Veto No. 1994-1

HB 2495 April 22, 1994

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

I am returning herewith, without my approval, House Bill 2495, Printer's No.3207, entitled "An act amending the act of December 13, 1988 (P.L.1190, No.146), entitled 'An act establishing standards and qualifications by which local tax authorities in counties of the first and second class may make special real property tax relief provisions,' further defining "longtime owner-occupant;" further providing for deferral or exemption authority and for conditions of deferral or exemption; providing for applications for relief; and further providing for data used to determine eligibility."

This bill amends the First and Second Class County Property Tax Relief Act to permit counties of the second class to expand real property tax gentrification programs by reducing from ten years to three years the minimum length of time that a person must be in continuous ownership and occupancy of a dwelling place as a principal residence and domicile in order to qualify for special tax gentrification treatment. This new special tax treatment would be applicable to the tax levies of every city, borough, township and school district located within a county of the second class, as well as the county itself.

This bill would apply only to Allegheny County since it is the only county in the Commonwealth at the present time which is a county of the second class. This new gentrification program would apply to all municipal taxes levied for the fiscal year beginning January 1, 1994, and all school district taxes levied for the fiscal year beginning July 1, 1994. Each municipality and school district is authorized to reopen their budgets for their respective 1994 fiscal years to change real estate tax millage rates which might otherwise have been adopted prior to the effective date of this bill.

So-called gentrification programs are intended to provide real property tax relief to homeowners whose real property taxes have increased as a result of a substantial increase in the assessed value of their properties as a consequence of the aggregate improvement of the neighborhood in which they live through either renovation of other existing residences or construction of new residences. The purpose behind providing this special treatment is to insure that homeowners who have lived in a neighborhood for a long period of time and have not made any actual physical improvements to their properties are not subjected to increased taxes which result from an increase in the overall value of the neighborhood triggered by actual physical improvements made to adjacent properties. This special tax treatment would ordinarily be prohibited under the so-called uniformity clause of the Pennsylvania Constitution, Article VIII, section 1. However, Article VIII,

section 2(b)(v) expressly permits the General Assembly to enact a law authorizing local taxing authorities in counties of the first and second class to establish such special tax gentrification programs.

In 1988 the General Assembly passed a bill, which I approved as Act No.146, implementing the gentrification provision of the Constitution. It became known as the First and Second Class County Property Tax Relief Act. Under Act No.146 of 1988, counties of the second class are permitted to establish gentrification programs for which persons would be eligible only if they own their properties for at least ten continuous years. Moreover, whether a gentrification program would be applicable in a county of the second class is entirely at the option of the county under Act No.146, and school districts and municipalities within the county have equal freedom to choose whether or not to participate in the gentrification program. Currently less than ten municipalities and school districts of the nearly 175 municipalities and school districts in Allegheny County have opted to participate in the gentrification program.

The problem with this bill is that it has the effect of guaranteeing that homeowners who have the least ability to pay real property taxes will be required to shoulder a greater burden of such taxes. This result is inescapable because of the manner in which Allegheny County has structured its gentrification program. Under both the Constitution and Act No.146 of 1988, the county is given the power to determine the geographic areas within the county where the gentrification program would be applicable and is to make that determination based upon criteria relating to whether property values have increased as a result of renovations and improvements made to existing residences or the construction of new residences within the area. In exercising its power to make this determination, Allegheny County, by adoption of an ordinance in 1990, has designated the entire geographic area of the county as an eligible area for the special gentrification tax treatment and established a five percent cap on increases in assessments.

This bill would do nothing other than to compound the tax equity difficulties of the existing gentrification tax exemption program in Allegheny County. By reducing the length of ownership requirement from ten years to three years, more persons would automatically become eligible for the tax exemption. By forcing school districts and municipalities within Allegheny County to participate in the gentrification program, an even greater proportion of the tax revenues generated by one mill of tax per one dollar ($1.00) of assessed value would be payable by those property owners who live in areas where assessments have either remained stable or declined than by those taxpayers who live in areas where assessments have increased. No amount of rationalization can change the fact that the greatest beneficiaries of this bill under the gentrification program existing in Allegheny County would be a minority of persons who happen to be wealthy homeowners and who happen to live in the more affluent areas of the county.

As I have said before, the burden of local taxation in this Commonwealth

is unfairly borne by homeowners, and to that extent I do sympathize with the intent of this bill to control the growth of real property taxes. However, that burden of local taxation, without regard to its degree, should never be lifted in a manner which is inherently inequitable from the shoulders of some, especially those who have the ability to pay, and placed on the shoulders of many, especially those who have the least ability to pay. Gentrification, as envisioned by Article VIII, section 2(b)(v) of the Constitution and its implementing legislation found in Act No.146 of 1988 does provide some equitable relief from increasing property values for long-time homeowners who have made no improvements to their property and yet fall victim to increased tax bills because of improvements made to properties which surround them in their newly gentrified neighborhoods. The effect of this bill would turn this purpose on its head and inflict greater burdens on those persons who are the true intended beneficiaries of gentrification enactments.

