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FIRST SPECIAL SESSION

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SENATE

TUESDAY, June 13, 1995

The Senate met at 1 p.m., Eastern Daylight Saving Time.

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the Chair.

PRAYER

The Chaplain, Reverend PAUL JOHNSON, who is affiliated with the Altoona Alliance Church and Chaplain with the Federal Correctional Institution in Loretto, offered the following prayer:

Let us pray.

The Lord is the true God. He is the living God and an Everlasting King and His dominion is from generation to generation. The Lord reigneth. Let the earth rejoice. Let the multitude of vows be glad thereof.

Lord, we come before Your presence with praise and thanksgiving. Grant us, we pray at this hour, Thy grace and Thy mercy. Cause us, O Lord, to seek after Your wisdom and Your knowledge as this blessed assembly of men and women prepare to render decisions that will impact on every resident of the Commonwealth of Pennsylvania.

Grant, O Lord, to our Governor and Lieutenant Governor strength, wisdom, and confident leadership. Guard their families and guard their lives. Bless this administration with unity, love, understanding, and sound minds.

Lord, our minds are directed this day among many issues toward consideration, deliberation, and delivering of our State budget, as well as discussions and decisions pertaining to school choice. Lord, our youngest lives and minds will be affected for a lifetime by the decisions here rendered. To this end we pray.

May our differences prove to be a means of honest, deliberate, and creative dialogue that lifts our minds and our hearts to a plateau that will be a blessing to all of our citizens. For it is upon this Senate this day, this hour, we bestow the anointing of Thy spirit, Thy love, Thy tender mercies, and Thy peace for ever and ever, Amen.

The PRESIDENT. The Chair thanks Reverend Johnson, who is the guest today of Senator Jubelirer.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Special Session of June 12, 1995.

The Clerk proceeded to read the Journal of the preceding Special Session.

Senator FISHER. Mr. President, I move that further reading of the Journal be dispensed with and that the Journal be approved.

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

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

YEAS—50

Afflerbach	Gerlach	Madigan	Shaffer
Andrezeski	Greenleaf	Mellow	Shumaker
Armstrong	Hart	Mowery	Stapleton
Baker	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Porterfield	Tilghman
Brightbill	Jones	Punt	Tomlinson
Corman	Jubelirer	Rhoades	Uliana
Dawida	Kasunic	Robbins	Wagner
Delp	LaValle	Salvatore	Wenger
Fisher	Lemmond	Schwartz	Williams
Fumo	Loeper		

NAYS—0

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

The PRESIDENT. The Journal is approved.

**SPECIAL ORDER OF BUSINESS
GUESTS OF THE PRESIDENT PRO TEMPORE
PRESENTED TO THE SENATE**

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer.

The PRESIDENT pro tempore. Mr. President, I am deeply honored to have Reverend Paul Johnson here today. He just delivered the beautiful opening prayer to the Senate, and I wanted to introduce him. He is a very special person. He is here today with his wife, Darlene; his mother, Lucy; and an associate pastor from the Altoona Alliance Church, Brook Gamber.

Reverend Johnson, who is an Altoona native and is employed in Altoona, is the Chaplain at the Federal Correctional Institution in Loretto. He has recently been appointed by Governor Ridge to the Organ Donation Advisory Committee. He was the recipient of a new kidney some 10 years ago. He is a Vietnam veteran, and the Reverend and Mrs. Johnson have three children.

I would ask that the Senate give its usual warm welcome to Reverend Paul Johnson, his family, and also Reverend Brook Gamber, who are here with us today.

The PRESIDENT. Would our guests please rise so that the Senate may give you its usual warm welcome.

(Applause.)

GUESTS OF SENATOR NOAH W. WENGER PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Lancaster, Senator Wenger, who in a moment will introduce some longtime personal friends of the Chair and also important constituents of Senator Wenger. They are Troy Burkholder and his parents, Dan and Margiann Burkholder.

Senator WENGER. Mr. President, it certainly is a pleasure for me to introduce to the Senate of Pennsylvania and make some brief remarks concerning a fine young person who is visiting with us here today. He has excelled as a scholar. He has excelled as an athlete, and most important of all, I think, he excels as a person. I think he is the type of young person to whom we look for leadership in the future.

Mr. President, as Troy Burkholder heads for the University of Washington this fall on a full track scholarship, few will forget the mark he has left on the history of sports in Pennsylvania. His list of accomplishments is as long as it is impressive. This year at the Penn Relays the Cocalico High School senior emerged as the nation's top javelin thrower with a throw of 243 feet, 2 inches, a throw that also surpassed the previous Penn Relays javelin record by more than 30 feet. At the Golden West Invitational Track Meet in Sacramento, California, from which he returned early this morning, Troy confirmed his position as the nation's top javelin thrower by beating a field of the nation's top throwers with a distance of 229 feet, 7 inches, a throw that was 12 feet farther than the closest competitor. Aside from this remarkable accomplishment, Troy, for the second straight year, became the PIAA State Javelin Champion, this year with a throw of 240 feet, 6 inches. In addition, this year Troy also became the PIAA Class State Champion in the discus.

However, his athletic talents are not just limited to track and field. Mr. President, Troy finished third and fourth at the PIAA State Championship in wrestling in 1994 and 1995, respectively. His 102 career wins is a Cocalico High School record. Troy was also a member of the varsity football team until this last year when he decided to concentrate on track. Because of his accomplishments and versatility, Troy was named the Lancaster New Era Newspaper's Athlete of the Year both in 1994 and 1995. No other athlete has ever received that honor twice.

Mr. President, the dedication and commitment such feats demand is also reflected in Troy's scholastic record. With a grade point average of 3.6, Troy has been a member of the National Honor Society since his junior year and a consistent honor roll student. Troy has also been a member of Cocalico's Quiz Bowl team for the last 4 years. Such accomplishments have caused him to be named Cocalico High School's Student of the Month three times, as well as the New Era Newspaper's Teen of the Week.

Mr. President, such remarkable athletic and academic accomplishments serve as a testament to Troy's commitment to hard work and excellence in all his endeavors. Therefore, I am pleased to honor Troy Burkholder for his accomplishments both on the field and in the classroom. He truly is a scholar-athlete.

I would like to further indicate that Troy is the son of Dan and Margiann Burkholder, who are accompanying him today. His track coach, Ron Derr, was unable to be here today. I would point out that I understand that Troy's father, Dan, and Lieutenant Governor Schweiker were fraternity brothers and lived in the same fraternity house at one time, and I suspect they could do a lot of reminiscing today as well if they wished to, but they may not wish to submit that for the record.

