
Bebko-Jones	Gabig	McGeehan	Semmel
Belardi	Gannon	McGill	Shaner
Belfanti	Geist	McIlhattan	Shapiro
Benninghoff	George	McIlhinney	Siptroth
Beyer	Gerber	McNaughton	Smith, B.
Biancucci	Gillespie	Melio	Smith, S. H.
Birmelin	Gingrich	Metcalfe	Solobay
Bishop	Godshall	Micozzie	Sonney
Blackwell	Good	Millard	Staback
Blaum	Goodman	Miller, R.	Stairs
Boyd	Grell	Miller, S.	Steil
Bunt	Grucela	Mundy	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirono	Haluska	Myers	Stevenson, R.
Cappelli	Hanna	Nailor	Stevenson, T.
Casorio	Harhai	Nickol	Sturla
Causar	Harhart	O'Brien	Surra
Cawley	Harper	Oliver	Tangretti
Civera	Harris	O'Neill	Taylor, E. Z.
Clymer	Hasay	Parker	Taylor, J.
Cohen	Hennessey	Payne	Thomas
Cornell	Herman	Petrarca	Tigue
Corrigan	Hershey	Petri	True
Costa	Hess	Petrone	Turzai
Crahalla	Hickernell	Phillips	Veon
Creighton	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Lederer	Roberts	Yudichak
Ellis	Leh	Roebuck	Zug
Evans, D.	Lescovitz	Rohrer	
Evans, J.	Levdansky	Ross	Perzel,
Fabrizio	Mackereth	Rubley	Speaker
Fairchild			

NAYS—0

NOT VOTING—2

Rooney Ruffing

EXCUSED—6

Cruz Leach Rieger Youngblood
Gergely Pallone

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

MEMBER'S PRESENCE RECORDED

The SPEAKER pro tempore. The Chair recognizes the presence of the gentleman, Mr. Rooney, on the floor of the House, and his name will be added to the master roll call.

BILLS REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND RECOMMITTED TO COMMITTEE ON RULES

HB 862, PN 4189 (Amended) By Rep. ALLEN

An Act amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, further providing for rules of procedure.

LABOR RELATIONS.

HB 1905, PN 4190 (Amended) By Rep. ALLEN

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, further defining "employee."

LABOR RELATIONS.

HB 2738, PN 4191 (Amended) By Rep. ALLEN

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, further providing for schedule of compensation, for definitions relating to procedure and for enforcement of standards and processing of claims; providing for the Workers' Compensation Appeal Board; further providing for assignment of claims to referees, for rehearings, for counsel fees and for the Office of Adjudication; providing for an Uninsured Employers Guaranty Fund; and making a related repeal.

LABOR RELATIONS.

CALENDAR CONTINUED

The SPEAKER pro tempore. The Chair turns to page 11 of today's calendar. We took up HB 698 back in April, and we are now returning to HB 698, PN 791.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 698, PN 791**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for jurisdiction and proceedings, for relief and order and for sentencing procedure for murder of the first degree; and providing for mental retardation of defendant.

On the question recurring,
Will the House agree to the bill on third consideration?

The clerk read the following amendment No. **A05740**:

Amend Title, page 1, lines 1 through 5, by striking out all of said lines and inserting

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, prohibiting the imposition of the death sentence in cases of mental retardation.

Amend Bill, page 1, lines 8 through 17; pages 2 through 7, lines 1 through 30; page 8, lines 1 through 18, by striking out all of said lines on said pages and inserting

Section 1. Sections 9543(a)(2) and 9545(b)(1) of Title 42 of the Pennsylvania Consolidated Statutes are amended to read:
§ 9543. Eligibility for relief.

(a) General rule.—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

* * *

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

(ix) The existence of mental retardation as defined in section 9711(q) (relating to sentencing procedure for murder of the first degree).

* * *

§ 9545. Jurisdiction and proceedings.

* * *

(b) Time for filing petition.—

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; [or]

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively[.]; or

(iv) the petitioner claims he is a person with mental retardation as defined in section 9711(q) (relating

to sentencing procedure for murder of the first degree) and the time for raising that claim has expired as of the effective date of this subparagraph. Any petition invoking this exception must be filed within 365 days of the effective date of this subparagraph or of the conclusion of any appeal pending on the effective date of this subparagraph from the judgment of sentence or from the denial of a previous petition under this chapter.

Section 2. Sections 9546 and 9711 of Title 42 are amended by adding subsections to read:

§ 9546. Relief and order.

(a.1) Mental retardation.—Upon a finding that evidence has been presented that is sufficient to establish, by a preponderance of the evidence, that the petitioner is a person with mental retardation as defined in section 9711(q) (relating to sentencing procedure for murder of the first degree), the court shall direct that the sentence of death be vacated and that the defendant be sentenced to life imprisonment.

§ 9711. Sentencing procedure for murder of the first degree.

(e.1) Mental retardation.—

(1) No person with mental retardation shall be eligible for the death penalty.

(2) (i) At least 90 days before the commencement of trial or later upon just cause shown to the court, counsel for the defendant may, upon written motion alleging reasonable cause to believe that the defendant is a person with mental retardation, apply for an order directing that a hearing to determine if the defendant is not eligible for the death penalty because he is a person with mental retardation be conducted prior to trial. The written motion shall set forth in particular the reasons and grounds to support the reasonable cause to believe that the defendant is a person with mental retardation.

(ii) Upon receipt of a motion for a determination that the defendant is not eligible for the death penalty because he is a person with mental retardation, the trial court shall conduct a hearing for the presentation of evidence regarding the defendant's mental retardation. Both the Commonwealth and the defendant shall have the opportunity to present evidence, including expert testimony. The court shall order an expert psychiatric or psychological examination of the defendant to be performed by a licensed psychiatrist or licensed psychologist who is an expert in the diagnosis and evaluation of mental retardation. The defendant shall prove he is a person with mental retardation by a preponderance of the evidence.

(iii) Prior to the time set for the hearing on the pretrial motion, the Commonwealth shall have the same rights of discovery as exist under the Pennsylvania Rules of Criminal Procedure, including, but not limited to, the production of reports from experts and production of any information that will further a full, fair and expeditious resolution of the determination of whether the defendant is a person with mental retardation.

(iv) At the hearing on the pretrial motion to determine whether the defendant is a person with mental retardation, the defendant shall have the burden of proving that he is a person with mental retardation by a preponderance of the evidence. The court shall consider the existence or absence of documentation, and any reasons for the existence or absence of documentation, of the manifestation of mental retardation before 18 years of age.

(v) The court shall find that the defendant is not eligible for the death penalty if it finds, by a preponderance of the evidence, that the defendant is a person with mental retardation. If the court finds that the defendant is a person with mental retardation, the trial shall proceed as a noncapital trial.

(vi) If the court enters an order under subparagraph (v) finding that the defendant is a person with mental retardation, the Commonwealth may appeal as of right from the order under Pa.R.A.P. 311 (a)(8) (relating to interlocutory appeals as of right). The taking of an appeal by the Commonwealth under this subsection stays the effectiveness of the court's order and any order fixing a date for trial for purposes of Pa.R.Crim.P. 600 (relating to prompt trial) and speedy trial rights under the Constitution of the United States and the Constitution of Pennsylvania.

(vii) If the court finds that the defendant is eligible for the death penalty, the trial may proceed as a capital case.

(viii) The pretrial determination of the court shall not preclude the defendant from raising any legal defense or factual evidence, including, but not limited to, the existence of mental retardation during the trial or the sentencing phase of a capital trial under this section.

(ix) The jury shall not be informed of the prior proceedings or the court's findings concerning the defendant's motion with respect to the issue of mental retardation.

(3) If a defendant has already been sentenced to death as of the effective date of this subsection and postsentence motions are still pending or a direct appeal is still pending, pursuant to rule of court, a defendant may file a motion raising a claim that he is ineligible for a death sentence because he is a person with mental retardation. The trial court that imposed the sentence on the defendant shall conduct an evidentiary hearing on the motion and determine whether the defendant is a person with mental retardation.

(p) Burden of proof.—

(1) A defendant who raises a defense of mental retardation must prove the elements of subsection (q) by a preponderance of the evidence.

(2) A defendant who raises a claim of mental retardation waives confidentiality and privileges. The following apply:

(i) The defendant's medical, corrections, military and scholastic records may be reviewed by the parties.

(ii) The defendant's previous physicians, teachers and mental health providers may be contacted by the parties and current mental health examiners to learn of the defendant's background relative to the claim of mental retardation.

(q) Definition.—As used in this section, the term "person with mental retardation" means a person to whom all of the following apply:

(1) The person's full-scale intelligence quotient is two standard deviations below the mean as determined by a standardized test generally accepted in the profession and individually administered by a licensed psychologist.

(2) The person has significant limitations, as determined by a standardized test generally accepted in the profession and individually administered by a licensed psychologist, in adaptive behavior as manifested by performance which is at least two standard deviations below the mean of:

(i) conceptual, social or practical adaptive behavior; or

(ii) an overall score on a standardized measure of conceptual, social and practical skills.

(3) The person's mental disability was present before 18 years of age. The requirement of this paragraph must be demonstrated by contemporaneous written records unless:

- (i) the written records are lost or missing; or
- (ii) the person was deprived of schooling or other social services contacts in which such contemporaneous records would be created.

Section 3. (a) This act shall apply to persons who are sentenced on or after the effective date of this act.

(b) If a defendant who has already been sentenced to death as of the effective date of this section wishes to raise the issue of mental retardation, and postsentence motions are still pending, the defendant may, pursuant to court rule, amend the postsentence motions to raise the claim that imposition of the death penalty would have been barred under 42 Pa.C.S. § 9711(e.1) if it had been in effect at the time of the sentencing hearing. The trial court that imposed the sentence on the defendant shall conduct an evidentiary hearing on the motion. Upon a finding that evidence has been presented sufficient to establish that the defendant is a person with mental retardation as provided under 42 Pa.C.S. § 9711(e.1), the court shall vacate the sentence of death and shall sentence the defendant to life imprisonment.

(c) If a defendant who has already been sentenced to death as of the effective date of this section wishes to raise the issue of mental retardation and direct appeal is still pending, the defendant may, pursuant to rule of court, after disposition of the appeal, raise the issue in a Post Conviction Relief Act petition under 42 Pa.C.S. § 9545(b) after the disposition of the appeal.

Section 4. This act shall take effect immediately.

On the question recurring,
Will the House agree to the amendment?

The SPEAKER pro tempore. On that question, the Chair recognizes Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Just as a recap and reminder to members, since you may recall, we have debated partially this issue several times but it has never actually been voted on and moved all the way through the process.

This is the issue that deals with determination of mental retardation in capital cases, and if you will recall from the earlier discussion, my amendment would have Pennsylvania put into place, all the States are putting into place some sort of procedure to make sure that they have statutes that conform with the United States Supreme Court decision in *Atkins*, which says you shall not execute mentally retarded people, that it is cruel and unusual punishment under the United States Constitution. My amendment would put into place in Pennsylvania a procedure that would have the determination of whether a person is mentally retarded be made pretrial by the judge instead of, as it is written in the current language of the bill in chief, posttrial or postconviction by the jury.

And I know there are a lot of members in this chamber that feel passionately about this issue, and I would really appreciate if folks who feel the same way as I do would also articulate their reasons, and so I will just be very brief in my first remarks to say that, in my opinion, this is a commonsense amendment. One does not fake mental retardation. This is not about mental illness; this is not about mental competency; this is not about mental instability; this is not about emotional distress. This is about mental retardation. The definitions are identical in my amendment and the bill in chief. The mental retardation is something that needs to have been demonstrated conclusively during childhood. That is something that can be taken into

account before we go to trial and spend all the time, energy, and resources on a capital-case jury in an instance where the person is not even eligible to get the death penalty.

So again, I ask your affirmative support of this amendment to provide for pretrial determination of mental retardation in capital punishment cases.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the gentleman from Berks County, Mr. Caltagirone.

Mr. CALTAGIRONE. Thank you, Mr. Speaker.

I would just like to reiterate some points for the members to think about before they cast this vote.

In the case of *Atkins v. Virginia*, the United States Supreme Court held that an execution of a mentally retarded person violates the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the U.S. Constitution, and in its decision, the court authorized the individual State legislatures to determine and adopt standards and procedures to implement the ruling.

