

COMMONWEALTH OF PENNSYLVANIA
Legislative Journal

TUESDAY, JUNE 17, 2003

SESSION OF 2003 187TH OF THE GENERAL ASSEMBLY

No. 42

SENATE

TUESDAY, June 17, 2003

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

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

PRAYER

The Chaplain, Reverend JERRY McGRATH, of Prospect Park United Methodist Church, offered the following prayer:

Let us pray.

Almighty and merciful God, we turn to You in humble prayer on behalf of our State Senators. May they be grateful to You, Lord, for calling them and ordaining them to represent the welfare and security of the people of the Commonwealth of Pennsylvania. Grant them wisdom in the duties assigned to them. May they remember that government is an institution ordained by You. Let differences in party politics yield to the concern and responsibilities of representing the best interests of the people. And Lord, raise up the citizens of our State to encourage, support, and pray for the lives of our Senators.

We pray Your blessing upon these fine men and women in the name of our loving and just God. Amen.

The PRESIDENT. The Chair thanks Reverend McGrath, who is the guest today of Senator Anthony Williams.

PLEDGE OF ALLEGIANCE

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

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for a legislative leave for Senator Waugh.

The PRESIDENT. Senator Brightbill has requested a legislative leave for Senator Waugh. Without objection, the leave will be granted.

LEAVE OF ABSENCE

Senator PIPPY remains on military leave pursuant to Senate Rule XXI(3).

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of June 16, 2003.

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

Senator BRIGHTBILL. Madam 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 BRIGHTBILL and were as follows, viz:

YEA-49

Armstrong	Hughes	Oric	Tomlinson
Boscola	Jubelirer	Piccola	Wagner
Brightbill	Kasunic	Pileggi	Waugh
Conti	Kitchen	Punt	Wenger
Corman	Kukovich	Rafferty	White, Donald
Costa	LaValle	Rhoades	White, Mary Jo
Dent	Lemmond	Robbins	Williams, Anthony H.
Earll	Logan	Scarnati	Williams, Constance
Erickson	Madigan	Schwartz	Wonderling
Ferlo	Mellow	Stack	Wozniak
Fumo	Mowery	Stout	
Greenleaf	Musto	Tartaglione	
Helfrick	O'Pake	Thompson	

NAY-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 SENATOR DONALD C.
WHITE PRESENTED TO THE SENATE**

The PRESIDENT. The Chair recognizes the gentleman from Indiana, Senator Donald White.

Senator D. WHITE. Madam President, I am really pleased today to welcome several constituents to the Capitol. A bus with approximately 55 constituents from the 41st Senatorial District have come to spend their day at the Capitol and see their government in action. Most of them are from Armstrong County, which, in my opinion, is the birthplace of the property tax reform move-

ment in this State, and we all know what an important issue that is today. So I ask the Senate to please give its usual warm welcome to my constituents from the 41st Senatorial District.

Thank you very much, Madam President.

The PRESIDENT. Would the guests of Senator Donald White please rise so the Senate may give you its usual warm welcome. (Applause.)

**GUESTS OF SENATOR TERRY L. PUNT
AND SENATOR HAROLD F. MOWERY
PRESENTED TO THE SENATE**

The PRESIDENT. The Chair recognizes the gentleman from Franklin, Senator Punt.

Senator PUNT. Madam President, I have a very special guest in the balcony today, Areti Tsitsiris. In fact, she is a constituent of Senator Mowery, but she is doing an internship through my Capitol office this summer. Areti is with her father, Jimmy, and is the daughter of Jimmy and Voula Tsitsiris of Mechanicsburg. She is a graduate of Cumberland Valley High School, and is currently a senior at Washington and Jefferson College in Washington, Pennsylvania. Areti has a double major in political science and Spanish and is the president of the Prelegal Society, vice president of the Panhellenic Council, and vice president of the Spanish club at her college. After graduation, she plans to attend law school, and I ask the Senate to give its usual warm welcome to Areti and her father, Jimmy.

The PRESIDENT. Would the guests of Senator Punt and Senator Mowery please rise so we can give you a warm welcome. (Applause.)

**GUESTS OF SENATOR CONSTANCE H.
WILLIAMS PRESENTED TO THE SENATE**

The PRESIDENT. The Chair recognizes the gentlewoman from Montgomery, Senator Constance Williams.

Senator C. WILLIAMS. Madam President, I had the pleasure today of being visited by members of the Wayne Presbyterian Church, Valley Forge Presbyterian Church, Bryn Mawr Presbyterian Church, Gladwyne Presbyterian Church, and Ardmore Presbyterian Church, as well as some members of the Philadelphia Presbytery, who are here on behalf of Good Schools Pennsylvania, along with Reverend George Hollingshead and Reverend Mike Dunfee. Some of them are in the balcony today, and I am delighted that they are here lobbying all of us on behalf of Good Schools Pennsylvania.

The PRESIDENT. Would the guests of Senator Connie Williams please rise so the Senate may give you a warm welcome. (Applause.)

**COMMUNICATIONS FROM THE GOVERNOR
NOMINATIONS REFERRED TO COMMITTEE**

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

**MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION**

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, G. Craig Caba, 2520 Lambs Gap Road, Enola 17025, Cumberland County, Thirty-first Senatorial District, for appointment as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice William A. Cornell, Sr., Wormleysburg, whose term expired.

EDWARD G. RENDELL
Governor

**MEMBER OF THE DELAWARE COUNTY
BOARD OF ASSISTANCE**

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Mary Ellen Balchunis-Harris, Ph.D., (Democrat), 1101 Belfield Avenue, Drexel Hill 19026, Delaware County, Twenty-sixth Senatorial District, for appointment as a member of the Delaware County Board of Assistance, to serve until December 31, 2005, and until her successor is appointed and qualified, add to complement.

EDWARD G. RENDELL
Governor

**RECALL COMMUNICATIONS
LAID ON THE TABLE**

The PRESIDENT laid before the Senate the following communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows and laid on the table:

**MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION**

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 11, 2003, for the appointment of Oliver Byrd, 6955 Penn Avenue, Pittsburgh 15208, Allegheny County, Thirty-eighth Senatorial District, as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice Allen Wenger, Hershey, whose term expired.

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

EDWARD G. RENDELL
Governor

MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 10, 2003, for the appointment of G. Craig Caba, 2520 Lambs Gap Road, Enola 17025, Cumberland County, Thirty-first Senatorial District, as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice William A. Cornell, Sr., Wormleysburg, whose term expired.

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

EDWARD G. RENDELL
Governor

MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 11, 2003, for the appointment of Bishop William R. Clark, 1546 Woodlawn Avenue, Erie 16510, Erie County, Forty-ninth Senatorial District, as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice Leroy Patrick, Pittsburgh, whose term expired.

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

EDWARD G. RENDELL
Governor

HOUSE MESSAGES

**HOUSE CONCURS IN SENATE
CONCURRENT RESOLUTION**

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

Weekly adjournment.

HOUSE BILLS FOR CONCURRENCE

The Clerk of the House of Representatives presented to the Senate the following bills for concurrence, which were referred to the committees indicated:

June 17, 2003

HB 348 -- Committee on Labor and Industry.

HB 607 -- Committee on Transportation.

BILLS INTRODUCED AND REFERRED

The PRESIDENT laid before the Senate the following Senate Bills numbered, entitled, and referred as follows, which were read by the Clerk:

June 17, 2003

Senators CONTI, KUKOVICH, MELLOW, A. WILLIAMS, FERLO, TARTAGLIONE, KITCHEN, STOUT, C. WILLIAMS, LAVALLE, WAGNER, SCHWARTZ, HUGHES, FUMO, WOZNIAK, BOSCOLA, MUSTO, COSTA and LOGAN presented to the Chair **SB 706**, entitled:

An Act amending the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act, further providing for findings and declaration of policy, for right to freedom from discrimination, housing and public accommodation; defining "sexual orientation" and "gender identity or expression"; and further providing for unlawful discriminatory practices, for powers and duties of commission, for education program, for procedure and for construction and exclusiveness of remedy and for damages.

Which was committed to the Committee on JUDICIARY, June 17, 2003.

Senators CONTI, KUKOVICH, MELLOW, A. WILLIAMS, FERLO, KITCHEN, C. WILLIAMS, LAVALLE, SCHWARTZ, HUGHES, FUMO, WOZNIAK, BOSCOLA, MUSTO, COSTA, STOUT, WAGNER, TARTAGLIONE and LOGAN presented to the Chair **SB 707**, entitled:

An Act amending the act of July 17, 1961 (P.L.776, No.341), known as the Pennsylvania Fair Educational Opportunities Act, further providing for findings and declaration of policy, for definitions, for unfair educational practices, for powers and duties of the Pennsylvania Human Relations Commission, for right of action and for construction of act.

Which was committed to the Committee on EDUCATION, June 17, 2003.

Senators RHOADES, ERICKSON, MADIGAN, TOMLINSON, M. WHITE and KASUNIC presented to the Chair **SB 754**, entitled:

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, providing for revenue sources and taxing authority for funding public schools; establishing the Educational Trust Fund; providing for Fairness in Education Funding State Revenue Report; mandating local tax relief; defining terms for Commonwealth reimbursement of school districts; and providing for fairness in educational funding.

Which was committed to the Committee on EDUCATION, June 17, 2003.