So it is my pleasure, Mr. President, at this time to present Troy Burkholder and his parents, Dan and Margiann, to the Senate and ask Troy to make some brief comments.

The PRESIDENT. Would our guests please rise so the Senate may acknowledge your presence. Would the Senate please offer its usual warm welcome.

(Applause.)

The PRESIDENT. Troy, the Senators are hungry to hear your remarks. Thanks for being with us.

Mr. BURKHOLDER. Good afternoon. I would like to first thank the whole Senate for inviting me here. It has been quite an honor and it is very nice. I enjoyed the building.

I would also like to say a special thank you to Lieutenant Governor Schweiker and Senator Wenger for showing me around, and to Mrs. Rabuck for being our chauffeur today.

Thanks a lot for everything.

The PRESIDENT. Thank you, Troy.

(Applause.)

The PRESIDENT. I am sure I speak for the entire Membership when I say that we wish you only the best in your scholastic and athletic career at the University of Washington.

GUEST OF SENATOR HAROLD F. MOWERY PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Cumberland, Senator Mowery.

Senator MOWERY. Mr. President, I am happy today to introduce a guest Page from my district, Jenna Henderson. She is an eighth grade student at New Cumberland Middle School. She also, I understand, is quite a softball player. Her parents are John and Carolyn Henderson. Let us welcome Jenna, a Page for the day.

The PRESIDENT. Would our guest please rise so the Senate may acknowledge you.
(Applause.)

RECESS

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

Senator FISHER. Mr. President, I ask for a recess of the Senate for the purpose of a Republican caucus, with the expectation of returning to the floor at approximately 4 o'clock.

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

Senator FUMO. Mr. President, we, too, would like to have a Democratic caucus so we can review the Republican WAMs that are in the budget and inform our Members accordingly how Governor Ridge has lied to the public and to us.

The PRESIDENT. Would you like to make known when the caucus meeting begins?

Senator FUMO. Immediately, Mr. President. It is difficult for us to get the information. We just got a printout a little while ago. We are trying to read the bill. This is part of the new Republican open process. So we will go to caucus immediately and read the bill there, Mr. President, and when you see the Governor, give him my best regards and tell him he is the best since Tammany Hall.

The PRESIDENT. Senator Fisher makes known the need for a Republican caucus to convene immediately following this announcement in the caucus room, and the Democratic leadership has made known the need for a caucus gathering of their Membership to begin immediately following this announcement, with the intention of returning at approximately 4 p.m. For this purpose, the Senate stands in recess.

AFTER RECESS

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

HOUSE MESSAGE

**HOUSE CONCURS IN SENATE
CONCURRENT RESOLUTION**

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

Weekly adjournment.

REPORTS FROM COMMITTEES

Senator GREENLEAF, from the Committee on Judiciary, reported the following bills:

SB 83 (Pr. No. 145) (Amended)

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for exceptions to the interception and disclosure of communications by inmates of correctional institutions.

SB 100 (Pr. No. 146) (Amended)

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further defining "delinquent act" to exclude certain criminal offenses; and providing for children committing delinquent acts.

Senator ULIANA, from the Committee on Urban Affairs and Housing, reported the following bill:

SB 103 (Pr. No. 135)

An Act providing for expedited eviction of drug traffickers; providing remedies; conferring powers and duties upon the Department of Health; and making an appropriation.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL OVER IN ORDER

HB 24 -- Without objection, the bill was passed over in its order temporarily at the request of Senator LOEPER.

BILL OVER IN ORDER TEMPORARILY

SB 81 -- Without objection, the bill was passed over in its order temporarily at the request of Senator LOEPER.

**BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE**

SB 96 (Pr. No. 143) -- The Senate proceeded to consideration of the bill, entitled:

An Act establishing programs for the education of disruptive students.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Gerlach	Madigan	Shaffer
Andrezeski	Greenleaf	Mellow	Shumaker
Armstrong	Hart	Mowery	Stapleton
Baker	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Porterfield	Tilghman
Brightbill	Jones	Punt	Tomlinson
Corman	Jubelirer	Rhoades	Uliana
Dawida	Kasunic	Robbins	Wagner
Delp	LaValle	Salvatore	Wenger
Fisher	Lemmond	Schwartz	Williams
Fumo	Loeper		

NAYS—0

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

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

LEGISLATIVE LEAVES

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

Senator LOEPER. Mr. President, Senator Heckler and Senator Jubelirer have been called from the floor, and I request temporary Capitol leaves for them.

The PRESIDENT. Senator Loeper requests temporary Capitol leaves for Senator Heckler and Senator Jubelirer. Without objection, the leaves will be granted.

The Chair recognizes the gentleman from Allegheny, Senator Bodack.

Senator BODACK. Mr. President, I request temporary Capitol leaves for Senator Andrezeski, Senator Musto, and Senator Williams, who have been called back to their offices.

The PRESIDENT. Senator Bodack requests temporary Capitol leaves for Senator Andrezeski, Senator Musto, and Senator Williams. Without objection, those leaves will be granted.

THIRD CONSIDERATION CALENDAR RESUMED

SB 81 CALLED UP

SB 81 (Pr. No. 131) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 1 of the Third Consideration Calendar, by Senator LOEPER.

BILL ON THIRD CONSIDERATION AMENDED

SB 81 (Pr. No. 131) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for postconviction relief, and providing for unitary review in death penalty cases.

On the question,

Will the Senate agree to the bill on third consideration?

Senator GREENLEAF offered the following amendment No. A3598:

Amend Sec. 1, page 1, lines 9 through 16, by striking out all of said lines

Amend Sec. 2, page 1, line 17, by striking out "2" and inserting:

1 Amend Sec. 2, page 1, line 18, by inserting after "42": of the Pennsylvania Consolidated Statutes

Amend Sec. 2 (Sec. 9542), page 2, line 15, by inserting after "OTHERWISE": all provisions of

Amend Sec. 2 (Sec. 9543), page 4, line 3, by striking out the bracket after "been"

Amend Sec. 2 (Sec. 9543), page 4, line 4, by striking out the bracket before "(ii)"

Amend Sec. 2 (Sec. 9543), page 4, line 11, by inserting after "relief.]:" previously litigated or waived.

