Veto No. 1981-1

HB 456 July 10, 1981

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

I return herewith, without my approval, House Bill 456, Printer's No. 1890, entitled "An act amending the act of April 9, 1929 (P.L.177, No.175), 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 others assistants and employes of certain departments, boards and commissions shall be determined,' abolishing the Valley Forge Park Commission, imposing restrictions on the Department of Transportation relating to auto emissions inspections and making repeals."

The need to veto this measure arises from the provision concerning vehicle emission inspections, which would place this Commonwealth in violation of Federal law and jeopardize our much-needed Federal highway funds.

While the administration totally sympathizes with the sentiment for such a bill, there is real concern over enactment of such a measure at this time. Such an action could complicate the efforts we are currently pursuing in Washington and the courts. Moreover, it would immediately jeopardize desperately needed Federal highway and other funds for Pennsylvania. However much we disagree with the Federal emission program or with the Shapp Administration's decision to enter into a voluntary court decree consenting to implement it, we should not risk "cutting off our nose to spite our face."

I resent the choice that current Federal legislation, the Federal court and the action of the prior administration impose on me. I am forced to veto this bill which would block a program that I agree is unfairly burdensome and unnecessary, or face the loss of over $400 million in Federal funds.

My administration is fighting the precipitous implementation of this program through the courts. At the same time, we are actively supporting efforts in the Congress to abolish the program and to prevent the loss of Federal funds to states which decline to implement it.

I continue to believe that states should be permitted to set their own air quality standards and adopt their own means for implementing them. Moreover, I am convinced that the currently mandated program is not the best means of ensuring appropriate air quality in the Commonwealth. Before resorting to the drastic measure represented by this bill, however, I feel that we should at least pursue to conclusion our efforts in the courts and the Congress.

DICK THORNBURGH

Veto No. 1981-2

SB 406 July 12, 1981

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

I return herewith without my approval, Senate Bill 406, Printer's No. 1115, entitled "An act amending the act of March 10, 1949 (P.L.30, No.14), entitled 'An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto', further providing for reopening of district budgets; requiring the superintendent of every public school to make available, upon request, lists of graduating seniors to military recruiters; providing a penalty for the misuse of any such lists; providing for special aid to certain school districts; prescribing dress for professional employes and making an appropriation."

This bill amends the School Code: 1 to provide "special aid" to districts experiencing a 15% loss of local revenue due to court-ordered reassessment of one or more properties and appropriates $2.9 million for such "special aid"; 2 to permit the establishment of dress codes for professional employes; 3 to provide lists of graduating seniors to military recruiters; and 4 to permit the reopening of 1980-81 school budgets, a measure already enacted into law with my recent signature of Senate Bill 168.

The first provision of this bill is designed to provide financial assistance to school districts which experience a significant loss of property tax revenues because of reassessments following major plant closures or serious economic downturns affecting major industries within the districts. Unfortunately, I must disapprove this bill because of defects in this provision. In doing so, I want to emphasize I do not oppose the concept of special aid and would work with the General Assembly on an amended version.

The current school subsidy already does provide assistance to districts experiencing losses of revenue, but this assistance is delayed for two years. The two year delay occurs because districts plan budgets based on anticipated revenues, but subsidies are calculated by reimbursing the prior year's expenditures. Temporary relief during the two year delay is appropriate in cases where districts suffer major unanticipated revenue losses.

This legislation is totally inadequate to achieve the objective, however, because it totally omits specifying procedures for calculating special aid. The bill does not indicate how much aid should be paid to eligible districts, when the assistance should be paid, or the duration of

special aid payments. The bill also does not specify the manner required for reducing special aid payments in the event the appropriation is not sufficient. The Executive Branch should not devise extensive rules and regulations to specify these procedures without more express guidance and direction from the General Assembly.

Further, in redrafting this legislation, the General Assembly should clearly indicate whether "special aid" should be paid from the basic instructional subsidy appropriation, or whether payments should be expressly limited to amounts appropriated for special aid. As currently drafted, special aid is incorporated as part of the basic instructional subsidy, but a special appropriation is also provided. It is unclear, therefore, whether the appropriation is intended to be the sole source of funding for special aid. I respectfully suggest that special aid be paid from the basic subsidy appropriation, and be subject to caps to ensure that entitlements do not exceed funds provided. If additional moneys are to be appropriated, these funds should be in the form of a supplemental appropriation to the basic instructional subsidy.

Finally, I wish to emphasize beyond the technical defects in this legislation that additional funds for educational subsidies are not available at this time. The recently approved General Fund budget fully commits Commonwealth resources for the upcoming year, and unless taxes are increased or current appropriations are reduced, any special aid to school districts must be financed by offsetting reductions in payments to other districts.

