

SB 23 (Pr. No. 66) (Amended) (Rereported)

An Act amending the act of August 6, 1941 (P. L. 861, No. 323), entitled, as amended, "Pennsylvania Board of Probation and Parole Law," further providing for investigations and recommendations to the Board of Pardons and for grants of parole.

SB 50 (Pr. No. 67) (Amended) (Rereported)

An Act amending the act of July 16, 1968 (P. L. 351, No. 173), entitled, as amended, "Prisoner Pre-release Plan Law," further providing for release plan for prison inmates; and making editorial changes.

SENATE CONCURRENT RESOLUTION**RECESS ADJOURNMENT**

Senator LOEPER offered the following resolution, which was read, considered and adopted:

In the Senate, February 13, 1995

RESOLVED, (the House of Representatives concurring), That when Special Session No. 1 adjourns this week it reconvene on Monday, February 27, 1995, unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when Special Session No. 1 of the House of Representatives adjourns this week it reconvene on Monday, February 27, 1995, unless sooner recalled by the Speaker of the House of Representatives.

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

CALENDAR**THIRD CONSIDERATION CALENDAR****BILL ON THIRD CONSIDERATION AMENDED**

SB 4 (Pr. No. 4) -- The Senate proceeded to consideration of the bill, entitled:

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

On the question,

Will the Senate agree to the bill on third consideration?

Senator BRIGHTBILL offered the following amendment No. A0858:

Amend Title, page 1, line 2, by inserting after "the" where it appears the first time: composition and

Amend Sec. 1 (Sec. 9), page 2, lines 8 and 9, by inserting brackets before and after "two-thirds or"

Amend Sec. 1 (Sec. 9), page 2, lines 9 and 10, by inserting brackets before and after "as is specified by law"

Amend Sec. 1 (Sec. 9), page 2, lines 12 through 14, by striking out "; one shall be" in line 12, all of line 13 and "corrections expert" in line 14 and inserting: ; one]. One shall be a [member of the bar,] crime victim; one a [penologist,] corrections expert;

Amend Sec. 1 (Sec. 9), page 2, line 14, by striking out the brackets before and after "doctor of medicine,"

Amend Sec. 1 (Sec. 9), page 2, line 15, by inserting an underscored comma after "psychologist"

On the question,

Will the Senate agree to the amendment?

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

Senator BRIGHTBILL. Mr. President, very simply, it would again permit a doctor of medicine to be a member this board.

LEGISLATIVE LEAVES

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

Senator FISHER. Mr. President, I request temporary Capitol leaves for Senator Robbins, Senator Loeper, and Senator Greenleaf.

The PRESIDENT. Senator Fisher requests Capitol leaves for Senator Robbins, Senator Loeper, and Senator Greenleaf. Without objection, those leaves will be granted.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request temporary Capitol leaves for Senator Afflerbach, Senator Dawida, and Senator O'Pake.

The PRESIDENT. Senator Mellow requests temporary Capitol leaves for Senator Afflerbach, Senator Dawida, and Senator O'Pake. Without objection, those leaves will be granted.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

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

Senator SCHWARTZ offered the following amendment No. A0901:

Amend Sec. 1 (Sec. 9), page 2, lines 6 and 7, by inserting bracket before "the" in line 6 and after "three" in line 7 and inserting immediately thereafter: five

Amend Sec. 1 (Sec. 9), page 2, line 10, by inserting brackets before and after "three" and inserting immediately thereafter: five

Amend Sec. 1 (Sec. 9), page 2, line 13, by striking out the brackets before "member" and after "bar" and inserting immediately thereafter: one a

Amend Sec. 1 (Sec. 9), page 2, line 14, by inserting a bracket before "and" and after "third" and inserting immediately thereafter: one

Amend Sec. 1 (Sec. 9), page 2, line 16, by inserting brackets before and after the period after "behavior" and inserting immediately thereafter: and the fifth a citizen who shall serve as the chairper

On the question,

Will the Senate agree to the amendment?