For all of these reasons, I hereby disapprove this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY

Veto No. 1994-2

HB 2198 June 3, 1994

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

I am returning herewith, without my approval, House Bill 2198, Printer's No.3375, entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for judgment by confession filed against incorrectly identified debtors; further providing for sentencing procedure and aggravating circumstances in sentencing for murder; and making a repeal."

This bill amends Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to increase the due process rights of debtors, to authorize imposition of the death penalty for homicides involving pregnant women and to require the Governor to issue death warrants within specific time limits.

I strongly object to the provisions of the bill forcing the hand of the Governor to sign death warrants within arbitrary deadlines. I have no objections to the other provisions of the bill.

Current law requires the Supreme Court to send to the Governor a complete record of the legal proceedings in every death penalty case which it affirms upon automatic direct appeal. After reviewing the record, the Governor is responsible for issuing the warrant authorizing the Secretary of Corrections to carry out the sentence during a week specified by the Governor.

This bill radically changes the procedure for carrying out a death sentence. Within 60 days of receipt of the record, the Governor is automatically required to issue a death warrant commanding the Secretary of Corrections to execute the named inmate during a specific week within 30 days following the date of the warrant, unless the Governor issues a pardon or commutation, which can only be done after a recommendation to pardon or commute made by the Board of Pardons. In cases where the Governor has already received the record prior to the effective date of this bill, a warrant must be issued within 120 days of the effective date setting an execution date within 30 days after the warrant is signed.

If the execution is stayed by judicial order, the Governor is mandated to reissue the warrant within 30 days of the termination of the stay order. If the Governor fails to meet these time requirements, and notwithstanding the absence of a death warrant, the bill would require the Secretary of Corrections to execute the inmate within 60 days of the date on which the Governor was required to sign a death warrant.

In effect, this bill replaces reason and deliberation with a mechanical and arbitrary process. The current law gives the Governor the right to give careful

and deliberate review to every record before a sentence of death is carried out. This prerogative is the foundation for a final and ultimate check against miscarriages of justice. It is an ancient prerogative deeply rooted in our Anglo-American legal system having the purpose of preventing arbitrary, capricious or erroneous administration of the law. This is the ultimate safeguard to prevent innocent persons from being put to death for crimes which they may not have committed.

The General Assembly, as the embodiment of the will of the people in a just, fair and civilized society, should not deprive the Governor of the time necessary to guarantee that the fundamental principle of equal justice under law prevails, even in the most heinous murder cases. Miscarriages of justice or plain errors are irreversible once a capital sentence is carried out. One last reasoned and unhurried inquiry as to whether justice is being served is the least our government and society can do before exercising the grave power of putting a human being to death. This bill would unwisely divest the Governor of his current authority to make such an inquiry in every capital case.

Moreover, an infringement upon this ancient executive prerogative is even more offensive because the prerogative is inherently related to the Governor's constitutional power of clemency. Since the earliest days of this Commonwealth, the people have given the Governor, through the Constitution, the power "to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons." Art. IV, § 9(a). Gubernatorial discretion to issue execution warrants insures that the exercise of gubernatorial clemency does not miss its mark for lack of due deliberation.

This paramount importance of executive clemency so pervades our criminal justice system in this country that the United States Supreme Court, in rejecting a habeas corpus appeal, expressly referred to it as the appropriate alternative relief. The court said: "This is not to say, however, that petitioner is left without a forum to raise his actual innocence claim. For under Texas law, petitioner may file a request for executive clemency. (citations omitted) Clemency is deeply rooted in our Anglo-American tradition of law and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Herrera v. Collins*, ___ U.S. ___, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993). In this case, executive clemency was in fact the only available legal alternative for hearing newly discovered exculpatory evidence since the unbending rules of law governing the courts would not let it be considered.

Given the overwhelming case load of the Board of Pardons and the stringent deadlines that would be imposed by this bill, the pardon and commutation process could be unduly accelerated to the point where it would become a meaningless constitutional safeguard. The exercise of the clemency power could effectively be limited to the same 120- or 150-day period allowed the Governor for warrant review. Such haste would impair the making of a rational and informed decision about enforcement of the death

penalty. It is inconceivable that the people of this Commonwealth intend to give nothing more than lip service to an invaluable check against injustice in capital cases embodied in their Constitution.

This specter of unfairness and injustice becomes even more apparent when the bill is applied to the nearly 100 cases in which the Supreme Court has already transmitted a record to the Governor and for which no execution warrants are outstanding. In all of these cases the bill would require the Governor to sign a warrant within 120 days of its effective date and schedule executions for a date within 30 days after signing the warrant. This bill becomes effective immediately upon approval.

