

EXCUSED—5

Bunt Daley Evans Pistella
Colaizzo

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

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same without amendment.

BILLS SIGNED BY SPEAKER

Bills numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the titles were publicly read as follows:

HB 109, PN 2852

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, further defining "permanent resident"; and authorizing counties to make appropriations to municipal corporations for disaster or emergency aid.

HB 595, PN 2765

An Act amending the act of May 29, 1956 (1955 P.L.1804, No.600), referred to as the Municipal Police Pension Law, providing for early retirement.

HB 911, PN 2877

An Act amending the act of July 9, 1990 (P.L.340, No.78), known as the Public Safety Emergency Telephone Act, further providing for definitions, for the powers and duties of the Pennsylvania Emergency Management Agency and the Pennsylvania Public Utility Commission, for county plans, for training, for telephone records, for rules and regulations and for expenditures for mobile communications equipment; and providing for immunity.

HB 1495, PN 2829

An Act authorizing and directing the Department of General Services, with the approval of the Governor, to sell and convey to James E. Hedglin and Cheryl Hedglin, husband and wife, certain surplus land situate in Sandy Creek Township, Venango County, Pennsylvania; authorizing and directing the Department of General Services, with the approval of the Department of Environmental Protection and the Governor, to sell and convey to Marc G. and Susan K. Springman, certain land situate in Old Lycoming Township, Lycoming County, Pennsylvania; and authorizing the Department of General Services, with the approval of the Governor and the Commissioner of the Pennsylvania State Police, to sell and convey to B.D. and D. Associates certain land situate in the City of Bethlehem.

Whereupon, the Speaker, in the presence of the House, signed the same.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1520, PN 1842**, entitled:

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

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

The SPEAKER. It is the understanding of the Chair that the amendments prepared by the gentleman, Mr. Cohen, are withdrawn.

On the question recurring,
Will the House agree to the bill on third consideration ?
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally ?

PARLIAMENTARY INQUIRY

Mr. ARMSTRONG. Mr. Speaker ?

The SPEAKER. The gentleman, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Speaker.

According to the bill, what I am reading, it says that if this would go on the ballot, at the closest election, that would be 3 months after we vote it. So what my thought is, is this going to be in the general election of this year ?

The SPEAKER. Without having a calendar before me, I think the answer is yes, because this is a House bill that must go to the Senate; it needs 3 days in the Senate — that is assuming that it goes 1, 2, 3 over there, and that is highly unlikely that it would be considered this week — and you add 3 months to that, and I believe it would take it past the primary and over into the general election. So I agree with your timing estimate.

Mr. ARMSTRONG. Okay. The reason I raised that is because we have had other ballot questions in the primary elections and even some in odd-numbered years. The reading of some of the past ballot positions, historically, they have been on the general election in an even-numbered year to allow for the majority of the people to come out and vote for those issues.

So if that is the case with this, I think it is following the historical way that things have been done in the past, although we have deviated off that in the last couple years, and I think that has created some concern with some of the constituents that I have talked to. So that should alleviate some of those problems.

However, at this point, may I just comment on the bill, Mr. Speaker ?

The SPEAKER. The gentleman is in order.

Mr. ARMSTRONG. Thank you, Mr. Speaker.

If all of us would take a look at this bill, it is a constitutional change, and I think every time we have a constitutional change we should just pause and make sure that we are doing the right thing, because it will have a lasting effect, and it is putting our stamp of

approval upon an issue that is going to be looked at microscopically by certain individuals if not a lot of individuals.

So I would ask for you to take a look at that. It may create some problems for some people who have been accused of certain crimes and are innocent, and they find themselves behind bars and not able to have bail until they can prove their innocence. So it does create that problem.

Unfortunately, at this time of history where so many of us are opposed to drug dealing and the issue of illegal drugs and it is sexy to be able to paint an issue that—

The SPEAKER. The gentleman will yield.

Conferences on the floor, conferences on the floor, please break up.

Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Speaker.

Again, as this issue was shared with us, many of us, this was an attempt to keep drug dealers behind bars, to keep them from escaping the country from prosecution and conviction, and if that is the primary role that this is going to play, then I think most of us can be in favor of that.

However, it does not just impact those kinds of individuals. It goes much further. It can be interpreted by judges to go much further, and I would ask for us to try to be a little bit more cognizant that we do not get involved with some of these very emotional issues and, in the long term, impact some very innocent people.

I may actually be voting in favor of this, because I do not want those drug dealers to leave the country, and if it gives the judges that power to do that, then so be it. But I also would like it to be a matter of record that the judges, should they ever look at the record, that they execute their judicial decisions with clarity and with also a carefulness as to whom they do not allow to have bail, especially if there is any possibility of a person being very innocent of the charge.