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

Senator SCHWARTZ. Mr. President, briefly, the bill we are dealing with, Senate Bill No. 4, would require unanimous agreement and a unanimous vote to offer a pardon. I believe that is a pretty serious step that we would be taking and in consideration of that my amendment would change

membership slightly. It would address the two members who are not being changed by the bill, and they are the Lieutenant Governor and the Attorney General. What it would do is say that elected officials would not be able to serve, that instead those two people would be replaced by gubernatorial appointees, one of whom would be a member of the bar and the other would be a citizen chosen by the Governor.

My concern, Mr. President, and the reason for offering this amendment, is that, in fact, we are requiring this board to be quite deliberative. We are asking for them to put aside outside considerations to consider seriously both this offender and also public safety, and my concern here is that we not allow personal, individual political considerations to enter into these very serious deliberations of whether someone would continue to serve a life sentence or not. Obviously, it is not likely to happen very often, but we certainly want to be sure that someone is not, instead of looking at the facts and instead of looking at the individual situation, instead thinking how is this going to appear when I speak next week or how is this going to appear when I run for higher office?

Mr. President, let me make it absolutely clear that I am not in any way casting doubt on anyone who has already served on the Board of Pardons or currently serves on the Board of Pardons, in any way suggesting that they might not be looking at this so carefully, but I think the only way we can be absolutely sure that it does not happen in the future is to make sure that we do not have an elected official on the board, that we do not have a Lieutenant Governor or the Attorney General serving, but instead that we have a member of the bar, and again, it is of the Governor's choosing, and maybe even more importantly, that we also have an average citizen, someone who does have probably the concern of other people out there who are just like them, who are concerned about public safety, who will not have a particular perspective. Almost everyone else on the board has a particular perspective. The bill actually calls for a victim's advocate representative, and there are people who are coming with a particular viewpoint, and this way it would be someone who really would be coming only with the interest of protecting public safety and giving fair and just deliberations on this Board of Pardons.

Again, Mr. President, we are saying if we are going to call for a unanimous vote, we want to make sure that every person on this Board of Pardons really will do that within the context of the findings with which they are presented and the recommendations with which they are presented, and I think that it is something that the public would want us to be doing to make sure that, in fact, there are not these other outside considerations that might be made. I hope that I will have agreement from some of my other colleagues on this. I believe it is one that the public would be quite in favor of if they were voting on it today.

Thank you, Mr. President.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. The Chair notes the presence on the floor of Senator Loeper and Senator Greenleaf, and their temporary Capitol leaves are cancelled.

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

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

Senator BELL. Mr. President, I rise to oppose the proposal of the gentlewoman from Philadelphia, Senator Schwartz. What she is going to give us is a nameless, faceless board, a board that can take action in releasing murderers and lifers who maybe will move to New Jersey or Ohio. The Attorney General and the Lieutenant Governor are elected public officials. The people of Pennsylvania have expressed their approval that they serve in these high offices. Also, both probably will appear once again in front of the people for a vote. So this gives responsibility to a board.

Now, I am sorry the gentlewoman did not make a proposal to have an 80 percent approval. That I could support.

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

Senator FUMO. Mr. President, I rise in support of the amendment for a very simple, practical reason. I believe that you, Mr. President, campaigned on a platform that you would never vote to release anyone, so just given that fact of reality right now, but more importantly, I cannot see, after the last election and the horrible incident with Mr. McFadden, where any elected official would ever vote to pardon anybody. And if that is going to be the absolute end, and we are talking about making it unanimous, probably the more proper constitutional amendment is to abolish the Board of Pardons. And there are many people who are of conservative view, obviously our Governor said life means life, and I think in the end we are probably going to get to a point where we are going to rethink this, but to say that any elected official, after what happened last year, would ever vote to pardon anybody is just a non sequitur. And the amendment makes sense from that standpoint. If we are going to have a Board of Pardons, if we are going to spend the money to fund a Board of Pardons but, in reality, never pardon anybody, why are we kidding the public and wasting money even on a Board of Pardons?