Mr. Speaker, that was 4 years ago, and this legislature still has not adopted standards and procedures to implement the holding in *Atkins*. In December of last year, in the case of *Commonwealth v. Miller*, the Pennsylvania Supreme Court was forced to step into this void and make a judicial determination of the standard to be utilized in Pennsylvania for determining whether a defendant in a criminal case suffers from mental retardation. However, because the *Miller* case arose from a habeas corpus proceeding, the Supreme Court did not address the procedures to be utilized in making these determinations in future criminal cases. It still remains necessary for us to enact these procedures.

If we do not adopt the Manderino amendment, we will continue to fail to meet our legislative responsibilities. The Manderino amendment provides that the question of mental retardation of a defendant in a capital case shall be determined by the trial judge prior to the trial for the charged offense. A hearing would be held, at which time the defendant must prove by a preponderance of the evidence that the defendant suffers from mental retardation. Both the Commonwealth and the defendant would be entitled to present evidence. If the Commonwealth prevails, the trial would proceed as a capital case and the defendant would be subject to the death penalty. If the defendant prevails, the trial would proceed but the defendant would not be subject to the death penalty.

This is a procedure which has been adopted by many States and which has previously been adopted in legislation passed by the State Senate. It is also the procedure that has been endorsed by the organizations that advocate for the welfare of the mentally retarded. It saves the Commonwealth the costs of an unnecessary capital trial. It utilizes the same type of rules and timetables that we use to resolve other pretrial issues. For example, this is the procedure that is presently used to determine if the defendant in a criminal case is competent to stand trial, and this procedure assures that the issue of a defendant's mental retardation will be decided in a fair and impartial manner, without being influenced by the testimony and evidence produced at the trial. This is the procedure that we should adopt.

If we adopt the Manderino amendment, we can finally resolve this issue and fulfill our legislative responsibility. If we do not adopt the Manderino amendment, HB 698 will die in the

Senate and we will once again be abdicating our responsibility and allowing the courts to resolve this issue.

I ask you for a “yes” vote on the Manderino amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentlelady from Luzerne County, Ms. Mundy.

Ms. MUNDY. Thank you, Mr. Speaker.

This is not a question of whether we are going to execute mentally retarded individuals. That has already been decided. So what we are trying to decide here today is when we make the determination as to whether they are mentally retarded or not.

In study after study after study in States where capital punishment is allowed, it has been demonstrated that capital punishment is extremely expensive. From the very first investigation in a capital case through the entire trial, the expense of a capital case is far higher than if it is not a capital case. So given that, please explain to me what sense it would make to go through an entire trial with capital punishment on the table, only to have in the end it be determined that the person is mentally retarded. You have already spent all this additional money to bring this capital case forward, and now you cannot execute the individual anyway because the determination is that the individual is mentally retarded. Please explain to me how that makes any sense at all.

The only reasonable thing to do is to decide before the fact, before you go forward with the trial, as to whether this individual is mentally retarded or not, because then the expense would be spared of an unnecessary additional expense to bring forward the capital case. This is such common sense, I just really do not understand how we could vote any other way, but I would certainly urge a vote for the Manderino amendment.

Thank you.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the gentleman from Cumberland County, Mr. Gabig.

Mr. GABIG. Thank you, Mr. Speaker.

My concern about the Manderino amendment, as we are calling it – which if the gentlelady from Philadelphia does not mind me using her name, I will continue to use that phrase – is that what it does is it takes this very important decision – I made this point during our Judiciary Committee meetings chaired by, ably chaired by the gentleman from Philadelphia, Mr. O’Brien – is it takes the decision, this very important decision that we make in our criminal justice system, away from the people, away from the jury, and puts it in the hand of the judge, and we have had this very important decision being made by the jury and by the people through the jury system since this Commonwealth was founded.

It is not a matter of when, it is a matter of who in the system is making the decision. You will notice in the Manderino amendment that the jury is no longer involved with this decision. They could have had a procedure where the jury was involved sometime earlier; we have that in our system. The jury currently in our system makes decisions, for example, about insanity pleas, whether or not a defendant should be found not guilty by reason of insanity. Guilty but mentally ill is another important decision. But the key is, we need to keep this important decision in the hands of the jury.

The *Atkins* decision that was referred to earlier would be fully complied with under the O’Brien bill. It would comply with the Supreme Court decision. But it not only would comply with the Supreme Court decision, it would keep the decision within the hands of the jury. And so the comments that have

been made by the opponents of the bill, I think because of their decision to take it out of the hands of the jury, and I have made this point time and time again as we have walked through this process, they never came forward with a bill that would have kept it in the hands of the jury. So I have to strongly, strongly urge my colleagues to oppose the Manderino amendment and support the bill. I am not going to talk on final passage, but to support final passage.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Allegheny County, Mr. Flaherty.

Mr. FLAHERTY. Thank you, Mr. Speaker.

I have actually worked on a capital case before – it was years ago – and I can tell you this. In looking at it—

The SPEAKER pro tempore. Will the gentleman suspend.

Ladies and gentlemen, I believe this is the first time the gentleman, Mr. Flaherty, is seeking recognition. Members, please take your seats. Members, please take your seats.

The gentleman may proceed.

Mr. FLAHERTY. Thank you, Mr. Speaker.

On one side of the issue, we are looking at making a determination and vesting it in the hands of the jurors after they are obviously emotionally invested in the case. On the other side, there is some concern about judges making decisions and perhaps allowing people who are not mentally retarded to escape under the guise of mental retardation.

I would point out that I am going to support the pretrial determination, first because of the expense. The expense is outrageous. It is necessary that capital cases be tried, but if there is no chance that a retarded person can be convicted of a capital offense, have we not just wasted all of that money?

Pretrial determinations are made in cases of competency and insanity. I would suggest to this room that mental retardation be looked at in the same light. Every single one of these judges making these decisions will be making cases and decisions on competency and insanity, and mental retardation should and must fall within the same genre.

Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Lehigh County, Mr. Reichley.

Mr. REICHLEY. Thank you, Mr. Speaker.

Like the previous speaker, I have also handled some death penalty cases when I was a prosecutor, about five or so, and I must put the question back to the gentleman and to the gentlelady from Luzerne County, how much is a victim’s life worth? You are throwing out the fact that dollars and cents are supposed to be evaluated when trying to decide whether a death penalty case is appropriate. Turn to the family of a victim and ask them, what is the price that they would like to see assessed for the dead person’s life? When you want to start throwing around dollars-and-cents figures as the price for justice, this whole conversation has completely lost its focus, and the focus that is being put forward by the proponents of this amendment is their opposition to the death penalty.

Now, I am very respectful for those who are concerned about the rights of the mentally retarded, and none of the people who are going to be voting today on behalf of the O’Brien bill and against this amendment are trying to do anything to discriminate against those who are mentally retarded. We have great admiration and sympathy for those who are advocates for their

cause, but by advocating on behalf of the mentally retarded, we are losing the question which is before us, which is, what is the propriety and the proper method to be utilized in evaluating a death penalty question?

For those who may not be familiar with the whole procedure which is being put forward by Representative O'Brien, let me point out that there are greater protections for the defendant in the O'Brien bill than there are in the Manderino amendment, because under the O'Brien bill, after a decision is made by the jury, a unanimous verdict being made that the defendant is both capable of malice and specific intent to kill, a first-degree murder conviction, that same jury answers one question and one question alone initially: Is the defendant mentally retarded beyond a reasonable doubt? And if one individual, one juror, says, no, I think there is a chance that the individual is mentally retarded, the proceedings stop there, much as we have today under our current procedures in life imprisonment versus the death penalty, because under current law, once a defendant is convicted of murder in the first degree and even just one juror says, I have some doubt because of mental conditions, a lack of, a chance for rehabilitation, whatever it might be the defense counsel puts forward, that same one individual can stop the proceedings and render a verdict of life imprisonment as mandated by the current law.

The Manderino amendment takes the propriety of the situation out of the hands of the jurors. This is not a question like competency or like insanity that often requires a distinct legal interpretation and therefore precludes the defendant from even being found guilty because of mental incapacity to either understand the nature of the crime committed and the court proceedings or an incapacity of formulating specific intent. As some of our colleagues here know because of their work with the mentally retarded, a mentally retarded person, no matter how stigmatic that term may be, is still capable of the mental calculation to formulate specific intent, and what you are doing is thereby putting the focus in the hands of a judge who can at a single stroke of a pen wipe out the capacity for many individuals to have the same evaluation made by a jury of their peers that every one of us would have for ourselves in that similar situation.

So, Mr. Speaker, I am asking you to vote "no" on the Manderino amendment, not because it is more helpful to criminal defendants, but because it is less helpful to the victims of the crimes, to the family members who are left behind, and they have the equivalent constitutional right for consideration in these proceedings that we are considering here today in this amendment. This is not something which makes the law better, which helps defendants more, but in fact, it harms the cause of victims and prosecutors being able to bring forward, as they are constitutionally allowed to do, that case before a jury.

Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Philadelphia County, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, like several other speakers, I have worked with the mentally retarded. I have worked as a law clerk on death penalty cases, and, Mr. Speaker, I think that we should support the Manderino amendment for the following reasons: One, Mr. Speaker, why should we depart from historical practices, historical principles? In education a determination of mental retardation is made up front so that appropriate,

appropriate learning experiences can be applied. Mr. Speaker, in employment if you have a mental illness or you are disabled and you go to the Bureau of Vocational Rehabilitation, there is an assessment and determination made up front, not at the end, and it is made up front so that appropriate services can be provided. Mr. Speaker, in every other arena the question of whether or not one is mentally retarded is a decision that is made in the beginning so that it does not complicate things in the end. So, Mr. Speaker, the O'Brien proposal departs from something that we do, something that we have been doing historically when it comes to the issue of mental retardation.

Secondly, Mr. Speaker, the reason that this issue should be addressed up front and not wait until the end of the trial, because, Mr. Speaker, there is a high probability that once a jury knows that an individual is mentally retarded and comes face to face with the depth of that retardation, Mr. Speaker, that could interfere with the jury being able to make a clear and concise decision.

Thirdly, Mr. Speaker, the benefits of making the determination up front far outweigh the costs associated with making this decision at the end, and, Mr. Speaker, I know that things are bad out there, but as a society, Mr. Speaker, it is only reasonable and fair that such a determination is made up front.

Mr. Speaker, we cannot— And in some cases mental retardation is extensive and long-term, and so, Mr. Speaker, mental retardation, unlike mental illness, it is something that you cannot make a determination off-the-cuff or just by looking at someone, and so, Mr. Speaker, there needs to be an assessment and that assessment needs to be done during pretrial, not posttrial, and so the issue is very clear; it is very clear, and it has nothing to do with whether or not the individual committed the crime or whether or not the individual should be punished. What it has to do with is the jury having an opportunity, the jury and the fact-finder having an opportunity to know up front, up front, the capacity of the defendant.

Someone said that there are no competency issues involved. There is clearly a competency issue involved if the individual was born with the illness and if that illness has been aggravated over a period of time. Mr. Speaker, clearly that runs to competency and capacity, and it is something that should be done up front, not done posttrial.

And so I strongly urge good men and women from both sides of the aisle to do the right thing on this amendment, and that is to support this amendment. It is the right thing to do; it is the right time; it is the right circumstances; and, Mr. Speaker, it represents a step in the right direction.

Vote "yes" on the Manderino amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

LEAVE OF ABSENCE CANCELED

The SPEAKER pro tempore. Returning to leaves of absence, the Chair notes the presence on the floor of the House of the gentleman from Westmoreland County, Mr. Pallone, and he will be added to the master roll.

CONSIDERATION OF HB 698 CONTINUED

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

Mr. TURZAI. Thank you, Mr. Speaker.

As a former prosecutor, it makes sense to me that the issue of appropriate punishment is not and should not be raised unless and until there is a conviction of the underlying crime based on the facts of the case. Keep in mind the prosecution has the burden of proving guilt in the actual underlying prosecution of a crime. Only if the jury convicted the defendant of first-degree murder does the issue of punishment, including whether someone should be given the death penalty, become relevant in a separate phase of the case, and while insanity can be a defense in the prosecution of a crime, that issue is separate and distinct from the issue of mental retardation as a defense to the death penalty in the punishment phase. Thus so, logically, the issue of mental retardation, as a defense to the death penalty punishment, should be raised and addressed in the penalty phase after the prosecution. If the defendant is found not guilty in the prosecution of the case, there is no penalty phase. Should the defendant be found guilty, the first issue addressed in the penalty phase would be whether the defendant is mentally retarded.

Secondly, I also believe that factual issues such as whether a defendant in fact committed a crime are properly placed in the hands of a jury, the bedrock of our criminal justice system. Under our system, the jury decides whether the prosecution has proven the elements of a crime beyond a reasonable doubt and decides whether a defendant has established any defenses to that crime. The defense of mental retardation to the death penalty in a capital case should be treated similarly; thus so, decided by a jury.