It is not humanly possible for any Governor to give thoughtful and deliberate review to almost 100 sets of voluminous court records within 120 days and still attend to the many other duties of his office. Therefore, it is apparent that the effect, if not the purpose of this bill is to deprive the Governor of his prerogative of review and compel him to rubber stamp every death penalty case already affirmed by the Supreme Court on direct appeal. At the very least, this is bad policy. At its worst, it would violate fundamental principles of justice and fair play embodied in constitutional provisions affording due process and equal protection of the law.

The bill also infringes on executive powers reserved to the Governor under the constitutional doctrine of separation of powers. The General Assembly crosses the line and removes the protections afforded by a system of checks and balances whenever it imposes time limits and conditions on a Governor's exercise of statutory powers that are so severe and constraining as to hinder the Governor from exercising executive discretion or carrying out statutory or constitutional functions. Requiring the Governor to review immediately nearly 100 capital cases and schedule nearly 100 executions simultaneously would preclude him from exercising true discretion with respect to the issuance of warrants. It would also monopolize the Governor's agenda and schedule for months. I do not believe that the people of Pennsylvania are aware of or would accept this consequence of the bill.

The record shows that I have signed 16 death warrants in slightly less than six years, more than the combined total signed by all of the four governors who immediately preceded me in office. The point is that I have enforced the law and justice has been served within the parameters of a deliberative process under the current system.

I have never taken my duties under the death penalty statute and under the clemency provisions of the Constitution lightly, and I never will. Issuing warrants to put a human being to death should never become a rubber stamp process. The bill would force the Governor to become a rubber stamp. Furthermore, this bill would create an assembly line on which people will be lined up and sent to the death chamber without being given a fair and equitable last chance to show that their criminal convictions have been unjust. That is not what this country or this Commonwealth represents. It is an affront to the causes of justice and fairness.

For all of these reasons, I hereby disapprove this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY

(The veto of House Bill 185 was overridden by the General Assembly on October 4, 1994, and became Act 1994-84.)

Veto No. 1994-3

HB 185 July 8, 1994

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

I am returning herewith, without my approval, House Bill 185, Printer's No.2105, entitled "An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for prohibited offensive weapons and for limitation on municipal regulation of firearms and ammunition."

This bill amends Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes to prohibit counties and municipalities from adopting ordinances which regulate the sale, ownership, possession, transfer or transportation of firearms, offensive weapons, ammunition or ammunition components. In effect, this bill invalidates ordinances recently adopted by the City of Philadelphia and City of Pittsburgh which ban the sale or possession of semi-automatic assault weapons within city limits and preempts local regulation of firearms and offensive weapons.

I cannot approve this legislation. As I have said before, until such time as the Commonwealth enacts a Statewide ban on assault weapons, local governments should have the right to enact ordinances which ban assault weapons. Moreover, ordinances already in existence at the local level should not be invalidated until the General Assembly addresses the issue of prohibiting the sale of assault weapons. Invalidating existing ordinances, such as those adopted in Philadelphia and Pittsburgh, without concurrent enactment of a Statewide regulation deprives local governments of an additional resource for insuring the safety and protection of their citizens and the security of their neighborhoods and only facilitates the ease with which persons may obtain instruments of death.

In the spring of this year, I sent House Bill 2600 to the General Assembly. This legislation would ban only the most dangerous assault weapons, impose new standards of responsibility for gun ownership and restrict the possession of firearms by children. Let me make clear what I have said before: House Bill 2600 is not antigun legislation. It is antiassault weapon legislation. It strikes a balance between the rights of sportsmen and legitimate target shooters on the one hand and the need to protect the people of this Commonwealth from violence on the other.

It is imperative to remove from the streets of this Commonwealth weapons which are popular with violent criminals, which are instruments of death in the hands of assassins and which serve no purpose other than to promote

senseless and random violence which paralyzes neighborhoods and inflicts carnage. House Bill 2600 meets this objective. It takes those weapons off the streets and out of the hands of persons who would use them. I have no doubt that an overwhelming majority of Pennsylvanians support enactment of a law which would regulate assault weapons in the manner proposed by me in House Bill 2600. In fact, numerous public opinion surveys show that over 75% of the voters of this Commonwealth favor a Statewide ban on assault weapons.

I encourage the General Assembly to enact House Bill 2600. It is our responsibility as the elected representatives of the people to do all that we can to insure that they are safe on our streets, in our public buildings and parks, in our schools, on our playgrounds and in their homes. Most importantly, and overall, we have a duty to insure that fundamental respect for human life does not disappear from our society. House Bill 185 does nothing to foster these goals. In fact, House Bill 185 sends the exact opposite message: life is cheap.

It is argued by some that House Bill 185 must be enacted to avoid patchwork regulation by municipalities. I disagree. The ordinances in Pittsburgh and Philadelphia are designed to deal with the unique situation of escalating random urban violence which has already taken the lives of many people, including many innocent children. I see no evidence whatsoever of any rush to enact similar local ordinances around the Commonwealth.