Amend Sec. 2 (Sec. 9543), page 4, line 17, by inserting brackets before and after "meets" and inserting immediately thereafter: has met

Amend Sec. 2 (Sec. 9544), page 5, line 21, by inserting after "CORPUS]:" prior state

Amend Sec. 2 (Sec. 9545), page 5, line 27, by striking out "HAS" and inserting: shall have

Amend Sec. 2 (Sec. 9545), page 5, line 28, by striking out "A" where it appears the second time and inserting: any

Amend Sec. 2 (Sec. 9545), page 6, line 8, by inserting after "and": the

Amend Sec. 2 (Sec. 9545), page 6, line 17, by striking out "Federal"

Amend Sec. 2 (Sec. 9545), page 6, line 21, by inserting after "STATES": or the Supreme Court of Pennsylvania

Amend Sec. 2 (Sec. 9545), page 6, line 28, by inserting after "the": Supreme Court of the United States and the

Amend Sec. 2 (Sec. 9545), page 6, line 30, by striking out "AND THE SUPREME COURT OF THE UNITED STATES"

Amend Sec. 2 (Sec. 9545), page 7, lines 13 through 18, by striking out all of said lines and inserting:

(4) For purposes of this subchapter, ("government officials!") shall not include defense counsel, whether appointed or retained.

Amend Sec. 2 (Sec. 9545), page 8, line 5, by striking out "notarized affidavit from" and inserting: signed certification as to

Amend Sec. 2 (Sec. 9545), page 8, line 7, by inserting after "INCLUDE": any

Amend Sec. 2 (Sec. 9545), page 8, line 8, by inserting after "TESTIMONY": Failure to substantially comply with the requirements of this paragraph shall render the proposed witnesses' testimony inadmissible.

Amend Sec. 2 (Sec. 9545), page 8, line 9, by striking out "other"

Amend Sec. 2 (Sec. 9545), page 8, lines 12 through 17, by striking out all of said lines and inserting:

(3) When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

Amend Sec. 3, page 9, line 7, by striking out "3" and inserting:

2

Amend Sec. 3 (Subchapter Analysis), page 9, by inserting between lines 19 and 20:

9578. Subsequent petitions.

9579. Certification.

Amend Sec. 3 (Sec. 9571), page 9, line 24, by striking out "Unified means of challenging proceedings" and inserting: Capital unitary review

Amend Sec. 3 (Sec. 9571), page 9, line 25, by striking out "unified" and inserting: the sole

Amend Sec. 3 (Sec. 9571), page 9, line 26, by inserting after "death": The unitary review proceeding provided by this subchapter shall replace postappeal collateral review of death penalty cases with preappeal collateral review.

Amend Sec. 3 (Sec. 9571), page 9, line 27, by striking out "NEW" and inserting: collateral

Amend Sec. 3 (Sec. 9571), page 9, line 29, by inserting after "be": immediately

Amend Sec. 3 (Sec. 9571), page 9, lines 29 and 30; page 10, lines 1 through 13, by striking out "and to the" in line 29, all of line 30, page 9, all of lines 1 through 13, page 10 and inserting: for purposes of collateral review. The collateral proceeding shall occur in the trial court after the imposition of sentence and before appeal. The petitioner may raise any claim that could not have been raised previously, including claims of ineffective assistance of counsel.

(c) Capital appeal.—Direct appeal shall occur after the trial court has concluded collateral review. Claims raised on direct appeal shall be limited to those claims that were preserved at trial and that may be resolved on the basis of the record created up to and including sentencing. Collateral appeal shall occur simultaneously with direct appeal. Claims raised on collateral appeal shall be limited to claims that were preserved in the collateral proceeding in the trial court and to any other claim that could not have been raised previously, including claims of ineffective assistance of counsel on direct appeal.

(d) Limitation on subsequent petitions.—No further review shall be available except as provided in this subchapter.

Amend Sec. 3 (Sec. 9571), page 10, line 14, by striking out "(d)" and inserting: (e)

Amend Sec. 3 (Sec. 9571), page 10, line 15, by striking out "is" and inserting: does

Amend Sec. 3 (Sec. 9571), page 10, line 16, by striking out all of said line and inserting: apply to

Amend Sec. 3 (Sec. 9572), page 10, line 19, by striking out "New" and inserting: Collateral

Amend Sec. 3 (Sec. 9572), page 10, line 20, by striking out "by the court,"

Amend Sec. 3 (Sec. 9572), page 10, lines 22 and 23, by striking out "unitary review and direct appeal" and inserting: collateral review

Amend Sec. 3 (Sec. 9572), page 10, line 30, by inserting after "represented": on collateral review, either in the trial court or on appeal,

Amend Sec. 3 (Sec. 9572), page 11, line 2, by striking out "prior stage of the proceedings" and inserting: other stage of the proceedings, including direct appeal,

Amend Sec. 3 (Sec. 9572), page 11, line 6, by striking out "COUNSEL'S PRIOR" and inserting: that attorney's

Amend Sec. 3 (Sec. 9572), page 11, lines 8 and 9, by striking out "TO CONDUCT UNITARY REVIEW AND DIRECT APPEALS"

Amend Sec. 3 (Sec. 9572), page 11, lines 16 through 25, by striking out "IN NO FEWER" in line 16 and all of lines 17 through 25 and inserting: in a specified number of trials or other relevant proceedings.

Amend Sec. 3 (Sec. 9572), page 12, by inserting between lines 1 and 2: Absent standards established under this subsection, the court may appoint such counsel as it deems qualified, in accordance with any local rules or practices. The existence or applicability of, or failure to comply with, such standards shall not provide a basis for relief.

Amend Sec. 3 (Sec. 9573), page 12, line 6, by striking out "an extension of time of up to" and inserting: extensions of time totaling no more than

Amend Sec. 3 (Sec. 9573), page 12, lines 7 through 14, by striking out "IF A PETITION OR AN" in line 7, all of lines 8 through 14 and inserting: Any claim raised after the time specified in subsection (a) shall be dismissed unless it satisfies section 9578 (relating to subsequent petitions).

Amend Sec. 3 (Sec. 9573), page 12, line 15, by striking out all of said line and inserting:

(c) Evidentiary hearing.—Where the petitioner requests an

Amend Sec. 3 (Sec. 9573), page 12, lines 16 and 17, by striking out "notarized affidavit from" and inserting: signed certification as to

Amend Sec. 3 (Sec. 9573), page 12, line 19, by inserting after "INCLUDE": any

Amend Sec. 3 (Sec. 9573), page 12, line 19, by inserting after "TESTIMONY": Failure to substantially comply with the requirements of this subsection shall render the proposed witness's testimony inadmissible.