The reality is that you do have an elected official who ultimately makes this decision, and that is the Governor, and this constitutional amendment makes it even more difficult by saying that vote has to be unanimous. So now you are going to get two elected officials, particularly one, the Attorney General, who always runs on law and order, who is going to say he is not going to let anybody out regardless of how exemplary.

In fact, if you look at the history, with the exception of Mr. McFadden and maybe two or three others, in all the years of Thornburgh and Casey, the overwhelming majority of pardons--and read some of those records--you will find were for people for whom we did not want to pay. They were people who were dying of cancer, people who were dying of AIDS, people who were crippled, whom we did not even want to keep in prison, in addition to having great, exemplary records and having served in jail for decades. It was an economic decision in the Casey administration. It was not a great merciful decision that was made by a liberal Democratic governor.

So let us face up to the fact: if we are never going to give a pardon, then why even have a Board of Pardons? At least this amendment makes some sense out of a system that maybe eventually will die down.

I will be the first to tell you that if we keep the lid on what is going on and we keep telling everyone, you know, right now we have a relatively calm situation in our prisons. If life means life forever, and I know that is a very popular thing to say today, but we have to rethink it. Either we are for some type of rehabilitation, either we believe in this or not, but to do this silly thing by saying, and not silly in the sense that we should have it be unanimous is silly, but by saying to ourselves that we really believe that someday, 5 years, 10 years, 20 years from now, some elected official is going to put his entire career on the line by gambling even on the most exemplary prisoner, after McFadden, is crazy. So either adopt the amendment or let us change the amendment to an amendment to the Constitution to just do away with the Board of Pardons and stop kidding ourselves and probably wasting millions of dollars by having the hearings and going through all the charades and doing all the expertise and then you will never get five votes, at least not during the first 4 years, and assuming reelection, the first 8 years, from just what you have said, Mr. President. So why not just abolish it? Either do something smart or do something at least that is economical.

I said it before, we are tough on crime these next couple of weeks, as we were the weeks before this and as we will be in the months in the future, but we are not being smart about crime, and the answer to the problem is not necessarily going to come with toughness. It requires a certain degree of intelligence. Let us not kid anybody. I support the amendment. I am glad that my colleague from Philadelphia offered it, and I think we all ought to really stop and sit back and think for a minute about what we are doing. Are we going to waste the taxpayers' money by having a Board of Pardons that never issues a pardon? That is just as dumb as anything else I have heard up here.

Thank you, Mr. President.

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

Senator FISHER. Mr. President, I join with the gentleman from Delaware, Senator Bell, and rise in opposition to the amendment of the gentlewoman from Philadelphia, Senator Schwartz.

Mr. President, what this amendment would do is take the two people off the Board of Pardons who currently are there by virtue of their election. First, the Lieutenant Governor, who clearly is a representative of the administration on that Board of Pardons, as well as representing the people, and who, pursuant to the Constitution, serves as the chairman of the Board of Pardons. Secondly, we would then be taking off the chief law enforcement officer of this Commonwealth and removing the Attorney General from the Board of Pardons. Mr. President, I think it is entirely appropriate that we keep these two top statewide elected officials on the Board of Pardons.

The bill which is before us, Mr. President, is a constitutional amendment. Senate Bill No. 4 is a constitutional amend-

ment. We are going to have to approve it in two consecutive Sessions. The people of this Commonwealth are going to be given a chance to vote on it, but I believe that under this bill, in changing the requirement for a commutation for a life prisoner from the current majority vote to a unanimous vote, I believe we are doing the right thing. I believe if a person is convicted and sentenced to life only after the unanimous agreement by twelve jurors in their criminal case at the common pleas court level, it should require a unanimous vote to let that person have his sentence commuted from a life sentence to a minimum sentence.