Nevertheless, if the General Assembly would send to me for approval a Statewide ban of assault weapons, such as the one contained in House Bill 2600, and include with it a provision for preempting local action, I would certainly approve it. Such an approach is the only sensible answer to the assault weapons crisis facing the Commonwealth.

Throughout my public service I have always been and continue to be a strong supporter of the Second Amendment guarantee of the right to bear arms. This right does not guarantee the right to own a machine gun or an antitank weapon, which are already banned by existing law. Nor in my opinion does this right include the right to own an assault weapon which has no redeeming social purpose and whose only purpose is to take a human life.

For all of these reasons, I hereby disapprove this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY

(The veto of House Bill 1514 was overridden by the General Assembly on November 16, 1994, and became Act 1994-95.)

Veto No. 1994-4

HB 1514 October 13, 1994

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

I am returning herewith, without my approval, House Bill 1514, Printer's No.4179, entitled "An act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for the suspension of operating privileges for failure to respond to a citation and for the enhanced vehicle emission inspection program."

This bill amends Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes to clarify the Department of Transportation's (department) authority to suspend the operating privileges of a person for failing to respond to an out-of-State citation for a traffic violation (other than parking). It also makes numerous changes to the Commonwealth's enhanced emissions testing program, scheduled to go into effect on January 2, 1995.

The bill requires the Department of Transportation to immediately suspend the development and implementation of a centralized, test-only emissions program until March 31, 1995; requires the Department of Transportation to develop and submit to the Environmental Protection Agency (EPA) by March 1, 1995, an alternative emissions testing program that consists of a decentralized test and repair program or a hybrid program combining both decentralized test and repair and test-only components; prohibits the expenditure of any department funds in furtherance of a centralized program until EPA approves the alternative program; requires the Governor to obtain EPA approval to remove the Commonwealth from the Ozone Transport Commission; orders the Governor to immediately suspend the implementation and enforcement of the Employer Trip Reduction Program; and sets fees or costs for entities testing and/or repairing automobiles.

I strongly object to all of the provisions of this bill, set forth as an amendment to 75 Pa.C.S. § 4706, which relate to vehicle emissions testing and the Employer Trip Reduction Program. These provisions endanger the health, safety and welfare of Pennsylvanians and the economy of the Commonwealth. They would subject the people of the Commonwealth to avoidable increases in health risks associated with breathing polluted air, take money directly out of the pockets of hardworking men and women by costing the Commonwealth jobs and jeopardize the receipt of substantial and much-needed Federal moneys for the Commonwealth's highway program. Finally, the alternative plans proposed by the bill would make the inspection process more inconvenient and more expensive for the motorists of Pennsylvania.

The Federal Clean Air Act amendments, passed by Congress and signed into law by President Bush in January 1991 require states to drastically reduce air pollution. The standards set by EPA are stringent, are on fixed timetables and require air pollution reductions from both automobiles and businesses. Since Congress placed Pennsylvania into a group of states described as the Northeast Ozone Transport Region, a geographic area stretching from Maine to Virginia, Federal law requires the implementation of an "enhanced automobile emissions testing program" in 25 out of 67 Pennsylvania counties based solely on population criteria.

If Pennsylvania fails to comply with the Federal requirements, EPA must, by law, impose draconian sanctions, which include the loss of more than $1.1 billion annually in Federal highway funds and a so-called "two-for-one offset" for new or expanded air pollution sources. This "offset" would require that businesses eliminate two sources of pollution for every new or increased source or business created in Pennsylvania. Moreover, if after being sanctioned a state fails to cure the deficiency to EPA's satisfaction, the Clean Air Act directs the Federal Government to impose its own program on Pennsylvania to ensure that the state meets the requirements of the Clean Air Act.

The first three years of the Commonwealth's efforts to implement the stringent, complicated and technical mandates of the Federal Clean Air Act reflected a remarkable degree of cooperation between the General Assembly and my administration. For example, in 1992 the General Assembly passed a law directing the Department of Transportation to implement an enhanced vehicle emissions testing program, specifically authorizing the department to enter into a contract for seven years or more with a vendor to establish and operate a centralized testing program. The act created a ten-member Vehicle Emissions System Inspection Program Advisory Committee to provide advice and recommendations to the Pennsylvania Department of Transportation on establishing and implementing an enhanced testing program. The committee, made up of representatives from the Legislature, the American Automobile Association and the Automotive Service Association of Pennsylvania, determined that the only way to meet the EPA's stringent standards with the least amount of cost and inconvenience to Pennsylvania motorists was to implement a centralized emissions testing program. Throughout 1992 and 1993, the General Assembly and the administration relied on EPA's representation that the only way the Commonwealth could meet the Clean Air Act's stringent performance standards was to implement a centralized testing program.