Senators STACK, KITCHEN, KUKOVICH, TARTAGLIONE, LOGAN, MUSTO, BOSCOLA, RHOADES, C. WILLIAMS, SCHWARTZ, WOZNIAK and KASUNIC presented to the Chair **SB 775**, entitled:

An Act providing for safe staffing standards for medical doctor residents working in hospitals and for penalties.

Which was committed to the Committee on CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, June 17, 2003.

Senators TARTAGLIONE, BOSCOLA, STACK, COSTA, C. WILLIAMS, FUMO, LOGAN, MUSTO, MELLOW, STOUT, KUKOVICH, LEMMOND, KASUNIC, WOZNIAK and SCHWARTZ presented to the Chair **SB 801**, entitled:

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 tax, for definitions; and providing, in corporate net income tax, for pass-through business withholding.

Which was committed to the Committee on FINANCE, June 17, 2003.

Senators PICCOLA, EARLL, WENGER, MOWERY, C. WILLIAMS, THOMPSON, SCARNATI, ARMSTRONG, WAUGH, CORMAN, DENT, WONDERLING and MADIGAN presented to the Chair **SB 806**, entitled:

An Act amending the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, further providing for unfair methods of competition and unfair or deceptive acts or practices.

Which was committed to the Committee on JUDICIARY, June 17, 2003.

Senators ORIE, M. WHITE, WAGNER, D. WHITE, MUSTO, COSTA, RAFFERTY, KITCHEN, MOWERY, KASUNIC and C. WILLIAMS presented to the Chair **SB 810**, entitled:

An Act amending the act of April 8, 1949 (P.L.418, No.58), entitled, "An act to provide for and regulate the accumulation, investment, and expenditure of funds by cities, boroughs, incorporated towns and townships for preparing plans for sewage disposal systems, and for the construction, improvement or replacement of sewage disposal systems for which plans have been approved by the Sanitary Water Board of the Commonwealth," further providing for definitions and for expenditure of fund.

Which was committed to the Committee on ENVIRONMENTAL RESOURCES AND ENERGY, June 17, 2003.

Senators GREENLEAF, WONDERLING, WOZNIAK, LEMMOND, WAGNER, ORIE, TOMLINSON and PUNT presented to the Chair **SB 812**, entitled:

An Act amending Title 71 (State Government) of the Pennsylvania Consolidated Statutes, adding definitions; and authorizing the Deferred Retirement Option Plan for eligible members of the State Employees' Retirement System.

Which was committed to the Committee on FINANCE, June 17, 2003.

Senators ORIE, MUSTO, WAGNER, RAFFERTY, STACK, COSTA, LAVALLE and TARTAGLIONE presented to the Chair **SB 813**, entitled:

An Act amending the act of June 28, 1935 (P.L.477, No.193), referred to as the Enforcement Officer Disability Benefits Law, extending benefits to corrections employees; prohibiting compelling a person to return to light-duty work; and making an editorial change.

Which was committed to the Committee on LABOR AND INDUSTRY, June 17, 2003.

Senators LOGAN, LAVALLE, COSTA, KASUNIC, A. WILLIAMS, WOZNIAK, ORIE, WAGNER and MUSTO presented to the Chair **SB 816**, entitled:

A Joint Resolution proposing integrated amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for uniformity of taxation.

Which was committed to the Committee on FINANCE, June 17, 2003.

Senators M. WHITE, PICCOLA, BRIGHTBILL, RAFFERTY, HELFRICK, COSTA, EARLL, WONDERLING, JUBELIRER, ERICKSON, MOWERY, PILEGGI, WAUGH, CORMAN, THOMPSON, WENGER, D. WHITE, ROBBINS, ARMSTRONG, DENT, CONTI, TOMLINSON, MADIGAN and ORIE presented to the Chair **SB 817**, entitled:

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, providing for the funding of preschool education for financially needy persons, for educational support services for preschool children, for student loan forgiveness and for distribution of books to parents of preschool-age children.

Which was committed to the Committee on EDUCATION, June 17, 2003.

Senator STACK presented to the Chair **SB 819**, entitled:

An Act authorizing and directing the Department of General Services, with the approval of the Governor, to transfer jurisdiction and control from the Department of General Services to the Department of Conservation and Natural Resources, of certain lands situate in the City of Philadelphia, Philadelphia County; and authorizing and directing the Department of General Services, with the approval of the Governor, to grant and convey to the Philadelphia Authority for Industrial Development a tract of land situate in the City of Philadelphia, Philadelphia County.

Which was committed to the Committee on STATE GOVERNMENT, June 17, 2003.

Senators PICCOLA, KUKOVICH, EARLL, FUMO, MOWERY, DENT, WONDERLING, M. WHITE, COSTA, ORIE, KITCHEN, WAUGH, WENGER, LEMMOND, O'PAKE, D. WHITE, RHOADES, BOSCOLA, ROBBINS, C. WILLIAMS, WAGNER, FERLO, JUBELIRER and SCHWARTZ presented to the Chair **SB 820**, entitled:

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 sales and use tax definitions, for sales and use tax exclusions, for personal income tax definitions and for classes of personal income; providing for a credit against personal income tax; further providing for realty transfer tax definitions, for realty transfer tax exclusions and for penalties for failing to fulfill a historic covenant; providing for tax credits for historic commercial sites; and conferring powers and duties on the Department of Community and Economic Development, the Pennsylvania Historical and Museum Commission and the Department of Revenue.

Which was committed to the Committee on FINANCE, June 17, 2003.

Senators WAGNER, LOGAN, TARTAGLIONE, COSTA, MUSTO, ORIE, RAFFERTY, MOWERY, WONDERLING and RHOADES presented to the Chair **SB 822**, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for the offense of selling or furnishing violent video or computer games to minors.

Which was committed to the Committee on JUDICIARY, June 17, 2003.

Senators O'PAKE, MUSTO, ORIE, LOGAN, ERICKSON, KITCHEN, COSTA, TOMLINSON, KASUNIC, RAFFERTY, WAUGH and C. WILLIAMS presented to the Chair **SB 825**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for collection of restitution, reparation, fees, costs, fines and penalties.

Which was committed to the Committee on JUDICIARY, June 17, 2003.

Senators O'PAKE, KUKOVICH, ORIE, MUSTO, LOGAN, LAVALLE, ERICKSON, KITCHEN, COSTA, SCHWARTZ, TARTAGLIONE, RAFFERTY and WAUGH presented to the Chair **SB 826**, entitled:

An Act amending the act of March 11, 1971 (P.L.104, No.3), known as the senior Citizens Rebate and Assistance Act, further defining "claimant" to include certain estates of deceased individuals; and further providing for claimant eligibility.

Which was committed to the Committee on AGING AND YOUTH, June 17, 2003.

Senators O'PAKE, KUKOVICH, ORIE, MUSTO, LOGAN, KITCHEN, COSTA, RHOADES, TOMLINSON, KASUNIC, SCHWARTZ, TARTAGLIONE, RAFFERTY, GREENLEAF, C. WILLIAMS and STACK presented to the Chair **SB 827**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for protection from abuse proceedings.

Which was committed to the Committee on JUDICIARY, June 17, 2003.

BILLS REPORTED FROM COMMITTEES

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

SB 684 (Pr. No. 787)

An Act ensuring the confidentiality of information obtained from a genetic test and regulating its collection, retention, use and dissemination.

SB 699 (Pr. No. 809)

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for criminal laboratory user fee.

SB 711 (Pr. No. 981) (Amended)

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the right of action regarding profits received as a result of the commission of a crime.

HB 89 (Pr. No. 108)

An Act amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for the share of the surviving spouse.

HB 898 (Pr. No. 2094) (Amended)

An Act prohibiting false claims; imposing duties on the Attorney General and on district attorneys; and providing for procedures and for penalties.

Senator SCARNATI, from the Committee on Labor and Industry, reported the following bills:

SB 131 (Pr. No. 127)

An Act amending the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act, further providing for findings and declaration of policy, for right to freedom from discrimination, housing and public accommodation; defining "marital status"; and further providing for unlawful discriminatory practices.

HB 674 (Pr. No. 2086) (Amended)

An Act regulating child labor; conferring powers and duties on the Department of Labor and Industry and the Department of Education; imposing penalties; and making a repeal.

Senator TOMLINSON, from the Committee on Consumer Protection and Professional Licensure, reported the following bills:

SB 751 (Pr. No. 907)

An Act amending the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, further providing for respiratory care practitioners; and providing for refusal or suspension or revocation of respiratory care practitioner certificates, for automatic suspension and temporary suspension of respiratory care practitioners, for impaired professionals and for continuing respiratory care education.

SB 752 (Pr. No. 908)

An Act amending the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, further providing for respiratory care practitioners certificates and permits; providing for refusal or suspension or revocation of respiratory care practitioner certificates, for automatic suspension and temporary suspension of respiratory care practitioners, for impaired professionals and for continuing respiratory care education.

Senator ORIE, from the Committee on Aging and Youth, reported the following bill:

HB 297 (Pr. No. 2087) (Amended)

An Act establishing the Kinship Care Program.

RESOLUTION REPORTED FROM COMMITTEE

Senator ORIE, from the Committee on Aging and Youth, reported the following resolution:

SR 107 (Pr. No. 948)

A Resolution urging Congress to consider the PACE and PACENET programs for inclusion in the President's proposed program to provide prescription drug benefits to recipients of Medicare.

The PRESIDENT. The resolution will be placed on the Calendar.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, at this time I ask for a recess of the Senate for the purpose of a Republican caucus, which will begin immediately.

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

Senator MELLOW. Madam President, I request that the Democratic Members report to our caucus room in the rear of the Chamber immediately.

