

WEEKLY SESSION NOTES

SENATE REPUBLICAN POLICY COMMITTEE – JOHN PIPPY, CHAIRMAN

Monday, July 6, 2009

[Senate Bill 14](#) (Mellow) would authorize the release of Project 70 restrictions and the sale of lands owned by the Borough of Old Forge, Lackawanna County for a consideration of not less than \$5,000. The funds received from the sale would be placed in a special account for the maintenance, improvement and development of Pagnotti Park. **Passed: 49-0.** *(The provisions of Senate Bill 14 were also included in House Bill 109 which passed the Senate on Thursday, July 7, 2009.)*

[Senate Bill 949](#) (Baker) would create the Interbranch Commission on Juvenile Justice Act. The bill would establish the Interbranch Commission on Juvenile Justice to undertake a review of the occurrences involving the Luzerne County juvenile justice system to ascertain how the Luzerne County juvenile justice system failed and to prevent similar events from occurring in the future. The commission would be composed of:

- Four members appointed by the Chief Justice of the Supreme Court of Pennsylvania. One of these members must have served on the Juvenile Court Judges' Commission.
- Four members appointed by the legislative leaders. The legislative appointees would have to be knowledgeable and experienced in juvenile law or providing services to juveniles and could not be members of the General Assembly; and
- Three members appointed by the Governor. One of these appointees would have to be a member of the general public and one would have to be from the Coalition of Pennsylvania Crime Victim Organizations who is directly involved in providing services to victims associated with juvenile crime in a county.

The Chief Justice would select the chairperson of the commission. The first meeting of the commission would have to be convened within 45 days of the effective date of the act. The commission would meet at least once a month. Additional meetings could be called by the chairperson as necessary. Members would not receive compensation but would be reimbursed for expenses. The Administrative Office of the Pennsylvania Courts would provide administrative services to the commission. Upon request, the Pennsylvania Commission on Crime and Delinquency and the Joint State Government Commission would be required to provide administrative assistance to the commission. The Juvenile Court Judges' Commission could provide analyses, reports and recommendations to the commission.

The commission would have the power to investigate and analyze the events, practices and procedures in Luzerne County involving judges, attorneys, county officials, probation and parole officers and providers of juvenile services. In addition, the commission would have the ability to review: the practices relating to the appointment of counsel to represent juvenile

offenders and the exercise of the right to counsel in Luzerne County; the exercise of authority and the abuse of power with regard to the disposition and placement of juveniles in Luzerne County; procedures used in responding to judicial and attorney conduct and to make recommendations with respect to both disciplinary systems; and, the oversight and utilization of juvenile facilities. By May 31, 2010, the commission would be required to make recommendations to the Governor, the Supreme Court and the General Assembly to improve the juvenile justice system and to prevent the reoccurrence of events similar to those which transpired in Luzerne County. The report would have to be adopted at a public meeting and would be considered a public record under the Right to Know Act. The act would expire June 30, 2010. [Passed: 49-0.](#)

[Senate Resolution 151](#) (Fontana) congratulates the National Hockey League champion Pittsburgh Penguins for winning the 2009 Stanley Cup. [Adopted by Voice Vote.](#)

Tuesday, July 7, 2009

[Senate Bill 33](#) (Pileggi) would amend the Pennsylvania Election Code to restrict the ability of counties and municipalities to establish, abolish, divide, consolidate or alter in any manner an election district during the period July 15, 2009 through November 30, 2012 or through resolution of all judicial appeals to the 2012 Congressional Redistricting Plan, whichever is later. Election districts could be divided or combined from July 15, 2009 through December 31, 2010, if certain criteria outlined in the bill are met. The bill would also require the Secretary of the Commonwealth, no later than August 15, 2009, to submit to the Census Bureau any corrections to municipal boundaries and election district boundaries as depicted on maps maintained by the Bureau which may be necessary to conform the boundaries to the official municipal boundaries and election district boundaries of the Commonwealth. If no corrections are necessary, the Secretary would be required to notify the Majority and Minority Leaders of the Senate and House of Representatives. As amended in the House, the bill would prohibit the Secretary of the Commonwealth from approving any voting machine for any election, federal or state, in the Commonwealth that does not comply with the requirements of Section 301 of the Help America Vote Act of 2002. An additional change would extend the voting standards adopted for the 2004 General Election to all primary, municipal, special and general elections in 2009 and 2010.

