# VETOES

BILLS FILED IN THE OFFICE OF THE SECRETARY OF THE COMMONWEALTH BY THE GOVERNOR, WITH HIS OBJECTIONS THERETO, WITHIN THIRTY DAYS AFTER THE ADJOURNMENT OF THE LEGISLATURE ON THE 5TH DAY OF JUNE, A. D. 1937.

No. 1

AN ACT

Providing that in all cases where writs of habeas corpus are granted the judge may inquire into the facts of the case, including an examination into the record, proceedings, and evidence produced against the person committed or detained before the committing judge, officer, magistrate or grand jury; and making such records, proceedings, and evidence available for inspection by the petitioner or his counsel.

Section 1. Be it enacted, &c., That in all cases where writs of habeas corpus are granted, the judge granting the writ may inquire and examine into the facts of the case.

Section 2. Such examination into the facts of the case shall include an examination by the judge into all the proceedings held and evidence produced before a judge, magistrate, justice of the peace or other officer sitting as a committing judge or magistrate, or the grand jury, and if such proceedings shall, after inquiry, be deemed to have been conducted not in accordance with law, or the evidence deemed insufficient, the prisoner shall be discharged.

Section 3. For the purposes of the inquiry, the records of all proceedings and testimony shall be available to the petitioner or his counsel for inspection in the court where the application is made, regardless of where the proceedings against the person detained are pending.

Section 4. It is hereby declared to be the legislative intent that if this act cannot take effect in its entirety because of the decision of any court holding unconstitutional any part hereof, the remaining provisions of the act shall be given full force and effect as completely as if the part held unconstitutional had not been included herein.

Section 5. This act shall be effective immediately upon its final enactment.

Commonwealth of Pennsylvania,
Governor's Office,
May 6, 1937.

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 1038, Printer's No. 326, entitled "An act providing that in all cases

where writs of habeas corpus are granted the judge may inquire into the facts of the case, including an examination into the record, proceedings, and evidence produced against the person committed or detained before the committing judge, officer, magistrate or grand jury; and making such records, proceedings, and evidence available for inspection by the petitioner or his counsel."

This bill would provide that in any case where a writ of habeas corpus has been granted, the judge granting the writ may inquire into the facts of the case. Such inquiry would include an examination into all the proceedings held and evidence produced before a judge, magistrate, justice of the peace, or other officer sitting as a committing judge or magistrate, or the grand jury. If, after inquiry, the judge would deem such proceedings to have been conducted not in accordance with law, or deem the evidence insufficient, he would be required to discharge the prisoner.

For the purposes of the inquiry, the bill would make available to a petitioner, or his counsel, the records of all proceedings and testimony, for inspection in the court where the application is made.

The bill would have the effect of compelling the Commonwealth to disclose its entire case, by making mandatory the availability to a petitioner of the records of all proceedings and the testimony therein.

The principal objection to the bill lies in the fact that counsel for petitioners could file petitions for such writs merely for the purpose of forcing the State to disclose its evidence, and thus unduly burden the prompt administration of justice.

I feel that under the present state of the law the rights of imprisoned persons are amply protected, and although I am wholeheartedly in favor of any safeguard against possible unjust restraints of freedom, I believe that any benefits which might be obtained under this bill would be far outweighed by its detrimental consequences to society and the administration of justice.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 2

AN ACT

To amend section five of the act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, five hundred ninety-nine), entitled "An act relating to motion picture exhibitions, and sound motion picture exhibitions together with orchestral or other instrumental musical or mechanical musical accompaniment, prelude, playing, or selection in connection with or incidental thereto on Sunday; prohibiting motion picture exhibitions and sound motion picture exhibitions, and orchestral or other instrumental musical or mechanical musical accompaniment, prelude, playing, or selection incidental thereto on Sunday during certain hours, and also during other hours, unless the electors of a municipality approve thereof; regulating the em-

ployment of persons in conducting such exhibitions on Sunday; providing for referendums to ascertain the will of the electors; and providing penalties; and repealing inconsistent laws," providing for a referendum vote in certain municipalities in the year one thousand nine hundred and thirty-seven, and making persons filing petitions liable for the cost of printing ballots.

Section 1. Be it enacted, &c., That section five of the act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, five hundred ninety-nine), entitled "An act relating to motion picture exhibitions and sound motion picture exhibitions, together with orchestral or other instrumental musical or mechanical musical accompaniment, prelude, playing, or selection in connection with or incidental thereto on Sunday; prohibiting motion picture exhibitions and sound motion picture exhibitions, and orchestral or other instrumental musical or mechanical musical accompaniment, prelude, playing, or selection incidental thereto on Sunday during certain hours, and also during other hours, unless the electors of a municipality approve thereof; regulating the employment of persons in conducting such exhibitions on Sunday; providing for referendums to ascertain the will of the electors; and providing penalties; and repealing inconsistent laws," is hereby amended to read as follows:

Section 5. Further Referendums.—In any municipality the will of the electors with respect to the conducting, staging, and exhibiting of motion pictures and sound motion pictures on Sunday may, after the year one thousand nine hundred and thirty-five (1935), but not oftener than once in five years, *(except as hereinafter otherwise provided)* be ascertained, and the question, as provided in section 3 of this act, shall be submitted to the electors of any municipality upon demand in writing of petitioners equal to at least five per centum (5%) of the highest vote cast for any candidate in the municipality at the last preceding general or municipal election. Such petition shall be filed with the corporate authorities at least sixty (60) days before the day of any general or municipal election at which the question is to be submitted, and, if the petition is signed by the requisite number of petitioners, it shall thereupon be certified to the county commissioners, who shall cause such question to be submitted in the same manner as is provided in this act for the election in the year one thousand nine hundred and thirty-five (1935).

If a majority of the voters, in any municipality in which motion picture exhibitions are permitted from and after two o'clock postmeridian on Sunday to which an admission charge is made or is incidental, are not in favor of the continuance of such exhibitions, then upon the certification of such election return to the acting chief executive officer of such municipality, as is provided in section four of this act, it shall thereafter be unlawful to conduct, stage, manage, operate or engage in such exhibitions after two o'clock postmeridian, on Sunday; but if a majority of the electors in any such municipality which has not heretofore permitted such motion picture exhibitions after two o'clock postme-

ridian, on Sunday, or which has not theretofore voted on such question are in favor of such exhibitions, then upon the certification of such fact to the acting chief executive officer of such municipality, as is provided in section 4 of this act, such exhibitions shall thereafter be lawful.

*Notwithstanding the limitation of five years for the holding of elections hereinbefore provided to ascertain the will of the electors, the question provided for in this section may be submitted, at the primary election in the year one thousand nine hundred and thirty-seven, to the electors of any municipality wherein motion pictures are not permitted on Sunday at the time this act becomes effective, and motion pictures on Sunday shall be permitted or prohibited in such municipality after the ascertainment of the result of such vote, in like manner as if such vote had been taken under the preceding provisions of this section. Where a special referendum is so held at the primary election in the year one thousand nine hundred and thirty-seven, the person or persons filing any such petition for an election shall be liable for the costs of printing the ballots to be used at any such election, which expense shall be paid to the county upon bills rendered by the county commissioners who may require a bond or deposit of money to assure the payment thereof before accepting such petition for filing.*

Section 2. This act shall become effective immediately upon its final enactment.

Commonwealth of Pennsylvania,
Governor's Office,
May 26, 1937.

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 2039, Printer's No. 911, entitled "An act to amend section five of the act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, five ninety-nine), entitled 'An act relating to motion picture exhibitions and sound motion picture exhibitions, together with orchestral or other instrumental musical or mechanical musical accompaniment, prelude, playing, or selection, in connection with or incidental thereto on Sunday; prohibiting motion picture exhibitions and sound motion picture exhibitions and orchestral or other instrumental musical or mechanical musical accompaniment, prelude, playing, or selection incidental thereto on Sunday during certain hours, and also during other hours, unless the electors of a municipality approve thereof; regulating the employment of persons in conducting such exhibitions on Sunday; providing for referendums to ascertain the will of the electors; and providing penalties and repealing inconsistent laws'; providing for a referendum vote in certain mu-

nicipalities in the year one thousand nine hundred and thirty-seven, and making persons filing petitions liable for the cost of printing ballots."

This bill would provide that the question of whether or not motion picture exhibitions shall be permitted on Sunday may be submitted to the electors of any municipality where motion pictures are not now so permitted, at the primary election in the year 1937. Under existing law, this question may be presented to the electors in any municipality not oftener than once in five years.

Following the enactment of the Act of July 2, 1935, P. L. 599, which this bill would amend, the question of whether or not Sunday motion pictures would be permitted was submitted to the electors of many of the municipalities of the Commonwealth. In some cases Sunday motion pictures were permitted; in some they were not. This bill would permit proponents of Sunday motion pictures to reopen the question within the five-year limitation in those municipalities which voted against the proposition, but would extend no similar permission to opponents of Sunday motion pictures in those municipalities which have already adopted the proposition.

The mere statement of the effect of this bill demonstrates its inequitable nature. The proponents and opponents of Sunday motion pictures should be placed on an equal plane, and neither group should be permitted to impose upon municipalities the burden of holding an election on this question unless the other group is afforded a similar advantage.

Furthermore, the constitutionality of the bill is decidedly in question under Article III, Section 7, of the Constitution, which prohibits the General Assembly from passing a local or special law regulating the affairs of cities, townships and boroughs. This bill might well be termed special legislation, in that it applies only to those municipalities which at the time of the primary election in 1937 have not voted to permit Sunday motion pictures. The bill would have no application to those municipalities which already have voted to permit such exhibitions.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 3

AN ACT

Providing that officials charged with the duty of assessing real estate for taxation may at any time split or separate the assessment on any tract of real estate which has been or is to be divided, in order to permit the payment of taxes due on a portion of such tract; requiring tax collectors to accept payment of such taxes; and validating all such split or separated assessments heretofore made.

Section 1. Be it enacted, &c., That any official or authority charged with the duty of assessing real estate for the purpose of

taxation is hereby authorized at any time to split or separate the assessment on any tract of real estate which has been or is to be divided, in order to permit and facilitate the payment of a portion only of the taxes levied on such tract of real estate, which partial payment shall represent the taxes due upon a fixed and described parcel of such tract. In such cases the tax collecting authority shall accept the payment of such amount as represents the taxes, penalties, and interest due on such fixed and described parcel of the larger tract, in the same manner and subject to the same duties relative thereto as if such fixed and described parcel had been assessed as one parcel of real estate in the original assessment. The provisions of this section shall apply to all taxes heretofore or hereafter levied and assessed, including taxes which are or have been returned to the county commissioners or entered as liens in the office of the prothonotary.

Section 2. In all cases where any official or authority charge with the duty of assessing real estate for the purpose of taxation has heretofore split or separated the assessment on any tract of real estate in the manner and for the purpose described in this act, such action is hereby ratified, confirmed, and validated, and the assessment of each parcel of real estate which has heretofore been split or separated for the purpose described in this act are hereby declared to be for all purposes as good and valid as if such parcels of real estate had been assessed separately in the original assessment.

Section 3. This act shall not apply to cities of the first class.

Section 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Commonwealth of Pennsylvania,

Governor's Office,

May 28, 1937.

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 872, Printer's No. 914, entitled "An act providing that officials charged with the duty of assessing real estate for taxation may at any time split or separate the assessment on any tract of real estate which has been or is to be divided in order to permit the payment of taxes due on a portion of such tract, requiring tax collectors to accept payment of such taxes and validating all such split or separated assessments heretofore made."

This bill would authorize officials charged with the duty of assessing real estate for taxation (except in cities of the first class) to split or separate, at any time, the assessment on any tract of real estate which has been, or is to be, divided, in order to permit and facilitate the payment of a portion of the taxes levied on such tract of real estate, which partial payment would represent the

taxes due upon a fixed and described parcel of such tract. The bill would also ratify acts of officials charged with the duty of assessing real estate for the purpose of taxation, who have heretofore split or separated the assessment on any tract of real estate in the manner provided in this bill. The bill would apply, not only to taxes hereafter levied and assessed, but also to taxes heretofore assessed and liened against the property.

The effect of this bill would be to permit a landowner having the opportunity of selling a portion of his real estate to pay the taxes on that portion and leave the taxes pertaining to the remainder of the tract unpaid until some future time, with the possibility of such remaining taxes never being paid. In other words, the owner of a tract of land would be able to carve out of that tract the valuable portion of the real estate for the purpose of sale, and pay the taxes thereon, without paying the accrued taxes on the less valuable portions of the tract.

This bill is undesirable in at least two respects. In the first place it would encourage the taxpayer to become delinquent in the payment of taxes on the less valuable portions of his property. In the second place it would establish a procedure whereby a real estate speculator owning a large tract of land would be enabled to convey separate parcels thereof, and pay the back taxes on such parcels, and ultimately leave the residue of the tract go for accumulated unpaid taxes, at the expense of the general taxpayers.

It is the purpose of this administration to alleviate taxpayers' burdens. The advantages which would be afforded real estate developers under this bill would be greatly outweighed by the disadvantages which would result to the general taxpayers.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 4

AN ACT

Requiring counties of the third class to repay moneys heretofore recovered on forfeited recognizances in certain cases, and providing for the recapture of such moneys from future fines and forfeited recognizances payable to law and library associations.

Section 1. Be it enacted, &c., That whenever heretofore the county commissioners, sheriff or district attorney of any county of the third class shall have collected any money upon any forfeited recognizance duly estreated to such county, and the same has been paid over to any law and library association for the purchase and maintenance of a law library as provided by law, and where the defendant in the case subsequently surrendered himself to the jurisdiction of the proper court or was subsequently apprehended and returned to the jurisdiction of the court, the county commissioners shall repay, out of the funds of the county, to the party from whom such money was collected, the amount so col-

lected on such forfeited recognizance and so turned over to such law and library association, exclusive of all costs paid or incurred by the county in such proceeding; and no future payments shall be made to any such law and library association from fines and forfeited recognizances collected by the county commissioners, sheriff or district attorney until the full amount paid out by the county as required by this act shall have been recovered by the county from such fines and forfeited recognizances and paid into the county treasury.