Mr. President, I recognize that the change in this bill clearly was brought forward by the revelations that were brought before the people of Pennsylvania in the case of Reginald McFadden. But, Mr. President, I believe it is time, because so many people across Pennsylvania said to me, and I am sure to you and to many others, that they thought a life sentence in this Commonwealth meant a life sentence. Well, in fact, it does mean a life sentence, except in that case where the Board of Pardons acts. And I believe that with the approval of Senate Bill No. 4, and retaining the current makeup with the changes that are included in Senate Bill No. 4, that we will have a system that is not going to eliminate each and every commutation of a life sentence, but it is going to mean that only those people who have been properly rehabilitated, whether it be after a period of 18 years or 20 years or 23 years or 25 years, who all five members, including two statewide elected officials, agree on are good risks for society, that they will be the only ones who will have their sentence commuted.

Mr. President, I think it makes all the sense in the world to keep the Attorney General and the Lieutenant Governor on this Board of Pardons, and I would ask for a negative vote from the Members of the Senate.

Thank you, Mr. President.

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

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

YEAS—9

Andrezeski	Hughes	Schwartz	Wagner
Armstrong	Jones	Tartagliene	Williams
Fumo			

NAYS—40

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

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

The PRESIDENT. Senate Bill No. 4 will go over in its order, as amended.

BILL OVER IN ORDER

SB 7 -- Without objection, the bill was passed over in its order at the request of Senator FISHER.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR NO. 2

THIRD CONSIDERATION CALENDAR

BILLS REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 5, SB 11, SB 23 and SB 50 -- Without objection, the bills were passed over in their order at the request of Senator FISHER.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR NO. 1

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 4 (Pr. No. 68) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

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

On the question, Shall the bill pass finally?

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

YEAS-44

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

NAYS-5

Bodack	Hughes	Jones	Williams
Fumo			

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

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

UNFINISHED BUSINESS

PETITIONS AND REMONSTRANCES

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

The PRESIDENT pro tempore. Mr. President, I just want to make a few comments on Senate Bill No. 4 in the Special Session. This body has taken a significant step in dealing with the issue of the Board of Pardons. Mr. President, I voted for that bill today and I hope that as it moves on to the House of Representatives, if it is passed in the same way, that we will at least recognize that a significant step has been made.

The gentleman from Philadelphia, Senator Fumo, in his remarks on the amendment of the gentlewoman from Philadelphia, Senator Schwartz, I think truly identified some genuine concerns. The concern is, Mr. President, is this body prepared to do away with the Board of Pardons? By requiring unanimous consent of the five members of the Board of Pardons, potentially that does, indeed, exist. It would probably have been my druthers that we would not have given any one member veto power over the Board of Pardons. I would have preferred to have seen an 80 percent, a four out of five. Obviously, the will of this body was not ready for that, and I did not offer the amendment.

I frankly believe, Mr. President, that if we have an 80 percent membership of the Board of Pardons voting for a pardon after the required number of years, if we have the appropriate authorities dealing with the halfway house, with counseling, if we have a Governor who is prepared to be the backup and be very, very, careful in his review, then, frankly, I do not think we need a veto power in the Board of Pardons. If there is to be one, then, frankly, we should indeed move to the way Virginia did it and do away with all pardons. Mr. President, we did not do that.

I voted for the bill. I raised the issue. I hope it is at least reviewed in the House of Representatives. I recognize that the emotions of the consideration of what happened last year are here in this body today, but I hope that we do not overreact. Recognizing that in this Session I will continue to vote to strengthen various legislation dealing with crime and that this goes a long way, I still think as a deliberative body that it is important to review exactly what we are doing. I trust that the House of Representatives, as they get this, will do the very same.

Again, Mr. President, I felt compelled to make these comments in light of the fact that this body just made a significant step to change the way the Board of Pardons operates in the Commonwealth.

Thank you, Mr. President.

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

Senator FUMO. Mr. President, I rise, in essence, to second the remarks made by the gentleman from Blair, Senator