So thank you for your time and the consideration, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

PARLIAMENTARY INQUIRY

The SPEAKER. The gentleman, Mr. Rohrer.

Mr. ROHRER. Thank you, Mr. Speaker.

Somewhat following up on the member from Lancaster County, Mr. Armstrong, in reviewing the language on this proposed amendment, I have, I guess, a question relative to the technical aspects of a part of how it is written, and I think it may— I am not quite sure how to address this; I have a comment, but perhaps a question for the Chair as well.

In the last portion of the amendment it says that following the adoption by the House here, “The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election occurring at least three months after the proposed constitutional amendment is passed by the General Assembly...,” and then it says that it needs to be in conformance with section 1, Article XI, of the Constitution. If I look at section 1, Article XI, the procedure for introducing amendments, it says at the fourth line there, “...the Secretary of the Commonwealth shall cause the same to be published three months before the next general election...” Then if we go back to

Article VII of the Constitution, the definition for “General Election Day” is that election to “...be held biennially on the Tuesday next following the first Monday of November in each even-numbered year...” and my question is that even though this may in fact be held on the general election, being fall of this year, and even though there have been many amendments, proposed amendments, passed by the House in the past that have included primary election, the Constitution does not allow for mentioning or offering amendments to the people of the State in primary elections for a number of reasons. And really, we never did that in this State until 1968, before the amendment that was put in place that created the unified court system and gave the court the authority to — they think — to tell us what to do relative to even funding of the court system.

Now, my interpretation is that we cannot do that and that perhaps even the wording of this amendment is not constitutional in construction, because we have no authority as a General Assembly to prescribe any other day other than the general election in an even-numbered year.

The SPEAKER. The Chair thanks the gentleman.

The Chair does not think it is necessary to express an opinion as to the gentleman’s remarks, because I have already expressed an opinion that this cannot be ready for the primary.

Mr. ROHRER. Granted.

The SPEAKER. And I am not going to go out on that limb of expressing an opinion as to what the law is or is not without research, and it is not relevant to this particular bill at this particular moment.

Mr. ROHRER. Okay. I guess it would still be sufficient for me then on my own opinion as a member to say, as I read this to be, I do not believe that we as a House have the authority to even permit in writing the Secretary of the Commonwealth to publish before the people on any other day other than a general election, and by the fact that this one actually calls that out, I think that it is not our prerogative and we should not act upon this measure.

The SPEAKER. Did the gentleman ask a question of the Chair?

Mr. ROHRER. Well, I am not quite sure how to handle that, whether, you know, there ought to be a move for constitutionality of this and have us consider it, or perhaps to go over it and to consider it before we actually pass it at this point, or— I am kind of looking for some direction from you on how this perhaps ought to be addressed.

The SPEAKER. I think all I can give you is some comfort, and the comfort would be that it is not going to be on the ballot in the primary. So there is no useful purpose served by defeating the bill on the basis that I see, on the basis of our determination of constitutionality of, frankly, a moot point — moot in the sense that it cannot happen at the time of the primary. We are testing something for the sake of testing, not for the sake of making a determination.

Mr. ROHRER. Is there a possibility that if the Senate were to sit, for instance, and not act on it in accordance with the time for the general, that it could fall next primary?

The SPEAKER. The session would have been adjourned — I think. No; no. I am not sure of that, Mr. Rohrer.

Mr. ROHRER. Am I understanding—

The SPEAKER. I am not going to stand here and speculate. You have to make your argument and do what you have to do.

Mr. ROHRER. Okay. I guess my comment would be—
 The SPEAKER. Mr. Rohrer, this is something a lawyer should never do, and that is give advice without research, but I am going to take that chance right now.

My recollection of the way this works is that there— My recollection of the way this would work is there is a deadline date — and I am going to say it is in June sometime — for advertising. The advertising must take place a minimum of 3 months prior to the general election, and that general election is November 3, 5, 6, whatever.

The constitutional amendment, to be effective, must be a bill that has passed in two succeeding sessions. That would be the session that it passed in 1995 and then again here in 1998, which are two different terms. I believe that if it held over for some reason to the next primary, it would not be the same term, and therefore, it would not be effective. It would not be the next succeeding term, but rather, it would be the third term rather than the second term.

Mr. ROHRER. Okay. Thank you for your comments on that then.

The SPEAKER. By way of caveat, the Parliamentarian does not necessarily agree with me. That is why I made a mistake saying anything.

PARLIAMENTARY INQUIRY

The SPEAKER. Mr. Gordner.