Section 2. All acts and parts of acts, general, local or special, inconsistent with this act, are hereby repealed.

Commonwealth of Pennsylvania,

Governor's Office,

June 5, 1937.

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 935, Printer's No. 282, entitled "An act requiring counties of the third class to repay moneys heretofore recovered on forfeited recognizances in certain cases and providing for the recapture of such moneys from future fines and forfeited recognizances payable to law and library associations."

This bill would require counties of the third class to repay moneys heretofore recovered on forfeited recognizances and turned over to any law or library association for the purchase of books, where the defendant in the case subsequently surrendered himself to the jurisdiction of the proper court or was apprehended and returned to the court.

There are no facts which would justify the approval of a bill of this type. Its effect would be to nullify the very purpose for which bail is required. If approved, it would encourage persons charged with crime to fail to appear in court at the time required for trial, and would give them power to determine when their cases would be tried, regardless of the attitude of the court and the district attorney.

The purpose of bail is to make certain the appearance of a person charged with crime in court at the term that his case is to be called. His bail guarantees such appearance. In the absence of such bail, he is committed to jail to await trial.

This bill gives an undue, unwarranted and unjustifiable advantage to persons charged with crime, and to their bondsmen. If such leniency is to be extended to such individuals, and if the present rigid requirements regarding forfeiture of bail are to be relaxed, then there is no reason why the same should not apply throughout the State and inure to the benefit of all bondsmen.

In addition to these objections, there is serious doubt as to the constitutionality of this bill. First, it attempts, by implication,

to amend a special or local law without complying with the requirements of the Constitution regarding such amendment. Furthermore, its provisions would apply only to those third class counties which pay moneys collected on forfeited recognizances into the law and library association fund. This, in my opinion, makes the bill itself special legislation. Article III, Section 8 of the Constitution requires that notice of the intention to introduce a special or local bill must be published thirty days prior to its introduction in the General Assembly. Failure to comply with this requirement in this case makes the bill unconstitutional.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 5

AN ACT

To prohibit the admission in criminal cases of evidence illegally secured or acquired.

Section 1. Be it enacted, &c., That hereafter no evidence whatever which has been illegally secured or acquired, whether by or through the use of an illegal search warrant or an illegal service or in any other illegal manner whatever, shall be admissible in any court of this Commonwealth at the trial of any person accused of a violation of any of the criminal laws of this Commonwealth.

Section 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Commonwealth of Pennsylvania,

Governor's Office,

July 1, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 880, Printer's No. 678, entitled "An act to prohibit the admission in criminal cases of evidence illegally secured or acquired."

This bill would prohibit evidence which has been illegally secured or acquired to be admitted in criminal cases.

The bill would help only those persons who have violated the law.

In many cases it would unduly favor law violators by suppressing conclusive evidence of their offenses simply because such evidence was irregularly obtained. Technicalities should not be permitted to enable a law violator to assert another's wrong as a means of escaping punishment. If an offense has been committed, the court and jury are entitled to have all the facts. If such facts are themselves obtained contrary to law, appropriate action, either civil or criminal, should be taken against the offenders. Both violations of the law should be punished, but this bill would

result in at least the original, and probably both, offenders evading punishment.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 6

AN ACT

Relating to the business of selling or leasing furniture and household articles on the installment or deferred payment plan; and prohibiting the joining in one agreement of sale or lease of articles purchased or leased at different times.

Section 1. Be it enacted &c., That no person, copartnership, association or corporation, engaged in the business of selling or leasing furniture or household articles on the installment or deferred payment plan, shall, upon the sale or lease of any such article to any person who has previously purchased or leased upon an agreement of sale or lease any other furniture or household articles, include the said articles so last purchased or leased, or any part thereof, in a new agreement of sale or lease with the articles previously purchased or leased, or any part thereof; and all such agreements of sale or lease shall include only such articles as are actually purchased or leased at the time of the execution of such agreement of sale or lease; and any agreement of sale or lease executed in violation of the provisions of this section shall be null and void.

Section 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Commonwealth of Pennsylvania,

Governor's Office,

July 1, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 370, Printer's No. 287, entitled "An act relating to the business of selling or leasing furniture and household articles on the installment or deferred payment plan and prohibiting the joining in one agreement of sale or lease of articles purchased or leased at different times."

This bill would prohibit any person, copartnership, association or corporation, engaged in the business of selling or leasing furniture or household articles on the installment or deferred payment plan, from including in any agreement of any such sale or lease, any articles other than those which are actually purchased or leased at the time the agreement is made, and would prohibit the inclusion in such agreements of any furniture or household articles previously purchased or leased.

This bill would be impractical, inasmuch as it would take away from the vendor the right to require collateral beyond the actual subject matter of a particular purchase as security for the debt

incurred. Therefore, its effect would be to impose a hardship upon the individual who desires to purchase merchandise on the installment or deferred payment plan, by prohibiting him from resorting to other assets as collateral. It would encourage customers to buy additional merchandise with insufficient collateral, and consequently, would jeopardize both the interests of the customer and the vendor.

Under the present method of consolidation of contracts, the customer is advised periodically of his purchases and indebtedness. Under such a system the customer will not arbitrarily increase his purchases when such a procedure would involve the risk of jeopardizing that merchandise which he has already purchased and which may be subject to similar agreements. The present method is a safeguard against the incurring of indebtedness beyond the income of the customer, and therefore inures to the benefit of the customer and the vendor.

I see no merit in taking away this protection from both parties to a contract.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 7

AN ACT

To amend section two thousand five hundred fifty-three, as amended, of the act, approved the twenty-third day of June, one thousand nine hundred and thirty-one (Pamphlet Laws, nine hundred thirty-two), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," permitting city treasurers to give fidelity bonds as tax collectors of school districts of the second class, and regulating the premiums thereof.

Section 1. Be it enacted, &c., That section two thousand five hundred fifty-three of the act, approved the twenty-third day of June, one thousand nine hundred and thirty-one (Pamphlet Laws, nine hundred thirty-two), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," as amended by the act, approved the twelfth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, seven hundred nineteen), is hereby further amended to read as follows:

Section 2553. Bond of Treasurer as Tax Collector.—The treasurer, as collector of taxes, before entering upon his duties, shall give bond to the city as provided in article fourteen of this act, and he shall give fidelity bonds to the other respective authorities levying taxes, which he is authorized to collect, in an amount to be by them severally fixed, with corporate or at least two sufficient sureties to be by them approved, conditioned that the said treasurer, as collector of taxes, shall account for and pay over all moneys received by him as taxes, and account for all tax items

contained in the duplicates delivered to him during his term of office, which remain uncollected. The city treasurer and his sureties shall be discharged from further liability on any bond as tax collector, as soon as all tax items contained in the duplicates are either—(1) collected and paid over, or (2) certified to the respective authorities levying the taxes for entry as liens in the office of the prothonotary, or (3) returned to the county treasurer or city treasurer for sale, or (4) in the case of occupation, poll, and per capita taxes, a record of those which remain uncollected is filed with the tax authority, together with the oath of the tax collector that he has made a diligent effort to collect such taxes.

*Provided, That where the city treasurer is tax collector for school districts of the second class, the school board of such districts may, by unanimous vote, accept a fidelity bond in lieu of the bond herein provided. Such fidelity bond shall bind the treasurer, as tax collector, and his surety to account faithfully for all tax moneys due the school district received by him and to pay the same over to the proper authority of the school district. Such accounting for and payment over shall constitute full performance under such bond, and, upon such full performance, there shall be no further liability on such bond. Whenever such bond is a corporate bond, the premium thereon shall be computed upon the amount of penalty fixed in the bond, and it shall be unlawful to compute the amount of the premium on any greater amount than the amount of the penalty of the bond.*

Should the city or any of the said authorities levying any tax be of opinion, at any time, that the bond given is not sufficient, the city or said authority may require the said treasurer, as collector, to give additional security, to be approved in manner as aforesaid. The said collector shall not in any event be required to give bond or bonds aggregating an amount in excess of the tax to be collected by him.

Commonwealth of Pennsylvania,

Governor's Office,

July 1, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 1858, Printer's No. 916, entitled "An act to amend section two thousand five hundred fifty-three, as amended, of the act, approved the twenty-third day of June, one thousand nine hundred and thirty-one (Pamphlet Laws, 932), entitled 'An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto,' permitting city treasurers to give fidelity bonds as tax collectors of school districts of the second class and regulating the premiums thereof."

This bill would attempt to permit city treasurers, in cities of the third class, to give fidelity bonds as tax collectors of second class school districts, and to regulate the premiums on such bonds.

The bill would purport to amend Section 2553 of the Act of June 23, 1931, P. L. 932, which section was specifically repealed by the Act of June 21, 1935, P. L. 363.

It is a well known rule of law that an enactment which has been repealed cannot be revived by subsequent amendment. Therefore, the bill could have no legal meaning or effect.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 8

AN ACT

To amend subsection third, of section one of the act, approved the ninth day of July, one thousand nine hundred and one (Pamphlet Laws, six hundred fourteen), entitled "An act relating to the service of certain process in actions at law, and the effect thereof, and providing who shall be made parties to certain writs," as amended, by providing for the service of summons and writs of scire facias in personal actions in any action for damages arising from the ownership, possession, occupancy, control, maintenance, and use of real estate, and the footways and curbs adjacent thereto, in counties other than that wherein the real estate, footways, and curbs are located and the writ issues.

Section 1. Be it enacted, &c., That subsection third, of section one of the act, approved the ninth day of July, one thousand nine hundred and one (Pamphlet Laws, six hundred fourteen), entitled "An act relating to the service of certain process in actions at law, and the effect thereof, and providing who shall be made parties to certain writs," as amended by section one of the act, approved the twenty-fifth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, seven hundred seventy-five), is hereby further amended to read as follows:

Section 1. Third. The writ of summons *and the writ of scire facias in personal actions,* in cases where a trespass or nuisance has been committed on real estate *and in cases where claims are made for damages arising from the ownership, possession, occupancy, control, maintenance, and use of real estate and the footways and curbs adjacent thereto,* and in cases arising from any contract relating to real estate, may also be served in the manner provided by subsections one and two, in any other county than that wherein the real estate, [is] *footways, and curbs are* located and in which the writ issues, by the sheriff of such other county, who shall be deputized for that purpose by the sheriff of the county in which the writ issues.

Commonwealth of Pennsylvania,
Governor's Office,
July 1, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 942, Printer's No. 339, entitled "An act to amend sub-section third of section one of the act, approved the ninth day of July, one thousand nine hundred and one (Pamphlet Laws, 614), entitled 'An act relating to the service of certain process in actions at law and the effect thereof, and providing who shall be made parties to certain writs,' as amended, by providing for the service of summons and writs of scire facias in personal actions in any action for damages arising from the ownership, possession, occupancy, control, maintenance, and use of real estate and the footways and curbs adjacent thereto, in counties other than that wherein the real estate, footways, and curbs are located and the writ issues."

This bill would provide that the writ of summons and the writ of scire facias in personal actions, in cases where claims are made for damages arising from the ownership, possession, occupancy, control, maintenance, and use of real estate, and the footways and curbs adjacent thereto, may also be served in any other county than that wherein the real estate, footways and curbs are located, and in which the writ issues, by the sheriff of such other county, who shall be deputized for that purpose by the sheriff of the county in which the writ issues.

I have already approved Senate Bill No. 953, which, together with the provisions of existing law regarding the issue of writs of scire facias in personal actions, embraces the same subject matter as the instant bill. Moreover, the terms of Senate Bill No. 953 are much more definite than those of this bill. Hence, there is no necessity for this bill.

For this reason, the bill is not approved.

GEORGE H. EARLE

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No. 9

AN ACT

Concerning the ascertainment of principal and income, and the apportionment of receipts and expenses among tenants and remaindermen, and to make uniform the law with reference thereto.

Be it enacted, &c., That—

Section 1. Definition of Terms.—"Principal" as used in this act means any realty or personalty which has been so set aside or limited by the owner thereof, or a person thereto legally empowered, that it and any substitutions for it are eventually to be conveyed, delivered, or paid to a person, while the return therefrom or use thereof, or any part of such return or use, is in the mean-

time to be taken or received by, or held for accumulation for, the same or another person.

"Income" as used in this act means the return derived from principal.

"Tenant" as used in this act means the person to whom income is presently or currently payable, or for whom it is accumulated, or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

"Remainderman" as used in this act means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

"Trustee" as used in this act includes the original trustee of any trust to which the principal may be subject, and also any succeeding or added trustee.

Section 2. Application of the Act; Powers of Settler.—This act shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen in all cases where a principal has been established, with or, unless otherwise stated hereinafter, without the interposition of a trust, except that, in the establishment of the principal, provision may be made touching all matters covered by this act; and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses, or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control, notwithstanding this act.

Section 3. Income and Principal; Disposition.—(1) All receipts of money or other property paid or delivered as rent of realty, or hire of personalty, or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income, unless otherwise expressly provided in this act.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement, or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this act. Any profit or loss resulting upon any change in form of principal shall enure to, or fall upon, principal.

(3) All income, after payment of expenses properly chargeable to it, shall be paid and delivered to the tenant, or retained by him

if already in his possession, or held for accumulation where legally so directed by the terms of the transaction by which the principal was established, while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law.

Section 4. Apportionment of Income.—Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine, by death or in any other manner, at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income, or any portion thereof, until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise, when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue, the balance shall be a part of the principal.

Section 5. Corporate Dividends and Share Rights.—(1) All dividends on shares of a corporation, forming a part of the principal, which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation, accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation, accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights shall be deemed income.

(3) Where the assets of corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger, consolidation, or reorganization, or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to or in substitution for their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section, the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or, in default thereof, the date of declaration of the dividend.

Section 6. Premium and Discount Bonds.—Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value, or, in default thereof, at their market value at the time the principal was established or at their cost where purchased later, regardless of their par or maturity value, and, upon their respective maturities or upon their sale, any loss or gain realized thereon shall fall upon or enure to the principal.