[Concurrence in House Amendments: 48-0.](#)

[Senate Bill 711](#) (Earll) would amend the Pennsylvania Race Horse Development and Gaming Act in Title 4 (Amusements) to institute a number of reforms. Among other modifications, the bill would:

- Declare that it is the legislative intent of the General Assembly that campaign contributions by certain individuals and entities subject to the act be completely banned.
- Authorize the chair of the Senate Community, Economic and Recreational Development Committee to hold a public hearing on an appointee to the Pennsylvania Gaming Control Board and clarify that a member of the Board serves at the pleasure of the appointing authority.

- Prohibit all future members of the Board from engaging in any business, employment or vocation for which the member shall receive any compensation or remuneration while serving on the Board.
- Extend the financial interest prohibition applicable to Board members and their immediate families from one year to two years, clarify that former Board members may not appear before the Board as an advocate for at least two years after their terms in office, and extend the prohibition from one to two years after termination against Board members, employees or independent contractors of the Board from receiving a complimentary service or prize.
- Extend the post-employment prohibitions on Board employees, including attorneys, from one to two years, and extend, from two years to five years, the post employment prohibitions of a removed member, employee, or independent contractor.
- Require appointing authorities to fill a vacancy on the Board within 60 days.
- Provide that in the event of a budget impasse or fiscal crisis, employees of the Board, the Department of Revenue, the Pennsylvania State Police, and the Office of Attorney General whose duties involve the regulation and oversight of gaming shall not be subject to furlough.
- With respect to future employees, require that the Board, like other Commonwealth agencies, establish a system of classification and compensation of its employees subject to the provisions of the Administrative Code of 1929.
- Raise the required standard of proof from “by a preponderance of the evidence” to “by clear and convincing evidence” with respect to a licensee’s or prospective licensee’s suitability.
- Permit the Board to collect and post information on its Internet website regarding the controlling interest or ownership interest of an applicant for a slot machine license or a licensed gaming entity.
- Strengthen provisions regulating ex parte communications by members, attorneys, employees, and hearing officers of the Board, including maintaining a formal log of such communications.
- Limit reimbursement of expenses of Board members and employees to actual and reasonable expenses incurred during the performance of their duties, with receipts required for reimbursement of expenses exceeding \$10, and require the monthly and annual posting of such expenses on the Board website.
- Require a public input hearing prior to approving the structural redesign of a licensed facility located in a city of the first class and require that the Board establish a public

comment period prior to approving any such structural redesign or before licensing a facility.

- Clarify information submitted by an applicant or licensee that should be kept confidential (information that is publicly available including information from a criminal history check would not be considered confidential), and would classify the illegal disclosure of such information as a misdemeanor.
- Increase the ban on issuing a principal license or key employee license to an individual previously convicted of a felony from 15 years to life.
- Require all applicants for a license or permit to fully disclose all arrests and the criminal dispositions in such cases, including any dismissal, plea bargain, pardon, expungement or ARD order, etc.
- In certain circumstances, permit the Board to appoint a trustee to act on behalf of the Commonwealth; grant authority to the Board to set forth the powers, duties and responsibilities of the trustee; limit the compensation for the trustees and all individuals hired by the trustee to \$600 per hour in the aggregate; and provide for the disposition of net income during the period of trusteeship.
- Require the Office of the Budget to submit an annual report to the General Assembly regarding distribution from the Pennsylvania Gaming Economic Development and Tourism Fund (PGEDTF), and require that any entity receiving such funds report to the Office of the Budget and to the General Assembly how such funds are distributed.
- Clarify that following the distribution of \$42.5 million from the PGEDTF to Allegheny County for the Allegheny County airport, all remaining funds shall be distributed directly to the airport authority.
- Require the Board to ensure the Bureau of Investigations and Enforcement is a distinct entity and to prevent commingling of the investigatory and prosecutorial functions of the Bureau with the adjudicatory functions of the Board.
- Reduce local law enforcement grants from \$5 million to \$3 million annually, expand the use of such grants to the enforcement and prevention of all forms of unlawful gambling rather than just the unlawful operation of slot machines, and permit the Pennsylvania State Police to qualify as local law enforcement in a municipality that does not have its own municipal police force.
- Require the Pennsylvania State Police to submit an annual report to the General Assembly summarizing law enforcement activities at each licensed facility.
- Clarify change of ownership and portability issues with respect to slot machine licensees and licenses, and extend various permits and licenses from one year to three years.

Passed: 47-1.