Amend Sec. 3 (Sec. 9573), page 12, line 20, by striking out all of said line and inserting:

(d) Other materials.—No

Amend Sec. 3 (Sec. 9573), page 12, lines 26 through 30, by striking out all of said lines and inserting:

(e) Claim for relief.—When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

Amend Sec. 3 (Sec. 9574), page 13, line 3, by striking out "60" and inserting: 120

Amend Sec. 3 (Sec. 9574), page 13, line 5, by striking out "60" and inserting: 90

Amend Sec. 3 (Sec. 9575), page 13, lines 8 and 9, by striking out "Not later than the 20th day after" in line 8 and all of line 9 and inserting: No more than 20 days after the Commonwealth answers the petition, or, if no answer is filed, 20 days after the deadline for answering, the

Amend Sec. 3 (Sec. 9575), page 13, line 20, by striking out "60" and inserting: 90

Amend Sec. 3 (Sec. 9575), page 13, line 21, by inserting after "requested": , and any postsentence motions filed under the Pennsylvania Rules of Criminal Procedure

Amend Sec. 3 (Sec. 9576), page 13, lines 24 through 26, by striking out "not later" in line 24, all of line 25 and "answer the petition," in line 26 and inserting: no more than 20 days after the Commonwealth answers the petition, or, if no answer is filed, 20 days after the deadline for answering,

Amend Sec. 3 (Sec. 9576), page 14, line 1, by striking out "60" and inserting: 90

Amend Sec. 3 (Sec. 9576), page 14, line 2, by inserting after "petition": and any postsentence motions filed under the Pennsylvania Rules of Criminal Procedure

Amend Sec. 3 (Sec. 9577), page 14, lines 4 through 7, by striking out all of said lines and inserting:

(a) Capital unitary review.—Review by the Supreme Court under section 9711(h) (relating to review of death sentence) shall comprise direct appeal and collateral appeal. The common pleas court order disposing of the petition under this subchapter shall constitute the final judgment for purposes of this review.

(b) Briefs for petitioner.—Unless the petitioner has waived the right to new counsel on collateral review, separate briefs shall be filed for direct appeal and collateral appeal. The time for filing the collateral appeal brief shall begin to run from service of the petitioner's brief on direct appeal.

(c) Brief for the Commonwealth.—The Commonwealth shall file a brief in response to the petitioner's direct and collateral appeal briefs. The time for filing the Commonwealth's brief shall begin to run from service of the petitioner's brief on collateral appeal.

§ 9578. Subsequent petitions.

(a) Further review.—No further review shall be available unless a petition is filed under Subchapter B (relating to post conviction relief) alleging that:

(1) 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 of the United States or laws of the United States or the Constitution of Pennsylvania or laws of this Commonwealth;

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

(3) 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.

(b) Exception petition.—Any petition invoking an exception provided in subsection (a) shall be filed within 60 days of the date the claim could have been presented.

§ 9579. Certification.

(a) General rule.—By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion or other papers regarding a petition for collateral relief, an attorney or unrepresented party is certifying that, to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims and other legal contentions in it are warranted by existing law or by a nonfrivolous argument for extension, modification or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation.

(b) Sanctions.—If, after notice and a reasonable opportunity to respond, the court determines that this section has been violated, the court may impose an appropriate sanction on the attorneys, law firms or parties that have violated this section.

Amend Sec. 4, page 14, line 8, by striking out "4" and inserting:

3

Amend Sec. 4, page 14, line 17, by striking out "9541.1."

Amend Sec. 4, page 14, line 21, by striking out "ONLY"

Amend Sec. 5, page 14, line 28, by striking out "5" and inserting:

4

On the question,

Will the Senate agree to the amendment?

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

Senator FUMO. Mr. President, will the maker of the amendment, the gentleman from Montgomery, Senator Greenleaf, stand for interrogation?

Senator GREENLEAF. Yes, I will, Mr. President.

The PRESIDENT. Senator Fumo, you may proceed.

Senator FUMO. Mr. President, on page 2 of the amendment, lines 25, 26, and 27, our staff has been having difficulty trying to ascertain the meaning of those lines in the bill. Could the gentleman tell us what he means by that language?

Senator GREENLEAF. Mr. President, would the gentleman repeat the page and the section.

Senator FUMO. Mr. President, page 2, lines 25, 26, and 27.

Senator GREENLEAF. Mr. President, first of all, to put it all in perspective, we are dealing with a bill that would address the lengthy and protracted appeals in death penalty cases. We all know how many years an appeal such as that takes, sometimes as many as 8 or 10 years, a decade. Part of the reason is that there are two parts to an appeal. One of them is called a direct appeal, which is handled after the imposition of the death sentence on a defendant and then he has an appeal to the Supreme Court of Pennsylvania. After the Supreme Court handles that case, and that whole process could take years, then after the Supreme Court denies the appeal, the defendant may then take what is known as a collateral appeal and raise matters that have not been raised on the direct appeal. And that, again, could take years. So the purpose of this bill is to consolidate and expedite death penalty appeals so that both the direct and collateral appeals are taken at the same time so that it is not as long and it is done in a more expeditious manner.

In regard to this question here, there are certain time limits. If we are going to have an expedited appeal, if we are going to have an appeal that is going to consolidate but also to make sure that the appeal is taken in a timely manner, we have to put time limits on when you can file these appeals. And there are such time limits. I believe it is a year. If the appeal is not taken within a year, then there are certain indications or criteria that a defendant could still file an appeal if he can raise certain matters, such as a government official was involved in delaying the appeal in some way, in this case, where the gentleman is requesting an inquiry. Also, it could deal with, let us say, after a discovery of evidence or a variety of reasons. It is stated in the bill.

Now, this amendment indicates that government officials shall not include defense counsel, whether appointed or retained. Now, the reason that is in there is when you handle a Post-Conviction Hearing Act petition, you have a defense counsel representing a defendant. Many times the defense counsel is then in a position where he can, in effect, reverse the whole process by saying, well, I delayed the appeal in some way or I am the cause of this, and many times a defense counsel will come in and say that he is an incompetent counsel, and that is almost an automatic reversal for the defendant. All too often I think defense counsel becomes attached to the individual he is representing, if he is a good defense attorney, and will, I think, be overly sympathetic towards him, and we do not want to have a defense attorney give him the right, in effect, to almost allow the defendant to file an appeal out of time just by saying that it was in some way his fault and that he interfered with the appeal process.