Section 7. Principal Used in Business.—(1) Whenever a trustee or a tenant is authorized, by the terms of the transaction by which the principal was established or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profit of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting, from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one

calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

Section 8. Principal Comprising Animals.—Where any part of the principal consists of animals employed in business, the provisions of section seven shall apply, and, in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals, and the remainder shall be deemed income, and in all other cases such offspring or increase shall be deemed income.

Section 9. Disposition of Natural Resources.—Where any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas, or other natural resources, and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease, or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds, if received as rent on a lease, shall be deemed income, but, if received as consideration, whether as royalties or otherwise for the permanent severance of such natural resources from the lands, shall be deemed principal to be invested to produce income. Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit.

Section 10. Principal Subject to Depletion.—Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment either at once or as soon as it may be done without loss, then the return from such property, not in excess of five per centum per annum of its fair inventory value or in default thereof its market value at the time the principal was established or at its cost where purchased later, shall be deemed income, and the remainder principal.

Section 11. Unproductive Estate.—(1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year and until disposed of as hereinafter stated has not produced an average net income of at least one per centum per annum of its fair inventory value, or in default thereof, its market value at the time the principal was established, or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value, and such change is delayed but is made before the principal is finally distributed, then the tenant,

or, in case of his death, his personal representative shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of five per centum per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change; but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property, or, in default thereof, its market value at the time the principal was established, or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one year after the trustee first received the property if then unproductive, otherwise one year after it became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants, the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

Section 12. Expenses; Trust Estates.—(1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums, or insurance taken upon the estates of both tenant and remainderman, interest on mortgages, on the principal, ordinary repairs, trustees' compensation, except commissions computed on principal compensation of assistants and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses, where incurred in disposing of or as carrying charges on unproductive estate as defined in section eleven, shall be paid out of principal subject to the provisions of subsection two of section eleven.

(2) All other expenses, including trustee's commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees, and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of or assessments for improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined as principal under the terms of subsection two of section

three, shall be paid out of principal notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection one, which represent regularly recurring charges, shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of or special taxes or assessments for an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal as provided in subsection two, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

Section 13. Expenses; Non-Trust Estates.—(1) The provisions of section twelve, so far as applicable and excepting those dealing with costs of or special taxes or assessments for improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in subsection one, the cost of or special taxes or assessments for an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant where such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American Experience Tables of Mortality, and no other evidence of duration or expectancy shall be considered.

Section 14. Uniformity of Interpretation.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 15. Short Title.—This act may be cited as the Uniform Principal and Income Act.

Section 16. Repeal.—All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Section 17. Time of Taking Effect.—This act shall take effect on October first, one thousand nine hundred thirty-seven, and shall apply to all estates of tenants or remaindermen which become legally effective after the date of final enactment of this act.

Commonwealth of Pennsylvania,

Governor's Office,

July 1, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 1266, Printer's No. 836, entitled "An act concerning the ascertainment of principal and income, and the apportionment of receipts and expenses among tenants and remaindermen, and to make uniform the law with reference thereto."

This bill would define, by statute, the concepts of "principal" and "income," as such terms relate to the respective interests of tenants and remaindermen in a fund or an estate created for their benefit, and, in addition would cover many allied problems pertaining to such matters. The bill embodies the provisions of the "Uniform Principal and Income Act," which has been recommended by the National Conference of Commissioners on Uniform State Laws to the various states for adoption.

The courts of the Commonwealth of Pennsylvania have, in a number of cases, over a long period of years, laid down rules for the determination of what is to be considered principal and income in trust estates, and in so doing have established the widely followed Pennsylvania rule which has, as its underlying fundamental principle, the equal protection of the rights of tenants and remaindermen. This bill would abrogate the long established Pennsylvania rule and would substitute therefor the Massachusetts rule, which tends to protect remaindermen at the expense of tenants. This is particularly true with respect to corporate stock dividends. The Massachusetts rule, as embodied in this bill, arbitrarily awards all stock dividends from earnings to "principal," thereby benefiting the remaindermen at the expense of the tenants. The Pennsylvania rule calls for an apportionment of share dividends as to the time when the fund out of which they are declared was earned, and an assignment to the tenant of all such dividends declared out of earnings made by the corporation after the interest of the tenant accrued.

The chief arguments made for the Massachusetts rule are its simplicity and convenience of application. The argument for the Pennsylvania rule is greater fairness.

The chief argument against the Pennsylvania rule is its difficulty of application, with the result that it is likely to require more litigation than the Massachusetts rule.

A brief application of the Pennsylvania rule and the Massachusetts rule with respect to stock dividends will readily indicate how the Massachusetts rule favors remaindermen at the expense of tenants, and how the Pennsylvania rule will achieve a fairer result, thus:

1. A stock dividend declared during the life interest, which was earned wholly during the life interest, goes in its entirety to principal, under the Massachusetts rule, but under the Pennsylvania rule, it goes in its entirety to income.

2. A stock dividend declared during the life interest, which was earned wholly before the commencement of the life interest, goes in its entirety to principal, under the Massachusetts rule and under the Pennsylvania rule.

3. A stock dividend declared during the life interest, which was earned partly before and partly during the life interest, goes in its entirety to principal, under the Massachusetts rule, but under the Pennsylvania rule, is apportioned between principal and income in such a way as to compensate the principal for loss, in consequence of the dividend, of intrinsic or book value of the original shares as of the date they became subject to the life interest.

The Massachusetts rule is strongly favored by trust companies, not only because of its simplicity of application, but also because it retains more funds in the hands of the trust companies, and thereby increases the earnings of such trust companies. On the other hand, the Pennsylvania rule requires trust companies in many instances to release funds to the tenants who are often widows and orphans, which, under the Massachusetts rule, such companies could retain in their possession for the ultimate benefit of the remaindermen.

Neither my conscience nor the principles upon which I was elected would permit me to approve a bill that would increase the income of the trust companies by diminishing the income of tenants, particularly widows and orphans.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 10

AN ACT

Making an appropriation to the Department of Property and Supplies for the restoration, preservation, development, and maintenance of the Ephrata Cloisters Park.

Section 1. Be it enacted, &c., That the sum of ten thousand dollars ($10,000) is hereby specifically appropriated to the Department of Property and Supplies for the purpose of restoring, preserving, developing, and maintaining the buildings and grounds of the Ephrata Cloisters Park, in Ephrata Township, Lancaster County, to be expended by said department under the direction of the Pennsylvania Historical Commission.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 1135, Printer's No. 1122, entitled "An act making an appropriation to the Department of Property and Supplies for the restoration, preservation, development, and maintenance of the Ephrata Cloisters Park."

This bill would make an appropriation of $10,000 to the Department of Property and Supplies for the purpose of restoring, preserving, developing and maintaining the buildings and grounds of the Ephrata Cloisters Park in Ephrata Township, Lancaster County. The Department of Property and Supplies would be required to expend the appropriation under the direction of the Pennsylvania Historical Commission.

I have already approved House Bill No. 1615, which contains an appropriation for the same purpose and for the same amount as that contained in this bill. Accordingly, the approval of this bill is unnecessary.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 11

AN ACT

Limiting the questions to be decided in any new trial granted because of the inadequacy or excessiveness of a verdict.

Section 1. Be it enacted, &c., That when in any action a new trial shall be granted to any party solely upon the ground of inadequacy or excessiveness of a verdict or finding, the sole question to be determined upon such new trial shall be the amount of damages; and the question of liability as between the parties shall be deemed to have been finally determined by the prior verdict or finding.

Section 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 1357, Printer's No. 683, entitled "An act limiting the questions to be decided in any new trial granted because of the inadequacy or excessiveness of a verdict."

This bill would provide that when a trial is granted solely because of the inadequacy or excessiveness of a verdict, the only

question to be determined at such new trial would be the amount of damages. The question of liability would be deemed to be finally determined at the original trial.

If juries could be depended upon to determine legal liability without regard to resulting damages, and damages without misgivings as to the accuracy of their conclusions as to legal liability, this bill might be desirable. Too often, however, a jury will reach a compromise agreement to compensate doubts as to liability by the finding of low damages. Accordingly, in a case where there is some doubt as to liability, the jury might agree on a verdict substantially lower than would otherwise be justified by the evidence. If a new trial were granted in such case, the new jury would have before it only evidence as to the amount of damage and none as to liability. The possibilities of injustice in such a case are obvious. In such case the present system of laying the entire case before a new jury is certainly more equitable than the practice the bill would initiate.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 12

AN ACT

To amend clause A of section two hundred and two of the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," as amended, restricting the use of certain words in corporate names.

Section 1. Be it enacted, &c., That clause A, of section two hundred and two of the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such cor-

porations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," as amended by the act, approved the seventeenth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, one thousand one hundred twenty-three), is hereby further amended to read as follows:

Section 202. The Corporate Name.—A. The corporate name may be in any language, but shall be expressed in English letters or characters, and shall contain the word "corporation," "company," or "incorporated," or shall end with an abbreviation of one of these words, except that the word "company" or the abbreviation "Co." may not be used where that word or abbreviation is immediately preceded by the word "and" or any symbol or substitute therefor, unless the word "incorporated," or any abbreviation thereof, immediately follows the word "company" or the abbreviation "Co." The corporate name shall not imply that the corporation is an administrative agency of the Commonwealth or of the United States or is subject to the supervision of the Department of Banking or of the Insurance Department, and shall not contain the word "bank," "banking," "bankers," "savings," "trust," deposit," insurance," "mutual," "assurance," "indemnity," "casualty," "fiduciary," "benefit," "beneficial," "benevolent," "public service," "building and loan," "surety," "security," "guaranty," "guarantee," "cooperative," "State," or "Commonwealth"; *nor shall it contain any word or words which indicate or imply the practice of a profession for which the said corporation is not licensed by the Commonwealth so to practice.*

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 1671, Printer's No. 753, entitled "An act to amend clause A of section two hundred and two of the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, 364), entitled 'An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations, conferring certain rights,

powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions and officers, authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations,' as amended, restricting the use of certain words in corporate names."

This bill would amend Clause A of Section 202, of the Business Corporation Law (Act of May 5, 1933, P. L. 364), by prohibiting the use of any word, or words, in the name of a business corporation which would indicate or imply the practice of a profession for which the corporation is not licensed by the Commonwealth to practice. Generally speaking, a corporation cannot be formed to practice a learned profession, either directly or through the medium of duly qualified agents or employes: IN RE CO-OPERATIVE LAW CO., 198 N. Y. 479, 92 N. E. 15 (Practice of Law); PEOPLE v. JOHN H. WOODBURY DERMATOLOGICAL INSTITUTE, 192 N. Y. 454, 85 N. E. 697; THE THOMAS DIAGNOSTIC CLINIC (Op. Atty. Gen.) 30 Pa. Dist. 778 (Practice of Medicine); IN RE WHITE DENTIST (Op. Atty. Gen.) 50 Pa. C. C. 55; COMMONWEALTH v. ALBA DENTIST CO., 13 Pa. Dist. 432 (Practice of Dentistry).

By the Act of June 21, 1935, P. L. 398, corporations are not permitted to be registered or licensed for the purpose of conducting an undertaking business. Section 8 of the Act of May 6, 1927, P. L. 820, permits a corporation to engage in the practice of engineering in the name of registered engineers connected with it. On the other hand, corporations may be formed for the purpose of conducting, through the medium of duly licensed employes or agents, certain trades, businesses or callings, such as real estate brokers.

In view of the foregoing, it is obvious that this amendment, by the use of the word "profession," would have little, if any, application in Pennsylvania. Moreover, this provision is couched in such general terms that it would be very difficult, if not impossible, for the Department of State to administer this provision properly and expeditiously. The purpose of Clause A of Section 202, of the Business Corporation Law was to specify as accurately as possible the words that are not permissible for use in the name of a business corporation. The amendment called for by this bill would defeat this purpose by its general and obscure terminology. If it is desired to prohibit the use by unlicensed corporations of certain words usually associated with a licensed calling or occu-

pation, the specific words should be enumerated for the purpose of accuracy and simplicity.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 13

AN ACT

Relating to suits and judgments on obligations accompanying mortgages heretofore or hereafter foreclosed; changing the rule of evidence that the price paid at a sheriff sale for the mortgaged property is conclusive evidence of its value; providing a procedure by which the actual value of such property when purchased by or for the holder of the mortgage may be determined and credited on the mortgage debt; and providing a limitation of time within which such procedure may be invoked.

Section 1. Be it enacted, &c., That in any case where a mortgagee* or holder of a mortgage or the attorney of either has purchased the mortgaged premises at a sheriff sale, heretofore or hereafter held, and such mortgagee or mortgage holder takes title to the mortgaged premises so purchased, either directly or indirectly, the price bid and paid for the mortgaged property so purchased shall not, in any proceeding to collect the balance of the mortgage debt brought against the mortgagor or any person secondarily liable on or for the obligation accompanying the mortgage, be deemed conclusive evidence of the value of the mortgaged property, but the same shall be prima facie evidence only of such value.

Section 2. In any action or proceeding on or under the obligation accompanying said mortgage to collect the balance of the mortgage debt against the mortgagor or anyone secondarily liable therefor, said mortgagor or person secondarily liable shall have the right to allege and show, as a matter of defense and setoff, that the property purchased at the sheriff sale was fairly worth the amount of the debt secured by it at the time and place of the sale or that the amount bid and paid therefor was substantially less than its true value. The burden of so proving shall be upon the mortgagor or party secondarily liable, and, upon such proof, said mortgagor or person secondarily liable shall be entitled to have the judgment satisfied or credit entered thereon against the debt to the full value of the mortgaged property so established: Provided, That where judgment has been entered by confession on the bond or obligation accompanying said mortgage, the defendant in said judgment shall have a right to petition the court in which the judgment is entered to open judgment and be allowed to establish the actual value of the property, and to have credit for such value as aforesaid duly credited against the amount of the judgment.

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*"Mortgage" in the original.