This cooperative effort continued when, based on the authority granted to it by the General Assembly, the information provided by EPA and the assistance and input of the Advisory Committee, the department promulgated regulations adopting an enhanced, biennial, centralized, test-only program to take effect January 1, 1995. On June 3, 1993, after a public comment period,

the Independent Regulatory Review Commission (IRRC) approved the department's regulations.

On November 5, 1993, the Commonwealth submitted its proposal for a centralized testing program to EPA. Following a competitive bidding process, the department entered into a seven-year agreement with a private vendor to establish and operate centralized test centers throughout the State. As of this date, the vendor claims to have made nearly $150 million in capital investment and contract commitments in order to meet the January 1, 1995, implementation deadline. Finally, in February 1994 the Pennsylvania General Assembly passed a law (Act 2 of 1994) requiring that Pennsylvania adopt a centralized test-only enhanced emissions testing program unless Congress changed the Clean Air Act or EPA amended its regulations. Neither Congress nor EPA has done so.

Unfortunately, in March of 1994 this cooperative relationship was threatened when the EPA for the first time agreed to allow a state (California) to implement a "hybrid" enhanced emissions program. The California program combines a centralized test-only component with a decentralized test and repair program. Although the "hybrid" system sounds attractive at first glance, California was required to implement more stringent testing criteria since EPA has determined a hybrid system is less effective in cleaning the air. *In addition, California motorists will be required to pay two to three times as high an inspection fee for their test.*

The legislature's own Legislative Budget and Finance Committee held hearings this past summer to explore whether an alternative system would be suitable for Pennsylvania. In June of this year the committee issued a report concluding that, in light of the threat to EPA sanctions, the potential liability to the vendor and the increased costs associated with a noncentralized system, *a centralized program "would involve the least risk to the Commonwealth" and provide significant cost savings.* On August 31, 1994, the EPA approved the Commonwealth's centralized emissions testing program. This approval marked the culmination of the cooperative effort of my administration and the General Assembly to bring Pennsylvania into compliance with the Clean Air Act with a minimal cost and inconvenience to Pennsylvania motorists.

The bill before me, which represents a drastic "about-face" by the General Assembly, would completely dismantle the cooperative efforts described above.

First, by requiring an immediate suspension of the centralized program until March 31, 1995, the General Assembly is risking the loss of billions of dollars for highway projects. Many of these highway projects are necessary, if not vital, for the creation of jobs and the continuation of economic growth in the Commonwealth. Delaying implementation could also lead to severe restrictions on the ability of manufacturers to build new factories and facilities in our State. For example, under the "two-for-one" sanction, if a new factory generating 50 tons of pollutants per year were to be built, at least 100 tons of pollution would have to be eliminated by other sources, such as

by closing a factory. We must not jeopardize the present and future jobs of hardworking men and women and the economic growth of Pennsylvania.

Even assuming that EPA were to agree to allow a suspension of the centralized program until March 31, 1995, it could take as much as two years to implement an alternative program, given the time-consuming regulatory and bidding process that must be followed. Others may indulge in speculation as to whether sanctions will be imposed. As Governor, I have the obligation to *ensure* that they are not imposed. Implementation on January 2, 1995, of the centralized emissions testing program, based on EPA's model program, avoids these sanctions.

The threat of sanctions is alone a sufficient basis for vetoing this bill. However, by requiring the department to implement a decentralized test and repair program (which is specifically prohibited by EPA regulations) or a "hybrid" program, this bill would impose a more costly and burdensome program on motorists that will be less effective in cleaning the air and will require a more expansive and stricter testing program.

The existing centralized testing program requires only one test every two years, at a cost of just $17 (only 50 cents more per year than the current "basic" test). Centralized test centers will be open a minimum of ten and a half hours on weekdays, eight hours on Saturdays, without an appointment and with an average test taking a mere 12 minutes. Hybrid or decentralized tests may have to be done every year and at a significantly higher fee (anywhere from $35 to $100). Since hybrid or decentralized programs are less effective in cleaning the air, the EPA requires that automobiles meet tougher testing criteria, which will lead to twice as many cars failing the test. While a centralized program allows for automobiles that fail the emissions tests to be excused from having to make repairs, upon the payment of a fee set by Congress, the EPA has placed limits on the ability of states, such as California, to issue such waivers under a hybrid or decentralized system -- resulting in motorists being forced to fix or scrap automobiles that fail the more stringent tests.

It is also significant that the hybrid program that EPA has approved for California only allows for certain newer vehicles to continue to be tested by a local mechanic, as they are currently tested in Pennsylvania. Individuals owning cars six years or older must be tested at a centralized test-only site with more stringent criteria than the centralized test Pennsylvania intends to implement on January 2.