For these reasons, I hereby return Senate Bill 406, Printer's No. 1115, without my approval.

DICK THORNBURGH

Veto No. 1981-3

SB 742 December 23, 1981

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

I have before me for action Senate Bill 742, Printer's No. 1535, which would establish a number of detailed procedures and requirements with respect to the performance of medical abortions.

Perhaps no issue in recent times has generated more concern, conflict and passion than the issue of what, if any, restrictions should be imposed upon the ability to obtain an abortion. Perhaps, then, it should not be surprising that this bill has led to a considerable amount of public passion and controversy. Unfortunately, it also appears to have generated a considerable amount of misinformation and misunderstanding.

Many who favor stringent limitations on abortion appear to perceive this bill as a means of furthering that objective. Many who oppose most or all restrictions on abortion appear to perceive this bill as preventing virtually all abortions.

I have carefully studied this bill and those opinions of the United States Supreme Court and other Federal courts which establish the legal and constitutional parameters for the performance of medical abortions. I also have reviewed similar laws in other states and a variety of relevant materials and opinions reflecting all points of view on the cluster of issues related to the abortion question.

I have concluded that this bill does far less to restrict the ability of a woman to elect to have an abortion than its proponents perceive or its opponents fear.

I have stated a number of times in the past my personal opposition to abortion on demand, and my view that abortion should not be employed as an alternative to birth control techniques. I have also expressed my concern that too many abortions are too casually undertaken. This is a matter of particular concern with regard to teen-agers who are usually less equipped than adults to independently evaluate the decision to have an abortion or understand the consequences it may later entail.

On the other hand, I also have stated in the past my personal view that abortion should be a permissible medical option in certain narrowly restricted situations, including threat to the life of the mother, rape, incest or serious and irreparable harm to the health of the mother.

While this bill contains a number of proposed requirements with which I am in agreement, I have concluded that it really does little, if anything, to prohibit abortions which can now be performed in the Commonwealth.

What this bill would do is erect a series of hurdles which would have to be cleared by a pregnant woman interested in obtaining an abortion.

Any competent, pregnant, adult intent upon obtaining an abortion who could negotiate those hurdles, could obtain one, much as she now could in this State. It must be assumed that the same services now available to assist and counsel women considering abortion would be available to provide assistance to any such woman in negotiating the procedural hurdles contained in this bill.

On the other hand, for those women, often minors, who face the dilemma of an unwanted pregnancy with fear or ignorance, some of these proposed procedures would provide certain valuable information and protection.

Specifically, the bill would permit a pregnant woman to elect an abortion before the fetus is viable — that is, capable of surviving outside the body of the mother — if her physician made a medical determination that it was necessary in light of all factors relevant to the well-being of the woman, including physical, emotional, psychological, age and family circumstances.

The bill would, however, require women seeking such abortions to be counselled on the options with regard to an unwanted pregnancy and the consequences of each, including the medical risks involved in both proceeding with an abortion and with carrying the fetus to term. It would then require a waiting period of one day, which would provide the woman with an opportunity to assess and reflect upon this information. This waiting period would not apply where a medical emergency compelled the performance of an abortion.

The bill would require minors and adjudged incompetents to obtain the consent of a parent or guardian for an abortion if so desired. In the alternative, such a pregnant woman could obtain a court order authorizing the performance of an abortion upon a finding either that the woman is mature and capable of giving her informed consent, or that the performance of an abortion would be in the woman's best interest. In such a proceeding, the pregnant woman would be entitled to court-appointed counsel, and all proceedings would be confidential. In assessing the best interests of a minor seeking an abortion, I must assume that any court would rely heavily on the best medical judgment of the petitioner's physician.

The bill would require that any abortion after the first trimester of pregnancy be performed in a hospital.

The bill would require certain precautions to help insure the survival of an aborted fetus which was viable. Where a physician has determined prior to an abortion that the fetus is, in fact, viable, an abortion could only be performed upon a determination by the woman's physician that the abortion was necessary to preserve her life or health, and then, to the extent medically feasible, by the method most likely to preserve the via-

bility of the fetus. I am advised that this is already the case pursuant to current normal medical practice.

The bill would require that physicians performing abortions file reports setting forth certain detailed information relating to the facts and circumstances involved in the abortion. Such records would not contain the identity of the pregnant woman, but would be available for public inspection.

The bill would place restrictions on abortion-related coverage that could be provided in health care and disability insurance policies.