Section 3. Either the mortgagee, mortgage holder, mortgagor, or any person secondarily liable on the obligation accompanying the mortgage, may at any time within five years from the date of the sheriff sale make application to the court in which a judgment on the obligation accompanying the mortgage has been entered by confession, or, if not entered, in any court having jurisdiction over the person of the mortgagee or mortgage holder, and to have said court find and decree the value of the property purchased by said mortgagee or mortgage holder at the sheriff sale as of the time and place of said sale and to deduct said value from any judgment that may have been entered by confession, or enter on the bond such values so established as a credit or payment on account thereof: Provided, however, That the burden of proof of establishing said value shall be upon the mortgagor or the person secondarily liable: And provided also, That the issue of the value of the property sought to be established under this act shall be determined by a jury: And provided further, That in any case in which the right to apply for relief herein granted shall be sooner barred, the application to the court may be made within two years from the effective date of this act.

Section 4. This act shall not be construed to affect the title to any real or personal property sold under any judgment prior to the effective date of this act, or to the commencement of any proceedings herein authorized to be begun on the part of the mortgagor.

Section 5. This act shall become effective immediately upon its final enactment.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 1751, Printer's No. 1183, entitled "An act relating to suits and judgments on obligations accompanying mortgages heretofore or hereafter foreclosed; changing the rule of evidence that the price paid at a sheriff sale for the mortgaged property is conclusive evidence of its value; providing a procedure by which the actual value of such property when purchased by or for the holder of the mortgage may be determined and credited on the mortgage debt; and providing a limitation of time within which such procedure may be invoked."

This bill would provide that when a mortgagee, or mortgage holder, takes title to the mortgaged premises at a sheriff's sale, the prices bid and paid for the mortgaged property, in any proceedings to collect the balance of the mortgage debt, shall not be deemed conclusive evidence of the value of the mortgaged property, but shall be prima facie evidence only of its value.

The bill would authorize the mortgager, or any one secondarily liable, to show, as a matter of defense in any action to collect the balance of the mortgage debt, the true value of the mortgaged property. The bill would require credit to be entered against the

debt for the full value of the mortgaged property so established. The bill would also authorize the opening of judgments obtained by confession on the bond or obligation accompanying the mortgage for the establishment of the actual value of the property involved. It would require such value to be duly credited against the amount of the judgment. The bill would also authorize mortgagees, mortgage holders, mortgagors, and persons secondarily liable to make application, at any time within five years from the date of the sheriff's sale, to have a judicial determination made as to the value of the property purchased by said mortgagee, or mortgage holder, as of the time and place of said sale. The bill would authorize the deduction of such value from any judgment that may have been entered by confession, or the entrance on the bond of such value as a credit.

The bill would also permit the application for such relief at any time within two years from its effective date, if it would otherwise be barred sooner.

This bill was apparently drafted with the view of bringing it within the decision of RICHMOND MORTGAGE AND LOAN CORPORATION v. WACHOVIA BANK AND TRUST COMPANY, et al., Executors, 300 U. S. 124, 57 S. Ct. 338. In that case a North Carolina statute, analogous to this bill, was upheld by the United States Supreme Court. However, there exists in North Carolina an equitable procedure for the foreclosure of mortgages, under which the sale price and the amount of deficiency judgment are within the control of the Chancellor. The United States Supreme Court, in effect, held that the results obtained under this equitable procedure were the standard by which the rights of the mortgagee should be measured, and that a statute which so restricted the legal procedure as to cause the same results to be obtained was not such a substantial impairment of the mortgagee's contractual rights as to render the act unconstitutional. No such equitable procedure for the foreclosure of mortgages exists in Pennsylvania, and this fact might cast a doubt upon the validity of this bill.

The practical effect of the bill would be the same as that which was arrived at under the Pennsylvania deficiency judgment acts, which were held to be invalid, as to pre-existing mortgage contracts, in the cases of BEAVER COUNTY BUILDING AND LOAN ASSOCIATION v. WINOWICH, 323 Pa. 483 (1936), and SHALLCROSS, et al., Receivers v. NORTH BRANCH-SEDGWICK BUILDING AND LOAN ASSOCIATION, 123 Super. 593 (1936).

In addition, in the case of BEAVER COUNTY BUILDING AND LOAN ASSOCIATION v. WINOWICH, Supra, it was held that the amount realized in the foreclosure sale was conclusive as to the value of the property, and it might well be held that this principle is so well established in Pennsylvania that it must be considered to be written into every mortgage contract. In this event, such a bill as the present one, which would allow the fair value to be fixed at a different amount, might well be held to be an

unconstitutional impairment of the obligation of the mortgage contract.

Moreover, the recent session of the Legislature passed a bill which deals with the problem of deficiency judgments in a somewhat different manner. That bill (Senate Bill No. 69) prohibits, for certain periods, the foreclosure sale of mortgaged property at less than its fair mortgage value. I feel that Senate Bill No. 69 constitutes less of an impairment of the mortgagee's contractual rights than would this bill, and that Senate Bill No. 69 would, therefore, be more likely to be sustained by the courts.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 14

AN ACT

Making an appropriation to the Department of Forests and Waters for the construction of a masonry weir across the Shenango River near the Chestnut Street Bridge, at Sharon, and the construction of a shelter house for recording devices, near the weir.

WHEREAS, The Pymatuning Reservoir was built for the primary purpose of conserving the water entering the Pymatuning Swamp and regulating the flow in the Shenango and Beaver rivers; and

WHEREAS, It is necessary to know accurately the amounts of water flowing in the Shenango River at all times in order to regulate its flow properly; and

WHEREAS, The bed of the Shenango River in the vicinity of the gaging station at Sharon is easily eroded and changes frequently, rendering records made there unreliable; and

WHEREAS, The construction of a masonry weir across the Shenango River near the Chestnut Street Bridge, at Sharon, will facilitate securing the reliable stream flow measurements necessary for the proper operation of the Pymatuning Reservoir Project; therefore

Section 1. Be it enacted, &c., That the sum of twenty-two thousand dollars ($22,000), or so much thereof as may be required, is specifically appropriated to the Department of Forests and Waters for the construction of a masonry weir across the Shenango River near the Chestnut Street Bridge, at Sharon, and the construction of a shelter house for recording devices near the weir.

Section 2. The masonry weir and the shelter house shall be constructed in accordance with plans and specifications which have been or shall be prepared by or under the direction of the Water and Power Resources Board of the Department of Forests and Waters. The Department of Forests and Waters shall advertise for proposals and award contracts for the construction of said weir and shelter house in the same manner and subject to the same conditions as proposals are advertised and contracts are

awarded by the Department of Property and Supplies under section two thousand four hundred and eight of "The Administrative Code of 1929."

Section 3. The Department of Forests and Waters shall pay out of the appropriation made by this act the cost of supervision and engineering fees and other incidental expenses necessary for carrying out the purposes of this act.

The sum appropriated by this act shall be available for use by the Department of Forests and Waters until the weir and shelter house provided for herein shall be constructed and built.

Commonwealth of Pennsylvania,
Governor's Office,
July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 473, Printer's No. 985, entitled "An act making an appropriation to the Department of Forests and Waters for the construction of a masonry weir across the Shenango River near the Chestnut Street Bridge at Sharon and the construction of a shelter house for recording devices near the weir."

This bill would make an appropriation of $22,000 to the Department of Forests and Waters for the construction of a masonry weir across the Shenango River near the Chestnut Street Bridge at Sharon, which is necessary to procure reliable stream flow measurements required for the proper operation of the Pymatuning River Project.

I am informed by the Department of Forests and Waters that the purpose for which the appropriation provided in this bill is intended can be accomplished in conjunction with the flood control program and can be financed out of the Flood Control Fund. Therefore, the approval of this bill is unnecessary.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 15

AN ACT

To amend section two of the act, approved the fifteenth day of July, one thousand eight hundred and ninety-seven (Pamphlet Laws, two hundred ninety-two), entitled "An act to provide revenue by taxation," by reducing, from ten mills to five mills, the rate of tax upon the capital stock of companies organized and incorporated for the purpose of distilling liquors and selling the same at wholesale.

Section 1. Be it enacted, &c., That section two of the act, approved the fifteenth day of July, one thousand eight hundred and ninety-seven (Pamphlet Laws, two hundred ninety-two), entitled "An act to provide revenue by taxation," be and the same is hereby amended to read as follows:

Section 2. Companies organized and incorporated for the purpose of distilling liquors and selling the same at wholesale, shall constitute a separate class for the purpose of taxation; and every such corporation, joint stock association, limited partnership or company, shall be subject to pay into the Treasury of the Commonwealth, annually a tax at the rate of [ten] *five* mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred. The Department of Revenue shall require every such corporation, joint stock association, limited partnership or company, to report to the said Department annually all such facts as may be by the said Department deemed necessary to arrive at the actual value of the capital stock of every such corporation, joint stock association, limited partnership or company. The said Department is hereby authorized and required to send out blanks in proper form to secure such information, as other corporations are required by law to give to the accounting officers in their annual reports, so that the actual value of the capital stock may be ascertained.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 2379, Printer's No. 1141, entitled "An act to amend section two of the act, approved the fifteenth day of July, one thousand eight hundred and ninety-seven (Pamphlet Laws, two hundred ninety-two), entitled 'An act to provide revenue by taxation,' by reducing, from ten mills to five mills, the rate of tax upon the capital stock of companies organized and incorporated for the purpose of distilling liquors and selling the same at wholesale."

This bill would reduce the rate of tax upon the capital stock of companies organized and incorporated for the purpose of distilling liquors from the present rate of ten mills to five mills.

The present rate of tax was established in 1897, and has been in effect for the forty years since that date without any detrimental economic effect. Since the increased obligations of the Commonwealth have made necessary the imposition of new taxes and the increase of old ones during the past several years, there is no valid reason why an existing and satisfactory tax of long standing should be reduced, particularly as the number of citizens which would benefit by such a reduction would be exceedingly small.

This bill would reduce the General Fund revenues approximately $200,000 a biennium. Either this amount would have to be made up by new taxation, or curtailment of the necessary expenditures of the Commonwealth would have to be effected. Neither alternative is desirable at this time.

For these reasons the bill is not approved.

GEORGE H. EARLE

No. 16

AN ACT

Making an appropriation for the preparation of the Eightieth Division History; and creating a commission for such purposes.

Section 1. Be it enacted, &c., That in order to commemorate the heroic achievements of the citizens of Pennsylvania who served on the battlefields of Europe and to perpetuate the memories of those who fell in the World War, there is hereby appropriated the sum of twenty-five thousand dollars ($25,000), or so much thereof as may be necessary, for the compilation and the printing in book form of the history of the Eightieth Division.

A commission is hereby constituted, which shall be composed of five (5) citizens who were former Pennsylvania soldiers and who served with the Eightieth Division during the war with Germany. The members of the commission shall be appointed by the Governor. They shall serve without compensation, but shall receive their actual and necessary expenses incurred in the performance of the duties imposed upon them by this act. The commission shall organize at the call of the Governor. Vacancies occurring in the membership of the commission shall be filled by appointment by the Governor. Any member so appointed shall have the same qualifications as is required of the original appointees.

Section 2. It shall be the duty of the commission, after its organization, to forthwith make arrangements for the preparation of the history and the furnishing of photographs with accompanying maps, and shall then make a complete report of its proceedings to the General Assembly as soon as possible. In such report the commission shall state the amount of money required to print and furnish each citizen who served as a member of the Eightieth Division with a copy of the history in book form.

Payments from said appropriation shall be made by requisition of the secretary of the commission, under such regulations as the Auditor General shall prescribe.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 826, Printer's No. 335, entitled "An act making an appropriation for the preparation of the Eightieth Division History and creating a commission for such purposes."

This bill would create a commission for the purpose of compiling and printing, in book form, the history of the Eightieth Division, and would make an appropriation of $25,000 to the commission for this purpose. The commission would be composed of five Pennsylvanians who served with the Eightieth Division dur-

ing the World War, and would be appointed by the Governor. The members of the commission would serve without compensation, but would be entitled to receive their actual and necessary traveling expenses. Also, the commission would be required to make a complete report to the General Assembly as soon as possible.

I have no fault to find with the purpose of this bill, but I have observed that House Bills Nos. 463, 1077 and 1252 providing appropriations for histories for other units of the military forces, failed to pass. While I regard the recording of the history of the various military organizations of the Commonwealth as worthwhile and worthy of public support, I feel that the work should be done for all such organizations and not by individual units.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 17

AN ACT

Declaring valid provisions in wills and trust instruments directing that certain dividends upon and profits realized from corporate stock be treated, in whole or in part, either as principal or income; and repealing inconsistent legislation.

Section 1. Be it enacted, &c., That in wills, deeds of trust, or other instruments creating trusts, becoming effective hereafter, provisions directing that extraordinary dividends declared upon corporate stock held in trust, whether payable in cash, stock, rights to subscribe to stock of the issuing or * another corporation, or otherwise, or directing that profits realized from such stock, either upon its sale or upon the sale or dissolution of the issuing corporation, or otherwise, shall be treated, in whole or in part, either as principal or income, shall be valid and enforceable.

Section 2. Section 9 of the act, approved the eighteenth day of April, one thousand eight hundred and fifty-three (Pamphlet Laws, five hundred three), entitled "An act relating to the sale and conveyance of real estate," as amended, and all other acts and parts of acts inconsistent herewith are hereby repealed in so far as they are inconsistent herewith.

Commonwealth of Pennsylvania,
Governor's Office,
July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 904, Printer's No. 325, entitled "An act declaring valid provisions in wills and trust instruments directing that certain dividends upon and profits realized from corporate stock be treated, in whole or in part, either as principal or income; and repealing inconsistent legislation."

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* "of" in the original.

This bill would declare as valid and enforceable, provisions in wills or trust instruments directing that extraordinary dividends of any kind whatsoever declared upon corporate stock held in trust, or directing that profits realized from such stock (either upon its sale or upon the sale or dissolution of the issuing corporation, or otherwise) shall be treated in whole or in part as principal or income.

Under the present law a testator or settler has the right to direct that all extraordinary dividends shall be allocated to income, and that no part of them shall be added to the principal of the trust. This bill would give the testator or settlor the same power with reference to the allocation of extraordinary dividends to principal.

This bill would make it possible for a testator or settler to provide for the accumulation of a great estate by requiring that all extraordinary dividends be credited to principal. The building up of such enormous estates is contrary to sound public policy. It deprives the beneficiary of the income of the estate and takes the proceeds of the estate out of circulation for as long a time as the law will permit, to wit, a life in being and twenty-one years.