I believe these are proper procedures in the underlying bill sponsored by Representative O'Brien that offer exceedingly sufficient protections to ensure that mentally retarded persons are not given the death penalty in accordance with the underlying facts of the *Atkins* case.

Thank you very much, Mr. Speaker. I appreciate it.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Luzerne County, Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, I rise to oppose the amendment. I think the bill before us is a carefully crafted piece of legislation that takes into account not only the justice system, not only the accused, but also the rights of the victim.

In a capital case where someone's life has been taken, the determination of guilt or innocence should be the first determination by the jury. Once that is accomplished, if the person is found guilty, as previous speakers have said, then you get into the jurisdiction as to whether or not there is a high level of mental retardation to avoid the death penalty.

But the bill as stands, I believe, Mr. Speaker, meets all the requirements of the Supreme Court. It is a piece of legislation that will be good law in the Commonwealth of Pennsylvania, and I would ask the members for a negative vote on the Manderino amendment.

Thank you very much, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Philadelphia County, Mr. O'Brien.

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

Earlier this month we voted on the constitutionality of the Manderino amendment. I disagree with the outcome of that vote, but I can see where some members might plausibly take

the position that it was within the constitutional power of the General Assembly to adopt that amendment as law without necessarily supporting that amendment on its merits.

Today you are confronted with an entirely different question. Today you must decide whether the Manderino amendment is a good idea or a bad idea. Today you must decide whether a jury should exclusively decide a killer's claim of mental retardation or whether a trial judge can take this issue away from the jury by making his own finding of mental retardation.

HB 698 exclusively vests that decision in the jury. Under the bill, the jury will determine whether the murder defendant is mentally retarded at the time it weighs all the factual questions relating to whether to impose the death penalty or to impose life without parole. Juries have always decided whether a killer can be acquitted by reason of insanity. There is no good reason why juries should be stripped of a substantial portion of their power to determine the question of mental retardation in capital murder cases.

The Manderino amendment will give anti-death-penalty judges and liberal judges with defense lawyer mindsets the opportunity to make a diagnosis of mental retardation in order to take the death penalty off the table, even for the most vicious, brutal, and heinous of crimes and even for serial killers who have successfully evaded the clutches of the law for many years.

This will be a particular problem in a city like Philadelphia, which has the highest percentage of murder trials in the State and the largest collection of judges who coddle criminals. As I will demonstrate, however, this problem is not limited to Philadelphia, but before giving specific examples of the types of killers who will profit from the Manderino amendment, I will briefly set out my reasons for opposing this amendment.

First and foremost, this amendment will handicap the efforts of prosecutors to seek appropriate punishment for brutal killers who are wily enough to exploit its provisions in an attempt to escape the justice they deserve.

Second, this amendment's pretrial hearing requirement will generate lengthy delays which will compromise the quality of evidence presented at trial. When a trial judge's disputed mental retardation diagnosis is appealed by the prosecution, the ensuing delay will go on for years. If the Supreme Court defers to the judgment of the trial judge, the case comes back to the county for a full-blown trial with the death penalty off the table.

This brings us to a related problem with the Manderino amendment. Witnesses' memories begin to fade and other witnesses may pass away during the intervening years between the pretrial and the jury trial. As a consequence, the quality of evidence is compromised. I have been advised that the average time for resolving interlocutory appeals, such as the appeal procedure created by this amendment, is at least 3 years.

While the final outcome is likely to be the same in most cases, witness deaths and fading recollections will compromise the ability of the prosecution to prove guilt beyond a reasonable doubt and some guilty killers will beat the rap and receive a get-out-of-prison-free card and not merely avoid the death penalty, all for the sake of a novel procedural gimmick that usurps the traditional fact-finding function of the jury. These delays and this impairment of the quality of evidence can be avoided if the notion of a pretrial determination is scrapped and the jury makes the call during the sentencing phase of the trial.

Third, this amendment is costly and wasteful. Much of the evidence and expert testimony in the maxitrial will duplicate the

evidence that was presented at the minitrial. The defense will rehash this evidence before the jury in an attempt to mitigate the defendant's guilt, and the prosecution will recycle its material in order to rebut the defense contentions. Since the defense and the prosecution will often have to use their psychiatrists and experts at two proceedings rather than one and since the public is frequently picking up the tab for both sets of psychiatrists, the amendment will increase the fiscal cost of conducting capital murder trials.

Fourth, and most importantly, Mr. Speaker, this amendment is cruel to the families and other loved ones of murder victims. One of the truly saddest things about this amendment is the excruciating pain that it will callously inflict on the families and loved ones of the murder victim. Spouses, children, parents, and significant others will be denied closure for years and they will have to struggle with the pain of uncertain justice during this eternity of time between the judge's pretrial ruling and the jury's verdict. You can spare the families and loved ones of the murder victim this pain by voting "no" on this amendment.

Fifth, this amendment will inject an illogical element into the capital trial process by using juries to decide insanity and depriving jurors of the right to decide mental retardation in cases where the judge decides the killer is retarded. This is preposterous. The issue of legal sanity has always been decided by the jury in a capital murder case and in every other criminal trial where this defense is raised. If a jury is qualified to fully decide sanity, Mr. Speaker, then a jury is qualified to fully decide mental retardation.

Sixth, the Manderino amendment raises a very troubling constitutional concern about the right to a jury trial on important factual issues that are central to the trial itself. I will not belabor this point because we have already debated this issue at length. I will simply make two quick points.

As to the Federal constitutional problem, the U.S. Supreme Court in *Atkins v. Virginia* has held that issues involving increased punishment must be decided by a jury, not a judge. I believe this amendment violates the *Atkins* ruling. This amendment is also a slap in the face of the voters of Pennsylvania, who approved a constitutional amendment to give the Commonwealth the right to insist on a trial by jury. The Manderino amendment deprives the people of their constitutional right to a jury determination on one of the most important factual issues in a death penalty case whenever the trial judge makes a finding of mental retardation.

Seventh, the pretrial procedure will contribute to the false and malicious stereotyping of mentally retarded individuals as violent and dangerous. A pretrial determination encourages many, if not most, first-degree murder defendants and almost requires their attorneys to claim mental retardation. Why would a defense lawyer not take a free shot at a pretrial hearing? After all, the Manderino amendment gives murder defendants two bites of the apple – once in a pretrial and again during the sentencing phase following a guilty verdict. The stigma resulting from the media association of mental retardation and murderers is deeply unacceptable, and this amendment will serve to defame a highly vulnerable class of individuals who are overwhelmingly nonviolent.

First-degree murder cases are human horror stories that necessarily generate an enormous media exposure. This amendment creates a procedural nightmare which guarantees that the public will be bombarded with a false association between brutal murderers and mental retardation. If the issue of

retardation is blended into the entire trial, mental retardation is only likely to receive a sharp public focus in the much less common cases where there is a legitimate question of mental retardation.

Let me offer a few examples of killers who will be able to exploit the Manderino amendment, and I would just ask for the members to listen to these examples. This succinctly describes whom you are voting for and whom you are voting against.

Take the case of Harrison "Marty" Graham. Graham was sentenced to death for murdering seven women, Mr. Speaker; I repeat, murdering seven women. Police discovered the decomposed bodies of six women in his crackhouse apartment within a room that had been nailed shut, and parts of the seventh body were found on the roof and in the basement of a nearby building. A Philadelphia common pleas court judge threw out Graham's death penalty by diagnosing this serial killer as mentally retarded.

The prosecution argued in vain that this is a man who was smart enough to lure his victims back to his apartment, to have sex with them, to murder them, and hide their bodies over a period of several months. Graham lived alone, worked as a handyman, and was able to support a drug habit. While imprisoned, Graham sought learning materials to improve his reading and writing skills, and according to prosecution testimony, his writing skills clearly improved after using these do-it-yourself materials. Marty Graham, Mr. Speaker, is the kind of serial killer who will be able to cynically exploit the Manderino amendment if he draws a Philadelphia judge to conduct his pretrial hearing.

There is also the case of Simon Pirela, who was sentenced to death for his involvement in the commission of several murders. Philadelphia trial court Judge Temon vacated Pirela's death sentence on the grounds of mental retardation despite the following evidence: Pirela was the leader of a violent drug gang and gave orders to others in the gang. At trial he gave over 40 pages of coherent testimony, and he gave statements to the police that demonstrated his ability to understand questions and provide appropriate responses.

Just try to imagine the ludicrous spectacle of a mentally retarded person running a drug gang. That did not seem to bother Judge Temon, who ruled that Pirela was too retarded to face the death penalty for multiple murders. The Manderino amendment would be an open invitation for this type of abuse.

These types of abuses are not confined to Philadelphia. Consider the case of Joseph Miller in Dauphin County. I would like to recite from Dauphin County District Attorney Marsico's description of this so-called mentally retarded killer, and I quote, "Joseph Miller is an example of just such a case. My office prosecuted Joey Miller, a serial rapist and killer who preyed on women in Dauphin County for years. A jury here in Dauphin County sentenced him to death for the murders and kidnapping of two women, and he pled guilty to the rape and attempted murder of two others. He was also convicted of first-degree murder of another woman in Perry County, where the jury did not impose the death penalty.

"Joey Miller is a calculating serial killer who lured women to remote unlit areas, bound them, then raped and murdered," them, "or attempted to murder, them. He told a detective that sometimes he got 'the urge to go out,' and 'pick up a black female, rape her and kill her.' To cover up his crimes, he would then bury his victims along with the murder weapon. He even went as far as to return to the scene of a murder" several

“months later...” to “ensure that the victim’s remains were...” still “concealed.

“Joseph Miller is not legally mentally retarded. This is a man who was calculating and exact. He knew he had to cover up his crimes, and he did that so well that they were not discovered for years, until he was finally caught in the act, ultimately confessed and brought the police to the site. Miller could drive a car, was married, and was even able to use an aerial photograph to assist police in finding the bodies of the victims.” End of quote.

Despite the glaring evidence of Miller’s capacity to deal with his environment, Judge Turgeon pronounced Joey Miller to be retarded and let him walk away from the death penalty. The Supreme Court subsequently vacated Judge Turgeon’s order because the judge failed to conduct an appropriate evidentiary hearing and returned the case for resentencing. Who knows what the judge will decide after conducting such a hearing. Moreover, the delays that are built into the Manderino amendment are underscored by the fact that 2 years elapsed between the time that Judge Turgeon set aside the death penalty and the time the high court vacated her order. These examples illustrate the potential abuse the Manderino amendment will codify into our law.

For those who worry about the possibility of the mistaken execution of a truly retarded defendant – and that includes me; that includes me – I would like to emphasize one very important safeguard in HB 698. If the defense can persuade a single juror, one juror, of the entire panel that his client is mentally retarded, his client’s life will be spared. Under the Manderino amendment, these vicious killers are given two opportunities to escape a death sentence. The judge and the jury must both agree that the defendant is mentally retarded in order to impose the death penalty. Under the bill, this call lies within the exclusive providence of the jury.

Lastly, HB 698 also generously provides that if both parties agree, the issue of mental retardation can be determined pretrial by a judge.

Mr. Speaker, I am going to summarize now. The current version of this bill is supported by the Attorney General’s Office, the District Attorneys Association, the Coalition of Pennsylvania Crime Victims Organizations, the Pennsylvania police chiefs associations, the Fraternal Order of Police, and the American Association on Mental Retardation. The Manderino amendment is backed by such organizations as the American Civil Liberties Union.

Mr. Speaker, we have a choice. You can vote with law enforcement and the American Association on Mental Retardation or you can vote with the American Civil Liberties Union. You can vote for judges or you can vote for juries. You can vote for speedy trials or you can vote for 2- or 3-year delays in justice. You can vote for criminal defense lawyers and murder defendants or you can vote for murder victims and their grieving families.

I ask you, vote “no” on the Manderino amendment. Thank you.

HARRISBURG LEGISLATIVE LEAVES

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Cohen, for Capitol leaves.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I would request Capitol leave for the lady from Philadelphia, Representative BISHOP, and the gentleman from Philadelphia, Representative WILLIAMS.

The SPEAKER pro tempore. The Chair thanks the gentleman. Without objection, the Capitol leaves will be granted.

CONSIDERATION OF HB 698 CONTINUED

The SPEAKER pro tempore. Mr. Vitali, are you seeking recognition?

Mr. VITALI. Thank you, Mr. Speaker.