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

AFTER RECESS

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

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL OVER IN ORDER

SB 10 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILL OVER IN ORDER TEMPORARILY

SB 26 -- Without objection, the bill was passed over in its order temporarily at the request of Senator BRIGHTBILL.

BILL OVER IN ORDER

SB 79 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 137 (Pr. No. 586) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of February 13, 1970 (P.L.19, No.10), entitled "An act enabling certain minors to consent to medical, dental and health services, declaring consent unnecessary under certain circumstances," further providing for consent to treatment; and providing for release of medical records and for certain court reporting.

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:

YEA-49

Armstrong	Hughes	Orie	Tomlinson
Boscola	Jubelirer	Piccola	Wagner
Brightbill	Kasunic	Pileggi	Waugh
Conti	Kitchen	Punt	Wenger
Corman	Kukovich	Rafferty	White, Donald
Costa	LaValle	Rhoades	White, Mary Jo
Dent	Lemmond	Robbins	Williams, Anthony H.
Earll	Logan	Scarnati	Williams, Constance
Erickson	Madigan	Schwartz	Wonderling
Ferlo	Mellow	Stack	Wozniak
Fumo	Mowery	Stout	
Greenleaf	Musto	Tartaglione	
Helfrick	O'Pake	Thompson	

NAY-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.

SB 26 CALLED UP

SB 26 (Pr. No. 968) -- 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 BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 26 (Pr. No. 968) -- The Senate proceeded to consideration of the bill, entitled:

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

On the question,
Will the Senate agree to the bill on third consideration?
Senator BOSCOLA offered the following amendment No. A1905:

Amend Sec. 2 (Sec. 9546), page 4, lines 9 and 10, by striking out "~~that the sentence of death be vacated and~~" in line 9 and all of line 10 and inserting: further proceedings in accordance with section 9711.1(c) (relating to applicability).

Amend Sec. 2 (Sec. 9711), page 4, line 20, by striking out "alleging reasonable cause to believe" and inserting: allege

Amend Sec. 2 (Sec. 9711), page 4, line 21, by inserting a period after "retardation"

Amend Sec. 2 (Sec. 9711), page 4, lines 21 through 24, by striking out "apply for an order" in line 21, all of lines 22 and 23 and "with mental retardation be conducted prior to trial." in line 24

Amend Sec. 2 (Sec. 9711), page 4, lines 28 through 30; page 5, lines 1 through 30; page 6, lines 1 through 28, by striking out all of said lines on said pages and inserting:

(ii) If a capital trial results in a verdict of guilty of murder of the first degree, the parties may present evidence to the jury on the issue of mental retardation.

(iii) If the defendant presents evidence and arguments regarding mental retardation, the court shall submit a special question to the jury as to whether the defendant is a person with mental retardation as defined in this section. Once the issue of mental retardation is raised, the defendant has the burden of proving it by a preponderance of the evidence.

(iv) The special question shall be considered and answered by the jury prior to the consideration of aggravating and mitigating factors and the determination of sentence. If the jury unanimously determines that the defendant is a person with mental retardation, the court shall sentence the defendant to life imprisonment.

(v) If the jury does not unanimously determine that the defendant is a person with mental retardation as defined by this section, the jury may nonetheless consider any evidence of mental retardation presented during the sentencing hearing in determining aggravating and mitigating factors and the defendant's sentence.

Amend Sec. 2 (Sec. 9711), page 7, lines 2 and 3, by striking out "may file a motion raising" and inserting: may amend the motion to raise

Amend Sec. 2 (Sec. 9711), page 7, line 7, by inserting after "whether": evidence has been presented sufficient to establish that

Amend Sec. 2 (Sec. 9711), page 7, line 8, by inserting after "(d)": If the court finds that sufficient evidence has been presented, the court shall vacate the sentence of death, impanel a jury unless waived by the defendant and the Commonwealth, and conduct an evidentiary hearing at which the issue of mental retardation shall be determined. Such hearing shall be conducted in accordance with subsection (e.1).

Amend Sec. 2 (Sec. 9711), page 7, lines 12 through 23, by striking out all of said lines and inserting:
established the following elements:

(1) An intelligence quotient of 70 or below on a standardized individually administered intelligence quotient test or tests, for which raw data has been provided and which accounts for all potential margin of error.

(2) Significant impairment in adaptive behavior in areas of social responsibility and personal independence.

(3) That the mental retardation is manifested before the individual attains 18 years of age. Such manifestation must be revealed by contemporaneous written records unless:

(i) the individual was deprived of schooling or other social service contacts in which such contemporaneous records would have been created; or

(ii) the records have been lost or destroyed.

Amend Sec. 3, page 8, line 8, by striking out "and shall sentence the defendant to life imprisonment" and inserting: , impanel a jury unless waived by the defendant and the Commonwealth, and conduct an evidentiary hearing at which the issue of mental retardation shall be determined. Such hearing shall be conducted in accordance with subsection (e.1).

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentlewoman from Northampton, Senator Boscola.

Senator BOSCOLA. Madam President, in offering this amendment to Senate Bill No. 26, I would like to first acknowledge Senator Helfrick and all of his hard work and effort that has been devoted to this issue. This is an issue that deserves

to be passionately debated in this Chamber, and Senator Helfrick has been a forceful advocate and I commend him for that. I also want the record to show that my amendment and this legislation and the debate that we have today is not about whether someone who is mentally retarded should be given the death penalty. The Supreme Court has already decided that issue, and the Supreme Court has ruled that it is unconstitutional to impose the death penalty on mentally retarded persons anywhere in any State in our nation. This bill is not about whether we will permit a mentally retarded person to be legally executed in Pennsylvania. The Supreme Court has already decided that issue. What we must decide today is how, how we intend to protect a criminal defendant who is mentally retarded from being given the death penalty. How do we make sure that the decision of the United States Supreme Court is carried out in every courtroom, in every county courthouse, in every murder case that is brought forward all across this Commonwealth? And how, how do we ensure justice for a mentally retarded defendant without creating the opportunity for another defendant to exploit those provisions to their own advantage in order to avoid execution? So it all comes down to how. Like the Supreme Court said, it is up to us, up to this legislature, to figure that out.

Madam President, I believe that my amendment preserves the strongest protections for mentally retarded defendants that are in Senate Bill No. 26, while adding other safeguards to protect the intent of the legislation. I believe that my amendment protects the rights of mentally retarded persons and also protects the rights of the victim and the victim's family to seek justice. You know, criminal defendants have attorneys who speak for them. They have amnesty groups and special interest groups who march in the streets for them. But, Madam President, who speaks for the victims? Who speaks for the victims? And who rallies around the family members who lost their husband or their wife or their child, and who protects them from being victimized again? Adopting this amendment will not mean that we can legally execute mentally retarded persons here in Pennsylvania. Adopting this amendment will not change the decision handed down by the Supreme Court, and adopting this amendment does not mean that you support imposing the death penalty in every single instance, in every single murder case. This amendment has the full support of Pennsylvania's law enforcement community. This amendment has the strong support of Pennsylvania's Attorney General, the Pennsylvania District Attorneys Association, the Pennsylvania Fraternal Order of Police, and the Pennsylvania Chiefs of Police Association.

Senator Helfrick should be commended, as I said, for bringing all sides together in the past few months to reach important areas of compromise. But today we have reached the point where there can no longer be any concessions or negotiations or a possible give and take. Protecting a mentally retarded person from being executed is our common goal here today, and it should matter because it does matter. We must make sure that how we accomplish this does not protect those cold-blooded killers who have no right to crawl through even the tiniest loophole to escape justice.

Thank you, Madam President.

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

Senator GREENLEAF. Madam President, I rise in opposition to this amendment. I want to give you a little background on how we came to the place we are today. Not too many years ago, I guess about a year and a half, there was quite a bit of publicity throughout this nation and in Pennsylvania in regard to the death penalty and whether we should maintain it or not. I feel that we should, but we do not need this amendment, and I will get to why we do not need it. There was a Governor in Illinois who stayed all executions because of individuals on death row who were innocent. And I asked every one of the witnesses, and that hearing went on from about 9 o'clock in the morning until 8 o'clock at night, and we heard from people from the religious community, from the political community, from law enforcement, from the academic community, and I asked every one of them if there was any evidence of anyone on death row in Pennsylvania who was innocent, and they said, no, they had no evidence to that effect.

The bottom line of that hearing and all that information is that we do not want to take any chances. We do not want to make a mistake and put someone to death. Remember, if a person is convicted, that person will end up, if they are found guilty, going to prison for life without the opportunity for parole. So victims do not have to worry about this situation, justice is being done. We are deciding whether that person should be put to death or get life imprisonment, and whether they have the mental capacity to commit a crime and whether they have the mens rea, whether they had premeditation in order to commit a murder, to kill a person, and we make the decision then to put that person to death or give life imprisonment. You also have to remember that most people who are convicted of killing another individual, whether first degree, second, third, voluntary manslaughter, involuntary manslaughter, whatever it is, most people convicted of killing an individual are not placed on death row and sentenced to death. Only a small percentage of cases, and those cases are those that are the most heinous crimes that society can imagine, and when those crimes occur, that is the time when we have what we call mitigating and aggravating circumstances, and when those aggravating circumstances are present, the jury will then impose the death penalty.