There are also hidden costs associated with a decision to proceed with a hybrid or decentralized program. EPA's audit of our basic emissions program in 1989 found that 50 percent of emissions mechanics observed were not following proper test procedures. A covert follow-up audit by the Pennsylvania Department of Transportation reported that 33 percent of the local stations audited committed major infractions of the inspection regulations. As a result, the Legislative Budget and Finance Committee report predicted that for Pennsylvania to implement a California-style hybrid system

it would cost as much as $13 million in annual administrative and oversight costs *required by the EPA*, compared to the estimated $1.9 million to oversee a centralized program. This would be a serious drain on the Motor License Fund, taking still more funding away from highway maintenance and construction programs. This bill does not provide any revenue source to pay for these additional costs.

Finally, the bill does not even address the enormous potential impact this last-minute legislative about-face will have on the contract with the vendor and potentially the contractual liability of the Commonwealth. The company has already begun construction of 73 of 86 proposed sites. It estimates that it has spent $70 million and contractually committed an additional $77 million for these facilities. This bill exposes the taxpayers to an enormous claim for damages which would have to be defended in court at great expense to the taxpayers and, if a court decided against the Commonwealth, could result in the imposition of a huge judgment for damages which the taxpayers would be forced to pay.

Moreover, I cannot suspend, as the bill requires, implementation of the Employer Trip Reduction Program. This program, which is currently in effect for large employers in the five-county Philadelphia area, is mandated in the Federal law and must be implemented in order for the Philadelphia area to meet stricter air quality standards because of its classification as a "severe" nonattainment area. Suspending this program at the eleventh hour could jeopardize Philadelphia's effort to upgrade its classification to a "serious" status -- an effort currently underway and spearheaded by the Economic Development Partnership's Clean Air Work Group. It could also lead to sanctions and/or the need for small businesses and industry to implement costly pollution reduction measures, stifling job growth.

The General Assembly has attempted in the bill to cap the costs and fees to ensure that our testing program is "user friendly" and carried out with a minimal cost to everyone affected by the Federal law -- motorists, service stations and taxpayers alike. I share that desire and believe our current centralized program meets these goals. The vendor is contractually required to meet specific performance standards with respect to driving time, waiting times and operating hours. A failure to meet these standards will subject the contractor to heavy fines and penalties -- provisions that will be strictly enforced. Indeed, as an added convenience to motorists, the contractor has already agreed to expanding the testing program into additional evening hours. I have also instructed the Department of Transportation to work with the Department of Environmental Resources, the EPA and the General Assembly to investigate other ways that our *centralized* program can be improved even more to ensure the maximum convenience for motorists; *as long as the improvements do not in any way subject Pennsylvania to sanctions which would jeopardize our highway or jobs programs or increase the risk to the public health.*

Suffice it to say, the provisions of this bill do not meet those requirements. Indeed, if this bill becomes law, it will only be a question of *when*, not *if*, sanctions will be imposed. These sanctions will jeopardize Pennsylvania jobs, critical highway projects and the ability of Pennsylvania to attract new business to the State. These dire consequences are not based on conjecture. They are based on the findings contained in the LB&FC report, confirmed by correspondence that I have received directly from the Administrator of the EPA, and reflected in recent comments made by the EPA's regional administrator.

To compound the problem, this bill will require the Commonwealth to implement a program that is less likely to effectively clean the air and will be more costly and burdensome, not only to Pennsylvania motorists, but to all taxpayers in the Commonwealth. This bill would expose the people of the Commonwealth to risks which I cannot approve for all the reasons indicated. In addition, the bill is based on a profound misconception of the alleged benefits of a hybrid or decentralized alternative program.

As Governor, I have the responsibility to act in the best interests of the people of the Commonwealth. The facts supporting implementation of a centralized testing program are overwhelming and incontrovertible. The sanctions to be imposed on Pennsylvania and the adverse impact they will have on Pennsylvania and each and every citizen of Pennsylvania, either directly or indirectly, are not imaginary. They are real. The best interests of the people of this Commonwealth require that I veto this bill because it places the health of our citizens at risk, threatens our progress in retaining and creating Pennsylvania jobs and jeopardizes our critical highway programs.

For all of these reasons, I hereby disapprove this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY

Veto No. 1994-5

HB 1099 October 14, 1994

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

I am returning herewith, without my approval, House Bill 1099, Printer's No.2148, entitled "An act amending the act of June 3, 1937 (P.L.1333, No.320), entitled 'An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections,' Providing for a warning of violations on envelopes for official absentee ballots; authorizing county boards of elections to place nonbinding referendums on ballots; providing for special elections for senators and representatives in the General Assembly and for the posting of referendum questions at polling places; further providing for powers and duties of the Secretary of the Commonwealth, for the printing of constitutional amendments or other questions on election ballots and for absentee ballots; authorizing the filing of certain reports by facsimile; making an appropriation; and making editorial changes."

This bill amends the Pennsylvania Election Code to authorize the county boards of elections to place nonbinding referenda on the election ballot, extend the deadline for voting by absentee ballot, revise procedures for filling vacancies in the General Assembly and authorize the reporting of postfiling report deadline campaign contributions by facsimile.