I rise in support of the Manderino amendment, and I just want to focus in on one very narrow point. I think we have gone really far afield here, because I think what we all want here is to reach the correct decision on whether the defendant is or is not mentally retarded. That is really the question before us. So then the next question becomes, who is in a better position to make that correct decision – the judge or the jury. That is what we want. We want the correct decision here. The rest, not as important.

Mr. Speaker, what you have essentially is a very technical, almost medical decision which needs to be yielded here. The person who is going to make this decision has to really sift through things like the testimony of medical doctors, medical reports, highly technical information. Mr. Speaker, typically it is the judge who is in a better position to do this than an assorted collection of lay jurors. Judges by their training and experience level by nature are highly competent. They have a built-in guarantee of high training. Mr. Speaker, they are also trained to be dispassionate. They are also by their disposition selected as dispassionate people. Mr. Speaker, judges have the ability to step beyond the maybe egregiousness of the facts and just focus in on medical testimony and other testimony received.

Mr. Speaker, on the other hand, a lay jury does not bring to the court those same qualities. Their educational level is assorted and perhaps deficient in certain circumstances. They are not in the court environment on a day-to-day basis and not used to dealing with the high pressure and emotions that a judge is.

Mr. Speaker, really at the end of the day we all want the same thing, which is the correct decision, and I am trying to make an analogy. If we are trying to diagnose whether you had cancer or not, would you want someone trained who deals with it day in and day out to look at the facts and dispassionately make a decision or would you want an assorted collection of 12 people brought in that day to make that decision?

Mr. Speaker, this is much more akin to the question of whether a witness is competent or not. This is a technical, narrow decision, and the best person to handle this is a judge, not a jury. So I would support the Manderino amendment.

Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman, and upon unanimous consent, the lady from Philadelphia County, Ms. Manderino, is recognized.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, the arguments against my amendment were creative, they were confusing to many, but they were not accurate. First of all, this is not an issue about whether mental retardation is a defense to a crime. It is not a defense. It is not an

ineligibility to be prosecuted. It is an eligibility issue with regard to the death penalty.

The more accurate analogy would be age. Age is an eligibility determination made by the court before trial, because of course, if the person is only 15 years old, they cannot be subject to the adult criminal penalties unless the case is removed to adult court. It is an eligibility question. Mental retardation is an eligibility question, and that is the appropriate place to determine eligibility, is at the front stage of the trial.

It is not an issue of whether or not witnesses can remember things. There are not a lot of delays in the process. My amendment provides for no interlocutory appeal by a matter of right for the defendant. It is only if the D.A. wants to take an interlocutory appeal could any happen, and before we start thinking that the earth is going to come crashing down around us in Pennsylvania if we do not do this, or if we pass my amendment, let us just look at reality. The *Atkins* decision was decided in the United States Supreme Court over 4 years ago. So for 4 years it has not been legal for Pennsylvania to execute mentally retarded people.

First-degree murder cases have come up in our trial courts since then. As a matter of fact, in the den of iniquity, my city, Philadelphia, that has over 50 percent of the capital cases, this has come up in the past 4 years. I contacted the president judge of the criminal division to say, tell me what is happening, and he sent out an e-mail to all, a notice to all of the judges. As best we were able to determine in the responses that he got, we identified four cases in Philadelphia in the 4 years that the determination of mental retardation came up.

How did the courts handle it? They handled it pretrial as my amendment is suggesting. What happened? In two of the cases, after hearing the evidence about the factual determination of that person's mental retardation, in two of the four cases, both the district attorney and the defendant's attorney, the defense attorney, agreed that the person was mentally retarded, and they proceeded to trial without a capital case. In the third case the defendant's attorney agreed after the presentation of the evidence that he was not mentally retarded, and they proceeded with the case as a capital case. In the fourth case I am not sure what happened. I got a report back of the e-mail from one of the judges that said, I handled the case, but did not further explain what they did, and before this came up, I did not get the follow-up response.

But my point is, in 4 years in the city of Philadelphia, which has over 50 percent of our capital cases, four times this has come up, and at least three of the four times that I was able to get determinations, it was handled without the sky falling in.

A couple of people asked me about the district attorney's letter that they got that said that the majority of the States do this posttrial. That is a disingenuous argument, and let me explain to you why. The only way you can come to the conclusion that – I think it was 37 or 38 States they had in their letter – the only way that you can come to the conclusion that they did is if you count all of the States who did nothing since *Atkins* was decided, including Pennsylvania, because prior to *Atkins* mental retardation was only a mitigating factor at the penalty stage after the jury had heard and convicted. So Pennsylvania is counted in that D.A. list as those who are posttrial. The only States that it is legitimate, I would argue to you, to count are the States that have reexamined their statutes since *Atkins* was decided. There were 19 States that I have been

able to identify that have reexamined their statutes since *Atkins* was decided. Sixteen of those went with a pretrial determination; three went with a posttrial. Of our surrounding States, Delaware is the only State that has already passed a statute since the *Atkins* decision, putting a new procedure on the books. Delaware's statute is pretrial.

New Jersey currently has a proposal pending in their legislature. As best I was able to determine, there is only one proposal pending; it is pretrial. If there is going to be a posttrial statute considered, it will probably be in this process, because right now the only bill they have in their current legislative session pending is a pretrial determination bill.

Finally, and I think most egregiously, is the confusion that was tried to be created by citing examples of past cases and facts from past cases such as Marty Graham or Joey Miller or Simon Pirela, and here is why. My amendment uses the identical definition of mental retardation as Representative O'Brien's bill does. That is a new definition of mental retardation that Pennsylvania will be adopting irrespective of whether you go with my amendment or Representative O'Brien's bill without my amendment. So the definition of who is mentally retarded and whether it will apply is the same definition, and it is different than any existing definition that may or may not have been used in past cases when mental retardation was a mitigating factor.

Finally, this amendment has an awful lot of additional groups other than the ACLU – I guess they are the whipping boy whenever we want to excite agitation over something – that support pretrial determination. Supporting pretrial determination – and you have had these letters before – are the Arc (Advocacy & resources for citizens) of Pennsylvania, the Pennsylvania Statewide Independent Council, United Cerebral Palsy of PA, Speaking For Ourselves, Vision for EQuality, PA Developmental Disabilities Council, MH/MR Administrators Association of Pennsylvania, the PA Community Providers Association, the Pennsylvania Disabilities Law Project, Speaking For Ourselves, PA Protection & Advocacy Project.

In addition, I will remind you, this bill is also supported by many clergy of all denominations, and we have been sent a letter in the past signed by clergy from Christian, Muslim, and Jewish backgrounds; 45 signers of religious organizations, all of whom support pretrial determination. Why? Because regardless of whether you stand in favor or against the death penalty, we all must stand against executing mentally retarded people, and the advocacy groups are convinced, as am I, that the way to assure that Pennsylvania does not execute mentally retarded people is to determine the mental retardation up front and not by throwing out facts of heinous crimes like Marty Graham or Joey Miller to try to diffuse the issue of eligibility. This is not about coloring the determination of mental retardation based on the facts of the case. This is about acknowledging mental retardation for what it is and making sure that we constitutionally apply our statutes.

I ask for an affirmative vote.

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-75

Bebko-Jones	Flaherty	Mundy	Siptroth
Belardi	Frankel	Myers	Solobay
Belfanti	Freeman	Pallone	Staback
Biancucci	Gerber	Parker	Stetler
Bishop	Godshall	Petrarca	Sturla
Blackwell	Good	Petrone	Surra
Buxton	Grucela	Pistella	Tangretti
Caltagirone	Gruitza	Preston	Taylor, E. Z.
Cawley	James	Ramaley	Thomas
Cohen	Josephs	Rapp	Tigue
Costa	Kenney	Reed	Veon
Curry	Kirkland	Roberts	Vitali
Daley	Kotik	Roebuck	Walko
Dermody	Levdansky	Ross	Waters
DeWeese	Manderino	Samuelson	Wheatley
Eachus	Mann	Santoni	Williams
Evans, D.	Markosek	Schroder	Wilt
Fabrizio	McGeehan	Shaner	Wojnaroski
Fairchild	Melio	Shapiro	

NAYS-122

Adolph	Feese	Lederer	Readshaw
Allen	Fichter	Leh	Reichley
Argall	Fleagle	Lescovitz	Rohrer
Armstrong	Flick	Mackereth	Rooney
Baker	Forcier	Maher	Rubley
Baldwin	Gabig	Maitland	Sabatina
Barrar	Gannon	Major	Sainato
Bastian	Geist	Marsico	Sather
Benninghoff	George	McCall	Saylor
Beyer	Gillespie	McGill	Scavello
Birmelin	Gingrich	McIlhattan	Semmel
Blaum	Goodman	McIlhinney	Smith, B.
Boyd	Grell	McNaughton	Smith, S. H.
Bunt	Haluska	Metcalfe	Sonney
Cappelli	Hanna	Micozzie	Stairs
Casorio	Harhai	Millard	Steil
Causar	Harhart	Miller, R.	Stern
Civera	Harper	Miller, S.	Stevenson, R.
Clymer	Harris	Mustio	Stevenson, T.
Cornell	Hasay	Nailor	Taylor, J.
Corrigan	Hennessey	Nickol	True
Crahalla	Herman	O'Brien	Turzai
Creighton	Hershey	Oliver	Wansacz
Dally	Hess	O'Neill	Watson
DeLuca	Hickernell	Payne	Wright
Denlinger	Hutchinson	Petri	Yewcic
DiGirolo	Kauffman	Phillips	Yudichak
Diven	Keller, M.	Pickett	Zug
Donatucci	Keller, W.	Pyle	
Ellis	Killion	Quigley	Perzel,
Evans, J.	LaGrotta	Raymond	Speaker

NOT VOTING-1

Ruffing

EXCUSED-5

Cruz	Leach	Rieger	Youngblood
Gergely			

Less than the majority having voted in the affirmative, 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?

Mr. DeLUCA offered the following amendment No. **A06870**:

Amend Title, page 1, line 2, by inserting after "for" exemptions from jury duty, for

Amend Bill, page 1, lines 8 and 9, by striking out all of said lines and inserting

Section 1. Section 4503(a) of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 4503. Exemptions from jury duty.

(a) General rule.—No person shall be exempt or excused from jury duty except the following:

* * *

(5) Persons 75 years of age or older who elect not to

serve.

* * *

Section 2. Sections 9545(b), 9546 and 9711(c) of Title 42 are amended to read:

Amend Sec. 2, page 6, line 5, by striking out "2" and inserting

3

Amend Sec. 3, page 8, line 18, by striking out "3" and inserting

4

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

The following roll call was recorded:

YEAS-197

Adolph	Feese	Maitland	Sabatina
Allen	Fichter	Major	Sainato
Argall	Flaherty	Manderino	Samuelson
Armstrong	Fleagle	Mann	Santoni
Baker	Flick	Markosek	Sather
Baldwin	Forcier	Marsico	Saylor
Barrar	Frankel	McCall	Scavello
Bastian	Freeman	McGeehan	Schroder
Bebko-Jones	Gabig	McGill	Semmel
Belardi	Gannon	McIlhattan	Shaner
Belfanti	Geist	McIlhinney	Shapiro
Benninghoff	George	McNaughton	Siptroth
Beyer	Gerber	Melio	Smith, B.
Biancucci	Gillespie	Metcalfe	Smith, S. H.
Birmelin	Gingrich	Micozzie	Solobay
Bishop	Godshall	Millard	Sonney
Blackwell	Good	Miller, R.	Staback
Blaum	Goodman	Miller, S.	Stairs
Boyd	Grell	Mundy	Steil
Bunt	Grucela	Mustio	Stern
Buxton	Gruitza	Myers	Stetler
Caltagirone	Haluska	Nailor	Stevenson, R.
Cappelli	Hanna	Nickol	Stevenson, T.
Casorio	Harhai	O'Brien	Sturla
Causar	Harhart	Oliver	Surra
Cawley	Harper	O'Neill	Tangretti
Civera	Harris	Pallone	Taylor, E. Z.
Clymer	Hasay	Parker	Taylor, J.
Cohen	Hennessey	Payne	Thomas
Cornell	Herman	Petrarca	Tigue
Corrigan	Hershey	Petri	True
Costa	Hess	Petrone	Turzai
Crahalla	Hickernell	Phillips	Veon
Creighton	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolo	Kirkland	Readshaw	Wojnaroski

Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Lederer	Roberts	Yudichak
Ellis	Leh	Roebuck	Zug
Evans, D.	Lescovitz	Rohrer	
Evans, J.	Levdansky	Rooney	
Fabrizio	Mackereth	Ross	Perzel,
Fairchild	Maher	Rubley	Speaker

NAYS—0

NOT VOTING—1

Ruffing

EXCUSED—5

Cruz	Leach	Rieger	Youngblood
Gergely			

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was 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 pro tempore. 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?