The bill provides for an annual review by the State Health Advisory Board of the standards and criteria for assessing viability. While the specific question of viability in any particular case appears to be left to the medical determination of the attending physician, the regularly revised standards devised by this board would appear to constitute a presumption against which each physician's determination could be judged. I have reservations about this provision. It has the potential to further politicize and complicate the whole issue of abortion. It will focus undue attention on a small board that may not reflect the consensus in the medical community at any given time on an issue that seems best left to the unfettered determination of individual treating physicians on a case-by-case basis. This is particularly troublesome since, by law, only half of that board's members are physicians. I do not object to a periodic review and revision of criteria of viability. I believe, however, that this should be the responsibility of the recognized organizations of the medical community — not of government.

Finally, this bill defines human life as beginning at the moment of fertilization. Much of the intent and purpose of the bill appears to flow from that assertion.

I do not believe that I have the scientific or theological expertise to affirm or refute that premise, nor do I believe that the members of the General Assembly do. The United States Supreme Court has noted the consensus among medical practitioners and theologians over a long period of time that human life does not begin until the time of viability or even later. The court has noted that this has been the predominant view in the Jewish and Protestant communities, and was also "official Roman Catholic dogma" until the last century.

It has been argued by many that the extremely detailed nature of some of the counselling and reporting requirements, when combined with the stringent criminal penalties that are provided for virtually any violation, is intended to deter women from seeking abortions and physicians from performing them, even under circumstances where the courts have made clear that abortions cannot be constitutionally restricted. I believe that these provisions, combined with the "human life" definition and power of a small State board to set standards of viability, have given rise to most of the concern and consternation expressed over this bill.

In performing my responsibility to properly evaluate this bill, I must carefully weigh not only the literal substance of the bill but what its effects could be. There is no bill to which I have given more careful consideration or undertaken more precise review and reflection. I have reached the following conclusions.

The medical necessity test for obtaining an abortion prior to the viability of a fetus, is consistent with United States Supreme Court holdings and is, in my view, reasonable.

The requirement for counselling and assessment are, in my view, reasonable for someone confronting a surgical procedure of this type and a personal decision of this magnitude — one which studies show could have lasting emotional impact. Requiring a physician to provide such counselling or medical advice is, in my view, reasonable and comparable to the kinds of things physicians do in other similar situations. Indeed, I would think that any thoughtful and sensitive physician, under any circumstances, would agree that it is appropriate to apprise a patient of the various potential medical, psychological and other risks and effects associated with such a procedure. Further, I think it is right to explain to a pregnant woman that there are alternatives to abortion if her only objection is raising the child or her only fear is the inability to support the child. An abortion that would not be performed but for ignorance or fear is perhaps an abortion best not performed.

On the other hand, I doubt that requiring the preparation and availability of detailed color photographs of a fetus at various gestational increments is necessary to an informed abortion decision. Moreover, their presentation would likely cause many women considerable anguish and distress.

While I personally believe that a brief, so-called "waiting period" is reasonable, I must note that comparable provisions in other bills have been held unconstitutional by a number of Federal appeals courts.

I feel that the provision for parental or guardian consent, or in the alternative, court review, is reasonable and consistent with traditional and legal parental responsibilities for the welfare of their minor children, and with the traditional role of the courts to determine, when necessary, the best interests of minor children. At no time is a minor more likely to need or stand to benefit from the guidance and support of a responsible adult than when facing the emotional trauma and dilemma of an unwanted pregnancy. I believe, however, that if the alternative of a court determination is to meet constitutional standards of reasonableness, it should include a specific, limited time period within which the court must act rather than the more general and undefined term, "promptly", as the bill now provides.

I do not believe that the requirement that an abortion on a woman beyond the first trimester of pregnancy be performed in a hospital is unreasonable. In fact, the great majority of abortions are performed in

the first trimester. Abortions performed beyond that period are more likely to entail greater risks, complications and care. However, I have serious reservations about the proposed requirement that all such abortions be performed on an in-patient basis. The necessity of proceeding on an in-patient basis, in my view, should be determined on a case-by-case basis by the attending physician. Clearly, proceeding on an in-patient basis would involve a greater burden and cost to the women involved. Where the need to proceed on an in-patient basis is not reasonably related to maternal health or the protection of a potentially viable fetus, this requirement would appear to be unduly restrictive and thus unconstitutional.