I cannot subscribe to a proposition that would invest such powers in the creator of a trust.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 18

AN ACT

To amend section twenty-four of the act, approved the sixteenth day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, two hundred seven), as amended, entitled "An act providing when, how, upon what property, and to what extent, liens shall be allowed for taxes and for municipal improvements, for the removal of nuisances, and for water rents or rates, sewer rates, and lighting rates; for the procedure upon claims filed therefor; the methods for preserving such liens and enforcing payment of such claims; the effect of judicial sales of the properties liened; the distribution of the proceeds of such sales, and the redemption of the property therefrom; for the lien and collection of certain taxes heretofore assessed, and of claims for municipal improvements made and nuisances removed, within six months before the passage of this act; and for the procedure on tax and municipal claims filed under other and prior acts of Assembly," as amended by and increasing the term for which sequestrators may lease sequestrated property.

Section 1. Be it enacted, &c., That section twenty-four of the act, approved the sixteenth day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, two hundred seven), entitled "An act providing when, how, upon what property, and to what extent, liens shall be allowed for taxes and for municipal

improvements, for the removal of nuisances, and for water rents or rates, sewer rates, and lighting rates; for the procedure upon claims filed therefor; the methods for preserving such liens and enforcing payment of such claims; the effect of judicial sales of the properties liened; the distribution of the proceeds of such sales, and the redemption of the property therefrom; for the lien and collection of certain taxes heretofore assessed, and of claims for municipal improvements made and nuisances removed, within six months before the passage of this act; and for the procedure on tax and municipal claims filed under other and prior acts of Assembly," as last amended by the act, approved the twelfth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, six hundred seventy-three), is hereby further amended to read as follows:

Section 24. After the expiration of twenty days from the recovery of judgment, whether on the original scire or any scire facias to revive, except in cases where the property named is essential to the business of a quasi public corporation, the court shall, upon the petition of the plaintiff, appoint a sequestrator of the rents, issues, and profits of the property bound by the judgment, unless in the meantime an appeal be taken, and approved security given to operate as supersedeas. If the owner against whom the judgment is entered be in possession of the property sequestered, or the party in possession refuse to pay a fair rent, the court shall, upon petition filed and served, grant a rule, and, if it be made absolute, award a writ in the nature of a writ of habere facias possessionem, directed to the owner and/or the party in possession commanding him or them to deliver such possession to the sequestrator within fifteen days thereafter, unless such property be occupied by the owner and his family for a home, in which case he shall be entitled to retain possession for a period of one month from the time the petition was served upon him. A sequestrator, once appointed, shall have power to retain possession as sequestrator until all the taxes owing at the time of his appointment shall have been collected or paid. He shall have power to lease the property for a period not exceeding one year, with the usual privilege of renewal or termination thereof upon three months' notice, *or for a term of more than one year but not exceeding ten years without a privilege of renewal: Provided, however, That the sequestrator shall first obtain the approval of the court of any lease that provides for a term of more than one year.* He may make such repairs to the property as may be reasonably necessary to restore it to and maintain it in a tenantable condition. He may advertise for tenants and collect the costs of repairs and advertising from rentals collected or from a redeeming owner. He may appoint an agent, or agents, to collect the rentals of the property and pay such agent, or agents, the customary commissions for rent collections. All commissions, costs, and necessary expenses shall be deducted from the rents collected before paying the net balance towards the taxes. Any owner of the property may redeem it from the sequestrator and be again

entitled to possession thereof upon payment of the net amount of taxes then owing upon the property after payment of the commissions, costs, and expenses of the sequestration proceedings. Upon payment of all taxes owing, either by a redeeming owner or by collection of rentals, the sequestrator shall transfer the possession of the property to the owner, or owners, subject to any existing lease, or leases, given or executed by the sequestrator, which said lease, or leases, shall be assigned to the owner.

Sequestrators appointed under this act shall have and exercise all the powers, and shall be entitled to use, all the remedies conferred by the laws of this Commonwealth upon sequestrators in other proceedings, so far as they may be applicable.

Commonwealth of Pennsylvania,
Governor's Office,
July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 952, Printer's No. 645, entitled "An act to amend section twenty-four of the act, approved the sixteenth day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, 207), as amended, entitled 'An act providing when, how, upon what property, and to what extent, liens shall be allowed for taxes and for municipal improvements for the removal of nuisances, and for water rents or rates, sewer rates, and lighting rates; for the procedure upon claims filed therefor; the methods for preserving such liens and enforcing payment of such claims; the effect of judicial sales of the properties liened; the distribution of the proceeds of such sales, and the redemption of the property therefrom; for the lien and collection of certain taxes heretofore assessed, and of claims for municipal improvements made and nuisances removed, within six months before the passage of this act, and for the procedure on tax and municipal claims filed under other and prior acts of Assembly,' as amended by and increasing the term for which sequestrators may lease sequestrated property."

This bill would authorize sequestrators, appointed to take possession of property bound by judgments for municipal claims, to lease such property, with the approval of the court, for terms of more than one but not exceeding ten years.

Under the present law such sequestrators are authorized to lease such property only for periods of one year or less, with the privilege of renewal or termination upon three months' notice. Under the provisions of the existing law, when the sequestrated property is redeemed by the owner it remains subject to such leases as may have been executed by the sequestrator.

It is, of course, necessary that efficient methods of collecting municipal claims be provided, or local governments will be greatly handicapped in their activities. Nevertheless, legislation relative to such matters should exhibit due regard for the rights of the local taxpayers.

By virtue of this bill, owners of property which had been sequestrated might, upon the redemption thereof, find the property subject to a ten years' lease. I do not feel that it is necessary to give sequestrators such power in order to enable them to perform their duties efficiently, nor that it would be advisable to subject the residents of municipalities to such encumbrances.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 19

AN ACT

To further amend the act, approved the fifteenth day of May, one thousand nine hundred and fifteen (Pamphlet Laws, five hundred thirty-four), entitled "An act relating to motion-picture films, reels, or stereopticon views or slides; providing a system of examination, approval, and regulation thereof, and of the banners, posters, and other like advertising matter used in connection therewith; creating the Board of Censors; and providing penalties for the violation of the act," by prohibiting the possession of motion-picture films, reels, or views, not approved; requiring permits in certain cases; and increasing penalties.

Section 1. Be it enacted, &c., That section two of the act, approved the fifteenth day of May, one thousand nine hundred and fifteen (Pamphlet Laws, five hundred thirty-four), entitled "An act relating to motion-picture films, reels, or stereopticon views or slides; providing a system of examination, approval, and regulation thereof, and of the banners, posters, and other like advertising matter used in connection therewith; creating the Board of Censors; and providing penalties for the violation of the act," is hereby amended to read as follows:

USE OF FILMS, REELS, OR VIEWS PROHIBITED

Section 2. It shall be unlawful to sell, lease, lend, exhibit, [or] use, *or possess* any motion-picture film, reel, or view, in Pennsylvania, unless the said film, reel, or view has been submitted by the exchange, owner, or lessee of the film, reel, or view, and duly approved by the Pennsylvania State Board of Censors, hereinafter in this act called the board.

Section 2. Section six of said act, as amended by section one of the act, approved the eighth day of May, one thousand nine hundred and twenty-nine (Pamphlet Laws, one thousand six hundred fifty-five), is hereby further amended to read as follows:

APPROVALS BY BOARD

Section 6. The board shall examine or supervise the examinations of all films, reels, or views to be exhibited or used in Pennsylvania; and shall approve such films, reels, or views which are moral and proper; and shall disapprove such as are sacrilegious, obscene, indecent, *inhuman,* or immoral, *or against the public good,* or such as tend, in the judgment of the board, to debase or corrupt morals *or incite to crime.*

*Every person, association, copartnership, or corporation, intending to exhibit or use any film, reel, or view alleged to depict news or to be of a purely educational, charitable, or religious nature, shall apply to the board for a permit at least five days before the intended use or exhibition. Said application shall contain a description of the film, reel, or view, and a statement as to the time and place of the intended showing or exhibition. Upon approval of the application, the board shall issue a permit for every such film, reel, or view coming within the aforesaid classifications, without payment of any fee. The board may, in its discretion, require an examination of the said film, reel, or view, before issuing a permit therefor.*

*Any permit issued as provided herein may be revoked at any time upon a finding by the board that the said film, reel, or view does not come within the aforesaid classifications. Thereafter, any such film, reel, or view may be submitted to the board only in the manner provided in the act.*

[This section shall not apply to announcement or advertising slides or to films or reels containing current news events or happenings, commonly known as news reels, which are not in violation of the provisions of this section].

Section 3. Sections twenty, twenty-seven, and twenty-eight of said act, are hereby amended to read as follows:

REGULATIONS OF EXHIBITIONS

Section 20. Any member or employe of the board may enter any place where films, reels, or views are exhibited *or kept;* and such member or employe is hereby empowered and authorized to prevent the display or exhibition of any film, reel, or view which has not been duly approved by the board.

PENALTIES

Section 27. Any person who violates any of the provisions of this act, and is convicted thereof summarily before any alderman, magistrate, or justice of the peace, shall be sentenced to pay a fine of not less than [twenty-five] *fifty* dollars, nor more than [fifty] *one hundred* dollars, for the first offense. For any subsequent offense the fine shall be not less than [fifty] *one hundred* dollars, nor more than [one] *two* hundred dollars. In default of payment of a fine and costs, the defendant shall be sentenced to imprisonment, in the prison of the county where such offense was committed, for not less than ten days, and not more than thirty days All fines shall be paid by the alderman, magistrate, or justice of the peace to the board, and by it paid into the State Treasury.

Section 28. If any person shall fail to display or exhibit on the screen the approval seal, as issued by the board, of a film, reel, or view which has been approved, and is convicted summarily before any alderman, magistrate, or justice of the peace, he shall be sentenced to pay a fine of not less than [five] *ten* dollars and not more than [ten] *twenty-five* dollars; in default of payment of a fine and costs, the defendant shall be sentenced to imprisonment,

in the prison of the county where such offense was committed, for not less than [two] *five* days and not more than [five] *ten* days.

Section 4. Section twenty-nine of said act is hereby repealed.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 1130, Printer's No. 474, entitled "An act to further amend the act, approved the fifteenth day of May, one thousand nine hundred and fifteen (Pamphlet Laws, 534), entitled 'An act relating to motion-picture films, reels, or stereopticon views or slides; providing a system of examination, approval, and regulation thereof, and of the banners, posters, and other like advertising matter used in connection therewith; creating the Board of Censors; and providing penalties for the violation of the act,' by prohibiting the possession of motion picture films, reels, or views not approved; requiring permits in certain cases; and increasing penalties."

This bill would require every motion picture film, reel, or view which depicts news, or which is of a purely educational, charitable or religious nature, to be submitted to the Pennsylvania State Board of Censors at least five days before its intended use or exhibition, and would require the approval of the board, witnessed by the issuance of a permit. Heretofore films of these types were not subject to censorship, and there is indeed little occasion for such censorship in such cases, because it is almost inconceivable that any such films would fall within any of the classifications which justify the board in withholding approval.

Censorship, except that absolutely necessary to preserve public peace and protect public morals, is essentially un-American, in that it limits and qualifies the fundamental principle permitting freedom of speech and expression.

Since the necessity for this bill is not apparent, the extension of censorship which it represents is undesirable.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 20

AN ACT

To amend article nine of the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and im-

munities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," providing that a domestic business corporation formed by merger of one or more domestic business corporations and one or more foreign business corporations shall be entitled to a credit on the bonus due the Commonwealth, equal to the amount of the bonus paid under existing laws by the corporations so merging.

Section 1. Be it enacted, &c., That article nine of the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," is hereby amended by adding thereto section nine hundred and nine, to read as follows:

*Section* 909. *Upon the merger of one or more domestic business corporations and one or more foreign business corporations into a domestic business corporation, as provided by section nine hundred and one of the act to which this is an amendment, said corporation shall be liable for bonus on its capital stock or stated capital, or both, to the same extent, at the same rate, and in the same manner as corporations created under the laws of the State of Pennsylvania are liable: Provided, however, That said corporations shall be entitled to a credit on the bonus to which they are made liable by this act, equal to the total amount of bonus paid under existing laws by the domestic corporation or corporations and the foreign corporation or corporations so merging.*

Section 2. This act shall become effective immediately upon its final enactment.

Commonwealth of Pennsylvania,
Governor's Office,
July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 1224, Printer's No. 652, entitled "An act to amend article nine of the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, 364), entitled 'An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations,' providing that a domestic business corporation formed by merger of one or more domestic business corporations and one or more foreign business corporations shall be entitled to a credit on the bonus due the Commonwealth equal to the amount of the bonus paid under existing laws by the corporations so merging."

This bill would amend the Business Corporation Law (Act of May 5, 1933, P. L. 364), by prescribing the bonus that is payable by a domestic business corporation where a foreign business corporation is merged into such domestic business corporation. The domestic business corporation would be required to pay a bonus on its capital stock or stated capital, or both, to the same extent, at the same rate, and in the same manner as is generally required of domestic business corporations, except that such domestic business corporation would be entitled to a credit equal to the total amount of bonus previously paid under existing law by it and the foreign corporation.

The obvious purpose of this bill is to overcome Informal Opinion No. 829 of the Department of Justice, in which the Secretary of the Commonwealth was advised, under date of March 16, 1937, that upon the merger of a foreign business corporation into a domestic business corporation, the surviving domestic business corporation is not entitled to a credit equal to the amount of bonus previously paid by the foreign business corporation upon its capital employed in Pennsylvania. In that opinion it was pointed out that domestic bonus and foreign bonus is imposed at a different rate and upon a different basis, the former being imposed upon

the "capital stock" and the latter being imposed upon corporate assets employed in Pennsylvania.

The laws relating to bonus payable by domestic corporations were codified into one law by the Act of April 20, 1927, P. L. 322, and that law outlines the various conditions under which bonus is payable. On the other hand, the Business Corporation Law pertains exclusively to purely corporate matters, and is singularly free from any provisions imposing fees, bonus or taxes that are required to be paid by corporations. Aside from the merits of this bill, it is obvious that the provisions of this bill have no proper place in the Business Corporation Law, but should be incorporated in the Bonus Act of 1927.