HARRISBURG LEGISLATIVE LEAVE

The SPEAKER pro tempore. On that question, the gentleman, Mr. Grucela, is recognized.

The gentleman, Mr. Grucela, requests Capitol leaves?

Mr. GRUCELA. Yes, Mr. Speaker; thank you.

Request a Capitol leave for the gentleman from Westmoreland County, Mr. TANGRETTI.

The SPEAKER pro tempore. Without objection, the Capitol leave will be granted.

Mr. GRUCELA. Thank you.

CONSIDERATION OF HB 698 CONTINUED

The SPEAKER pro tempore. On final passage, the gentelady, Ms. Manderino, from Philadelphia County is recognized.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, I rise to oppose HB 698.

A number of members who like me supported pretrial determination of mental retardation had asked me, if my amendment fails, what was I going to do on final passage, and I am going to vote “no” and here is why. We do not have to worry that mentally retarded people will be executed if we do not do anything today. They cannot be. I want to make sure that we do what is right and what I think is best, which is the pretrial determination, and I do not think that that battle is over yet in Pennsylvania. So for those of you who supported pretrial determination, I would ask you to vote “no” today as well.

The Senate last session— Last session both chambers addressed the issue of the death penalty and mentally retarded, and last session we voted for posttrial determination, as I assume we will today, but the Senate voted for a pretrial determination, and again this session the Senate is poised to vote again for a pretrial-determination bill. The bill that came out of Senate Judiciary is like our bill would have looked like had my amendment gone in. It has the same definition of mental retardation as Representative O’Brien’s bill does. It has everything exactly like Representative O’Brien’s bill except for the pretrial determination of mental retardation.

I think that if you went back and asked in your counties of your judges, what have we been doing in our county for the past 4 years, you will find that the vast majority of your counties are making these determinations pretrial, and again, the sky has not fallen in and mentally retarded people are protected.

I truly, truly believe that the determination of mental retardation, which is a condition determined early on in childhood, which is not something that is faked, is something that ought to be determined independent of hearing the facts of the case, because the last thing we would want to happen is for the facts of the case to color somebody’s perception of what kind of punishment they want to give and therefore both inadvertently and perhaps advertently give a penalty of execution to a mentally retarded person. That has been determined cruel and unusual punishment. I think there is no disagreement in the mental retardation advocacy community that that is cruel and unusual punishment, that the United States Supreme Court got it right, and until Pennsylvania gets it right, I will continue to advocate for a “no” vote.

The SPEAKER pro tempore. The Chair thanks the lady and recognizes the gentleman from Philadelphia County, Mr. O’Brien, on final passage.

Mr. O’BRIEN. Thank you, Mr. Speaker.

I would like to thank the members for sustaining the integrity of this piece of legislation. This represents years of work and compromise, and I would ask for an affirmative vote.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,

Shall the bill pass finally?

The SPEAKER pro tempore. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—169

Adolph	Evans, D.	Lederer	Rohrer
Allen	Evans, J.	Leh	Rooney
Argall	Fabrizio	Lescovitz	Rubley
Armstrong	Feese	Mackereth	Sabatina
Baker	Fichter	Maher	Sainato
Baldwin	Flaherty	Maitland	Santoni
Barrar	Fleagle	Major	Shaner
Bastian	Flick	Mann	Saylor
Bebko-Jones	Forcier	Markosek	Scavello
Belardi	Frankel	Marsico	Semmel
Belfanti	Gabig	McCall	Shaner
Benninghoff	Gannon	McGeehan	Shapiro
Beyer	Geist	McGill	Siproth
Biancucci	George	McIlhattan	Smith, B.
Birmelin	Gerber	McIlhinney	Smith, S. H.
Bishop	Gillespie	McNaughton	Solobay

Blaum	Gingrich	Melio	Sonney
Boyd	Godshall	Metcalfe	Staback
Bunt	Good	Micozzie	Stairs
Buxton	Goodman	Miller, R.	Steil
Caltagirone	Grell	Miller, S.	Stern
Cappelli	Grucela	Mustio	Stevenson, R.
Casorio	Gruitza	Nailor	Stevenson, T.
Causser	Haluska	Nickol	Surra
Cawley	Hanna	O'Brien	Tangretti
Civera	Harhai	Oliver	Taylor, J.
Clymer	Harhart	O'Neill	Tigue
Cornell	Harper	Pallone	True
Corrigan	Harris	Payne	Turzai
Costa	Hasay	Petrarca	Wansacz
Crahalla	Hennessey	Petri	Waters
Creighton	Herman	Petrone	Watson
Daley	Hershey	Phillips	Wheatley
Dally	Hess	Pickett	Wilt
DeLuca	Hickernell	Preston	Wojnaroski
Denlinger	Hutchinson	Pyle	Wright
Dermody	Kauffman	Quigley	Yewcic
DeWeese	Keller, M.	Ramaley	Yudichak
DiGirolamo	Keller, W.	Raymond	Zug
Diven	Killion	Readshaw	
Donatucci	Kirkland	Reed	
Eachus	Kotik	Reichley	Perzel,
Ellis	LaGrotta	Roberts	Speaker

NAYS—28

Blackwell	Kenney	Pistella	Sturla
Cohen	Levdansky	Rapp	Taylor, E. Z.
Curry	Manderino	Roebuck	Thomas
Fairchild	Millard	Ross	Veon
Freeman	Mundy	Samuelson	Vitali
James	Myers	Schroder	Walko
Josephs	Parker	Stetler	Williams

NOT VOTING—1

Ruffing

EXCUSED—5

Cruz	Leach	Rieger	Youngblood
Gergely			

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.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the majority leader, who requests a leave for the day for Mr. BENNINGHOFF. Without objection, the leave is granted.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 2055, PN 3854**, entitled:

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for manner of election of district superintendents and assistant superintendents and for their removal.

On the question,
Will the House agree to the bill on third consideration?

Mr. **WOJNAROSKI** offered the following amendment No. **A07828**:

Amend Title, page 1, line 7, by removing the period after “removal” and inserting
; and requiring school districts to develop a bullying and student intimidation prevention plan.

Amend Bill, page 5, by inserting between lines 5 and 6

Section 3. The act is amended by adding a section to read:

Section 1303.1-A. Bullying and Student Intimidation Prevention Plan.—(a) Each school district in this Commonwealth shall develop a comprehensive and coordinated bullying and student intimidation prevention plan relevant to the specific needs of the district and drawing on existing State and community resources with the goal to create a safe academic and social environment while assuring that appropriate procedures are in place to deal with crisis situations.

(b) The bullying and student intimidation prevention plan should include both preventative and responsive measures and programs to address bullying and student intimidation in order to eliminate numerous student safety risk factors and reduce the occurrence of school violence.

(c) Within three (3) months of the effective date of this section, every school district shall submit a bullying and student intimidation prevention plan to the Department of Education. The school board of a district must review and approve its plan before the plan may be submitted to the department. Any revisions to the original plan submitted to the department shall be approved by the school board prior to submission to the department. Any school district which has a preexisting bullying and student intimidation prevention plan adopted by the school board may submit such program to the department.

(d) The bullying and student intimidation prevention plan, and any subsequent revisions to the original plan, shall be made available for public inspection in the school district offices for at least thirty (30) days prior to its approval by the school board.

(e) At the beginning of each school year students shall be furnished with an updated copy of the bullying and student intimidation prevention plan adopted by the school board. Copies shall also be made available to administrators, parents and teachers within the district.

(f) A school district which fails to comply with this section shall be ineligible for reimbursement under Article XXV until it establishes compliance.

(g) In developing its plan, a district may utilize the existing resources and expertise of the office established by the department pursuant to section 1302-A. The department, through the office, shall develop and make available to school districts model bullying and student intimidation prevention plans drawn from programs already offered in this Commonwealth and throughout the United States.

Amend Sec. 3, page 5, line 6, by striking out “3” and inserting

4

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

The SPEAKER pro tempore. On the amendment, the gentleman, Mr. Stevenson, is recognized.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

This amendment is the same language basically that is in HB 772, and really, this bill should be considered and given full consideration of the legislative process and gone through the committee process and public scrutiny. Additionally, HB 178, which contains similar provisions, is awaiting a second consideration in the House. With these two bills already on the

calendar, I would like to ask for a negative vote on this amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Casorio.

Mr. CASORIO. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of the Wojnaroski amendment. Regardless of the fact that this amendment language may be in another bill or not is quite frankly irrelevant to this situation. This amendment is something that many school districts have been clamoring for, for years. It requires simply, Mr. Speaker, that each school district in the Commonwealth develop a comprehensive and coordinated bullying and student intimidation prevention plan.

Mr. Speaker, we know the problems that young folks face today; peer pressure every day in school. This amendment certainly is germane to HB 2055, Mr. Speaker, and this amendment would provide and add no additional costs to school districts, Mr. Speaker. It would not be an unfunded mandate. We are asking the school districts to simply look into the problem of young people being intimidated, young people being bullied, and have the school district have a comprehensive, overall plan to address some of those issues before, Mr. Speaker, before we see so often what happens in some of the school districts where children are hurt; someone goes on a rampage, some situation where young people are in harm's way. This may prevent that, Mr. Speaker. This may stop that, and I think quite frankly to vote against an amendment that would ask school districts to look into why children are being intimidated by other bullies is shortsighted and wrong, and I would ask for an affirmative vote on the Wojnaroski amendment.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Philadelphia County, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I also support the Wojnaroski amendment. The need for action against school bullying is a concern all over Pennsylvania, all over the nation, probably all over the world. A couple years ago a media outlet in London took a survey of readers as to what the most important issue was, and somehow school bullying wound up beating out a lot of other issues.

My wife has had extensive experience in dealing with school bullying as both a charter school administrator in Bensalem and as a schoolteacher in Philadelphia. This is just a major problem. It is universal. It crosses all areas of geography. It crosses all sorts of demographic distinctions. Representative Wojnaroski is to be commended for introducing this legislation. We ought to pass it. We ought to get on with the business of making school safe for all students.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Westmoreland County, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Speaker.

I rise in support of the Wojnaroski amendment.

I mean, when we ask ourselves what is more important and what is the most precious asset that we have in this Commonwealth, it is the children and youth of our community. This amendment does nothing more than support the children and youth as they attend schools. Unfortunately, we are in a society today where some children are picked on by other

children, and anyone who has ever been the subject of the bullying situation I am sure could realize that something like this, a policy in place to protect, to nothing more than protect some child, some young man or some young girl in school from some big bully – and sometimes it is not always the big bully; it is just a bully – this is nothing more than another opportunity for the school districts to put a policy in place that protects children, the most precious commodity, the most precious asset that we have in the Commonwealth of Pennsylvania.

I encourage you all to support this amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Maher, from Allegheny County.

Mr. MAHER. Thank you, Mr. Speaker.

For members who believe that our school districts do not have enough paper churning around their buildings at the behest of the State of Pennsylvania, this is a wonderful amendment. For those who believe that there is enough common sense in our schools to sort out these sorts of things without being mandated to create new streams of paper that bear standardized names, I would encourage you to vote against it.

We talk about the need to curtail unfunded mandates, and yet here again something that is so basic and common sense about a way a school district operates, we are going to mandate some new sheets of paper get passed out with everything else in the packet at the beginning of the school year. I say, let us allow our school districts to function without further imposition from this body.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the maker of the amendment, the gentleman from Cambria County, Mr. Wojnaroski.

Mr. WOJNAROSKI. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of my amendment, obviously.

What happened back in my district, I attended a PTA (Parent Teacher Association) meeting, and I was really appalled by the results of that meeting when people, parents, told me how their kids are being intimidated by other kids, that if they do not bring money to school the next day, they are going to get beat up. And then secondly, they buy tennis shoes; they steal their tennis shoes and then jackets.

This has been long overdue. This situation has existed, and if it exists in the elementary, I cannot even fathom what happens in the secondary.