The provisions which limit the aborting of a fetus medically determined to be viable and which require precautions to preserve the life of an aborted fetus which is in fact viable are, in my view, right and reasonable. In fact, the overwhelming majority of abortions are performed before any question of viability arises. I cannot disregard a recent ***Philadelphia Inquirer*** investigative feature which exposed the fact that in at least some cases of more advanced pregnancy, viable fetuses were being aborted and permitted to die. If a fetus is capable of living and growing outside the womb, it is difficult for me to accept that it does not embody a human life. If we are to regard ourselves as a humanitarian society, I believe that we must take every reasonable precaution in favor of the preservation of innocent life. This would include, in my view, requirements such as the ones in this bill for the presence of a second physician where an aborted fetus may be viable and utilization of the abortion technique, where consistent with maternal life and health, most likely to preserve a viable fetus.

I am troubled, however, by the provision in section 3212 (b) of the bill which, when read in conjunction with the definitions of "born alive" and "viability" in section 3203, would appear to require the use of every scientifically possible means, including artificial sustenance, to maintain in a technical state of life, presumably indefinitely, an aborted fetus or organism, however defective, deficient, or diseased, that does not embody any prospect of human life as we know it. While this may not have been the intent of the legislation, this provision could require a physician, under the risk of severe criminal penalties, to artifically maintain even an aborted anencephalic fetus, that is, one with no head or brain. Such cases have been documented.

The provision would establish a higher standard of care for a viable fetus or human organism than is required in the case of a diseased or failing adult. Whether and when artificial means of sustenance should be employed is a decision which, in my view, is best left to the affected family and their physician.

I believe that some general reporting requirements are reasonable and could provide the kind of data that would be beneficial in enabling us to

make more informed judgments about the continuing questions related to the matter of abortion. Indeed, 30 other states have enacted legislation with some type of reporting requirements. However, I have reservations about several of the specific reporting requirements proposed in this bill, and a particular concern about the availability of such reports for general public inspection. I am concerned that this could lead to the compromising of the identities and privacy of women who have obtained abortions, and of the doctor-patient relationship.

I also have some reservations about the constitutionality of some of the restrictions in the insurance provision and on the use of public health facilities in performing abortions. Where the latter are the only accessible facilities for women who are seeking abortions under circumstances where they would be permitted in private facilities, the application of this restriction seems unfair and has been held unconstitutional.

I have reviewed the history and development of this bill. It appears to me that the various amendments and revisions to the bill as initially proposed reflect a genuine effort to adopt procedures to insure informed consent by adults and reasonable protection for the well-being of minors considering abortion, as well as standards and procedures for protecting and preserving, to the extent possible and consistent with the life and health of the mother, the potential for new human life, and to do so within the constitutional limitations prescribed by the United States Supreme Court.

The United States Supreme Court has recognized the interest of a state in reasonably regulating abortion in ways related to maternal health and well-being, and for the purpose of protecting the "potentiality of human life." I believe that many provisions of the bill, as I have indicated, are consistent with those interests and are reasonable, particularly with regard to those women who, because of their circumstances, would benefit from the guidance and protection afforded by them.

On the other hand, I am concerned that other provisions, and to some extent, the overall tone and tenor of the bill, would have the effect of imposing an undue and, in some cases, unconstitutional burden upon even informed, mature adults intent upon obtaining an abortion under circumstances in which the United States Supreme Court has determined they are entitled to do so. For example, section 3213 would preclude the victim of a rape who has made an informed and mature decision that she absolutely does not want to bear any child that might result from that rape from exercising the option of menstrual extraction, and would force her to wait the five weeks or more that is required for the fact of pregnancy to be determined. This requirement would appear to needlessly subject a woman in such a stressful situation to additional trauma.

Likewise, I am concerned that some of the detailed, complex and burdensome requirements of the bill, accompanied as they are by severe criminal penalties, could well foster an atmosphere in which many physi-

cians would be deterred from providing the kind of abortion-related medical services to which the United States Supreme Court has held their patients are constitutionally entitled. This could well disrupt the traditional doctor-patient relationship and impinge upon the right of physicians to practice. Of even greater concern is the potential for more experienced and conscientious physicians to refrain from involvement in even medically necessary abortions, and to abandon the field to marginal practitioners. It could even lead to a resurgence of "back alley" abortions, which no thoughtful person would wish to happen. I believe that this concern could be alleviated by reduced criminal sanctions which would still be sufficient to deter physicians from willful violations.

I am also concerned that in its entirety the bill in its current form goes further than is necessary in protecting the State interests in this area to which I have referred. In so doing, it threatens to create additional regulation and bureaucracy and to unduly involve government in the private lives of its citizens.

Accordingly, and after extensive consideration and deliberation, I am returning this bill without my signature. In so doing, I wish to indicate the availability of my office to work with the General Assembly in developing revised legislation to effectuate the provisions with which I have indicated my agreement consistent with the objections I have expressed.

DICK THORNBURGH