Moreover, the title of the bill gives notice only of the credit mentioned above, yet the body of the bill first provides for the imposition of bonus upon the surviving domestic corporation and then provides for a credit equal to the bonus paid by the foreign and domestic corporations prior to their merger. Accordingly, there is serious doubt whether the title is broad enough to sustain the provisions of this bill.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 21

AN ACT

To amend section five hundred and fourteen of the act, approved the ninth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, one hundred seventy-seven), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards, and commissions shall be determined," as amended, permitting State institutions and sanatoria to supply water to individuals.

Section 1. Be it enacted, &c., That section five hundred and fourteen of the act, approved the ninth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, one hundred

seventy-seven), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards, and commissions shall be determined," as amended by the act, approved the twenty-second day of May, one thousand nine hundred and thirty-five (Pamphlet Laws, two hundred forty-one), and by the act, approved the twelfth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, seven hundred ninety-one), is hereby further amended to read as follows:

Section 514. Sale of Real Estate and Grants of Rights of Way or Other Rights Over or in Real Estate Tapping Water Lines of Institutions and Sanatoria.—(a) Except as otherwise in this act expressly provided, a department, board, or commission, shall not sell or exchange any real estate belonging to the Commonwealth, or grant any easement, right of way, or other interest over or in such real estate, without specific authority from the General Assembly so to do, but a department, board, or commission may, with the approval of the Governor, grant a license to any public service corporation to place upon, in, or over, any land or bridge of or maintained by the Commonwealth, any public service line, if such line will enable any State building or State institution to receive better service, or if such line is necessary for the service of persons living adjacent to the Commonwealth's land upon, in, or over which it is proposed to run the line, or if the running of such line over a bridge will be more economical than the erection of a separate bridge for the line. Every such license shall be revocable upon six months' written notice by the Commonwealth, and upon such other proper terms and conditions as the department, board, or commission, with the approval of the Governor, shall prescribe, and unless any such line is primarily for the benefit of a State building or State institution, the license shall provide for the payment to the Commonwealth of compensation for the use of its property in such amount as the department, board, or commission granting it shall, with the approval of the Governor, prescribe.

But nothing herein contained shall authorize the Commonwealth to impose and collect from any municipality or township

any compensation for a license granted to such municipality or township for the running of a public service line over any such bridge.

(b) Any department, board, or commission having control over lands of the Commonwealth underlaid with veins of coal, may, with the approval of the Governor, exchange part of such coal for coal in place, owned by private interests, which may be necessary to insure lateral or surface support for any building, reservoir, or structure erected or to be erected on such lands of the Commonwealth: Provided, That the coal given by the department, board, or commission to private interests, shall be approximately equivalent in value to the coal received in exchange therefor; every such department, board, or commission is hereby authorized and empowered to execute and deliver and to receive legal instruments and deeds necessary to effectuate any exchange authorized hereunder, which instruments and deeds shall have the prior approval of the Department of Justice, and a copy thereof shall be filed with the Department of Internal Affairs.

(c) Any department, board, or commission, having control over any water supply serving any State institution or sanitorium, may, with the approval of the Governor, permit and authorize the public authorities *or individuals* of any political subdivision, to which no other source of supply is available, under suitable regulations, to tap the lines of any such water supply for the purpose of supplying water to the people of any community living in proximity to such institution or sanitorium, and may impose reasonable charges payable periodically by such political subdivision for the water so furnished. All moneys, received under the provisions of this clause, shall be paid into the State Treasury through the Department of Revenue.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth,with my objections, House Bill No. 1433, Printer's No. 1228, entitled "An act to amend section five hundred and fourteen of the act, approved the ninth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, 177), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative

officers, providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards, and commissions shall be determined,' as amended, permitting State institutions and sanatoria to supply water to individuals."

This bill would amend paragraph (c) of Section 514 of The Administrative Code of 1929 (Act of April 9, 1929, P. L. 177), by authorizing any department, board or commission having control over any water supply serving any State institution or sanitorium, with the approval of the Governor, to permit and authorize individuals to tap the lines of any such water supply.

In its present form, this portion of The Administrative Code of 1929 authorizes such departments, boards and commissions to permit the public authorities of any political subdivision to which no other source of water supply is available, to tap the water lines of any such institution or sanitorium for the purpose of supplying water to the people of any community living in proximity to the institution or sanitorium, and authorizes the imposition of reasonable charges against such political subdivisions for the water so furnished.

Unfortunately, this bill fails to authorize any such department, board or commission to charge such individuals reasonable charges for water furnished them from the water lines of any such State institution or sanitorium. Accordingly, the effect of this bill would be to permit State institutions to furnish water gratuitously to individuals residing in the neighborhood of the institutions, inasmuch as no authority is contained in the bill for charging such individuals for such water. Clearly this would be against public policy.

For this reason the bill is not approved.

GEORGE H. EARLE

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No. 22

AN ACT

To further amend section one of the act, approved the eleventh day of May, one thousand nine hundred eleven (Pamphlet Laws, two hundred seventy-five), entitled "An act to provide for the appointment of county and city inspectors of weights and measures; providing for their compensation and expenses; prescribing their duties; prohibiting vendors from giving false or insufficient weights; and fixing the penalties for the violation of the provisions hereof," by eliminating certain conditions of removal of inspectors, and providing for their appointment in counties of the first class.

Section 1. Be it enacted, &c., That section one of the act, approved the eleventh day of May, one thousand nine hundred eleven

(Pamphlet Laws, two hundred seventy-five), entitled "An act to provide for the appointment of county and city inspectors of weights and measures; providing for their compensation and expenses; prescribing their duties; prohibiting vendors from giving false or insufficient weights; and fixing the penalties for the violation of the provisions hereof," as last amended by the act, approved the nineteenth day of July, one thousand nine hundred seventeen (Pamphlet Laws, one thousand eleven hundred two), is hereby further amended to read as follows:

Section 1. Be it enacted, &c., That the mayors of cities of the second and third class, and the several boards of county commissioners, shall, respectively, appoint one or more competent persons as inspectors of weights and measures, in the respective county or city, whose salary shall not be less than one thousand dollars per annum, to be paid out of the respective revenues of such county or city: Provided, however, That the payment of a minimum salary shall not apply to counties having a population of fifteen thousand or less. In addition to the salary provided by law, the said county and city inspectors shall be entitled to receive the actual expenses incurred by them personally in performing the duties of their office; such as transportation, hotel, livery, telephone, telegraph, and postal charges, to be paid by the boards of county commissioners of their respective counties and by the proper officers of their respective cities, in such proportion as may be agreed upon by said boards of county commissioners and proper officers of cities, on bills itemized and properly sworn to: Provided, however, That nothing in this act shall be construed to prevent two or more counties, or any county and city, from combining the whole or any part of their districts, as may be agreed upon by the board of county commissioners and mayors of cities, with one set of standards and one inspector, upon the written consent of the chief of the bureau of standards: Provided further, In cities of the first class the inspectors shall be appointed by the county commissioners of the county in which the said city may be located. Any inspector appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority and duties as if he had been appointed by each of the authorities who are parties to the agreement. The county and city inspectors of weights and measures, as appointed by the respective counties and cities, shall hold their office during good behavior. [and shall not be removed, discharged, or reduced in pay or position except for inefficiency, incapacity, conduct unbecoming employes, or other just cause, and until the said officials shall have been furnished with written statements of the reason for such removal, discharge, or reduction, and shall have been given reasonable time to make written answer thereto. Nor shall such removal, discharge, or reduction be made until the charge or charges shall have been examined into and found true in fact by the appointing* power of such county or

* "appointed" in the original.

city, at a hearing, upon reasonable notice to the person charged, at which time he may be represented by counsel and offer testimony or witnesses in his own behalf] It shall be unlawful for any sealer or inspector of weights and measures, or any of his deputies, to perform clerical or other services for the county or city of their respective districts.

*All the appointments made under the provisions of this act by the county commissioners in counties of the first class shall be equally divided between the majority commissioners and the minority commissioners, so that the majority commissioners shall name one-half of all appointees and the minority commissioners shall name one-half of all the appointees. The provisions of this act apply to persons presently employed as well as to persons to be employed in the future, and the county commissioners shall comply therewith within thirty days of the passage of this act.*

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 1322, Printer's No. 685, entitled "An act to further amend section one of the act, approved the eleventh day of May, one thousand nine hundred eleven (Pamphlet Laws, 275), entitled 'An act to provide for the appointment of county and city inspectors of weights and measures; providing for their compensation and expenses; prescribing their duties; prohibiting vendors from giving false or insufficient weights; and fixing the penalties for the violation of the provisions hereof,' by eliminating certain conditions of removal of inspectors, and providing for their appointment in counties of the first class."

This bill would provide that all appointments of city and county inspectors of weights and measures made by the county commissioners, in counties of the first class, shall be equally divided between the minority and the majority commissioners, so that the majority shall name one-half of all the appointees and the minority shall name the other half. The provisions of the bill would apply to persons at present employed as well as to persons to be employed in the future.

The bill is un-American in theory and contrary to democratic principles of government. Its application would result in a departure from the recognized American proposition of majority rule by giving to a minority more than its proportionate share of representation. In this respect it would violate the spirit of our constitution.

For these reasons the bill is not approved.

GEORGE H. EARLE

No. 23

AN ACT

To further amend the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," providing that certain proceedings by corporations must show that all contributions for unemployment compensation have been paid.

Section 1. Be it enacted, &c., That section nine hundred five of the act, approved the fifth day of May, one thousand nine hundred thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," is hereby amended to read as follows:

Section 905. Filing of Articles of Merger or Consolidation.—The articles of merger or articles of consolidation, as the case may be, and proof of the advertisement required by the preceding section, shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, it shall forthwith, but not prior to the day specified in the advertisement required by the preceding section, endorse its approval thereon, and when all bonus, fees, taxes, *contributions for unem-*

*ployment compensation,* and charges have been paid, as required by law, shall file the articles and issue to the corporation, or its representative, a certificate of merger or a certificate of consolidation, as the case may be, to which shall be attached a copy of the approved articles.

Section 2. That clause C of section one thousand seven of said act, as amended by section one of the act, approved the seventeenth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, one thousand one hundred twenty-three), is hereby further amended to read as follows:

C. If the Department of State finds that the provisions of this article have been complied with and that the applicant corporation is entitled to an amended certificate of authority, it shall forthwith, but not prior to the day specified in the advertisement heretofore required by this section, endorse its approval upon the application, and when all fees, *contributions for unemployment compensation,* and charges have been paid, as required by law, shall file the application and issue to the applicant corporation an amended certificate of authority setting forth the desired changes.

Section 3. That clause C of section one thousand fifteen of said act is hereby amended to read as follows:

C. Upon the filing of such application, proof of the advertisement heretofore required by this section, and the return for cancellation of the corporation's certificate of authority, or the filing of proof that it has been lost or destroyed, the Department of State, after all bonus, taxes, *contributions for unemployment compensation,* fees and charges have been paid, as required by law, shall cancel the certificate of authority, if any, and shall issue to the corporation, or its representative, a certificate of withdrawal. Upon the issuance of the certificate of withdrawal, the authority of the corporation to do business within this Commonwealth shall cease and determine. The issuance of such certificate shall not affect any action pending at the time thereof, or affect any right of action upon any contract made by such corporation in the Commonwealth before the issuance of the certificate. Process against the corporation in an action upon any liability or obligation incurred within this Commonwealth, before the issuance of such certificate, may be served thereafter upon the Secretary of the Commonwealth.

Section 4. That section one thousand one hundred one of said act is hereby amended to read as follows:

Section 1101. Voluntary Dissolution by Incorporators.—The incorporators of a business corporation which has not commenced business, or which has not issued any shares, may effect* the dissolution of the corporation by filing articles of dissolution with the Department of State. The articles of dissolution shall be executed under the seal of the corporation, signed and verified by a majority of the incorporators, and shall set forth:

(1) The name of the corporation.

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* "affect" in the original.

(2) The address, including street and number, if any, of its registered office.

(3) The date of its incorporation.

(4) That the corporation has not commenced business and that none of its shares has been issued.

(5) That the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(6) That no debt of the corporation remain unpaid.

(7) That all the incorporators elect that the corporation be dissolved.

The articles of dissolution shall be delivered to the Department of State. If the Department of State finds that the articles conform to law, it shall endorse its approval thereon, and when all bonus, taxes, fees, *contributions for unemployment compensation* and charges, required by law, have been paid, shall file the articles and issue a certificate of dissolution to the incorporators, or their representative, to which shall be attached a copy of the approved articles. Upon the issuance of the certificate of dissolution, the existence of the corporation shall cease.

Section 5. That clause (6) of section one thousand one hundred three of said act is hereby amended to read as follows:

(6) If the election to dissolve was by resolution adopted at a meeting of the shareholders, the number of shares outstanding, the number of shares entitled to vote in respect of the dissolution of the corporation, and the number of shares voted for and against the voluntary dissolution of the corporation, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of such class and the number of shares of all other classes voted for and against the voluntary dissolution of the corporation.

The certificate of election to dissolve shall be delivered to the Department of State. If the Department of State finds that the certificate conforms to law, it shall endorse its approval thereon, and when all bonus, taxes, fees, *contributions for unemployment compensation* and charges, required by law, have been paid, shall file the certificate, and shall issue to the corporation, or its representative, a copy of the approved certificate. Upon the filing by the Department of State of a certificate of election to dissolve, the corporation shall cease to carry on its business, except in so far as may be necessary for the proper winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Department of State, or until a decree dissolving the corporation has been entered by a court of common pleas, as elsewhere provided in this act.

Section 6. That section one thousand one hundred five of said act is hereby amended to read as follows:

Section 1105. Articles of Dissolution.—When all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation

shall have been distributed to its shareholders, articles of dissolution shall be executed under the seal of the corporation and signed and verified by two duly authorized officers of the corporation, which shall set forth:

(1) The name of the corporation.

(2) The address, including street and number, if any, of the registered office of the corporation.