In order to make sure that we do not have people who are innocent on death row, the first step that we took on the Committee on Judiciary in this Senate was to pass DNA legislation that would provide that every individual on death row, and other crimes, would have the right to have a DNA test to determine their innocence. And if that DNA evidence comes out and proves their innocence, they are off death row and we do not obviously want them there, we do not want anyone who is innocent or anyone who does not deserve to be put to death on death row. We passed that and it is now the law in Pennsylvania. And I think the next step that we have to take is to ensure that people with diminished mental capacity, who do not have the ability to form premeditation, who do not have the ability to plan and to commit these horrendous crimes with an intention that justifies capital punishment, we do not want them on death row either. They are going to spend the rest of their lives in prison and they will not be able to go out into society again, but this is an area where we have to be sure that a person who is mentally retarded is not placed on death row.

After those hearings, we had the Supreme Court of the United States rule in the *Atkins* case and say that States are not, as a matter of constitutional law, permitted or allowed to place an individual on death row and sentence them to death if they are mentally retarded. So then it is our job now to direct them and to develop legislation that will accomplish that purpose. And we find ourselves here today. We have worked out all the details of this legislation with the people involved and are also trying to match the Supreme Court decision, except when a determination is made, whether it is pretrial by a judge or posttrial by a jury.

This legislation provides now that it is done pretrial by a judge, and I think that is the appropriate method for a number of reasons. First of all, once it is determined that this individual is mentally retarded, the Supreme Court has said we cannot proceed against them. They should not be on trial. They should not be in that courtroom being charged with a capital offense. The Supreme Court has said that. We risk, if we put this amendment in, risk this piece of legislation becoming unconstitutional years down the road, after we spent all that time and all that money prosecuting these people, and then later the United States Supreme Court or our Supreme Court finds that the bill is unconstitutional because we put that section in there, because that person, under the reading of the *Atkins* case, would imply they are not even supposed to be in that place. So that lends it to a decision that it should be pretrial.

In addition, the economics of it and the time consumption and the judicial effort involved in a capital case is significant. If we charge someone who is not supposed to be charged with a capital offense and you try them and you have a jury, you are looking at a tremendous amount of time and effort and money to go through it, and at the end of the day, if we find that they are mentally retarded and it is not supposed to be a capital offense, that is not an easy decision. Once that decision is made, we have just wasted hundreds of thousands of dollars of taxpayers' money by placing that person in that position and prosecuting him. We should make that decision upfront before the trial begins. It will change the whole complexion of the trial, whether it is a life imprisonment prosecution or a capital offense prosecution.

In addition, the definition in the bill provides that the defendant has the burden of proving that he or she is mentally retarded in front of a judge. Judges make all kinds of decisions in the process. Even sometimes there are trials without juries, so judges are certainly more than capable of making that decision. If there are facts about the murder that are relevant in determining the mental competency and the mental ability to form premeditation, intention, malice, and mens rea, then that evidence will be heard by the trial judge and he can hear that evidence based on what he feels is relevant, making that one lone determination, are they mentally retarded or not, not whether or not they are guilty or innocent, but whether they are mentally retarded and should be subjected to a capital trial or a first degree murder, life imprisonment trial. So they have the burden of proof.

Now to the definition. The definition indicates this is what they are going to have to prove. The defendant would have to prove in front of a judge, and by the way, the DA would have the right to bring in experts, to have discovery, to ask for reports of the defendant, to take whatever efforts are necessary to present evidence to rebut this. They also could have testimony on their

own part to determine whether the individual is mentally retarded or not, have them tested individually or independently. But the defendant has the burden of proving that an individual has a significantly subaverage intellectual functioning, first of all.

Now, what does that mean? It also means that that individual has to have an intelligence quotient of 70 or below, so they are going to have to prove that to meet that criteria. And also, this has to manifest itself before the individual attains the age of 18 years of age. So we are not going to have individuals who are going to come up and suddenly say, well, I am mentally retarded. They are going to have a history of that. They are going to have to prove that. It will have to occur before they are 18 years of age. They have to have medical testimony indicating that they have been tested and their IQ is 70 or below. This is not going to be something that will be suddenly brought out from left field. It is something where an individual has had a long medical history of mental retardation. But that is not where it ends. It also says that individual, concurrently with the above, has to have substantial related deficits in adaptive behavior, basically meaning functioning, how they function, how they function in society, how they relate to people, can they feed themselves, can they live independently, things like that. It is a definition that is very narrowly drawn, will limit itself to only those people who are severely mentally retarded, it is more of a legal question than a factual question, and it is something that a judge should decide to put the hands of this issue on the judge for both the correct legal process and also for the saving of moneys and judicial time.

So I ask that this body vote against this amendment and then pass the bill, which will surely meet the requirements of the Supreme Court of the United States, will give direction to our law enforcement agencies, and we can then comfortably proceed, knowing that we will never have an individual who is tried by a jury that we find after the fact had inflamed minds, who heard extraneous issues, and then decided to put a person to death who really never had the mental ability to form premeditation that we want to have established before we execute somebody.

Thank you.

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

Senator M.J. WHITE. Madam President, I rise to oppose the Boscola amendment. But like Senator Boscola, I give very high marks to Senator Helfrick and his staff, Senator Greenleaf and his staff, to the members of the DAs Association, and all of the people who have had input into this bill, because it is a very important bill and people feel passionately about it on various sides. But we have been able to fashion, I think, a very good bill. The one issue that was not resolved is the one that Senator Boscola spoke to, but this is not about speaking for the victims. This is about following the Supreme Court's mandate that we not execute mentally retarded people and devising our own process, as they have required us to do, our definitions of mental retardation, as well as our process for making sure that mentally retarded persons are not subjected to the death penalty in Pennsylvania. The question at hand and the one we have been unable to reach an agreement or consensus on is whether this decision should be made pretrial by a judge or posttrial by a jury. We have come up with the one that I think is the better choice, and that is that the decision be made pretrial by a judge. Now,

what kind of decisions does a judge typically make pretrial? Well, he or she decides on admissibility of evidence, search and seizure questions, whether the party is competent to stand trial. I think this is a completely appropriate and similar type of finding.

Senator Greenleaf talked about our definition of mental retardation, an IQ of 70 or below, subaverage intellectual functioning, concurrent with deficits in certain adaptive behavior life skills, and having manifested itself before age 18. Now, this is not something you can fake. Either you are retarded or you are not. And if you are retarded and were retarded before age 18, you are not getting better. We are not talking mental illness, we are not talking insanity. People recover from mental illness, but if you are mentally retarded, you are mentally retarded, and that is a fact. We are not also talking about a defense. Insanity is a defense to a crime. Mental illness is not. We are not giving you a defense to your crime. We are simply saying you are now within a class of protected persons for whom the death penalty may not be imposed. This, to me, is a perfectly appropriate pretrial determination made by a judge.

I had occasion today to speak to Judge O.H. Eaton, a Superior Court Judge of Florida, who literally wrote the book on conducting the penalty phase of capital cases. He teaches at the National Judicial College and at the University of Florida advanced legal studies courses, where in Florida they have a procedure where if you are an attorney and you are going to try a capital case, you must have received advanced legal training in capital cases specifically, which I think is something we should consider here in Pennsylvania. But Judge Eaton lists a number of prohibitions against capital cases. A death penalty cannot be imposed for ordinary murder, that is *Godfrey v. Georgia*; or for the rape of an adult woman, *Coker v. Georgia*; or for a felony murder unless the defendant possessed a sufficiently culpable state of mind, *Enmund v. Florida*; you cannot execute an insane person, *Ford v. Wainwright*; or now a mentally retarded person, *Atkins v. Virginia*. All of those previous ones are decided pretrial by a judge, and Judge Eaton indicates the trial judge should make a pretrial determination if the death penalty is not a possible penalty as a matter of law. Now I recognize reasonable minds can disagree there, but I think that where we have put the burden on the defendant to prove that he is mentally retarded, it is entirely appropriate that that be a pretrial proceeding, and I ask that the Boscola amendment be defeated.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Luzerne, Senator Lemmond.

Senator LEMMOND. Madam President, on the Calendar today is Senate Bill No. 26, which prohibits the imposition of the death sentence in cases of mental retardation. On Friday, it will be 1 year that the United States Supreme Court did exactly that. So the law is that we cannot do it. They left to us the question of who, in fact, are the mentally retarded and who is going to make that decision and when are they going to make it. And it is not, by any means, an easy decision to make. The determination of a person's incapacity at this point, in this context that we are talking about, is a matter of just the greatest difficulty. There are two reasons that it is difficult to determine a person's range of mental retardation. One is in the old English scholars, they said

because of the ease of counterfeiting the disability, but partly from the degrees of the infirmity. The Supreme Court does not say, and I do not think that we in Pennsylvania want to say that the mildest degree of mental retardation makes you ineligible for the death penalty, so that some of these reasons are sufficient, some are insufficient to excuse the persons in capital offenses.

Who makes the decision and when do they make it? The Supreme Court said you in Pennsylvania and the General Assembly make that decision, make it not just for all of your people, make it not just for all of the mentally retarded, but make it for the people whom we have charged to administer our justice system. For hundreds of years, England offered the very best, the very best method of trial that is possible on who is and is not mentally retarded, as well as in all matters of fact, namely a jury of 12 men, good and true, now 12 women and men, acting unanimously under the inspection and direction of the judge. That is the forum that this has been traditionally decided. It is the forum that our prosecutors, our Attorney General, our chiefs would like to continue as we go into this uncharted water within this next year. If a judge hears it, and I understand some of the reasoning for that, judges are highly regarded, certainly by me they are, but it can be a sterile process. They do not have to listen to the facts of the case and apply the conduct of the defendant to the facts which are before them, which is far different, far different from just reciting in an atmosphere such as this what those are, but it is treated in the act as is, as though this is a clinical determination that can be made irrespective of the heinous acts that bring someone to trial in a capital case. Simple, neat, sterile, but it assumes without relation to what the actions are that precipitated the trial that is in front of us.