That is what that language means. If any other government official - a judge, a district attorney, a police officer, or a prison official - interferes with a defendant's right to appeal, then he has a right to file that appeal out of time, but we feel that it is not appropriate to have a defendant come in and say a defense attorney interfered with the appeal and, therefore, avoid the statute of limitations or the filing period.

Senator FUMO. Mr. President, can the gentleman tell me what happened to the language he struck out with the 60-day deadline? He struck out lines 13 to 18 on page 7 and inserted this language. What happened to that language?

Senator GREENLEAF. Mr. President, is the gentleman referring to page 7?

Senator FUMO. Mr. President, page 7 of the bill. The amendment that I just asked him about, it says striking out lines 13 through 18 and then inserting that language that he just allegedly explained to me.

Senator GREENLEAF. Mr. President, which line is the gentleman referring to? I am on page 7, but I do not know which line.

Senator FUMO. Mr. President, page 2 of the amendment says that you are striking out on page 7 of the bill lines 13 through 18. And my question is what then happens to lines 13 through 18? Are they reinserted somewhere else? Because that is the 60-day timeframe in which you have to file your appeal.

Senator GREENLEAF. Mr. President, is the gentleman referring to page 2, line 23 and line 24?

Senator FUMO. Mr. President, yes, and that refers back to the bill, page 7, lines 13 through 18, which is being stricken.

Senator GREENLEAF. Mr. President, I would refer the gentleman to page 8, line 29, subsection (b), which says, "Exception petition.—Any petition invoking an exception provided in subsection (a) shall be filed within 60 days of the date the claim could have been presented." So that language is placed in under Section 9578, subsection (b).

Senator FUMO. Mr. President, by doing that, has the gentleman then eliminated the phrase, "whichever is later," which appears on page 7, line 18, in the bill? Because that language does not carry over to page 8 of the amendment.

Senator GREENLEAF. Mr. President, what line did the gentleman say on page 7?

Senator FUMO. Mr. President, page 7, line 18, where that language is allegedly contained, also contains the phrase "whichever is later." Was that an inadvertent omission or an omission by design?

Senator GREENLEAF. No, Mr. President. It is my understanding that the 60 days would still apply based on page 8 of the amendment, which basically says, "Any petition invoking an exception provided in subsection (a) shall be filed within 60 days of the date the claim could have been presented."

Senator FUMO. Mr. President, but in the original language of the bill it says that "...a petition for relief under this subchapter shall be deemed timely only if it satisfies the requirements of paragraph (1)"--and I recognize the gentleman changed the paragraph number--"and is filed within 60 days of the date the judgment became final or the date the claim could have been presented, whichever is later." Is there a reason why the gentleman took out "whichever is later"?

Senator GREENLEAF. No, Mr. President. I think the purpose of it is to allow the person if there is a reason to file it and there is an exception provided that they can again file the petition at a later time once that is discovered.

Senator FUMO. Mr. President, then why was the language removed? That is my only concern. "Whichever is later," why was that not put in the amendment? My concern with this is that I understand this amendment was prepared by the District Attorneys Association. We went through this before where they have slipped things in on the chairman and myself, and I am wondering if this is one of those little gems that they may have snuck in?

Senator GREENLEAF. Mr. President, I do not believe so. I believe that it maintains the integrity of the bill. Again, maybe I could be wrong and I will re-read it. It seems to me that it provides for the appropriate time limits and that if there is a delay, that they still have the right to file the petition after the delay if there is a reason for that delay.

Senator FUMO. Mr. President, my only fear is that when language is purposely deleted by a group that advocates a position, that they are doing it for a reason.

The next question is on page 3 of the amendment, lines 12 through 15. None of this was in the original bill and we are wondering what does this mean? Does this mean, for example, that if I file, if I am being convicted and I file a PCHA that I now have to waive my attorney-client privilege with my previous lawyer? Why was this language placed in by the District Attorneys Association?

Senator GREENLEAF. Mr. President, what happens is in this situation where you have a petitioner claiming that there is ineffective assistance of counsel, which is a very common claim in PCHA petitions, we do not want a privilege exercised by the previous counsel who is being alleged to be incompetent to interfere with a full litigation of both the appellant's or the petitioner's rights and the Commonwealth's rights to know what steps he took to effectively represent his client. And so this bill would indicate that "...as a ground for relief, any privilege concerning counsel's representation as to that issue shall be

automatically terminated." That is how I read it and that is how I understood it.

Senator FUMO. Mr. President, but that privilege is a privilege of the defendant, not the lawyer. And by doing this you are attempting to abrogate a constitutional right of privilege between a counsel and his client and you are saying to the client that in order to exercise your constitutional right to this appeal, you have to waive your constitutional right to privileged communication between you and your counsel. First of all, I think the courts will hold that unconstitutional. I recognize that is what the district attorneys want to do, but is that what we want to do as a society?

Senator GREENLEAF. Mr. President, what I would say to that is that actually he does waive it. The defendant, the petitioner, does waive that right because when he files that petition and claims that his previous counsel is incompetent, then he has raised the issue of incompetency and he cannot have it both ways. He cannot partially go into the competency of his counsel and say that his counsel is partially incompetent, but then limit the degree and scope of inquiry. When he raises that issue he waives that privilege, and, therefore, all issues concerning the representation of that attorney then would be subject to review. I think that when he raises that issue he waives it. When he takes the stand, for example, and then alleges that--and says things that an attorney may have said in any case, whether it be this type of a proceeding or whether it be some other type of proceeding, you could waive your privilege to your counsel's confidentiality by raising issues covered by that privilege, and by filing the petition alleging that his counsel was incompetent, he waives that petition and that protection.

Senator FUMO. Mr. President, but in that situation, it is the defendant who has the right to waive his own privilege. What you are attempting to do, rather, what I should say is what the district attorneys are attempting to do via this amendment, via you, is to do it by law, and that directly conflicts with everyone's constitutional rights to privilege when they deal with their counsel.

Senator GREENLEAF. Mr. President, I view it as when he files that petition, that is what he has waived. He has filed a petition and claimed his attorney is incompetent, and then should we allow him to hide behind the privilege of protection and say, well, we are not going to allow you to pursue that? He is going to raise it, but then hide behind that privilege section? I think that would be unfair.