(3) A statement that the corporation has theretofore delivered to the Department of State a certificate of election to dissolve, and the date on which the certificate was filed by the Department of State.

(4) A statement that all debts, obligations and liabilities of the corporation have been paid and discharged, or that adequate provision has been made therefor.

(5) A statement that all the remaining property and assets of the corporation have been distributed among its shareholders, in accordance with their respective rights and interests.

(6) A statement that there are no suits pending against the corporation in any court.

The articles of dissolution, and proof of the advertisement required by the preceding section, shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, it shall endorse its approval thereon, and if all bonus, taxes, fees, *contributions for unemployment compensation* and charges, required by law, have been paid, shall file the articles and issue to the corporation, or its representative, a certificate of dissolution, to which shall be attached a copy of the approved articles. Upon the issuance of the certificate of dissolution, the existence of the corporation shall cease.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 995, Printer's No. 345, entitled "An act to further amend the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, 364), entitled 'An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing

duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations,' providing that certain proceedings by corporations must show that all contributions for unemployment compensation have been paid."

This bill would amend the Business Corporation Law (Act of May 5, 1933, P. L. 364), by providing that domestic business corporations may not be merged, consolidated or dissolved, and foreign business corporations may not be issued an amended certificate of authority or a certificate of withdrawal, unless and until such corporations have paid their contribution for unemployment compensation required under the Pennsylvania Unemployment Compensation Law.

Under the present law, none of the foregoing steps may be taken unless and until "all bonus, fees, taxes and charges have been paid as required by law." In addition, domestic business corporations may not procure an amendment to their charters until such payments have been made.

While I am heartily in favor of the purpose of this bill, I am constrained to withhold my approval from it for the following reasons:

1. The bill would amend clause 6 of Section 1903 of the Business Corporation Law so that a corporation could not file a certificate of election to dissolve unless and until it had paid its contributions for unemployment compensation. I have just approved Senate Bill No. 630, which amended this same provision of the Business Corporation Law by eliminating the requirement that "all bonus, taxes and charges required by law" must be paid before a corporation may file a certificate of election to dissolve. Inasmuch as this payment of "bonus, taxes and charges required by law" was necessary, not only for the filing of a certificate of election to dissolve, which merely fixes the time for the beginning of liquidation, but for the actual dissolution of the corporation by the filing of articles of dissolution, and this dual ascertainment and payment of bonus, taxes and other charges was very burdensome on the Department of State and the Department of Revenue, and served no useful purpose, Senate Bill No. 630 eliminated this requirement with respect to the certificate of election to dissolve. This bill would require the ascertainment and payment of contributions for unemployment compensation before a certificate of election to dissolve could be filed, which would impose a burden analogous to that which was eliminated by Senate Bill No. 630.

2. The phrase "fees, bonus, taxes, and charges required by law," which appears in the present law, is comprehensive enough to embrace contributions for unemployment compensation that are required to be paid to the Commonwealth by the Unemployment Compensation Law. Accordingly, the present bill would be unnecessary.

Moreover, the present bill does not cover every situation, in that it entirely overlooks the amendment of a corporate charter, so that the addition of the words "contributions for unemployment compensation" to the phrase mentioned above in every instance where such phrase appears in the law, except in the case of the amendment of a charter, would unquestionably mean that such contributions could not be required as a condition precedent to obtaining an amendment to a corporate charter. On the other hand, the present wording of the law will require such payments in such a case.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 24

AN ACT

To amend section eighteen of the* act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, five hundred eighty-nine), entitled "An act to safeguard human health and life by providing for the issuance of permits to, and regulation of persons and entities selling milk and milk products; conferring powers, and imposing duties on the Secretary of Health, the Advisory Health Board; and otherwise providing for the administration of the act; and imposing penalties," requiring local ordinances, in certain cases, to conform to this act and the regulations made thereunder.

Section 1. Be it enacted, &c., That section eighteen of the act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, five hundred eighty-nine), entitled "An act to safeguard human health and life by providing for the issuance of permits to, and regulation of persons and entities selling milk and milk products; conferring powers, and imposing duties on the Secretary of Health, the Advisory Health Board; and otherwise providing for the administration of the act; and imposing penalties," is hereby amended to read as follows:

Section 18. The provisions of this act, and the regulations made thereunder, shall not be taken nor deemed to repeal existing municipal ordinances, *except in so far as they may establish requirements and regulations for milk, for pasteurization, pasteurized milk, and milk products in excess of those provided by this act, and the regulations made thereunder,* nor to prevent municipalities from enacting and enforcing new ordinances for the [further] protection of the public health *consistent with this act and the regulations made thereunder.* [Provided, That this] *This* act shall be considered as establishing uniform requirements and regulations *for milk, for pasteurization, pasteurized milk, and milk products, and no person, city, borough, or township shall*

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* "this" in the original.

*establish nor enforce any requirements or regulations for milk, for pasteurization, pasteurized milk, and milk products, other than those provided by this act and regulations made thereunder.* [and nothing herein contained shall be deemed to prevent municipalities from ordaining and enforcing such additional requirements in excess of the requirements and regulations hereunder, as may be deemed necessary, from time to time for the preservation of public health, and to require applications from, and to issue permits to, such persons as may be defined by local ordinances.]

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 213, Printer's No. 810, entitled "An act to amend section eighteen of this act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, 589), entitled 'An act to safeguard human health and life by providing for the issuance of permits to, and regulation of persons and entities selling milk and milk products; conferring powers and imposing duties on the Secretary of Health, the Advisory Health Board; and otherwise providing for the administration of the act; and imposing penalties,' requiring local ordinances in certain cases to conform to this act and the regulations made thereunder."

This bill would amend the Act of July 2, 1935, P. L. 589, regulating milk sanitation throughout the Commonwealth, by forbidding any person, city, borough or township to establish or enforce any standards for pasteurized milk other than those provided in the Act of 1935, or in the regulations made thereunder. Its reported purpose is to cause uniformity of farm inspection.

Under existing law the Secretary of Health has the power to prescribe sanitary regulations for the production, processing and distributing of milk, and municipalities may impose additional requirements for the preservation of public health.

Objections to this bill have been received from the mayors of many cities, many local boards of health, county medical associations and the Secretary of Health. The farm groups are divided in opinion.

This bill would have the following effects:

1. The State's standard of sanitation would become the maximum that any community may enjoy. The cities of Philadelphia, Pittsburgh and Scranton necessarily have more stringent health regulations than elsewhere in the Commonwealth. Therefore, the State's standard must meet the standards required by these and other large centers of population; otherwise the quality of their milk supply would be reduced, and if the State's uniform regulations meet such strict requirements, it necessarily follows that

the thousands of farmers shipping to less populated communities would suffer by being forced to live up to unnecessary regulations.

2. The State's standard also would become the maximum that any person dealing in milk may require. Therefore, if a milk dealer would wish to serve the public with a higher quality of milk, this bill would prevent him from doing so. Furthermore, in actual practice no milk dealer can be forced to accept the milk of a farmer; hence, although the bill would appear to prevent a milk dealer from requiring his farmers to live up to burdensome standards, if the farmer would not do so the dealer could not be compelled to take his milk.

3. Milksheds have developed throughout the State, partly due to differences in sanitary regulations of various communities. Milk producers ship to particular markets, depending upon whether their farms meet the health requirements of those markets. The markets with the higher requirements usually command the higher market prices. This bill, by removing these differences in health requirements, would permit milk now entering lower priced markets to compete with milk which has heretofore commanded higher prices. This would impair the investment of many progressive dairy farmers.

4. The differences of production conditions which exist in the many counties of the Commonwealth could no longer be recognized by the communities receiving the milk.

5. This bill would not have the effect of uniformity which its sponsor seeks. It is true that many dairy farmers are burdened by duplicity of inspection. However, of the four reasons for multiplicity of inspection, only one (differences between municipalities) is in fact removed by this bill. As a matter of law, we cannot cause New York or New Jersey to relax its requirements upon Pennsylvania farmers shipping milk to dealers selling in those states. For the reason above stated, this bill would not affect the different requirements of milk dealers, and it is obvious that different inspectors could not be caused to have the same interpretation of a requirement merely by approving this bill.

Finally, this bill would place upon Harrisburg the responsibility for the milk supply of the third largest milk consuming state in the nation and, as a practical matter, would displace the health ordinances of one hundred four towns and cities, which towns and cities include two-thirds of our total population. Let there be one epidemic of a milk-borne disease, and it would be blamed on this fact. Notwithstanding this, no public hearing was ever held upon the bill, and it carries no appropriation. Municipalities would be free to contend that the responsibility for the sanitation of their milk supply would rest with the Commonwealth, and yet the absence of any appropriation would render the Commonwealth helpless to enforce the standards required by this bill. The significance of this cannot be overestimated. The high prices maintained in this Commonwealth by the Milk Control Commission tend to attract milk from farmers outside of Pennsylvania. Hence, if municipalities are permitted to relax their ordinances imposing

health restrictions upon such milk supply, local producers would suffer and it would cost the Commonwealth a fortune to police its boundaries. Without a large appropriation this policy would be impossible.

If approved this bill would tend to reduce the sanitary quality of milk and its ultimate effect would be to inflict harm upon those whom it proposes to help.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 25

AN ACT

To amend sections one and three of the act, approved the eighteenth day of March, one thousand eight hundred and seventy-five (Pamphlet Laws, thirty-two), entitled "An act requiring recorders of deeds to prepare and keep in their respective offices general, direct and ad sectum indexes of deeds and mortgages recorded therein, prescribing the duty of said recorders and declaring that the entries in said general indexes shall be notice to all persons," by further regulating the preparation and keeping of indexes of deeds and mortgages by recorders of deeds, and prescribing the effect thereof.

Section 1. Be it enacted, &c., That sections one and three of the act, approved the eighteenth day of March, one thousand eight hundred and seventy-five (Pamphlet Laws, thirty-two), entitled "An act requiring recorders of deeds to prepare and keep in their respective offices general, direct and and ad sectum indexes of deeds and mortgages recorded therein, prescribing the duty of said recorders and declaring that the entries in said general indexes shall be notice to all persons," are hereby amended to read as follows:

Section 1. Be it enacted, &c., That in addition to the indexes which the recorder of deeds in each county of this Commonwealth is required to keep, the said recorder shall carefully and accurately prepare and keep in his office two general indexes of all deeds recorded therein, in one of which, to be known as the direct index, he shall enter in their order the name of the grantor, the name of the grantee, the volume and page wherein the deed is recorded, *the date when the deed is recorded, the date of the instrument, and the exact locality, by city, borough, town, or township, or other political subdivision in the county wherein the property is situate, including also one of the streets by which the premises are bounded, if such appear in the deed, and also the particular designation of the lot and square by such number or letter as appears in such conveyance, if such number or letter is therein set forth, or, if the property is situated in more than two political subdivisions, by general reference to the each of said subdivisions*, and in the other, to be known as the ad sectum index, he shall enter in their order the name of the grantee, the name of the grantor, the volume and

page wherein the deed is recorded, *the date when the deed is recorded, the date of the instrument, and the exact locality, by city, borough, town, or township, or other political subdivision in the county wherein the property is situated, including also one of the streets by which the premises are bounded, if such appear in the deed, and also the particular designation of the lot and square by such number or letter as appears in such conveyance, if such number or letter is therein set forth, or, if the property is situated in more than two political subdivisions, by general reference to the each of said subdivisions.* He shall in like manner also prepare and keep two general indexes, one direct and the other ad sectum, of all mortgages recorded in his office, *including in the mortgage indexes the date of recordation of the mortgage and the locality of the property, in the same manner as herein provided for the indexing of deeds.*

Said indexes shall be arranged alphabetically and in such a way as to afford an easy and ready reference to said deeds and mortgages, respectively, and shall be written in a plain and legible hand: Provided, however, That in any county where such indexes have already been prepared and in use, or where any special law relating to any of said indexes is now in force, they shall be adopted and kept as if made in pursuance of this act.

Section 3. The entry of recorded deeds and mortgages in said indexes, respectively, shall be notice to all persons of the recording of the same, *and of the other information required by this act to be placed upon said indexes.*

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, Senate Bill No. 1270, Printer's No. 799, entitled "An act to amend sections one and three of the act, approved the eighteenth day of March, one thousand eight hundred and seventy-five (Pamphlet Laws, thirty-two), entitled 'An act requiring recorders of deeds to prepare and keep in their respective offices general, direct and ad sectum indexes of deeds and mortgages recorded therein, prescribing the duty of said recorders and declaring that the entries in said general indexes shall be notice to all persons,' by further regulating the preparation and keeping of indexes of deeds and mortgages by recorders of deeds, and prescribing the effect thereof."

The bill would amend Sections 1 and 3 of the Act of March 18, 1875, P. L. 32, which requires recorders of deeds to prepare and keep certain general indexes of the deeds and mortgages recorded in their offices by requiring that entries in the direct deed index and in the ad sectum deed index should include certain additional information relative to the instrument involved and to the location of the property concerned.

The bill would add additional detail in the indexing of deeds and mortgages. Such detail is unnecessary for the reason that the present system is completely adequate in every respect to provide a complete and comprehensive system of recordation. Furthermore, it would impose a cumbersome and costly burden upon the county, which cannot be justified.

For these reasons the bill is not approved.

GEORGE H. EARLE

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No. 26

AN ACT

To authorize, subject to certain conditions, the acquisition, improvement, construction, operation, and maintenance of electric light and gas systems by cities of the third class and boroughs; authorizing the issuance of revenue bonds of such cities and boroughs, payable solely from earnings, to pay the cost of such systems; providing for the fixing of rates and collection of charges for the payment of such bonds and for the cost of maintenance, operation, and repair of such systems; providing for condemnation; authorizing the issuance of revenue refunding bonds; and providing, subject to certain conditions, that no debt of such cities or boroughs shall be incurred in the exercise of any of the powers granted by this act.

Section 1. Be it enacted, &c., That any municipality, as hereinafter defined, is hereby authorized and empowered to acquire by purchase and to construct or partly acquire and partly construct and to improve, enlarge, reconstruct, own, equip, operate, and maintain an electric light system or a gas system, as hereinafter defined, inside or outside the limits of such municipality in whole or in part to sell services therefrom to public or private consumers located inside and outside said municipality, and to issue revenue bonds payable from earnings to pay the costs of such system.