Except for the provisions authorizing nonbinding referenda, the bill represents an expansion of the voting rights and franchise of our citizens and promotes the goals of representative democracy. I would be otherwise disposed to approving this bill, but I cannot do so because the referendum provision undermines the very same good government objectives which the other provisions promote. If legislation would be presented to me which expands absentee ballot voting rights, insures representation and protects against undue influences in campaign financing, I would approve it.

The provision authorizing nonbinding referenda violates the fundamental principles of representative democracy embodied in our constitution and upon which the whole system of government throughout this Commonwealth is built. Among my highest responsibilities as Governor is to uphold the Constitution of this Commonwealth. This is an especially compelling responsibility when the very foundation of the constitution itself is being targeted. Therefore, I object to and disapprove this bill.

The bill authorizes county boards of elections "to place nonbinding proposals on the ballot in a manner fairly representing the content of a petition for decision by referendum at an election." There are no other provisions in this bill which define or delineate the referendum process, including the manner in which the referendum would be initiated. It is my understanding that this provision was intended to respond to the recent court decisions in *Board of Elections of Schuylkill County v. Blythe Township*, 143 Pa.Cmwlth. 341, 600 A.2d 231 (1991) and *Hempfield School District v. Election Board of Lancaster County*, 133 Pa.Cmwlth. 85, 574 A.2d. 1190 (1990), where the court held that county election boards do not have any discretion to place a nonbinding referendum on the election ballot, absent express statutory authority to do so. At the very least, this bill is a poor and overly broad attempt to grant the express statutory authority that the court requires.

The Pennsylvania Constitution does not permit, nor does it provide for, "initiative and referendum" or authorize a general initiative and referendum process. This is not a surprise or a new and inventive constitutional construction. In 1776, at the very beginning of this Commonwealth, the people exercised their sovereign powers to create a republic grounded in a representative government.[1] This very fundamental decision to adopt this form of constitutional governance as the foundation for an orderly society continued to be expressly, consistently and firmly embodied in the constitutions of 1790, 1838, 1874 and the amendments recently made in 1968.[2] This same fundamental principle applies to local government also, as creatures of the State.

In order for the legislature to enact a law providing for initiative and referendum, it must find a provision in the constitution giving it the authority to do so. The only provisions in the constitution which permit initiative and referendum are limited to very specific subject matters and circumstances: Article IX, § 2 (adoption, amendment or repeal of home rule charters), Article IX, § 3 (adoption, amendment or repeal of optional plans of government), Article IX, § 5 (intergovernmental cooperation agreements), Article IX, § 8 (municipal consolidation, merger and boundary changes), Article IX, § 10 (local government debt limits), and Article XI, § 1 (constitutional amendment). There are no other provisions of the constitution which authorize initiative or referendum. Moreover, a proposal to permit by general law a system for taking advisory referenda in local governments was rejected by the Constitutional Convention of 1968. Proposal No. 1001,

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[1]"The supreme legislative power shall be vested in a house of representatives of the freemen of the Commonwealth, or state of Pennsylvania." Pa. Const., 1776, Section 2.

[2]"The legislative power of this Commonwealth shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives." Const., (1790) Art. I, Sec. 1; (1838) Art. I, Sec. 1; (1874) Art. II, Sec. 1; (1968) Art. II, Sec. 1.

Journal of the Constitutional Convention, page 100 (December 12, 1968).

The referendum provision of this bill, even though it is limited to non-binding proposals, effectively and as a matter of reality subjects the decision making and governing powers of local governing bodies to virtually constant plebiscites. It could essentially incapacitate local representative governments and in the end render their functions and purpose irrelevant and encourages and becomes an incentive for local government officials to abdicate the duties of their public office. It is not difficult to envision local governments submitting every important and controversial issue to a plebiscite out of fear of constituent reprisals. This is the very essence of the constitutional problem with this provision of the bill. It goes beyond the question of whether initiative and referendum are authorized by the constitution. It violates the fundamental tenet of representative government ordained by the constitution. Elected representatives most certainly must be responsive to those who elected them, but they are also elected for the purpose of acting responsibly. If they act in a manner which is neither responsive or responsible, the recourse of the voters is at the ballot box.

Beyond these constitutional problems, the provision could bring unfairness and chaos to the process of governing the municipalities and school districts of the Commonwealth. Every decision of governing would be second guessed. Vocal minorities and special interest groups who are dissatisfied with the outcome of a decision could force questions onto the ballot, making implementation of decisions difficult. Issues which often involve several complex factors would be targeted by sound bite rhetoric. Persons promoting their own political self-interest could easily abuse the process.

For all of these reasons, I disapprove of this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY

Veto No. 1994-6

HB 1248 December 27, 1994

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

I hereby publicly proclaim and file with the Secretary of the Commonwealth my disapproval of House Bill 1248, Printer's No.4354, entitled "An act establishing the Zoological Enhancement Fund; providing for transfers from the Motor License Fund; and making an appropriation."