The way it is now, reverting from jury trial to judge, which is what the act says, I believe could take the Pennsylvania criminal justice system down a wrong and a dangerous road if you believe that the jury system is important in capital murder cases and is one that we have had great success with, as we have had over the years. That is the choice. Are we going to have a jury of our peers do this? Are we going to have a judge do it? What is the aim of our legislation? It is certainly to improve the criminal justice system, and I bring objection to the letter writers and to the groups who say this is not a question about the Pennsylvania criminal justice system, it is a human service, it is a human service situation that we must enter. No, this is a very vital part of the criminal justice system that the Supreme Court has charged us with answering, and our prosecutors and others, the chiefs have asked, gentlemen, ladies, give us the tools and we will carry on from here.

We want to pass a measure that is fair for defendants, and certainly, we would do nothing other than that. We want to ensure justice and we want to ensure that justice is achieved, not just for the defendants, but for the victims as well. How do we say who are the mentally retarded? Senator Greenleaf mentioned that this is a broad definition. He thought that it narrowed it, I think that it expands it. As a human service, folks, it is a wonderful definition. As an apology for murder, it absolutely goes beyond so many of the things that we would hope. It is not 70 or below. You may consider if it is an IQ of 70 or below, and you must find following adaptive skill areas. And I mentioned in caucus to anyone who would listen, we have lawyers in Luzerne

County who, God love them, if they cannot find these, they are not really trying. But two or more of the following adaptive skill areas, and it disappears, you are not then to be treated as a capital case: communication, self-care, home living, social interpersonal skills, use of community resources, self-direction, health and safety, personal academic skills, leisure, and work. I have no problem with that on a social service listing. I have major problems that that should be an appropriate method to make one ineligible for the death penalty, provided a jury has found beyond any reasonable doubt that this person has committed the acts complained about.

I think that this amendment would ensure, would ensure that justice is achieved, as it has been for hundreds of years here and in England, not just for the defendants but for victims as well, allowing the criminal justice system to work its will as it has so successfully in the past. Those whom we charge have asked us to make decisions here today, this year, which will make legislation which is not pleasant, it is not easy, but they asked us to do the best we can, the best that we can for the system. We are not superprosecutors here. We are not going to try any of these cases. Number two, our job is to provide the best tools for the criminal justice system to carry out this very, very complicated system. If I were making a list, a third would be those charged with making our justice system work, our police, our prosecutors, and they have asked us, have asked this General Assembly not to compromise the jury system in capital murder trials, not to compromise it, to allow it to work its will as it has so successfully in the past. The amendment which has been offered to us this afternoon contains the tools that the criminal justice community has asked us to give them. It is what they want. They have asked for this to be given to them. The question is, will we give them the tools that they have asked for, as they are the ones who are charged with making it work? And if this vote is "yes," we have given them the tools, and I suggest to all of us that that would be a good vote and that is the appropriate way to go on this very difficult question on who will decide and when will they decide it. I am firmly in favor of the amendment and intend to vote in the affirmative for it.

Thank you.

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

Senator RAFFERTY. Madam President, I rise in support of Senator Boscola's amendment. My remarks will be brief in light of the statement made in a much more eloquent way by Senator Lemmond. This amendment does not lead anyone to the death chamber. This version continues to protect the mentally retarded. It allows the Commonwealth and the defense the same opportunity to present the facts before a jury at the conclusion of the case. The jury, in our system of criminal justice, is relied on for a fair and impartial decision. I am not afraid of a jury being inflamed, because we have already put reliance in the jury system and have seen that the jury system can and does work in this Commonwealth. I believe that with the integrity of the system and the fairness of the judge explaining the law, the jury will be able to interpret the facts, apply the applicable law, and be able to make a determination as to whether or not a defendant is mentally retarded. I believe that this amendment addresses all the issues the Supreme Court has asked us to do and that we are

doing so today with Senator Boscola's amendment. I urge passage of that amendment to once again rely on the jury system as we have since the inception of this Commonwealth, to respect its role in the criminal justice system.

Thank you, Madam President.

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

Senator ORIE. Madam President, I rise in opposition to this amendment. I recognize that the District Attorneys Association views that the mentally retarded issue should not be decided within the pretrial proceeding. In support of this argument, they point to the fact that the trial court does not decide pretrial matters involving issues of law such as entrapment justification and guilty but mentally ill. However, mental retardation is not a defense to a crime. The status of being a person with mental retardation is constitutionally recognized and enjoys greater status than an affirmative defense such as alibi, self-defense, or duress. It is well established that in cases where there is evidence raising an affirmative defense, the burden is on the Commonwealth to negate that defense, while at the start of the trial there is no burden on the Commonwealth to establish an affirmative defense. Once an affirmative defense is raised, the burden falls on the Commonwealth to disprove this defense beyond a reasonable doubt. Giving the existing allocation of burdens with respect to affirmative defenses, why would this shifting of the burden be any different in regard to a constitutionally recognized exemption of mental retardation?

A judge would only decide the issue of mental retardation to determine whether that person is eligible for the death penalty. This is a sentencing issue and nothing more. This has nothing to do, in my opinion, with regard to the intent to commit the crime. Because of the decision in *Atkins*, we are in a unique situation where a sentencing matter can be decided pretrial. In order to meet the criteria in the clinical definition of mental retardation, we actually have a definition that exceeds the definition under DSM-IV, which we use in cases dealing with psychiatric or psychological issues. This exceeds that. Furthermore, the judge would take into consideration the individual testing performed and whether there is significant impairment and adaptive behavior, and it would all have to be manifested before age 18 and they would have to have an IQ of 70 or below. A judge can make a pretrial determination of whether a person is competent to stand trial. This is no different. Why cannot a judge decide pretrial whether a person is mentally retarded? I would again reaffirm that I oppose this amendment.

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

Senator FERLO. Madam President, I am very pleased to be an initial cosponsor of Senator Helfrick's legislation, Senate Bill No. 26, as well as, I point out, in support of his amendments that were offered yesterday, which further take into consideration legitimate concerns and criticisms that were raised. I want to thank the Senator for once again addressing those issues by way of the amendments that were offered yesterday. The amendment that is being offered today, however, by one of my colleagues, I cannot support, and it would be my hope, if not my prayer, that the Senate would reject this amendment.

As we have stated very clearly, this legislation has been crafted by the Senator with a lot of input from folks, and the legislation that we are considering today ensures compliance with the Supreme Court's ruling in the *Atkins v. Virginia* case that has been mentioned. I just want to point out very clearly that in opposition to this bill, I think, basically, it is being offered by those who continue to be proponents of capital punishment and do not want to recognize sincerely the landmark decision in the ruling by the U.S. Supreme Court. The legislation, without this amendment, would provide a mechanism for pretrial determination of mental retardation by the court. There is already a process in place for a resolution of many pretrial issues. As has been pointed out, judges routinely determine the competency of defendants to stand trial by the admissibility of evidence. If a defendant is mentally retarded and is ineligible for the death penalty, pretrial determination saves the Commonwealth the cost of an unnecessary capital trial. The burden of proof of mental retardation falls to the defendant in the pretrial stage, and as well, the legislation allows for an appeal on this matter. But again, the burden of proof is on the defendant, and it is not an easy means test to be met. Some would have you believe that somehow after someone commits a heinous crime, all of a sudden, to cop a plea, they claim to be mentally retarded. Nothing could be further from the truth. The standard here and the burden of proof is tremendous. It is something that has to go back to early childhood, and all the other standards that the Senator has enumerated in the legislation can give full protections and, I think, keeping good faith with the Supreme Court's ruling.

If a judge determines a capital case may proceed, the defendant still has the right to raise mitigating factors at the postconviction phase of the trial. The legislation provides a mechanism for defendants convicted and sentenced to death prior to the Supreme Court's *Atkins* ruling to seek relief. Such relief must be sought within a year of the effective date of this act. Convicts seeking grant of relief shall have their death sentences vacated and shall be sentenced to life in prison. I do not know about you, but given the state of our prison society in the Commonwealth and across the country, except for the issue of vengeance and a lot of appeals that can be made by family members of victims of crimes, I would argue strongly that a lifetime in a jail cell in any prison is a substantial level of punishment, if not a substantial level of revenge, short of actual capital execution.

This legislation has been drafted, as I indicated earlier, and many professionals in the mental retardation field and many folks who have a very distinguished legal background have helped in the drafting of Senate Bill No. 26, without this proposed amendment. Counsel who successfully argued the *Atkins* case before the Supreme Court and who are consulting with State legislators to enact constitutional statutes to meet the *Atkins* case have assisted in the drafting of this bill. The legislation is supported by the Pennsylvania Bar Association, the Philadelphia Bar Association, the American Civil Liberties Union, the Federal Defenders Association, the Pennsylvania Association of Criminal Defense Attorneys, the Constitution Project, and the Disabilities Law Project. Mental retardation professionals and service providers support the legislation, including ARC of Pennsylvania, the Pennsylvania Community Providers

Association, United Cerebral Palsy of Pennsylvania in my hometown of Pittsburgh, as well as many county MH and MR agencies across our Commonwealth.