[Senate Bill 851](#) (Pileggi) would amend the Volunteer Fire Company and Volunteer Ambulance Service Grant Act to exempt the volunteer fire and emergency response organizations listed in the bill from the Right to Know Law. If an entity listed in the bill has a contract with a local agency as defined in the Right to Know Law, the financial records of the entity relating to the contract would be subject to the Right-to-Know Law. **[Passed: 47-1.](#)**

[Senate Bill 973](#) (Tomlinson) would amend the Home Improvement Consumer Protection Act to make a number of changes. Among other modifications, the bill would :

- Clarify that proof of insurance for contractors could include information indicating that the applicant is self-insured;
- Establish the Home Improvement Account in the General Fund to receive all fees and penalties collected under the act. The funds would be appropriated to the Attorney General for administering and enforcing the provisions of the act and to protect consumers with respect to home improvements through consumer education and other means;
- Increase the contract amount at which deposits are limited to one-third of the contract price from \$1,000 to \$5,000 and exempt home improvement retailers from this requirement if they post an irrevocable letter of credit in the amount of \$100,000 per store location (up to \$2 million) and ensure that their contractors are registered under the act and have proof of insurance;
- Permit an owner to file a complaint with the Bureau of Consumer Protection and request a draw on a home improvement retailer's letter of credit;
- Allow the Bureau of Consumer Protection to make a draw on the letter of credit following an investigation and notification to the retailer; and
- Establish that a home improvement retailer with two draws within a two-year period would be prohibited from posting a letter of credit for the purposes of the act for a period of five years and would be required to comply with the other provisions of the act.

[Passed: 48-0.](#)

[Senate Resolution 143](#) (Dinniman) proclaims the week of July 19 through 25, 2009 as "Probation, Parole and Community Supervision Week" in Pennsylvania. **[Adopted by Voice Vote.](#)** (*Senate Resolution 143 was originally adopted by the Senate on June 30, 2009. On Tuesday, July 7, 2009, the vote by which the resolution was originally adopted was reconsidered and it was amended to change the dates for Probation, Parole and Community Supervision Week from July 12 through 18, 2009 to July 19 through 25, 2009.*)

[House Bill 262](#) (Haluska) would create the Prescribed Burning Practices Act. The legislation would require the Department of Conservation and Natural Resources (DCNR), in consultation with the Department of Environmental Protection (DEP), the Game Commission and other

agencies, to develop standards for the planning and conduct of prescribed burning within six months of the effective date, including a 60 day public comment period. The standards would:

- Establish minimum qualifications and training requirements for prescribed burn managers and burn workers;
- Specify the required content of the prescribed burn plans; and
- Be consistent with the National Wildlife Coordinating Group's established requirements.

The legislation would also require DCNR, if deemed necessary, to promulgate the following: a certification and revocation process for prescribed burn managers; requirements for the review and approval of prescribed burn plans by the state; and a training program for prescribed burn managers and other participants. DCNR would be authorized to assess fees for training and certification programs.

The bill would require a prescribed burn manager, prior to a prescribed burn, to notify DCNR and DEP in writing of the specific location and the range of dates it could occur at least 25 working days prior to the earliest possible date of the burn. A copy of the prescribed burn plan would have to be included with the notification provided. The Department of Conservation and Natural Resources and DEP would review the plan and provide comments no later than five working days prior to the earliest possible date of the burn. The legislation would require the prescribed burn plan to include procedures to protect the public and firefighters. A burn could only take place with the written consent of the property owner or their legal representative. Regulations relating to open burning would not apply to a prescribed burn plan.

Further, the bill would establish immunities for those authorizing, conducting, or contracting for a prescribed burn, provided they comply with the provisions of the Act and the Air Pollution Control Act. If negligence can be proven, a civil or criminal penalty could apply. **Passed: 48-0.**

Executive Session

Nominations to Various Boards and Commissions. **Confirmed: 47-1.**

Wednesday, July 8, 2009

Senate Bill 628 (M. White) would amend the Judicial Code to prohibit the imposition of the death penalty on a person with mental retardation. The bill provides a definition of the term "person with mental retardation."

Under the proposed changes, at least 90 days before the commencement of a trial, the counsel for a defendant could apply for an order directing that a hearing be conducted before the trial begins to determine if the defendant is not eligible for the death penalty because of mental retardation. Upon receipt of a motion, the court would have to conduct a hearing for the presentation of evidence regarding the defendant's mental retardation. Both the Commonwealth and the defendant could present evidence. The court would also be required to order an expert psychiatric or psychological examination of the defendant, to be performed by a licensed

psychiatrist or psychologist who is an expert in the diagnosis and evaluation of mental retardation. At the hearing, the defendant would have the burden of proving that he or she is a person with mental retardation by a preponderance of the evidence. The Commonwealth could appeal a court order finding that a defendant is a person with mental retardation. A pretrial determination of the court that the defendant is eligible for the death penalty would not preclude a defendant from raising any legal defense or factual evidence including, but not limited to, the existence of mental retardation during the trial or the sentencing phase of a capital trial. The jury could not be informed of any prior proceedings or the court's findings concerning the defendant's motion with respect to the issue of mental retardation.