Senator FUMO. Mr. President, I do not think we can, by law, tell a person that they have lost a constitutional right to a statute, but I guess what we are looking for is to have this overturned by the Supreme Court.

My next question appears on page 8 of the amendment. On line 27 it talks about the precedent. It says, and I quote, "and has been held by that court to apply retroactively."

Senator GREENLEAF. Mr. President, I am sorry. Is the gentleman referring to page 8?

Senator FUMO. Mr. President, yes, page 8 of the amendment, lines 27 and 28.

Senator GREENLEAF. Yes, Mr. President.

Senator FUMO. Mr. President, the words, "and has been held by that court to apply retroactively."

Senator GREENLEAF. Yes, Mr. President.

Senator FUMO. Mr. President, are we saying that when the court hands down a precedent, it must specifically say that it is retroactive in order for it to apply? That it does not become part of stare decisis, it must also say that it is specifically retroactive?

Senator GREENLEAF. Mr. President, this provision, let me put it in perspective and context, is a provision dealing with subsequent petitions, petitions filed after the original PCHA petition is filed. And it provides for certain conditions in which an individual could file a subsequent petition, and, obviously, if we are going to expedite these proceedings, we are going to limit them to that one petition, but they can, under certain circumstances, file a second one. And this is one of them where the Supreme Court of the United States or the Supreme Court of Pennsylvania determines that there is a constitutional right that they had not discussed or held before that in order for this petitioner to base his claim upon that decision, it must be determined that this right is applied retroactively, and the Supreme Courts, both in Pennsylvania and the United States, frequently do that, indicate whether they intend it to apply prospectively or retroactively, and I think that that is an appropriate position to have. If they do not intend it to be retroactive, then how can and how should and why should we allow a petitioner to base his claim on something that the Supreme Court says has no retroactive application?

Senator FUMO. Mr. President, I thank the gentleman.

Mr. President, my problem with the amendment is that we just got it 2 hours ago. It is nine pages long, it is highly technical, the bill itself is highly technical. The amendment was drafted by the District Attorneys Association, something that I find really distasteful because what we are dealing with here is a situation in which the DAs, who are advocates, are now having a tremendous amount of input into setting the ground rules their way, and I think what we are doing is allowing them to set this bill up only to be held unconstitutional by the Supreme Court itself. I do not think it is proper for us to say that through statute we are going to tell people that they have less constitutional rights than they have in the Constitution, and I really wish that this bill, if this amendment goes in, gets sent back to committee so that we can have time to really analyze it in closer detail. I note that one of the things in the bill is it extends the amount of time that district attorneys have to file their appeals. We are supposed to be speeding up the process, but yet under the DAs' theory they increased their own timeframes. A lot of that stuff has been happening consistently with this bill, and that is what happens when you let one side dictate the ground rules.

I would ask for a negative vote on the amendment because I really do wish we had more time to study it. To pop it like this I think is unfair. If we are really trying to speed up a process here, I would hope that we would not be going down a path that would be leading the Pennsylvania Supreme Court or the U.S. Supreme Court to say everything we have done is unconstitutional and only send us back to the drawing board

and create more issues for appeal rather than less. Rather than streamlining the process, the DAs, in their greed, may wind up causing even more confusion in the process, so I ask for a negative vote, Mr. President.

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

Senator GREENLEAF. Mr. President, I rise, of course, in favor of the amendment, and let me say this: I think that the gentleman from Philadelphia, Senator Fumo, has been very constructive in his approach to the legislation and has added significantly to this bill. This is a very complicated area that we are dealing with, and yes, we have relied on the District Attorneys Association to help us draft the bill and the amendment. But I am somewhat familiar with the collateral appeal process. I probably handled hundreds, if not up to a thousand, collateral appeals before the Federal and State courts of both Pennsylvania and the Eastern District and the circuit court of appeals, and so I have some knowledge about it.

When we initially introduced this legislation, it was reported out of the Senate Committee on Judiciary with an understanding that we would put it on the Senate Calendar for input and consideration from persons who have interest in it. After we had the bill on the Calendar for a number of days, actually several weeks I guess it was, we then agreed to take the bill back to committee and hold a hearing on the bill. And we did. We heard from all sides. We heard from the law enforcement community, and we also heard from the defense community about this issue, and as a result of their input and Senator Fumo's input, we did agree to place a number of amendments into the bill, regardless of what the standing and the position of the District Attorneys Association was. We told them we thought this was an appropriate change to make in the bill and there were numerous changes made in the bill. The bill then was considered by the Senate Committee on Judiciary again, and there was a chance to offer amendments to the bill. And I know on both occasions, both times we considered the bill in the Committee on Judiciary, there were opportunities to do that. It was then reported out to the Senate, and we have allowed the bill to be on the Senate Calendar for some days now as well to generate and garner public input and interest from both the defense bar and the prosecution bar, and I hope we have generated that.

This amendment that I am offering today is not an amendment that the District Attorneys Association originally proposed. In fact, these are amendments that really are trying to broaden the bill to make sure that a defendant does have a fair and impartial hearing. This is not something that hardens the bill at all. To the contrary, I think it helps that case. For example, basically the amendment is in three parts. The first part deals with provisions in regard to a defendant. The original bill provided that if the defendant took an appeal, he had to take a new counsel, and that new counsel would take the collateral appeals and the direct appeal for him up to the Supreme Court of Pennsylvania. Because of objections from defense bar, they thought that the defendant should have the right, if he decided to, to retain the services of his trial counsel. We have split that up now, and we have said, yes, if

the defendant does not want to terminate the services of his trial counsel, he can keep the trial counsel, have the trial counsel handle his direct appeal issues, and we would supply him with a counsel to handle the collateral issues. So I think that is really a concession towards the defense bar on that issue to make it a fairer and broader-based piece of legislation.

In addition, when we held the hearing there was concern about the fact that when you file a petition, we want to make sure that it is a meritorious petition, we do not want to have a frivolous petition, that there are some witnesses that would be available to testify, so the original bill required that each witness had to sign a statement and have a notarized, sworn statement at the end of the statement indicating that this was a true and correct representation of what he would testify to at the coming collateral hearing. There were objections to that, feeling that that was too onerous to require a defendant to go out and obtain notarized statements from all of his witnesses, some of which would be hostile witnesses, and I agreed with that.