As would be expected, and I want to thank them, there are certainly many religious organizations across the Commonwealth that are in support of this legislation, if not totally opposed to capital punishment, and they include the Pennsylvania Catholic Conference, the Council of Churches in Pennsylvania, the United Methodist Witness, and the Christian Associates of Southwestern Pennsylvania.

Again, I think this amendment significantly raises new constitutional issues that I think we should avoid, and I find it interesting that some of our colleagues here today have such great faith in the jury system. They do not seem to extend that faith in the jury system when it comes to deciding caps on medical malpractice cases. So I find it interesting, that standard here today, and I look forward in the future to that discussion as well.

Thank you very much, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Northumberland, Senator Helfrick.

Senator HELFRICK. Madam President, I would like to thank all of my colleagues who have given so many great comments and appreciation that I brought this legislation up. I really appreciate that.

Madam President, I rise to oppose this amendment. I am not an attorney, but I have heard some very eloquent attorneys and some other people speak on this bill. I am neither an attorney nor an eloquent speaker, but I can read into this amendment one thing. What it says to me is that if you cannot prove beyond a reasonable doubt that a person is mentally retarded, we can still execute him. Madam President, that is not the intention of the Supreme Court.

Madam President, when the Supreme Court, in its wisdom, ruled we will no longer execute the mentally retarded, they finally ruled to eliminate a practice for which we should all hang our heads in shame. We helped kill our fellow citizens who, through no fault of their own, do not have the full mental capacity to understand the seriousness of a crime committed or the consequences of the death sentence which we would demand for that crime. I do not believe there is anyone in this room today who ever again wants that to happen.

Senate Bill No. 26 is a bipartisan effort to make certain this never happens again. Senate Bill No. 26 establishes a clear and concise definition of who is and who is not mentally retarded. Without this legislation, defense attorneys would try to convince the court in every case that their client is mentally retarded. This again is certainly not the intent of the Supreme Court. The prosecution attorneys would in every case try to circumvent the Supreme Court ruling and insist on the death penalty, because it is their job to be tough on crime and criminals. Again, this is not the intent of the Supreme Court. Juries certainly cannot decide who is mentally retarded. They do not have the medical or the legal experience to make that judgment, especially after they have heard the evidence of a well-planned, well-executed, heinous crime and convicted the defendant. They would use that same evidence to determine mental retardation. Their opinions certainly would be swayed, and that same evidence has no basic

scientific fact at all. Senate Bill No. 26 clearly defines mental retardation based on nationally accepted standards and facts.

Mental retardation cannot be faked. It rears its ugly head at birth and during the development period. Senate Bill No. 26 says that if an IQ of 70 and proof of mental deficiencies are not established before the age of 18, this legislation does not apply. Mental health and mental retardation are two entirely different things. Mental retardation is a development disability. Mental health problems can begin anytime and is also not included in this legislation. Mental retardation is not suddenly acquired. It is usually a birth defect. Senate Bill No. 26 allows a judge to make a pretrial determination of mental retardation after hearing all the evidence related to the defendant. As another safeguard, and in agreement with district attorneys to ensure that a defendant cannot fake mental retardation, this legislation requires that the judge must employ and be advised by a trained psychologist or psychiatrist before he makes his determination. The judge's determination has no impact on whether the defendant is guilty or innocent, but only on the mental retardation of the accused. It is much easier to seat a jury on a noncapital murder case.

Madam President, in my home county some years ago, the police arrested and charged an individual with murder. Prior to the trial, the district attorney publicly announced that if the defendant was convicted, he would ask for the death penalty. No one with knowledge of that case believed it was a capital offense. In fact, they had trouble seating jurors. My wife was one who was called for jury duty and she was ready to do her civic duty, but she was disqualified because it was public knowledge that she was opposed to the death penalty. The defendant was found guilty of a lesser crime and sentenced to 5 to 10 years in prison. We cannot let district attorneys prejudge without facts about a person's mental capacity. Senate Bill No. 26 assures that this will not happen. In a mental retardation case, this pretrial issue is not a criminal issue, it is a human service issue to ensure the intent of the Supreme Court to guarantee that we no longer execute the mentally retarded.

The Boscola amendment undermines the human issue of a guarantee that the mentally retarded defendant receives life in prison without parole. Madam President, remember, in Pennsylvania when a person gets life in prison, they not only get life in prison but they also get death in prison, they never get out. The light at the end of the tunnel for those types of people is their death. If we would err in this legislation or err in this particular case, we should err on the side of life in prison, certainly not on the death sentence.

Madam President, this legislation will never make or break any one of us politically. I doubt if 5 percent of our constituents will ever inquire about how we voted on Senate Bill No. 26 today, but for the rest of our lives we will be proud to say we voted for fairness when it comes to those who, through no fault of their own, were deprived of the full mental capacity that we enjoy and, hopefully, that we will use wisely. I ask for a "no" vote on this particular amendment.

I would like to also at this time enter into the record a letter I just received from Estelle Richman, the Secretary of the Department of Public Welfare.

Thank you, Madam President.

(The following letter was made a part of the record at the request of the gentleman from Northumberland, Senator HELFRICK:)

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare
P. O. BOX 2675
HARRISBURG, PENNSYLVANIA 17105-2675

The Honorable Edward W. Helfrick
Senate of Pennsylvania
Harrisburg Pennsylvania 17120

Dear Senator Helfrick:

The Department of Public Welfare supports the Helfrick version of Senate Bill 26 because it contains a pre-trial determination of mental retardation and it also defines mental retardation consistent with the National and State standards.

Sincerely,

Estelle B. Richman
Secretary

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

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Madam President, I request temporary Capitol leaves for Senator Jubelirer, Senator Brightbill, Senator Thompson, Senator Conti, and Senator Donald White.

The PRESIDENT. Senator Piccola requests temporary Capitol leaves for Senator Brightbill, Senator Jubelirer, Senator Thompson, Senator Conti, and Senator Don White. Without objection, the leaves are granted.

The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Madam President, I request temporary Capitol leaves for Senator Mellow, Senator Fumo, and Senator Hughes.

The PRESIDENT. Senator O'Pake requests temporary Capitol leaves for Senator Mellow, Senator Fumo, and Senator Hughes. Without objection, the leaves will be granted.

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

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

YEA-11

Boscola LaValle Rafferty Waugh
Dent Lemmond Rhoades Wonderling
Earll Piccola Scarnati

NAY-38

Armstrong Hughes O'Pake Tomlinson
Brightbill Jubelirer Oric Wagner

Conti Kasunic Pileggi Wenger
Corman Kitchen Punt White, Donald
Costa Kukovich Robbins White, Mary Jo
Erickson Logan Schwartz Williams, Anthony H.
Ferlo Madigan Stack Williams, Constance
Fumo Mellow Stout Wozniak
Greenleaf Mowery Tartaglione
Helfrick Musto Thompson

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?

It was 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 Allegheny, Senator Costa.

Senator COSTA. Madam President, I respectfully request that remarks that I have prepared be submitted as part of the record on Senate Bill No. 26 in support of this measure.

The PRESIDENT. Without objection, they will be submitted for the record.

(The following prepared statement was made a part of the record at the request of the gentleman from Allegheny, Senator COSTA:)

Madam President, I rise to support Senate Bill No. 26, and in doing so, I would like to offer some comments regarding the reasons that justify this legislation in the form proposed by Senator Helfrick.

As you know, last year the United States Supreme Court decided that the death penalty should not be imposed on or carried out against criminal defendants who are determined to be mentally retarded. The United States Supreme Court decided that the execution of persons who are mentally retarded violates the prohibition against cruel and unusual punishment found in the Eighth Amendment to the United States Constitution. As such, the court imposed a categorical bar on the execution of any person who is found to be mentally retarded or the consideration of the death penalty for such a person in a homicide prosecution. However, this is not the first time that Pennsylvania has been required to reconsider or revise its capital sentencing statute in response to the pronouncement of the United States Supreme Court.

By its 1972 opinion in Furman v. Georgia, the United States Supreme Court imposed a categorical ban on [the] death penalty, finding that various statutes challenged in several States violated the United States Constitution's guarantee for due process and against cruel and unusual punishments. There, the Supreme Court declared that because of disparities in the application of the death penalty based on the defendant's race or socioeconomic standards, capital punishment was being selectively or irregularly applied to the defendants to whom it was applicable.

Additionally, in some States, the death penalty was also applied to criminal cases that did not include homicide. For instance, it was applicable in cases of rape in Georgia. As the Supreme Court concluded in Furman, the Eighth Amendment requires State legislatures to write penal laws, including laws that provide for the death penalty, that are evenhanded, nonselective, and not arbitrary.

Following this decision, several States, including Pennsylvania, reenacted statutes providing for the use of execution of certain offenders, prompting further review by the United States Supreme

Court. In 1976, by its decision in *Gregg v. Georgia*, the United States Supreme Court provided clear guidance to the States regarding the necessary elements of a death penalty statute to conform to the Eighth Amendment's prohibition on cruel and unusual punishment and the Fourteenth Amendment's requirement for due process. In response to both of these decisions, the General Assembly of Pennsylvania revised and reenacted its capital punishment statute. In fact, two Senators who serve today, Senator O'Pake and Senator Jubelirer, had a large part in crafting the current death penalty statute to comply with the United States Supreme Court decisions.