So I ask for an affirmative vote on my amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—95

Bebko-Jones	Flaherty	McGeehan	Shaner
Belardi	Frankel	McIlhinney	Shapiro
Belfanti	Freeman	Melio	Siptroth
Biancucci	George	Mundy	Solobay
Bishop	Gerber	Myers	Staback
Blackwell	Goodman	Oliver	Stetler
Blaum	Grucela	O'Neill	Sturla

Buxton	Gruitza	Pallone	Surra
Caltagirone	Haluska	Parker	Tangretti
Casorio	Hanna	Petrarca	Thomas
Cawley	Harhai	Petrone	Tigue
Cohen	James	Pistella	Veon
Corrigan	Josephs	Preston	Vitali
Costa	Keller, W.	Ramaley	Walko
Curry	Kirkland	Readshaw	Wansacz
Daley	Kotik	Roberts	Waters
DeLuca	Lederer	Roebuck	Wheatley
Dermody	Leh	Rooney	Williams
DeWeese	Lescovitz	Sabatina	Wilt
DiGirolamo	Levdansky	Sainato	Wojnaroski
Donatucci	Manderino	Samuelson	Wright
Eachus	Mann	Santoni	Yewcic
Evans, D.	Markosek	Sather	Yudichak
Fabrizio	McCall	Schroder	

NAYS-100

Adolph	Fichter	Mackereth	Reed
Allen	Fleagle	Maier	Reichley
Argall	Flick	Maitland	Rohrer
Armstrong	Forcier	Major	Ross
Baker	Gabig	Marsico	Rubley
Baldwin	Gannon	McGill	Saylor
Barrar	Geist	McIlhattan	Scavello
Bastian	Gillespie	McNaughton	Semmel
Beyer	Gingrich	Metcalfe	Smith, B.
Birmelin	Godshall	Micozzie	Smith, S. H.
Boyd	Good	Millard	Sonney
Bunt	Grell	Miller, R.	Stairs
Cappelli	Harhart	Miller, S.	Steil
Causar	Harper	Mustio	Stern
Civera	Harris	Nailor	Stevenson, R.
Clymer	Hasay	Nickol	Stevenson, T.
Cornell	Hennessey	O'Brien	Taylor, E. Z.
Crahalla	Herman	Payne	Taylor, J.
Creighton	Hershey	Petri	True
Dally	Hess	Phillips	Turzai
Denlinger	Hickernell	Pickett	Watson
Diven	Hutchinson	Pyle	Zug
Ellis	Kauffman	Quigley	
Evans, J.	Keller, M.	Rapp	
Fairchild	Kenney	Raymond	Perzel,
Feese	Killion		Speaker

NOT VOTING-1

Ruffing

EXCUSED-7

Benninghoff	Gergely	Leach	Youngblood
Cruz	LaGrotta	Rieger	

Less than the majority having voted in the affirmative, 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?

Mrs. **BEYER** offered the following amendment No. **A07848**:

Amend Sec. 1 (Sec. 1073), page 4, by inserting between lines 1 and 2

(ix) Limit compensation for unused sick leave to the maximum compensation for unused sick leave under the teachers' collective

bargaining agreement for that district at the time of the contract or renewal.

(x) Limit transferred sick leave from previous employment to not more than 30 days.

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Stevenson.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

This is an agreed-to amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS-192

Adolph	Fichter	Manderino	Sabatina
Allen	Flaherty	Mann	Sainato
Argall	Fleagle	Markosek	Samuelson
Armstrong	Flick	Marsico	Santoni
Baker	Forcier	McCall	Sather
Baldwin	Frankel	McGeehan	Saylor
Barrar	Freeman	McGill	Scavello
Bastian	Gabig	McIlhattan	Schroder
Bebko-Jones	Gannon	McIlhinney	Semmel
Belardi	Geist	McNaughton	Shaner
Belfanti	George	Melio	Shapiro
Beyer	Gerber	Metcalfe	Siproth
Biancucci	Gillespie	Micozzie	Smith, B.
Birmelin	Gingrich	Millard	Smith, S. H.
Bishop	Godshall	Miller, R.	Solobay
Blackwell	Good	Miller, S.	Sonney
Blaum	Goodman	Mundy	Staback
Boyd	Grell	Mustio	Stairs
Bunt	Gruitza	Myers	Steil
Buxton	Haluska	Nailor	Stern
Caltagirone	Hanna	Nickol	Stetler
Cappelli	Harhai	O'Brien	Stevenson, R.
Causar	Harhart	Oliver	Stevenson, T.
Cawley	Harper	O'Neill	Sturla
Civera	Harris	Pallone	Tangretti
Clymer	Hasay	Parker	Taylor, E. Z.
Cohen	Hennessey	Payne	Taylor, J.
Cornell	Herman	Petrarca	Thomas
Corrigan	Hershey	Petri	Tigue
Costa	Hess	Petrone	True
Crahalla	Hickernell	Phillips	Turzai
Creighton	Hutchinson	Pickett	Veon
Curry	James	Pistella	Vitali
Daley	Josephs	Preston	Walko
Dally	Kauffman	Pyle	Wansacz
DeLuca	Keller, M.	Quigley	Waters
Denlinger	Keller, W.	Ramaley	Watson
Dermody	Kenney	Rapp	Wheatley
DeWeese	Killion	Raymond	Williams
DiGirolamo	Kirkland	Readshaw	Wilt
Diven	Kotik	Reed	Wojnaroski
Donatucci	Lederer	Reichley	Wright
Eachus	Leh	Roberts	Yewcic
Ellis	Lescovitz	Roebuck	Yudichak
Evans, D.	Levdansky	Rohrer	Zug
Evans, J.	Mackereth	Rooney	
Fabrizio	Maher	Ross	
Fairchild	Maitland	Rubley	Perzel,
Feese	Major		Speaker

NAYS-3

Casorio	Grucla	Surra
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NOT VOTING-1

Ruffing

EXCUSED-7

Benninghoff	Gergely	Leach	Youngblood
Cruz	LaGrotta	Rieger	

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

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

Mr. GRUCELA offered the following amendment No. A07830:

Amend Title, page 1, line 5, by inserting after "thereto," providing for school district notification of residential development; and

Amend Bill, page 1, lines 10 through 13, by striking out all of said lines and inserting

Section 1. The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is amended by adding an article to read:

ARTICLE II-A

NOTIFICATION OF RESIDENTIAL DEVELOPMENT

Section 201-A. Definitions.

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

"Applicant." A landowner or developer who has filed an application for development with a governing body. The term includes the landowner's or developer's heirs, successors and assigns.

"Application for development." Every application, whether preliminary, tentative or final, required by law or ordinance to be filed and approved prior to start of construction or development, including, but not limited to, an application for a building permit, for the approval of a subdivision plat or plan or for the approval of a residential development plan.

"Developer." Any landowner, agent of the landowner or tenant with the permission of the landowner, who makes or causes to be made a subdivision of land or a land development.

"Governing body." The council in cities, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board of commissioners in counties; or as may be designated in the law providing for the form of government.

"Landowner." The legal or beneficial owner or owners of land, including the holder of an option or contract to purchase, whether or not such option or contract is subject to any condition, a lessee if the lessee is authorized under the lease to exercise the rights of the landowner or other person having a proprietary interest in land.

"Planned residential development." An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, or combination of residential and nonresidential uses, the development plan for which does not correspond in lot size, bulk, type of dwelling, or use, density, or intensity, lot coverage and required open space to the regulations established in any one district created, from time to time, under the provisions of a municipal zoning ordinance.

"Planning agency." A planning commission, planning department or a planning committee of the governing body.

"Plat." The map or plan of a subdivision or land development, whether preliminary or final.

"Residential development plan." The provisions for residential development, including a planned residential development, a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions for residential development" when used in this section shall mean the written and graphic materials referred to in this definition.

"School district." Includes school districts of all classes. Section 202-A. Notification of subdivision and land development in school districts.

An applicant shall send via certified mail return receipt requested, within five days after filing with a governing body or planning agency, a copy or summary of the application for preliminary approval of a residential development plan to the superintendent of the school district wherein the residential development plan is proposed. A summary shall include, but not be limited to, the location of the development, the number and types of units to be included in the development and the proposed construction schedule of the development and where required by local ordinance to be included in the application, an economic assessment of the proposed development. The applicant shall provide a copy of the return receipt to the governing body showing compliance with this section.

Section 203-A. School district comments.

The school district may submit written comments, within 30 days after receipt of the copy or summary of the application, to the governing body or planning agency that is considering the residential development plan. If the governing body or planning agency does not receive the written comments from the school district within 30 days, the governing body or planning agency shall proceed with consideration of the application. Nothing in this section shall empower the school district with any authority to approve or deny any application for approval of a plat.

Section 2. Section 1073(a) of the act, amended January 16, 1974 (P.L.1, No.1), is amended and the section is amended by adding a subsection to read:

Amend Sec. 2, page 4, line 18, by striking out "2" and inserting 3

Amend Sec. 3, page 5, line 6, by striking out all of said line and inserting

Section 4. This act shall take effect as follows:

- (1) The addition of Article II-A of the act shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

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

GERMANENESS QUESTIONED

The SPEAKER pro tempore. On that question, the gentleman, Mr. McNaughton, is recognized.

Mr. McNAUGHTON. Thank you, Mr. Speaker.

Mr. Speaker, I understand what the gentleman making the amendment is trying to do, but I believe that this amendment more appropriately should be attached to the Municipalities Planning Code rather than an amendment to the School Code.

So, Mr. Speaker, at this time I would like to make a motion that this amendment is not germane to the subject matter.

The SPEAKER pro tempore. The gentleman, Mr. McNaughton, has raised the question of whether the amendment A07830 is germane.

Under House rule 27, questions involving whether an amendment is germane to the subject shall be decided by the House.

Those who believe the amendment is germane will vote “aye”; those who believe the amendment is not germane will vote “no.”

On the question,
Will the House sustain the germaneness of the amendment?

The following roll call was recorded:

YEAS—92

Bebko-Jones	Frankel	McCall	Santoni
Belardi	Freeman	McGeehan	Schroder
Belfanti	George	McIlhinney	Shaner
Beyer	Gerber	Melio	Shapiro
Biancucci	Goodman	Miller, S.	Siproth
Bishop	Grucela	Mundy	Solobay
Blackwell	Gruitza	Myers	Staback
Blaum	Haluska	Oliver	Steil
Buxton	Hanna	Pallone	Stetler
Caltagirone	Harhai	Parker	Sturla
Casorio	Harper	Petrarca	Surra
Cawley	Harris	Petri	Tangretti
Corrigan	James	Petrone	Thomas
Costa	Josephs	Pistella	Tigue
Curry	Keller, W.	Preston	Vitali
Daley	Kirkland	Ramaley	Walko
DeLuca	Kotik	Readshaw	Wansacz
Dermody	Lederer	Roberts	Waters
Donatucci	Lescovitz	Roebuck	Wheatley
Eachus	Levdansky	Rooney	Williams
Evans, D.	Manderino	Sabatina	Wojnaroski
Fabrizio	Mann	Sainato	Yewcic
Flaherty	Markosek	Samuelson	Yudichak

NAYS—103

Adolph	Feese	Mackereth	Rohrer
Allen	Fichter	Maher	Ross
Argall	Fleagle	Maitland	Rubley
Armstrong	Flick	Major	Sather
Baker	Forcier	Marsico	Saylor
Baldwin	Gabig	McGill	Scavello
Barrar	Gannon	McIlhattan	Semmel
Bastian	Geist	McNaughton	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Boyd	Gingrich	Micozzie	Sonney
Bunt	Godshall	Millard	Stairs
Cappelli	Good	Miller, R.	Stern
Causar	Grell	Mustio	Stevenson, R.
Civera	Harhart	Nailor	Stevenson, T.
Clymer	Hasay	Nickol	Taylor, E. Z.
Cohen	Hennessey	O'Brien	Taylor, J.
Cornell	Herman	O'Neill	True
Crahalla	Hershey	Payne	Turzai
Creighton	Hess	Phillips	Verzan
Dally	Hickernell	Pickett	Watson
Denlinger	Hutchinson	Pyle	Wilt
DeWeese	Kauffman	Quigley	Wright
DiGirolamo	Keller, M.	Rapp	Zug
Diven	Kenney	Raymond	
Ellis	Killion	Reed	Perzel,
Evans, J.	Leh	Reichley	Speaker
Fairchild			

NOT VOTING—1

Ruffing

EXCUSED—7

Benninghoff	Gergely	Leach	Youngblood
Cruz	LaGrotta	Rieger	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was declared not germane.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. SURRA offered the following amendment No. **A07892**:

Amend Title, page 1, line 7, by removing the period after “removal” and inserting

; and providing for conditional certification of persons by the Department of Education.