So as a result, this amendment allows a defendant to merely present a summary of the statement so we know generally what that witness is going to say and merely sign a certification. Either the witness, his attorney, the defendant's attorney, or the petitioner himself, the defendant himself can sign a certification saying to his best knowledge that this was an accurate statement of what this witness would testify to. So I think it is an effort, again, not to take anyone's rights away from him but also to help that defendant in the processing of his appeal and hopefully to make it easier for him to obtain a hearing, which we want him to obtain.

So I think basically this amendment is one that is a fair amendment. It is directed to alleviate some of the harshness, if you want to say, of the bill as it applied to a defendant and certainly is not something that the district attorney's office originally wanted. And so I ask that we adopt the amendment, if we want to make the bill fairer, and then go on from there.

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

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

YEAS—28

Afflerbach	Gerlach	Loeper	Salvatore
Armstrong	Greenleaf	Madigan	Shaffer
Baker	Hart	Mowery	Shumaker
Brightbill	Heckler	Peterson	Tilghman
Corman	Holl	Punt	Tomlinson
Delp	Jubelirer	Rhoades	Uliana
Fisher	Lemmond	Robbins	Wenger

NAYS—22

Andrezeski	Helfrick	Musto	Stewart
Belan	Hughes	O'Pake	Stout
Bell	Jones	Porterfield	Tartaglione
Bodack	Kasunic	Schwartz	Wagner
Dawida	LaValle	Stapleton	Williams
Fumo	Mellow		

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

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. For the record, Senator Musto has returned, and his temporary Capitol leave has been cancelled.

Also, Senator Jubelirer has returned, so his temporary Capitol leave is cancelled.

On the question,

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

Senator FUMO offered the following amendment No. A3449:

Amend Title, page 1, line 3, by striking out "and"

Amend Title, page 1, line 4, by removing the period after "cases" and inserting: ; and making appropriations.

Amend Bill, page 14, by inserting between lines 7 and 8:

Section 4. (a) The sum of \$350,000, or as much thereof as may be necessary, is hereby appropriated to the Office of Attorney General to handle capital appeals in Federal and State courts for the current fiscal year.

(b) The sum of \$350,000, or as much thereof as may be necessary, is hereby appropriated to the Pennsylvania Post-Conviction Defender Organization to hire, train and prepare persons qualified to represent indigent defendants in capital case postconviction appeals.

(c) The appropriations in subsections (a) and (b) shall not lapse at the end of the current fiscal year but shall continue for two fiscal years.

Amend Sec. 4, page 14, line 8, by striking out "4" and inserting:

5 Amend Sec. 5, page 14, line 28, by striking out "5" and inserting:
6

On the question,

Will the Senate agree to the amendment?

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

Senator FUMO. Mr. President, what this basically does is appropriates \$350,000 to the Attorney General's Office to handle these capital appeals, and appropriates \$350,000 to the Pennsylvania Post-Conviction Defender Organization to hire, train, and prepare persons qualified to represent indigent defendants in capital postconviction appeals.

One of the biggest problems that we have had with the appeal process is that many of the lawyers handling these appeals are not skilled in the advocacy, and that is what is resulting in these postconviction trial appeals. And last year through the horrible word "WAM," our Caucus provided money to this program and received great editorial praise, as a matter of fact, statewide for it. We reviewed the Governor's and Republican WAMs today and did not find this amongst the list, and we felt that it was a worthwhile program. I know that the gentleman from Montgomery, Senator Greenleaf, has expressed his support for this concept as well, and we figured that this is the only way we can try to see that this need is taken care of. If we are really about cutting down appeals, we have to make sure that the lawyers who try the cases have the skills necessary to try these cases.

Thank you, Mr. President.

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

Senator GREENLEAF. Mr. President, I rise in opposition to the amendment. We just received this amendment, I have not had it. The other amendments that the gentleman is going to offer we received an hour or so ago. This one was just given to me about a minute ago.

The concept is not foreign to me, though. It is an issue that was discussed in the Committee on Judiciary and denied, and primarily the reason is that it institutionalizes who is going to handle these appeals, and that really has not been decided at this point. For example, it appropriates money to the Pennsylvania Post-Conviction Defender Organization. Now, they may or may not be an organization that will be handling these appeals, as well as the Attorney General's Office is not always the office that handles these appeals. Many times it is the Philadelphia DA's office or the Montgomery County DA's office. So it is appropriating money to organizations and groups which may not handle these appeals, so as a result of that, I would ask for a negative vote.

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

Senator FUMO. Mr. President, I must respond to the gentleman. Number one, he gives me a nine-page highly technical amendment 2 hours ago and we vote on it, and I give him a two-paragraph amendment that does exactly what we said it did straightforward and he cries that he did not have enough time to study it. I really have to take issue with that.

Secondly, Mr. President, the gentleman assured me in committee he thought this was a worthwhile group and should get this money. Now he gets up and speaks against it. Mr. President, I do not know when or what group is appropriate. All I am trying to tell you is that if you do not train people to take these appeals, then all you are going to have is more appeals, and it is really short-sighted to not do this. I really have great difficulty with the gentleman's position when he says one thing on one day, then I call him up on it and give it to him and the next day it is something different.

So, Mr. President, I urge an affirmative vote on this. I recognize we do not have the numbers here, but I think it is terribly short-sighted to not consider this as a very important issue to the appellate process.

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

Senator GREENLEAF. Mr. President, the fact is that the gentleman has a short memory because what I said in committee I said here on the floor. I do not say two things in one place, one in a committee meeting and then another on the Senate floor. I said the same issue I raised today was raised in the Committee on Judiciary, that we do not know what group is going to handle these appeals. I do not have any objections to providing moneys for those groups that will be handling these appeals. That is something that we are going to have to do, but it is too early to commit those funds now and institutionalize those funds.

Finally, the gentleman has accomplished his purpose, at least for today, in delaying this bill, because we have other

issues on the agenda, and we are going to have to go over this bill because we do not have the time. But we will be back and we will be back and we will be back, and we are going to make sure that this legislation passes because the people of this Commonwealth are tired of waiting a decade for defendants who are charged with murder, convicted of murder, and sentenced to death and they are waiting for them to go to the electric chair, or now the lethal injection, and this bill will do that. It will make sure if they did not get a fair trial, they will have a new trial. But if they did have a fair trial, then they will meet the punishment that was given out to them.