Now, we are called upon to respond to the thoughtful pronouncements of the Supreme Court with regard to this important issue. I have provided this historical context to remind the Members that it is not just Senator Helfrick's courageous position that brings us to the consideration of this legislation, it is the clear direction of the United States Supreme Court that must be addressed. The Commonwealth's laws, particularly with respect to the imposition of the ultimate punishment, must comply with the Eighth Amendment's ban on cruel and unusual punishments as that prohibition is interpreted by the United States Supreme Court.

However, as noted in its opinion, the court has left to the States the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences. *Atkins* at 2250. Senate Bill No. 26 provides a rational and thoughtful method for considering mental retardation in a capital homicide. First, it provides that the issue of whether the defendant is a person with mental retardation be decided before the criminal trial. Second, it employs the standard of mental retardation developed by the American Association of Mental Retardation and similar to that of the American Psychiatric Association. Third, it requires that the defendant manifested or was found to be mentally retarded prior to the age of 18 years of age.

The Senate Committee on Judiciary had a very vigorous debate over these requirements with the contrary position requiring that the issue of mental retardation be reserved for proof at the sentencing stage of a capital trial. Additionally, there was concern that the definition of mental retardation was too broad. I would like to address both of these topics.

First, the pretrial determination of mental retardation is crucial. Further, it is the fairest and most expedient way to determine the issue. As the facts of *Atkins* demonstrate, it is important that the issue of mental retardation be determined as quickly in the process as possible to avoid unfair selection of a mentally retarded capital defendant for execution. In *Atkins*, his mentally competent codefendant pled guilty in exchange for his testimony against the mentally retarded Atkins and a life sentence [was given] rather than the death penalty. This left Atkins, who was found to have an IQ of 59, to stand trial for capital murder with his mentally competent codefendant testifying against him.

Additionally, in my home county of Allegheny, it is my understanding that the District Attorney's office uses the mental health court, an idea championed by my colleague, Senator Orie, to assist it with making pretrial determinations regarding mental retardation and mental competency decisions. Within this framework, Allegheny County District Attorney Stephen Zappala, Jr., empaneled a working group of capital litigators, mental health professionals, and legal scholars to study the *Atkins* decision and make recommendations. This group's recommendations were very helpful in revising Senate Bill No. 26 in committee to make the bill more useful for prosecutors, defendants, and the courts that will be called upon to implement it.

Further, I am not convinced by arguments that a pretrial determination violates the Commonwealth's right to a jury trial of factual issues in dispute, including the existence of mental retardation. Everyday, courts in this Commonwealth are called upon to make important pretrial determinations that involve the resolution of facts that may be in dispute. These include the determination of whether a criminal defendant is competent to stand trial. I would point out that this competency determination is not the defense of insanity that has been confused by some. Rather, the issue of competency goes to whether the defendant understands the charges against him and is able to assist with his defense. In simplistic terms, insanity measures whether the person understood right from wrong at the time of the offense and whether, because of this insanity, whether the person had the requisite mental state to commit the crime at all.

A pretrial determination of mental retardation does not absolve a defendant of the crime. A person with mental retardation who is charged with murder will be tried, and if prosecuted, will be sentenced to life imprisonment without the possibility of parole. A pretrial determination of mental retardation only removes the person from consideration for the death penalty because those with mental retardation suffer certain deficiencies and do not possess the "superculpability" warranting imposition of the death penalty, as the United States Supreme Court instructed.

[O]ur death penalty jurisprudence provides two reasons consistent with the legislative consensus that the mentally retarded should be categorically excluded from execution. First, there is a serious question as to whether either justification that we have recognized as a basis for the death penalty applies to mentally retarded offenders. *Gregg v. Georgia* identifies "retribution a deterrence of capital crimes by prospective offenders" as the social purposes served by the death penalty. Unless the imposition of the death penalty on a mentally retarded person "measurably contributes to one or both of these goals, it is nothing more than the purposeless and needless imposition of pain and suffering, and hence an unconstitutional punishment." *Atkins* at 2251

Simply put, because of their deficiencies in reasoning and the likelihood to act impulsively rather than premeditatedly, the very reasons for the death penalty, retribution for heinous, malicious acts and deterrence against future crimes, do not provide a basis for imposition of the death penalty on persons with mental retardation.

Last, and perhaps most importantly, a pretrial determination of mental retardation is clearly the preference of the United States Supreme Court. As noted in its opinion, "reliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury.... Mentally retarded defendants in the aggregate face a special risk of wrongful execution." *Atkins* at 2252

Second, with regard to the definition of mental retardation, Senate Bill No. 26 employs the standard of mental retardation developed by the American Association of Mental Retardation and similar to that of the American Psychiatric Association. This standard of showing a deficiency in two of ten adaptive skill areas existing concurrently with an IQ of 70 or below is the preferred standard of the United States Supreme Court in the *Atkins* decision. Further, unlike other definitions offered, clearly providing specific adaptive skills that must be deficient in assisting with the determination of mental retardation will provide guidance to the courts that will be applying it. Further, the terms are clear and definite, and under the rules of statutory construction, may not be expanded by the courts.

For these reasons, I am supporting Senator Helfrick's legislation to provide guidance to Pennsylvania's prosecutors and courts in the interpretation and application of the Supreme Court opinion in *Atkins*. Although I continue to believe that the death penalty is warranted for the most serious criminal defendants who have committed murder with premeditation, maliciousness, and cruelty, in this case the Supreme Court has spoken and imposed a per se bar on the execution of or the consideration of the death penalty for those determined to be mentally retarded.

I also congratulate Senator Helfrick on his unflinching efforts with regard to the death penalty.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Waugh has returned, and his legislative leave will be cancelled.

And the question recurring,
Shall the bill pass finally?

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

YEA-48

Armstrong	Hughes	O'Pake	Tartaglione
Brightbill	Jubelirer	Orie	Thompson
Conti	Kasunic	Piccola	Tomlinson
Corman	Kitchen	Pileggi	Wagner
Costa	Kukovich	Punt	Waugh
Dent	LaValle	Rafferty	Wenger
Earll	Lemmond	Rhoades	White, Donald
Erickson	Logan	Robbins	White, Mary Jo
Ferlo	Madigan	Scarnati	Williams, Anthony H.
Fumo	Mellow	Schwartz	Williams, Constance
Greenleaf	Mowery	Stack	Wonderling
Helfrick	Musto	Stout	Wozniak

NAY-1

Boscola

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.

BILLS OVER IN ORDER

SB 255, SB 386, SB 432 and HB 623 -- Without objection, the bills were passed over in their order at the request of Senator PICCOLA.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 696 (Pr. No. 798) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, further providing for powers and duties of the Municipal Police Officers' Education and Training Commission; and repealing provisions relating to prohibition on certain political activity.

Considered the third time and agreed to,

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:

YEA-48

Armstrong	Hughes	O'Pake	Tartaglione
Boscola	Jubelirer	Orie	Thompson
Brightbill	Kasunic	Piccola	Tomlinson
Conti	Kitchen	Pileggi	Wagner
Corman	Kukovich	Punt	Waugh
Costa	LaValle	Rafferty	Wenger
Dent	Lemmond	Rhoades	White, Donald
Earll	Logan	Robbins	White, Mary Jo
Erickson	Madigan	Scarnati	Williams, Anthony H.
Fumo	Mellow	Schwartz	Williams, Constance
Greenleaf	Mowery	Stack	Wonderling
Helfrick	Musto	Stout	Wozniak

NAY-1

Ferlo

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.

BILL OVER IN ORDER

SB 733 -- Without objection, the bill was passed over in its order at the request of Senator PICCOLA.

SECOND CONSIDERATION CALENDAR

PREFERRED APPROPRIATION BILL ON SECOND CONSIDERATION

SB 779 (Pr. No. 970) -- The Senate proceeded to consideration of the bill, entitled:

An Act making an appropriation from a restricted revenue account within the General Fund to the State Farm Products Show Fund.

Considered the second time and agreed to,

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

BILLS REREPORTED FROM COMMITTEE AS AMENDED ON SECOND CONSIDERATION

SB 387 (Pr. No. 969) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 8, 1986 (P.L.408, No.89), known as the Health Care Cost Containment Act, further providing for membership of the council, its bylaws and terms of its members, for powers and duties of the council, for data submission and collection, for data dissemination and publication, for access to council data and for enforcement and penalties; requiring a certain report from the Legislative Budget and Finance Committee; and extending the sunset date of the act.

Considered the second time and agreed to,

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

SB 521 (Pr. No. 962) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for assessment and commitment of sexually violent delinquent children and young adults.

Considered the second time and agreed to,

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

BILL OVER IN ORDER

HB 106 -- Without objection, the bill was passed over in its order at the request of Senator PICCOLA.

BILL ON SECOND CONSIDERATION
AND REREFERRED

HB 200 (Pr. No. 229) -- The Senate proceeded to consideration of the bill, entitled:

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 exclusions from tax.

Considered the second time and agreed to,
Ordered, To be printed for third consideration.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

BILL OVER IN ORDER

SB 264 -- Without objection, the bill was passed over in its order at the request of Senator PICCOLA.

BILLS REREFERRED

SB 443 (Pr. No. 966) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for the right of sworn members of the Pennsylvania State Police to enter into the deferred retirement option programs; and establishing the Deferred Retirement Option Program in State government for the members of the Pennsylvania State Police.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

SB 550 (Pr. No. 967) -- The Senate proceeded to consideration of the bill, entitled:

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 carryover, carryback, refund and assignment of credit and for a limitation on credits.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

BILLS OVER IN ORDER

SB 581 and **SB 586** -- Without objection, the bills were passed over in their order at the request of Senator PICCOLA.