Amend Bill, page 5, by inserting between lines 5 and 6

Section 3. The act is amended by adding a section to read:

Section 1109.3. Conditional Certification.—(a) A person who has earned a baccalaureate or graduate degree in education from a Commonwealth-approved teacher-preparation institution and meets the requirements of 22 Pa. Code § 49.12 (relating to eligibility) but has not passed all nonsubject matter tests required by 22 Pa. Code § 49.18 (relating to assessment) may apply for a Conditional Teacher Certificate with the department.

(b) An applicant who receives a Conditional Teacher Certificate will be eligible to enter into a contract with a school district to teach for up to two school years. A conditional certification may only be issued one time to an eligible applicant.

(c) During the two-year period, the school district will assess and evaluate the contracted employe on planning and preparation, classroom environment, instructional delivery and professionalism. Upon satisfactory recommendation by the school district, the department shall issue an Instructional I Certificate based on the school district’s evaluation under subsection (b) and the requirements of 22 Pa. Code § 49.12.

(d) The department’s responsibilities with regard to this section shall be to:

(1) Establish and process a Conditional Teacher Certificate and have it accessible on the Department of Education’s Internet website.

(2) Establish a conditional teacher evaluation form similar to an employe evaluation form for Instructional I teachers. This form shall be used by school districts to evaluate conditional teachers as noted in subsection (c).

(e) A Conditional Teacher Certificate applicant with regard to this act shall:

(1) Apply for a Conditional Teacher Certificate with the department.

(2) Apply for a criminal background check as provided for in section 111 and a child abuse clearance prior to applying for a Conditional Teacher Certificate as provided for in 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools).

(3) Apply for a teaching position in the same manner as a Pennsylvania-certified teacher.

(f) Persons with a Conditional Teacher Certificate employed under a two-year contract with a school district will not be able to use this time toward teacher tenure with the school district under section 1121(c). Persons applying for a position with the school district who have a Conditional Teacher Certificate shall not be discriminated against if applying for the same position as a person holding an Instructional I Certificate.

(g) (1) As used in this section “department” means the Department of Education of the Commonwealth.

(2) As used in this section “Conditional Teacher Certificate” means a two-year temporary certificate for a recent graduate of a teacher preparation institution seeking a teaching position in any of the 501 school districts, but has not met all the necessary requirements in testing for Pennsylvania Teacher Certification.

Amend Sec. 3, page 5, line 6, by striking out “3” and inserting

4

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Surra.

Mr. SURRA. Thank you, Mr. Speaker.

Mr. Speaker, this amendment passed the Education Committee in another form and was amended into another bill, which has yet to see floor action, and I am sure it deals with an issue that all of you have run into by dealing with your constituents, and it happens when someone attends one of our colleges here in Pennsylvania, studies to become a teacher, takes their battery of Praxis tests for teacher certification, sometimes numerous times, and they happen to fail one of the assessment portions of that test by one point, two points numerous times, costing them hundreds of dollars, and oftentimes these people do and will be good teachers.

Now, what this amendment does, it requires the passage of the Praxis test on all content areas. So in other words, if it is a science teacher or a history teacher, they must pass those tests, but if they fail to reach the mark on any of the reading, writing, or assessment tests, they would be able to apply for a conditional certificate through the Department of Education where they would have to teach for 2 years under very strict supervision, and then at that time, if deemed by the Department of Education and the district where they work, they would be issued an Instructional I Certificate. At that time then they could be hired, and then their 2-year tenure period would start.

I think this is an option for young people who run into that situation, which I know I have met with numbers of them, and I am sure everybody in this chamber has, too. I think it is an option to get kids down the track into going to work after going to college, and I would appreciate the members' support.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Stevenson.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

This amendment addresses an issue that must receive further consideration in order to determine the impact that such a program would have on teacher certification in Pennsylvania. The amendment does not specify whether a teacher certification candidate would have to take any core or content Praxis examination prior to becoming eligible for this program. Therefore, this amendment would effectively remove the need for Praxis examinations. Such a determination and decision should be considered by the State Board of Education and the Education Committees of the House and Senate, not made through this amendment.

And further, I have been informed by the Appropriations Committee that there is a cost of \$500,000 to the Commonwealth if this amendment passes.

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

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Northampton County, Mr. Grucela.

Mr. GRUCELA. Thank you, Mr. Speaker.

Mr. Speaker, I not only support this amendment from my good friend from Elk County, but it is long, long overdue. Passing a standardized test does not make you a good classroom teacher.

I respect the Representative from Allegheny County wanting to study this further, but student after student after student has contacted myself and Mr. Surra, and not all from my district but from around the State, about these Praxis tests. We are losing good, excellent teachers. Passing a Praxis test, passing a standardized test has nothing to do with how you perform in the classroom. How you do as a student teacher, how you have done in your other courses certainly prepares you for the knowledge content.

This is about making money; this is about making money. Let us be honest, this is about making money for Praxis time and time again. In the beginning this all started when Representative Surra and I found out that when a student would take a test, did not know if he passed the test, and then registered for the test, feeling that he would have to take the test again to be on the safe side, found out that he passed the test, and then was not returned his entire deposit for preregistering. That is wrong; that is absolutely wrong. It has been corrected.

Now we need to go one more step further. We need an alternate certification. Representative Surra had a teacher in his district that was Teacher of the Year preparing students. Businesses in that district said that this guy was doing the best job to prepare students. He was a career-change individual, 25, 30 years later going back into the classroom; could not pass the test after having been out of school all this time.

Again, I think this is a great amendment. We have been asking the department for years to take a look at some kind of an alternate certification method for these students. Superintendents, building principals, mentor teachers can tell you that this test is keeping a good teacher out of the classroom. If we want a good teacher, you need more than passing a standardized test.

I ask you to support this amendment. I think it is time to put this on the docket, move it forward. I commend my good friend from Elk County for taking the lead on this. Let us vote “yes” on this amendment.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Allegheny County, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

Would the maker of the amendment accept some interrogatories?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. MAHER. Thank you, Mr. Speaker.

Does the gentleman know how many thousands and thousands of students earn their undergraduate degrees in Pennsylvania as educators each year?

Mr. SURRA. No.

Mr. MAHER. Does the gentleman know how many thousands and thousands of Pennsylvanians earn their degrees as educators each year and leave the State because there is an insufficient number of openings available in Pennsylvania?

Mr. SURRA. I do know that Pennsylvania is one of the States that provide teachers for much of the country; yes.

Mr. MAHER. So the gentleman is aware that Pennsylvania exports our students regularly that we have educated, we have trained, we have raised, yet there are not sufficient teaching positions in Pennsylvania for all these good, new teachers.

The SPEAKER pro tempore. Will the gentleman yield.

Mr. SURRA. Yes, I am aware of that—

The SPEAKER pro tempore. Will the gentleman yield, please.

Mr. SURRA. Certainly.

The SPEAKER pro tempore. The purpose of interrogation is to elicit information that the gentleman does not know.

Mr. MAHER. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The gentleman may proceed.

Mr. MAHER. Embracing the concept of this amendment, Mr. Speaker, would the gentleman think that other professions that require certifications that involve examination should have those examinations waived if the individual fails them?

Mr. SURRA. I do not think it is relevant, Mr. Speaker, and this does not waive the requirements as the previous speaker mentioned, and I would like to correct that now, since you brought it up.

Mr. MAHER. Please.

Mr. SURRA. This does not waive the requirements for passing the content knowledge portion of Praxis. I do not know if you understand what they do. You have to take tests in content area. This does not waive that, as I understand by our staff. What it does waive is these portions on nonsubject assessment that deal with writing assessment, reading assessment, and math assessment. Now, these people already have a bachelor's degree, Mr. Speaker. They are not incompetent, illiterate individuals.

And Mr. Grucela brought up the one individual in my district who was a nontraditional student, who went back into the classroom after working in industry for 30 years, was Penn State's Teacher of the Year, and he cannot pass the writing assessment test by one point. He has taken it eight times, and we are forcing that man—

The SPEAKER pro tempore. Will the gentleman yield, please.

Mr. SURRA. —and many other thousands of individuals out of—

The SPEAKER pro tempore. Mr. Surra.

Mr. SURRA. Yes, Mr. Speaker.

The SPEAKER pro tempore. Would you please yield.

Mr. SURRA. Sure.

Mr. MAHER. I have completed my interrogation, Mr. Speaker.

If I might speak on the amendment.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

It is astonishing the concept that of all areas – education – that this chamber is contemplating sending the message that if you pass some of your tests but do not pass reading, writing, and arithmetic, we are still going to be happy to have you as a teacher in the public schools. It is bizarre; it is absolutely bizarre.

Now, if we had a deficit in the number of teachers, would-be teachers, if our school districts were crying out for new candidates to teach and we had to figure out some way to

cultivate applicants, then perhaps at that moment in time we would have to do a reach, but the fact is the opposite. We are blessed with a cornucopia, cornucopia of candidates, and in that circumstance, accepting those who cannot read, write, or do arithmetic well enough to pass the exam is absurd, and I would ask you to join me in repelling this amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman.

Mr. SURRA. On the amendment, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman on the amendment, Mr. Surra.

Mr. SURRA. Thank you, Mr. Speaker.

The SPEAKER pro tempore. Will the gentleman suspend.

My apologies. I did not see Mr. Pallone.

The gentleman, Mr. Pallone, is recognized.

Mr. PALLONE. Thank you, Mr. Speaker.

Will the maker of the amendment stand for interrogation?

The SPEAKER pro tempore. Will the gentleman, Mr. Surra, stand for a moment of interrogation? The gentleman has agreed, and you may proceed.

Mr. PALLONE. Thank you, Mr. Speaker.

Mr. Speaker, the essence of this particular amendment and the question here is, I went to college and then to law school and took a bar exam and became a licensed attorney to practice law. What is the Praxis exam? Is it an exam given by the State?

Mr. SURRA. No, Mr. Speaker. The Praxis exam is an exam that is given by a private company.

Mr. PALLONE. Is it an instituted through the colleges, or is it instituted through the Department of Education? How is the Praxis exam administered?

Mr. SURRA. As I understand it, Mr. Speaker, currently we are not actually under contract, but they are the company that is recognized to provide the testing, and I am being told that the department is looking into this situation because of numerous problems that I and others have had with this Praxis issue.

Mr. PALLONE. Who pays for the examination?

Mr. SURRA. The examinations are paid for by the graduates, by the students, by your constituents.

Mr. PALLONE. Do you know how much they pay?

Mr. SURRA. Often it is very expensive. Many of the tests run \$130, \$150 each per test.

Mr. PALLONE. Now, you suggested that there are some content portions of the exam and some noncontent portions of the exam. Can you clarify that for me, please?

Mr. SURRA. Well, if you are a history teacher, there is a battery of individual tests dealing with history that you must pass. Those are the content tests that you must pass. If you are a science teacher, there is a battery of science-related tests that you must pass. So in the content area – and this amendment does not change that – you still have to have a good working knowledge and pass those tests for that content area. What this deals with are people that struggle with the reading assessment, writing assessment, and sometimes math assessment, depending. And the writing assessment tests, by the way, are graded by an individual, which is very subjective, and many times people fail a test by one point two or three times. They will pay the \$150 two or three times, then they will take a similar test and pass it by five or six points the next time.

Mr. PALLONE. Mr. Speaker, are you suggesting then that these college graduates taking the Praxis exam then are not able to read, write, or understand mathematics?

Mr. SURRA. I am not suggesting that at all, Mr. Speaker. In fact, my whole point is, these people did graduate with a bachelor of science degree or bachelor's degree in education, and they do have good control and good understanding in those areas. And frankly, Mr. Speaker, I taught with brilliant people many times who were very, very horrible teachers, and I would submit to you that Albert Einstein may not have been able to pass some of our Praxis tests.

Mr. PALLONE. Mr. Speaker, do you know how long the Praxis exam has been a requirement for teachers in the public school system?

Mr. SURRA. I believe it has been since No Child Left Behind and under the last Governor it started, Mr. Speaker.

Mr. PALLONE. Thank you, Mr. Speaker.

On the amendment.

The SPEAKER pro tempore. On the amendment.

Mr. PALLONE. Thank you, Mr. Speaker.

Mr. Speaker, I rise to support the Surra amendment.

This is nothing more, again, than an opportunity to give young college graduates, young men and women who have gone to school and college in Pennsylvania, have learned their lessons, have gotten in fact their bachelor degrees, are certainly most capable and able to teach in their particular discipline, whether it be science, whether it be math, whether it be history, or what the discipline shall be, all this does is give those students, those graduates, an opportunity to secure a job maybe in their local community, at home where their families live. It just gives them an opportunity to be able to secure employment in their home school district or in a neighboring community or somewhere in the area where maybe they were raised or have family or friends or some kind of roots. It just gives these people an opportunity to go to work, to earn a living, and to be able to prove through an alternate mechanism, not unlike the apprenticeship programs that we see in other disciplines. It just gives young graduates another opportunity to maintain employment and to stay in Pennsylvania.