The measure would also make provisions for a person who has been convicted and who claims to be mentally retarded. If postsentence motions are still pending, the defendant could amend the motions pursuant to court rules to raise the claim that imposition of the death penalty would have been barred if these provisions were in effect at the time of the sentencing hearing. If the court finds that the petitioner is a person with mental retardation, it would be required to vacate the sentence of death and impose a life sentence. If direct appeal is still pending, the defendant could raise the issue in a Post Conviction Relief Act petition after the disposition of the appeal. **Passed: 45-2.**

Senate Resolution 62 (Costa) urges spending of federal economic recovery funds on the products that are made and services that are performed in the United States. **Adopted by Voice Vote.**

Senate Resolution 127 (Williams) urges the Commonwealth and all of its departments, agencies, boards and commissions to procure and utilize, where possible, Pennsylvania remanufactured automobile parts and equipment to perform their designated functions. **Adopted by Voice Vote.**

House Bill 92 (Staback) would amend Title 34 (Game) of the Pennsylvania Consolidated Statutes to limit the fee for the transaction costs associated with the Pennsylvania Automated Licensing Service to actual costs not to exceed \$1. **Passed: 45-2.**

Real Property Disposition Plan No.1 of 2009 (Resolution A). **Adopted in Part Without Scotland School: 47-0.**

Real Property Disposition Plan No.1 of 2009 (Resolution B). **Adopted in Part Disapproving Scotland School: 47-0.**

Thursday, July 9, 2009

Senate Bill 143 (Tomlinson) would amend Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes by adding a section prohibiting the use of electronic wireless communications devices to write, send or read text messages, while operating a vehicle in motion on a public highway. "Electronic wireless communications device" is defined as a handheld electronic device that permits the user to send or receive electronic communications. The prohibition would not apply to the following:

- The operation of a voice activated global positioning or navigation system affixed to a motor vehicle;
- Reading, selecting, or entering a phone number, or names in an electronic wireless communications device for the purpose of making a phone call; and
- Those operating an emergency vehicle, as well as police officers, peace officers, coroners, and members of fire departments performing their official duties.

Conviction or detainment would occur only as a secondary action when the driver had been detained or convicted of any other provision of the Vehicle Code. A violation of this law would be a summary offense with a maximum fine of \$100. The legislation would supersede and preempt all municipal ordinances pertaining to the use of electronic wireless communications devices. [Passed: 44-3.](#)

[House Bill 109](#) (Manderino) would authorize:

- the release of Project 70 restrictions on land in Lower Merion Township, Montgomery County for a consideration of \$180,000 in return for the imposition of Project 70 restrictions on other land to be conveyed and deeded to the township. The \$180,000 would have to be deposited in a special account established by Lower Merion Township for acquisition of park land. The park land would have to be acquired within two years. The use of funds from the special account would have to be approved by the Department of Conservation and Natural Resources. Any monies remaining in the fund after five years would be paid to the Commonwealth to be deposited into the Project 70 Land Acquisition Sinking Fund;
- the release of Project 70 restrictions on and the sale of 0.74 acres of land in the City of Warren. The land is owned by the City of Warren and would be sold to Warren General Hospital for \$81,500 which represents the fair market value of the property as determined by an appraisal. The proceeds of the sale would be deposited in a special account established by the City of Warren for acquisition or development of park land, to include a ball field, parking lot and access road. Use of the funds from the special account would have to be approved by the Department of Conservation and Natural Resources. Any monies remaining in the fund after five years would be paid to the Commonwealth to be deposited into the Project 70 Land Acquisition Sinking Fund;
- the release of Project 70 restrictions on land owned by the City of Wilkes-Barre for a roadway project in exchange for the imposition of Project 70 restrictions on similar lands in the city; and
- the release of Project 70 restrictions and the sale of lands owned by the Borough of Old Forge, Lackawanna County for a consideration of not less than \$5,000. The funds received from the sale would be placed in a special account for the maintenance, improvement and development of Pagnotti Park. [Passed: 47-0.](#)

Executive Session

Odelfa Smith Preston – State Civil Service Commission. [Confirmed: 47-0.](#)

(2009-093)