BILL ON SECOND CONSIDERATION
AND REREFERRED

SB 778 (Pr. No. 937) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, providing for keystone innovation zones.

Considered the second time and agreed to,
Ordered, To be printed for third consideration.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

BILL OVER IN ORDER

HB 1006 -- Without objection, the bill was passed over in its order at the request of Senator PICCOLA.

BILLS REREFERRED

HB 1105 (Pr. No. 1307) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, providing for the expiration of the Pennsylvania Veterans' Memorial Commission and for the administration of the Pennsylvania Veterans' Memorial Trust Fund.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

HB 1133 (Pr. No. 1335) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, further providing for definitions, for property held by courts, public officers and agencies and for depositing funds relating to abandoned and unclaimed property.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

COMMUNICATIONS FROM THE GOVERNOR
TAKEN FROM THE TABLE

Senator ROBBINS called from the table communications from His Excellency, the Governor of the Commonwealth, recalling the following nominations, which were read by the Clerk as follows:

MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 11, 2003, for the appointment of Oliver Byrd, 6955 Penn Avenue, Pittsburgh 15208, Allegheny County, Thirty-eighth Senatorial District, as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice Allen Wenger, Hershey, whose term expired.

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

EDWARD G. RENDELL
Governor

MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 10, 2003, for the appointment of G. Craig Caba, 2520 Lambs Gap Road, Enola 17025, Cumberland County, Thirty-first Senatorial District, as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice William A. Cornell, Sr., Wormleysburg, whose term expired.

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

EDWARD G. RENDELL
Governor

MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION

June 17, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 11, 2003, for the appointment of Bishop William R. Clark, 1546 Woodlawn Avenue, Erie 16510, Erie County, Forty-ninth Senatorial District, for appointment as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice Leroy Patrick, Pittsburgh, whose term expired.

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

EDWARD G. RENDELL
Governor

MEMBER OF THE PENNSYLVANIA HISTORICAL
AND MUSEUM COMMISSION

June 16, 2003

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated March 10, 2003, for the appointment of Neil Oxman, 122 Rockland Road, Merion 19066, Montgomery County, Seventeenth Senatorial District, as a member of the Pennsylvania Historical and Museum Commission, to serve until the third Tuesday of January 2007, and until his successor is appointed and qualified, vice John W. Lawrence, Swarthmore, whose term expired.

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

EDWARD G. RENDELL
Governor

NOMINATIONS RETURNED TO THE GOVERNOR

Senator ROBBINS. Madam President, I move that the nominations just read by the Clerk be returned to His Excellency, the Governor.

A voice vote having been taken, the question was determined in the affirmative.

The PRESIDENT. The nominations will be returned to the Governor.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Madam President, at this time I request a recess of the Senate and advise the Members that there will be no more votes this evening, but that the Senate Committee on Appropriations will be meeting during this recess, probably in approximately an hour, and that all Members of the Committee on Appropriations should stay close to their speaker boxes so that they can be called to that meeting. Thereafter, the Senate will reconvene and close out for the day. The adjournment motion, when it is made, Madam President, will be until 11 o'clock tomorrow morning.

The PRESIDENT. Senator Piccola requests a recess for a meeting of the Committee on Appropriations. Without objection, the Senate will stand in recess.

AFTER RECESS

The PRESIDENT pro tempore (Robert C. Jubelirer) in the Chair.

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

BILLS REPORTED FROM COMMITTEE

Senator THOMPSON, from the Committee on Appropriations, reported the following bills:

SB 100 (Pr. No. 992) (Amended) (Rereported)

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, providing for the imposition and collection of an earned income and net profits tax by school districts after approval by the electors.

HB 113 (Pr. No. 2099) (Amended) (Rereported)

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, requiring school districts to reopen their 2003-2004 budgets; imposing limitations on certain unreserved fund balances; further providing for auxiliary service and for cost of tuition and maintenance of certain exceptional children in approved private schools; providing for firefighter and emergency service training; further providing for Education Support Services Program, for education empowerment districts, for mandate waiver program and for school improvement grants; further defining "educational improvement organization" and "scholarship organization"; further providing for payments on account of pupils enrolled in vocational curriculums and for small district assistance; providing for basic education funding for 2002-2003 school year;

further providing for payments to intermediate units, for special education payments to school districts and for Commonwealth reimbursements for charter schools and cyber charter schools; and making appropriations, repeals and an editorial change.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 1**

**BILL REREPORTED FROM COMMITTEE
AS AMENDED ON SECOND CONSIDERATION**

HB 113 (Pr. No. 2099) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, requiring school districts to reopen their 2003-2004 budgets; imposing limitations on certain unreserved fund balances; further providing for auxiliary service and for cost of tuition and maintenance of certain exceptional children in approved private schools; providing for firefighter and emergency service training; further providing for Education Support Services Program, for education empowerment districts, for mandate waiver program and for school improvement grants; further defining "educational improvement organization" and "scholarship organization"; further providing for payments on account of pupils enrolled in vocational curriculums and for small district assistance; providing for basic education funding for 2002-2003 school year; further providing for payments to intermediate units, for special education payments to school districts and for Commonwealth reimbursements for charter schools and cyber charter schools; and making appropriations, repeals and an editorial change.

Considered the second time and agreed to,

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

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 2**

**BILL REREPORTED FROM COMMITTEE
AS AMENDED ON SECOND CONSIDERATION**

SB 100 (Pr. No. 574) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, providing for the imposition and collection of an earned income and net profits tax by school districts after approval by the electors.

Considered the second time and agreed to,

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

**UNFINISHED BUSINESS
CONGRATULATORY RESOLUTIONS**

The PRESIDENT pro tempore laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Congratulations of the Senate were extended to Mr. and Mrs. Jack Weller, Justin Latchford and to Project Upward Bound of University Park by Senator Corman.

Congratulations of the Senate were extended to Mr. and Mrs. George Bennick by Senator Helfrick.

Congratulations of the Senate were extended to Mary Novella Eley, Veronica I. Pugh, Denise L. Clark, Ernest E. Pinghore, Frederick Cotton and to Theodore Chadrick by Senator Kitchen.

Congratulations of the Senate were extended to Brian Shupe and to Robert R. Hare by Senator Kukovich.

Congratulations of the Senate were extended to Mr. and Mrs. Gerard H. McQuillen, Mr. and Mrs. Ervin Boudeman, Mr. and Mrs. George S. Wright, Mr. and Mrs. Raymond L. Rice, Mr. and Mrs. Maxwell R. Shief, Mr. and Mrs. Carl L. Cohick, Mr. and Mrs. Arthur D. Dymeck and to Mr. and Mrs. Richard L. Lane by Senator Madigan.

Congratulations of the Senate were extended to Larry B. Sharer by Senator Mowery.

Congratulations of the Senate were extended to Thomas A. Starnowsky by Senator Piccola.

Congratulations of the Senate were extended to Annie Harrison by Senator Schwartz.

Congratulations of the Senate were extended to James E. Yiaski and to Alliance Environmental Systems, Inc., of West Chester, by Senator Thompson.

Congratulations of the Senate were extended to Robyn Armstrong by Senators Thompson and Erickson.

Congratulations of the Senate were extended to Mr. and Mrs. Dean Fetzer by Senator Wozniak.

BILLS ON FIRST CONSIDERATION

Senator THOMPSON. 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 by voice vote.

The bills were as follows:

SB 131, SB 684, SB 699, SB 711, SB 751, SB 752, HB 89, HB 297, HB 674, and HB 898.

And said bills having been considered for the first time,

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

PETITIONS AND REMONSTRANCES

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

Senator TARTAGLIONE. Mr. President, I would like to enter into the record a statement under Petitions and Remonstrances.

(The following prepared statement was made a part of the record at the request of the gentlewoman from Philadelphia, Senator TARTAGLIONE:)

Yesterday afternoon, just prior to consideration of Senate Bill No. 259, I was called to my office. When I returned to the floor, the Senate had already begun a roll-call vote on the bill.

I cast a "yes" vote on the particular question pending before the Senate in belief that we were considering Senate Bill No. 259 on final passage. Unfortunately, after the roll call had been completed, I learned the vote was on a "Motion to Table."

It was not my intention to support a "Motion to Table," and I could not correct my vote because the roll call had been completed and the vote had already been announced.

Because the question was defeated by a comfortable margin--and expecting a lengthy debate on final passage of the bill--I decided not to inconvenience and burden the Members by requesting that the previous vote be reconsidered.

My support of the effort to repeal the motorcycle helmet requirement is well documented and longstanding. Unfortunately, yesterday, circumstances on the Senate floor created a situation that did not properly reflect my position.

I wanted to take a moment today to correct the record on this important vote and ensure that neither my intentions nor my support for Senate Bill No. 259 are misrepresented or misinterpreted.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

WEDNESDAY, JUNE 18, 2003

Off the Floor	RULES AND EXECUTIVE NOMINA- TIONS (to consider Senate Resolutions No. 99 and 110; and certain executive nominations)	Rules Cmte. Conf. Rm.
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WEDNESDAY, JUNE 25, 2003

1:30 P.M.	ENVIRONMENTAL RESOURCES AND ENERGY (public hearing on Pennsylvania's Land Recycling Program)	Room 8E-B East Wing
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ADJOURNMENT

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I move that the Senate do now adjourn until Wednesday, June 18, 2003, at 11 a.m., Eastern Daylight Saving Time.

The motion was agreed to by voice vote.

The Senate adjourned at 7:15 p.m., Eastern Daylight Saving Time.