Section 2. As used in this act the following words and terms shall have the following meanings:

(a) The word "system" shall include all property, rights, easements and franchises relating thereto and deemed necessary or convenient for its operation, and shall embrace an electric light system or a gas plant in its entirety, or any integral part thereof, including but not limited to dams, reservoirs, wells, storage tanks, pumping tanks, meters, valves, mains, and distribution systems.

(b) The word "municipality" shall include cities of the third class and boroughs.

(c) The term "legislative body" as applied to a municipality shall mean The Council, The Borough Council, or other board or body in which the general legislative powers of the municipality are vested.

(d) The word "improvement" shall mean such repairs, replacements, additions, and betterments of and to a system acquired by purchases as are deemed necessary to place it in a safe

and efficient condition for the use of the public if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such system.

(e) The term "cost of system" as applied to a system to be acquired by purchase, shall include the purchase price, cost of improvement, financing charges, interest during any period of disuse before completion of improvements, cost of engineering, and legal expenses, plans, specifications, and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and to acquisition of the system and the placing of the same in operation.

(f) The term "cost of system" as applied to a system to be constructed, shall embrace the cost of construction, the cost of all land, property, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for six months after completion of construction, cost of engineering, and legal expenses, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction of the system and the placing of the same in operation.

(g) The word "owner" shall include all individuals, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

Section 3. Any municipality shall have power to acquire by purchase, upon such terms and conditions and in such manner as it may deem proper, and to acquire by condemnation, in accordance with and subject to the provisions of any and all existing laws applicable to the condemnation of property for public use and land, rights, easements, franchises, and other property deemed necessary or proper for the construction, operation, and maintenance of a system. Title to the property condemned shall be taken in the name of the municipality. The municipality shall be under no obligation to accept and pay for any property condemned under this act, except from the funds provided by this act, and, in any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceeding, as may be just to the municipality and to the owners of the property to be condemned.

Section 4. Any municipality is hereby authorized to acquire by purchase, whenever it shall deem such purchase expedient, but solely by means of or with the proceeds of revenue bonds hereinafter authorized any system as hereinabove defined or any such system wholly or partly constructed and any franchises, easements, permits, and contracts for the construction of any such system, upon such terms and at such prices as may be considered

by it to be reasonable and can be agreed upon between it and the owner thereof, title thereto to be taken in the name of the municipality.

Section 5. At or before the time any such system shall be acquired by purchase, it shall be the duty of the legislative body to determine what repairs, replacements, additions, or betterments will be necessary to place such system in safe and efficient condition for use, and to cause an* estimate of the cost of such improvement to be made and submitted to it by an engineer or engineers appointed by it. Such improvements shall be ordered by the legislative body before the sale of any revenue bonds hereinafter authorized for the acquisition of such system and shall be paid for out of the proceeds of such bonds.

Section 6. Any municipality is hereby authorized to construct, whenever it shall deem such construction expedient, any system as hereinabove defined, the cost of such construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized.

Section 7. Before any system shall be acquired or constructed or partly acquired and partly constructed under the provisions of this act, the legislative body shall adopt an ordinance which shall—(a) set forth a brief and general description of the system and a reference to the plans and specifications which shall theretofore have been prepared by an engineer chosen by the municipality and filed with the clerk of the legislative body of such municipality; (b) set forth the engineers' estimated cost thereof and the estimated period of construction; (c) order the acquisition of such system and the construction of such improvements thereto as may be necessary, or order the construction of such system and the acquisition of all property deemed necessary or proper for the construction, operation, and maintenance thereof; and (d) direct that revenue bonds of the municipality shall be issued pursuant to this act, in such an amount as may be found necessary to pay the cost of the system.

Section 8. Upon the ordinance above mentioned becoming effective, the municipality is hereby authorized to provide by resolution for the issuance of its revenue bonds for the purpose of paying the cost as hereinabove defined of any system, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. Such revenue bonds shall bear interest at not more than six per centum per annum payable semi-annually, and shall mature at such time or times not more than thirty years from their date or dates as may be fixed by such resolution. All such revenue bonds may be made redeemable before maturity, at the option of the municipality, at such price and under such terms and conditions as may be fixed by it prior to the issuance of the bonds. The principal and interest of such revenue bonds may be made payable in any lawful medium. The legislative body shall determine the form of the bonds

* "as" in the original.

and the interest coupons to be attached thereto, the manner of executing the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the State. All revenue bonds issued under this act shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the revenues of such system. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All such revenue bonds shall be and shall have and are hereby declared to have, as between successive holders thereof, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone and for the transfer of bonds so registered including transfers to bearer and for successive registrations and transfers. The municipality may sell the bonds in such manner and for such price as it may determine to be for the best interests thereof, but no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of six per centum per annum to the purchaser upon the amount paid therefor. The proceeds of such revenue bonds shall be used solely for the payment of the cost of the system and shall be checked out in such manner and under such restrictions, if any, as the legislative body may provide. If the proceeds of the revenue bonds, by error of calculation or otherwise, shall be less than the cost of the system, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the trust indenture hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same system. If the proceeds of bonds issued for any such system shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the legislative body may under like restrictions issue temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this act or by the Constitution of the State.

Section 9. All moneys received from any revenue bonds issued pursuant to this act shall be applied solely to the payment of the cost of the system or to the appurtenant sinking fund, and there

shall be and hereby is created and granted a lien upon such moneys until so applied in favor of the holders of the bonds, or the trustee hereinafter provided for in respect of such bonds.

Section 10. In the discretion of the legislative body, such revenue bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State; but no such trust indenture shall convey or mortgage the system or any part thereof. Either, the resolution providing for the issuance of revenue bonds or such trust indenture, may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the system, the custody, safeguarding, and application of all moneys, and may provide that the system shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the municipality and satisfactory to the original purchasers of the bonds issued therefor, their successors, assigns, or nominees who may be given the right to require that security, given by contractors and by any depositary of the proceeds of the bonds or revenues of the system or other moneys pertaining thereto, be satisfactory to such purchasers, successors, assigns, or nominee. Such resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this act otherwise provided, the municipality may provide, by resolution or by such trust indenture, for the payment of the proceeds of the sale of the bonds and the revenues of the system to such officer, board, or depositary as it may determine, for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the system affected by such indenture.

Section 11. At or before the issuance of any revenue bonds, the municipality shall by resolution create a sinking fund for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the system, hereby defined to be the revenues of the system remaining after the payment of the reasonable expense of operation, repair, and maintenance, such amount to be paid into such sinking fund at intervals to be determined by the municipality prior to the issuance of the bonds for—(a) the interest upon such bonds as such interest shall fall due, and (b) the necessary fiscal agency charges for paying bonds and interest, and (c) the payment of the bonds as they fall due, or, if

all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time, and (d) a margin for the payment of premiums upon bonds retired by call or purchase as herein provided. Such required payments shall constitute a first charge upon all the net revenues of the system. Rates or other charges shall be fixed, charged, and collected for the use of such system, and shall be so fixed and adjusted, in respect of the aggregate of such rates or other charges from the system for which a single issue of revenue bonds is issued, as to provide a fund sufficient to make such required payments and to provide an additional fund to pay the cost of maintaining, repairing, and operating the system. Such rates or other charges shall not be subject to supervision or regulation by any state bureau, board, commission, or agency, and it shall not be necessary for the municipality to obtain any franchise or other permit from any state bureau, board, commission, or agency for the doing of the things authorized by this act. Prior to the issuance of revenue bonds, the municipality may provide, by resolution or by such trust indenture, for using the sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom, at the market price thereof, but not exceeding the price, if any, at which the same shall at the next interest date be payable or redeemable; and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. The moneys in the sinking fund, less a reserve for payment of not exceeding one year's interest on the bonds, if not used within a reasonable time for the purchase of bonds for cancellation, as above provided, shall be applied to the redemption of bonds by lot at the redemption price then applicable.

Section 12. Any municipality shall have power to make and enter into all contracts or agreements necessary or incidental to the execution of its powers under this act, and may employ engineering, architectural, and construction experts, and inspectors, and attorneys, and such other employes as may be deemed necessary, and may fix their compensation. All such compensation and all expenses incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act, and no liability or obligation shall be incurred hereunder beyond the extent to which money shall have been provided under the authority of this act. All public or private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their original condition as nearly as practicable, or adequate compensation made therefor out of funds provided by this act.

Section 13. Any holder of any such revenue bonds or any of the coupons attached thereto and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the revenue bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights granted hereunder or under such resolution or trust indenture,

and may enforce and compel performance of all duties required by this act or by such resolution or trust indenture to be performed by the municipality, including the fixing, charging, and collecting of rates and other charges for the use of such system.

Section 14. Any municipality shall be subject to the charges and rates established as hereinabove provided for services rendered such municipality, and shall pay such rates or charges when due, and the same shall be deemed to be a part of the revenues of the system as hereinabove defined and be applied as hereinabove provided for the application of such revenues.

Section 15. In addition to the revenues which may be received from the sale of revenue bonds and from the collection of fees, rents, tolls, rates, and other charges under the provisions of this act, any municipality shall have authority to receive and accept contributions of either money or property or other things of value to be held, used, and applied for the purposes in this act provided.

Section 16. Any municipality is hereby authorized to provide by resolution for the issuance of its refunding revenue bonds for the purpose of refunding any revenue bonds issued under the provisions of this act and then outstanding. The issuance of such refunding revenue bonds, the rights of the holders thereof, and the duties of the municipality in respect to the same shall be governed by the foregoing provisions of this act in so far as the same may be applicable and by the following provisions:

(a) No refunding revenue bonds shall be delivered unless delivered in exchange for revenue bonds to be refunded thereby, except in the amount necessary to provide for the payment of matured or redeemable revenue bonds, together with any premium thereon, or revenue bonds maturing or redeemable within three months, together with any premium thereon, or for the payment of unmatured revenue bonds which shall then be on deposit with a bank or trust company for surrender to the municipality upon receipt therefor of a sum not exceeding the face value thereof.

(b) No refunding revenue bonds shall be issued unless issued to refund revenue bonds which have matured or will mature within three months if either the interest rate of refunding revenue bonds delivered in exchange or the net return to the purchaser upon the amount paid for refunding revenue bonds sold shall exceed the interest rate borne by the revenue bonds to be refunded.

Section 17. No city or borough shall acquire, condemn, construct, or begin to operate any plant, system, equipment, or other facilities under any provisions of this act for the rendering or furnishing to the public of any service of the kind or character already being rendered or furnished by any public service company, until the Pennsylvania Public Utility Commission shall have first found, determined, and ordered, after public hearing upon notice to all parties affected, that such acquisition, condemnation, construction, or operation is necessary and proper for the service, economy, accommodation, convenience, or safety of the public.

Section 18. This act shall be deemed to provide an additional

and alternative method for the doing of the things authorized hereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

Section 19. The sections and provisions of this act are severable, and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and, if any of the sections or provisions or parts thereof are for any reason illegal, it is the intention that the remaining sections and provisions and parts thereof shall remain in full force and effect.

Section 20. This act shall take effect immediately upon final enactment.

Commonwealth of Pennsylvania,

Governor's Office,

July 2, 1937.

I file herewith, in the office of the Secretary of the Commonwealth, with my objections, House Bill No. 1835, Printer's No. 1224, entitled "An act to authorize, subject to certain conditions, the acquisition, improvement, construction, operation and maintenance of electric light and gas systems by cities of the third class and boroughs, authorizing the issuance of revenue bonds of such cities and boroughs, payable solely from earnings to pay the cost of such systems, providing for the fixing of rates and collection of charges for the payment of such bonds and for the cost of maintenance, operation and repair of such systems, providing for condemnation, authorizing the issuance of revenue refunding bonds and providing, subject to certain conditions, that no debt of such cities or boroughs shall be incurred in the exercise of any of the powers granted by this act."

This bill would authorize, subject to certain conditions, the acquisition, improvement, construction, operation and maintenance of electric light and gas systems by cities of the third class and boroughs, the issuance of revenue bonds of such cities and boroughs, payable solely from earnings to pay the cost of such systems, and the fixing of rates and collection of charges for the payment of such bonds and for the cost of maintenance, operation and repair of such systems.

The bill would empower such municipalities to condemn property determined necessary or proper for the construction, operation, and maintenance of a system, either electric or gas. Inasmuch as the bonds would be revenue bonds and their payment would be secured only by revenues derived from the sale of electricity or gas, it is perfectly obvious that the bonds could not be sold until it would be definitely ascertained what amount of money would be required to construct or maintain the property necessary for the system. It is a well settled principle of law that a condemnation cannot be had until sufficient funds are appropriated or on

hand to pay for the land condemned. Thus, it will be seen that if the bonds could not be sold until the land would be acquired, the municipality would not have the money on hand prior to the condemnation proceeding. This raises a serious question as to the constitutionality of the bill.

The first portion of Section 8 of the bill would provide that the interest paid on the bonds shall not exceed six per cent. Yet, in the same section the following quotation is contained:

> "*** The municipality may sell the bonds in such manner and for such price as it may determine to be for the best interests thereof, but no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of six per centum per annum to the purchaser upon the amount paid therefor.***"

This latter portion just quoted is ambiguous, for if the bonds are to be sold at a price that would allow a net return of not less than 6 per cent. to the purchaser, then the only way the bonds could be sold at a rate of less than 6 per cent. would be to sell them at less than par. The law at the present time provides that no municipality may sell bonds at less than par, so that the net result of the phrase above quoted would amount to requiring the municipality to issue a 6 per cent. bond.

The bill also would conflict with certain provisions of the Pennsylvania Public Utility Law, and would be detrimental to the interests of cities of the third class and boroughs desiring to operate a municipal electric light or gas plant, inasmuch as it would require the municipality to secure the approval of the Public Utility Commission for the construction, acquisition or operation of utility property within the municipal limits. Such approval is not required under the present law.

For these reasons the bill is not approved.

GEORGE H. EARLE

# INDEX TO VETOES