We need to do everything possible to keep young people in Pennsylvania. This gives another chance to these young student graduates who can go to work in the local district or local community or somewhere where they have roots, friends, and family.

Mr. Speaker, I implore you to support the Surra amendment. Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman.

LEAVE OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the majority whip, who requests a leave of absence for the gentleman, Mr. KILLION. Without objection, the leave of absence is so granted.

CONSIDERATION OF HB 2055 CONTINUED

The SPEAKER pro tempore. The Chair at this time recognizes the gentleman, Mr. Grucela, for the second time.

Mr. GRUCELA. Thank you, Mr. Speaker.

Mr. Speaker, I think we should not lose the point here that what Representative Surra is trying to do is provide an alternative method. He is not doing away with the Praxis exam.

I personally would like to do that, but that is not my call. He is asking that we have an alternative to those who are just missing that standardized written test; that is all.

I spent 30-some years in the classroom and probably had 20-plus student teachers. There are many former teachers in this chamber, and those of you who are former teachers know what I am talking about. You know when that student teacher comes in and that student teacher is in front of the classroom, you know whether that person is going to be a good teacher, an excellent teacher, or need some mentoring.

This idea of a standardized test, you can get 1800 on your boards and be a brilliant individual but you may not be able to teach. Teaching is an art, and I think what Representative Surra is trying to say is those that are not making it, those who the principals and the administrators and the superintendents want to keep in the classroom because they are good, excellent teachers, there ought to be an alternative method, and I think that is what he is saying.

With respect to other exams, and I may stand corrected on this, but I believe the bar exam and some of the others give you a composite score on certain sections, and that is not true with the Praxis. You had to pass each individual one.

Over and over and over again, through several administrations and a couple of Secretaries, Representative Surra and I and others have asked the department, have asked the department to take a look at an alternative method. For whatever reasons they have been dragging their feet, and it is about time we set their feet to the fire and make them do something. If we have to do it legislatively, let us do it legislatively. We are losing excellent teachers because of that exam, and there is no alternative method.

Again I ask you to please support this amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

HARRISBURG LEGISLATIVE LEAVE

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Casorio, for a Capitol leave.

Mr. CASORIO. Thank you, Mr. Speaker.

Mr. Speaker, I would like to place the gentleman from Westmoreland, Mr. PALLONE, on Capitol leave.

The SPEAKER pro tempore. Without objection, the Capitol leave is granted for the gentleman, Mr. Pallone.

CONSIDERATION OF HB 2055 CONTINUED

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Stevenson, for the second time.

Mr. T. STEVENSON. Thank you, Mr. Speaker.

I do not think we want an attorney who has only passed part of the bar exam to practice law. I do not think we want a doctor to practice medicine who has only passed part of the medical exams, and this could be said with every profession that we have in the Commonwealth.

As the maker of this amendment has stated, the Praxis exam is being reviewed by the department at this time. We should let them continue their review and stay out of it.

I ask for a negative vote on this amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Surra, for the second time.

Mr. SURRA. Thank you, Mr. Speaker.

For all of you in this chamber who have had constituents, families, parents, graduates come into your office, I know you have had this issue before you. This is your opportunity to do something that makes sense, and I just want to go over a few of the things quickly that we talked about here.

There are shortages of teachers in certain areas, and in the future there are projections of other shortages in the areas of vocational education, in science and math and special education, and in fact, Pennsylvania is well renowned for the teachers that we put out of our institutions, and in fact, people come to Pennsylvania from out of State to our colleges to be trained to become teachers and go back home, and that is nothing that we should be ashamed of, Mr. Speaker.

Mr. Speaker, this does not void any requirements. They still have to have a degree; they still have to pass their content knowledge in that subject area. If they fail to pass one of the assessments in writing, reading, then they can take an alternative track under very strict 2-year supervision, and then through approval from the department and the local district, they would then be granted a level I certificate and begin as a first-year teacher.

Mr. Speaker, this makes sense. This is an alternative to people who have put a lot of time and money into a profession that they love. Teaching is as much an art as anything else. I have worked with some brilliant people, Mr. Speaker, who unfortunately were not necessarily very good teachers.

And I would ask that you help me in this commonsense approach and help all of your constituents that have had these problems.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Stairs, on the amendment.

Mr. STAIRS. Thank you, Mr. Speaker.

The question of the Praxis test has been in front of our committee for a long time, and certainly I, as well as other members, have had concerns of students who have taken the test and have failed the test, and because of that we have talked to the Department of Education and asked them to make a review of this. Now, as of this moment, they have not terminated that study; they have not completed that study, but I think they will in the near future.

My concern and the reason I am voting against this – and I have concern about this proposal, even though there are problems – I think we are looking for two qualities in teachers today – those teachers that can stand in front of a classroom and have the pedagogical skills to talk to the students, teach the students, and relate to the students, and be good educators; and two, they also have to have the skills of the knowledge in that subject, to know what they are talking about. Whether it is mathematics or English or history or whatever the subject would be, they should be well versed and have a thorough knowledge. Unfortunately, the Praxis test is supposed to be the vehicle that tests their knowledge of the subject area, and Pennsylvania, as well as all States, is under very serious restraints from the Federal government on No Child

Left Behind to improve teacher quality and make sure the best teachers are in front of the students each day.

In light of the concerns out there on the test, I still think we should vote “no” if we are going to vote on this. Let the Education Department make their final decision after a thorough study and not give it to laymen, like the members of this chamber would be, but entrust the department to come up with a viable solution, and if indeed they feel strongly that we should eliminate this program or change it significantly, then they should do that. So we should not try to micromanage this thing. Even though there are problems, we should give it to the professional Department of Education.

So I would ask that we vote against this and trust our Department of Education to continue their review and give us an answer in the very near future.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—107

Bebko-Jones	Flaherty	McCall	Santoni
Belardi	Frankel	McGeehan	Scavello
Belfanti	Freeman	McIlhattan	Semmel
Biancucci	George	McIlhinney	Shaner
Bishop	Gerber	Melio	Shapiro
Blackwell	Gillespie	Micozzie	Siptroth
Blaum	Goodman	Mundy	Solobay
Buxton	Grucela	Myers	Staback
Caltagirone	Gruitza	Oliver	Stern
Casorio	Haluska	O'Neill	Stetler
Causser	Hanna	Pallone	Sturla
Cawley	Harhai	Parker	Surra
Cohen	Harhart	Payne	Tangretti
Corrigan	James	Petrarca	Thomas
Costa	Josephs	Petri	Tigue
Curry	Kauffman	Petrone	Veon
Daley	Keller, W.	Pistella	Vitali
Dally	Kirkland	Preston	Walko
DeLuca	Kotik	Ramaley	Wansacz
Dermody	Lederer	Readshaw	Waters
DeWeese	Leh	Reichley	Wheatley
DiGirolamo	Lescovitz	Roberts	Williams
Diven	Levdansky	Roebuck	Wilt
Donatucci	Manderino	Rooney	Wojnaroski
Eachus	Mann	Sabatina	Yewcic
Evans, D.	Markosek	Sainato	Yudichak
Fabrizio	Marsico	Samuelson	

NAYS—87

Adolph	Fichter	Mackereth	Ross
Allen	Fleagle	Maher	Rublely
Argall	Flick	Maitland	Sather
Armstrong	Forcier	Major	Saylor
Baker	Gabig	McGill	Schroder
Baldwin	Gannon	McNaughton	Smith, B.
Barrar	Geist	Metcalfe	Smith, S. H.
Bastian	Gingrich	Millard	Sonney
Beyer	Godshall	Miller, R.	Stairs
Birmelin	Good	Miller, S.	Steil
Boyd	Grell	Mustio	Stevenson, R.
Bunt	Harper	Nailor	Stevenson, T.
Cappelli	Harris	Nickol	Taylor, E. Z.
Civera	Hasay	O'Brien	Taylor, J.

Clymer	Hennessey	Phillips	True
Cornell	Herman	Pickett	Turzai
Crahalla	Hershey	Pyle	Watson
Creighton	Hess	Quigley	Wright
Denlinger	Hickernell	Rapp	Zug
Ellis	Hutchinson	Raymond	
Evans, J.	Keller, M.	Reed	Perzel,
Fairchild	Kenney	Rohrer	Speaker
Feese			

NOT VOTING—1

Ruffing

EXCUSED—8

Benninghoff	Gergely	LaGrotta	Rieger
Cruz	Killion	Leach	Youngblood

The majority having voted in the affirmative, 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?

The SPEAKER pro tempore. Mr. Schroder, do you seek recognition for suspension of the rules? He waives off? Thank you.

On the question recurring,

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

Bill as amended was agreed to.

The SPEAKER pro tempore. 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.

The following roll call was recorded:

YEAS—193

Adolph	Feese	Manderino	Sainato
Allen	Fichter	Mann	Samuelson
Argall	Flaherty	Markosek	Santoni
Armstrong	Fleagle	Marsico	Sather
Baker	Flick	McCall	Saylor
Baldwin	Forcier	McGeehan	Scavello
Barrar	Frankel	McGill	Schroder
Bastian	Freeman	McIlhattan	Semmel
Bebko-Jones	Gabig	McIlhinney	Shaner
Belardi	Gannon	McNaughton	Shapiro
Belfanti	Geist	Melio	Siptroth
Beyer	George	Metcalfe	Smith, B.
Bianucci	Gerber	Micozzie	Smith, S. H.
Birmelin	Gillespie	Millard	Solobay
Bishop	Gingrich	Miller, R.	Sonney
Blackwell	Godshall	Miller, S.	Staback
Blaum	Good	Mundy	Stairs
Boyd	Goodman	Mustio	Steil
Bunt	Grucela	Myers	Stern
Buxton	Gruitza	Nailor	Stetler
Caltagirone	Haluska	Nickol	Stevenson, R.

Cappelli	Hanna	O'Brien	Stevenson, T.
Casorio	Harhai	Oliver	Sturla
Causer	Harhart	O'Neill	Surra
Cawley	Harper	Pallone	Tangretti
Civera	Harris	Parker	Taylor, E. Z.
Clymer	Hasay	Payne	Taylor, J.
Cohen	Hennessey	Petrarca	Thomas
Cornell	Herman	Petri	Tigue
Corrigan	Hershey	Petrone	True
Costa	Hess	Phillips	Turzai
Crahalla	Hickernell	Pickett	Veon
Creighton	Hutchinson	Pistella	Vitali
Curry	James	Preston	Walko
Daley	Josephs	Pyle	Wansacz
Dally	Kauffman	Quigley	Waters
DeLuca	Keller, M.	Ramaley	Watson
Denlinger	Keller, W.	Rapp	Wheatley
Dermody	Kenney	Raymond	Williams
DeWeese	Kirkland	Readshaw	Wilt
DiGirolamo	Kotik	Reed	Wojnaroski
Diven	Lederer	Reichley	Wright
Donatucci	Leh	Roberts	Yewcic
Eachus	Lescovitz	Roebuck	Yudichak
Ellis	Levdansky	Rohrer	Zug
Evans, D.	Mackereth	Rooney	
Evans, J.	Maher	Ross	
Fabrizio	Maitland	Rublely	Perzel,
Fairchild	Major	Sabatina	Speaker

NAYS—1

Grell

NOT VOTING—1

Ruffing

EXCUSED—8

Benninghoff	Gergely	LaGrotta	Rieger
Cruz	Killion	Leach	Youngblood

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 pro tempore. There are no further votes. Are there any announcements?

VOTE CORRECTION

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Reichley.

Mr. REICHLEY. Thank you, Mr. Speaker.

On amendment 7830 to HB 2055, my button malfunctioned. I was recorded in the negative. I need to be recorded in the affirmative, please.

The SPEAKER pro tempore. The Chair thanks the gentleman, and his remarks will be spread upon the record.

Any other announcements?

RECESS

The SPEAKER pro tempore. This House now stands in recess until the call of the Chair.

AFTER RECESS

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

**THE SPEAKER (JOHN M. PERZEL)
PRESIDING****BILLS AND RESOLUTIONS PASSED OVER**

The SPEAKER. Without objection, any remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

RECESS

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

Mr. QUIGLEY. Mr. Speaker, I move that this House do now recess until Tuesday, June 13, 2006, at 11 a.m., e.d.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 10:59 a.m., e.d.t., Tuesday, June 13, 2006, the House recessed.