Mr. GORDNER. Parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. GORDNER. In reading Article No. XI, dealing with amendments, the language where it talks about "...three months before the next general election..." is when the bill passes the first time during a session. The language then goes on to say that when it passes a second session, then it should just be "...three months after being so agreed to by the two Houses...." So that 3 months prior to the general election applies only upon the first time that it has been approved by the House and the Senate, the way I am reading the amendment. Is that correct?

The SPEAKER. It is the opinion of the Parliamentarian, Judge Myer, that it shall be published as aforesaid— It talks about the language up above, which takes us beyond that. We are not going to— We are doing what we pay those big bucks to the judges for. We are not going to do that here anymore; I am stopping.

Mr. Rohrer, if you want to test the constitutionality of it, please feel free to do it. I am not going to engage in this any longer. You fellows, you people engage in it if you like, but get me out of it. I do not practice law from here.

On the question recurring,
 Shall the bill pass finally?

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

YEAS-191

Adolph	Egolf	Maitland	Schroder
Allen	Fairchild	Major	Schuler
Argall	Fargo	Manderino	Scrimenti
Armstrong	Feese	Markosek	Semmel

Baker	Fichter	Marsico	Serafini
Bard	Fleagle	Masland	Seyfert
Barley	Flick	Mayermik	Shaner
Barrar	Gannon	McCall	Smith, B.
Battisto	Geist	McGeehan	Smith, S. H.
Bebko-Jones	George	McGill	Snyder, D. W.
Belardi	Gigliotti	McIlhattan	Staback
Belfanti	Gladeck	McNaughton	Stairs
Benninghoff	Godshall	Melio	Steelman
Birmelin	Gordner	Michlovic	Steil
Bishop	Gruitza	Micozzie	Stern
Blaum	Gruppo	Miller	Stetler
Boscola	Habay	Mundy	Stevenson
Boyes	Haluska	Myers	Strittmatter
Brown	Hanna	Nailor	Sturla
Browne	Harhart	Nickol	Surra
Buxton	Hasay	O'Brien	Tangretti
Caltagirone	Hennessey	Olasz	Taylor, E. Z.
Cappabianca	Herman	Oliver	Taylor, J.
Cam	Hershey	Orie	Tigue
Casorio	Hess	Perzel	Travaglio
Cawley	Horsey	Pesci	Trello
Chadwick	Hutchinson	Petrarca	Trich
Civera	Itkin	Petrone	True
Clark	Jadlowiec	Phillips	Tulli
Clymer	James	Pippy	Vance
Cohen, L. I.	Jarolin	Platts	Van Horne
Cohen, M.	Josephs	Preston	Veon
Colafella	Kaiser	Ramos	Vitali
Cornell	Keller	Raymond	Walko
Corpora	Kenney	Readshaw	Washington
Corrigan	Kirkland	Reber	Waugh
Cowell	Krebs	Reinard	Williams, A. H.
Coy	LaGrotta	Rieger	Williams, C.
Curry	Laughlin	Roberts	Wilt
Dally	Lawless	Robinson	Wogan
DeLuca	Lederer	Roebuck	Wojnaroski
Dempsey	Leh	Rooney	Wright, M. N.
Dent	Lescovitz	Ross	Yewcic
Dermody	Levdansky	Rubley	Zimmerman
DeWeese	Lloyd	Sainato	Zug
DiGirolamo	Lucyk	Santoni	
Donatucci	Lynch	Sather	Ryan,
Druce	Maher	Saylor	Speaker
Eachus			

NAYS-2

Carone Rohrer

NOT VOTING-3

Butkovitz Thomas Youngblood

EXCUSED-5

Bunt Daley Evans Pistella
 Colaizzo

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

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

**STATEMENT BY PARLIAMENTARIAN
 SUBMITTED FOR THE RECORD**

The SPEAKER. Mr. Rohrer, for your information and the information of the members, this point deserves more careful study than I obviously was able to give it. I have asked the

Parliamentarian to do research on it, do a memorandum, and insert it in the record at this point. I have reserved a spot in the record to submit a statement from the Parliamentarian, which I will also circulate to the members.

The following statement was later submitted for the Legislative Journal:

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

DATE: February 23, 1998
SUBJECT: Constitutional Amendment
TO: MATTHEW J. RYAN
Speaker
FROM: Clancy Myer, Parliamentarian

During the session of Monday, February 9, 1998, while considering House Bill 1520, a Joint Resolution amending the Constitution, several questions arose regarding certain requirements of Article XI, Section 1, of the Constitution of Pennsylvania pertaining to adoption of constitutional amendments. In particular, a question was raised by Representative Rohrer as to whether or not the General Assembly had the authority to instruct the Secretary of the Commonwealth to submit the proposed constitutional amendment to the voters at the first primary, general or municipal election occurring at least three (3) months after the proposed amendment is passed by the General Assembly for the second time, or does the Constitution require the proposed amendment be submitted to the electorate at a general election only.