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

Senator FUMO. Mr. President, I have never, ever been opposed to the concept of speeding up the appeals, and the gentleman initially, in that meeting of the Committee on Judiciary, said that he did support the WAM when it went to that group. He thought that group was an appropriate group to receive that money, and the reason why he did not want to do it in the meeting of the Committee on Judiciary was because it involved an appropriation and he thought that that ought to be more appropriately done somewhere else other than in the Committee on Judiciary. I do not want to hear pious speeches about the people of Pennsylvania waiting for people to be fried in the electric chair. The point is, when you decide to kill someone in this Commonwealth, that that person at least get a fair and honest trial, and if you are really interested in executing people as quickly as you can, you have an obligation to make sure they do get a fair trial so they do not have an issue on which to run back and have their execution delayed.

Thank you, Mr. President.

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

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

YEAS—22

Andrezeski	Helfrick	Musto	Stewart
Belan	Hughes	O'Pake	Stout
Bell	Jones	Porterfield	Tartaglione
Bodack	Kasunic	Schwartz	Wagner
Dawida	LaValle	Stapleton	Williams
Fumo	Mellow		

NAYS—28

Afflerbach	Gerlach	Loeper	Salvatore
Armstrong	Greenleaf	Madigan	Shaffer
Baker	Hart	Mowery	Shumaker
Brightbill	Heckler	Peterson	Tilghman
Corman	Holl	Punt	Tomlinson
Delp	Jubelirer	Rhoades	Uliana
Fisher	Lemmond	Robbins	Wenger

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

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

Senator LOEPER. Mr. President, I move that Senate Bill No. 81 go over in its order.

The motion was agreed to.

The PRESIDENT. Senate Bill No. 81 will go over in its order, as amended.

LEGISLATIVE LEAVES

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

Senator FUMO. Mr. President, I request a temporary Capitol leave for Senator Mellow, who has been called to his office.

The PRESIDENT. Senator Fumo requests a temporary Capitol leave for Senator Mellow, and without objection, that leave is granted.

The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, I would also like to request a temporary Capitol leave on behalf of Senator Robbins.

The PRESIDENT. Senator Loeper requests a temporary Capitol leave for Senator Robbins. Without objection, that leave is granted.

THIRD CONSIDERATION CALENDAR RESUMED

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 98 (Pr. No. 142) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of March 10, 1949 (P. L. 30, No. 14), entitled "Public School Code of 1949," further providing for penalties for truancy; providing for suspension of operating privilege and for antitrucancy programs; and further providing for arrests of children failing to attend school and for power of arrest.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Cumberland, Senator Mowery.

Senator MOWERY. Mr. President, today we are considering Special Session Senate Bill No. 98, which is an important piece of legislation designed to give our school districts the tools to rectify the problems of truancy. The problem of truancy is not new to our educational system, nor one that has really developed overnight. In today's society, truancy can lead to much bigger problems for our children and for society as a whole. It is well recognized that the most common reason students drop out of school is poor academic achievement. Poor academic achievement leads to low self-esteem and dis-

ruption of the family and, potentially, to emotional and substance abuse.

Mr. President, I think it is safe to say that unsupervised juveniles in our streets are very vulnerable to local drug dealers and gang leaders who promise easy money and a good life. While we have a truancy law, it is being violated without concern for the well-being of our children because it no longer addresses the root cause of the problem - the breakdown of the family and the responsibility for a child's education by their parents.

Mr. President, my bill amends the Public School Code to increase the financial penalties for truancy from \$2 for the first offense and \$5 for subsequent offenses to a maximum of \$300. The district justice may also order the parent to perform community service in the school district. For students who are habitually truant, the parent or the guardian must appear at a hearing established by the district justice. If the parent or guardian can show they took every reasonable step to ensure the child's attendance, they will not be convicted under the law. The district justice may impose a fine of up to \$300 on a child over the age of 13 who is habitually truant or assign the child to an alternate program.

Mr. President, I ask for the Members' support for this very vital legislation.

Thank you.

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

Senator SCHWARTZ. Mr. President, I rise to just make a few comments on this bill. For those who were in committee, we did have some discussion about this bill, and I will say that I raised some concerns about dealing with the issue of truancy in the criminal justice system more so than in the educational system. I did raise concerns about the fact that we needed to create greater attention to truants and deal with them not just by fining their parents and potentially putting them in jail but by getting them some services.

Mr. President, yesterday we had an amendment that the gentleman from Cumberland, Senator Mowery, offered and it was accepted, which did, I think, improve this bill substantially by saying that the court could refer the family to the Children and Youth Agency and the agency could then provide some services to the family. The point here is, I believe, not just to be punitive, not just to punish the parents. I think there may be parents for whom it would be extremely difficult for them to come up with \$300. And I will tell you that the Philadelphia court system itself is quite overwhelmed and certainly our jails are overcrowded. Whether the best use of our jail cells is to incarcerate parents of truants after the third offense is really something I raise some questions about. So I was concerned about that being the proper remedy in this. I still, Mr. President, would prefer to see that the services are given to the families through the educational system and through the Children and Youth system so that truancy does not escalate, so that we keep young people in school, and I hope that we will.

It is a complicated issue and we will not see this as the only solution. It may be a tool that will be helpful in some situations, but it is clearly not a panacea for dealing with the issue

of truancy. I hope that we will come back, and while this bill may well go through, and I myself will vote for it because of the changes made yesterday, I do think that we need to do a number of other things to enhance the ability of our schools, not just the criminal justice system or the Children and Youth system, but our schools to deal more quickly, more appropriately, and more successfully with our young people who are truants.

Thank you, Mr. President.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Gerlach	Madigan	Shaffer
Andrezeski	Greenleaf	Mellow	Shumaker
Armstrong	Hart	Mowery	Stapleton
Baker	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Porterfield	Tilghman
Brightbill	Jones	Punt	Tomlinson
Corman	Jubelirer	Rhoades	Uliana
Dawida	Kasunic	Robbins	Wagner
Delp	LaValle	Salvatore	Wenger
Fisher	Lemmond	Schwartz	Williams
Fumo	Loeper		

NAYS—0

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

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

UNFINISHED BUSINESS BILLS ON FIRST CONSIDERATION

Senator GERLACH. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from committees for the first time at today's Session.

The motion was agreed to.

The bills were as follows:

SB 83, SB 100 and SB 103.

And said bills having been considered for the first time,

Ordered, To be printed on the Calendar for second consideration.

ADJOURNMENT

Senator LOEPER. Mr. President, I move that the Special Session do now adjourn until Wednesday, June 14, 1995, at 11 a.m.

The motion was agreed to.

The Special Session of the Senate adjourned at 6:01 p.m., Eastern Daylight Saving Time.