Article XI, Section 1, of the Constitution of Pennsylvania provides as follows:

“Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe...” (emphasis added)

The Pennsylvania Supreme Court addressed this issue in the case of *Commonwealth v. King*, 278 Pa. 280 (1923). The Court observed that the provision of the Constitution calling upon the Secretary to cause the second notice “to be published in the manner aforesaid” means the required notice must appear in at least two (2) newspapers in every county when possible, and, not (emphasis added) that it must be published prior

to a general election. It is sufficient that the publication appear in the proper publications three (3) months before the day set for the electorate to vote on the proposed amendment.

It is clear that the first passage of a proposed constitutional amendment must be advertised three (3) months before the next general election. The reason for this requirement is so voters are aware of the proposed amendment and to let the public ascertain the attitude of candidates for election to the next General Assembly. This requirement is not necessary upon second passage, since the General Assembly will no longer be voting upon the proposal, but rather the electorate itself will determine whether or not the proposed amendment should be passed or defeated.

Also, please note that Article XI, Section 1, specifically authorizes the General Assembly to set the time for submission of the amendment to the voters, as long as it is at least three months after final passage by the General Assembly. (see underlined portion of Article XI, Section 1, on page 1 of this memorandum) This is accomplished by setting the designated election date for submission of the amendment to the voters in the Joint Resolution. Thus, it is constitutionally permissible upon second passage of a proposed amendment to have the electorate vote on the proposal during a primary or municipal election.

One other issue must be addressed. During debate on House Bill 1520, the question was raised that since this Joint Resolution had been passed in the previous session of the General Assembly, and had been properly advertised prior to the election of the current General Assembly, what would happen if, upon second passage, this proposed amendment would not be approved until October or November of 1998, and, thus, could not be submitted to the electorate for approval until at least 1999. As you are aware, when a proposed constitutional amendment is voted upon during the first session, the proposed amendment must be voted on at least three months before the general election so that the advertising requirements of the Constitution can be met. It is my opinion this deadline does not exist for approval by the General Assembly of the proposed amendment in the second session. Specifically, this second approval can occur anytime in the second session, including September, October and November, of even numbered years, and, thus, House Bill 1520 could be passed by the Senate as late as November 1998, and submitted to the electorate in 1999 or 2000.

On at least one occasion the General Assembly has done this. In 1982, a Joint Resolution proposing a constitutional amendment authorizing special tax provisions for tax payers in cities was passed by the General Assembly for the second time on November 23, 1982, and the proposed amendment was submitted to and approved by the electorate on November 4, 1984. Thus, there is no requirement the entire process of amending the Constitution occur within two (2) sessions of the General Assembly. The proposed amendment can be submitted to the voters for approval during the third session of the General Assembly. The reason the above-noted amendment was not submitted to the voters until November 1984, was that the aforementioned Joint Resolution specifically instructed the Secretary of the Commonwealth to submit the proposed amendment to the voters at the next general election. Otherwise, it could have been voted upon at the primary or municipal elections in 1983.

If you need further information, please advise.

cc: All House Members

The SPEAKER. Does the majority leader have any further business? Does the Democratic leader have any further business? Any announcements of committee meetings?

ANNOUNCEMENT BY MR. STEIL

The SPEAKER. Mr. Steil.

Mr. STEIL. Thank you, Mr. Speaker.

The special task force on tax reform, dealing with the Sterling Act, will meet immediately upon adjournment in room 39, East Wing; immediately upon adjournment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

Any further announcements?

DEMOCRATIC CAUCUS

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

Mr. COY. Thank you, Mr. Speaker.

The Democratic members will caucus at 10 a.m. tomorrow in the caucus room.

The SPEAKER. The Chair thanks the gentleman.

Members of the Democratic Caucus are advised they will meet tomorrow at 10 a.m. in caucus.

Mr. Fargo advises that there will be no Republican caucus in the morning.

ADJOURNMENT

The SPEAKER. Are there any corrections to the record? Any further business? Announcements?

Hearing none, the Chair recognizes the gentleman, Mr. Maher, from the county of Allegheny.

Mr. MAHER. Mr. Speaker, I move that this House do now adjourn until Tuesday, February 10, 1998, at 11 a.m., e.s.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 4:57 p.m., e.s.t., the House adjourned.