This bill would create the Zoological Enhancement Fund as a special fund in the Treasury Department. The fund would be composed of such funds which may be generated by the sale of special zoological registration plates and transferred from the Motor License Fund to the Zoological Enhancement Fund.

Article VIII, § 11 of the Constitution does not permit the use of monies in the Motor License Fund to be used for any other purpose than solely for the construction, reconstruction, maintenance and repair of and safety on public highways and bridges and other related incidental costs and expenses, as well as for the repayment of debt incurred for such purposes. Moreover, the Constitution expressly prohibits money from being transferred from the Motor License Fund for any other purposes other than the highway and bridge purposes permitted by the Constitution.

This bill attempts to do exactly that which is prohibited by the Constitution. For this reason, I hereby withhold my signature from House Bill 1248, Printer's No.4354.

ROBERT P. CASEY

Veto No. 1994-7

SB 1027 December 28, 1994

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

I hereby publicly proclaim and file with the Secretary of the Commonwealth my disapproval of Senate Bill 1027, Printer's No.2536, entitled "An act establishing the Pennsylvania Commission on Blindness and Visual Impairment and providing for its powers and duties; transferring certain functions; and making repeals."

This bill would transfer the programs, personnel and other resources within the Department of Public Welfare currently dedicated to providing services for the blind and visually impaired to a newly created Pennsylvania Commission on Blindness and Visual Impairment. That commission would be composed of nine members and would report directly to the Governor. The Budget Office estimates that, at a minimum, this commission would control $18.7 million in currently appropriated funds.

The purported reason for the transfer is the belief that, by extricating the services for the blind from the Department of Public Welfare, more funding and support will become available. If in fact that is the impetus for this legislation, there is obviously a more direct and appropriate remedy available to the General Assembly and the Governor than the one posed by this legislation, one which would not result in the creation of a new bureaucratic structure.

I am also concerned about the precedents which this legislation may establish. It is not difficult to imagine that organizations representing individuals with other disabilities, rightfully, would ask for similar treatment. Moreover, transferring the responsibility for managing the programs and services of State government from executive agencies to more independent commissions could weaken the ability of the executive branch to govern.

In addition to the philosophical problems with this legislation, there are structural problems as well. The language of the legislation is imprecise, so that there is some question as to exactly what resources and staff are to be transferred. There appears to be a contradiction in the qualifications for membership on the commission, which could unduly prevent otherwise qualified individuals from serving on the commission. The legislation also requires the commission to establish a central database of blind and visually impaired individuals, which could include a substantial amount of personal information. At the same time, the legislation makes no provision governing the release of that information.

For these reasons, I hereby withhold my signature from Senate Bill 1027, Printer's No.2536.

ROBERT P. CASEY

Veto No. 1994-8

HB 2102 December 28, 1994

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

I hereby publicly proclaim and file with the Secretary of the Commonwealth my disapproval of House Bill 2102, Printer's No.4238, entitled "An act establishing the Self-Help Clearinghouse within the Department of Public Welfare; and adding to the powers and duties of the Department of Public Welfare."

This bill would create a clearinghouse on self-help groups within the Department of Public Welfare, which would maintain a computerized directory of self-help organizations, operate a toll-free inquiry line, publish newsletters and directories on self-help activities and foster the creation of self-help groups.

While there are numerous organizations which help individuals confront personal problems and more people could take advantage of these opportunities if they were aware of them, this legislation is extremely vague and imprecise. The bill contains no definition of self-help groups, other than to describe them as groups which "provide mutual support for individuals and families sharing a common problem, situation, characteristic or condition, including abuse, addiction, bereavement, disabilities, health, mental health/mental retardation, parenting and life situations." Any organization which meets these very broad parameters could rightfully ask to participate in the clearinghouse. This could include such reputable organizations as Alcoholics Anonymous, but it could include other, less widely respected organizations. It could include reputable, nonprofit groups which counsel cancer survivors, as well as for-profit diet workshops. Participation in the clearinghouse will inevitably carry with it some sense that the work of each of these groups has been recognized and sanctioned by the Commonwealth. Yet, the legislation does not provide the department with the requisite authority to deny an organization access to the clearinghouse, nor the ability to remove an organization for cause.

Many of the most successful self-help organizations are community based. They serve a local population and are known to the community-at-large. Many are supported through charitable contributions and are regulated as charities. These groups are beneficiaries of United Way campaigns, work closely with local social service, health care and education officials and are visible in the communities in which they are located. Oftentimes finding these groups is as simple as looking in the phone book, calling the United Way or asking a doctor. In many cases, these groups are also affiliated with national organizations.

Self-help organizations are often voluntary associations with frequent

changes in leadership. The legislation provides no resources for the department, but the resource demands on the Department of Public Welfare to assure that the listing of organizations and contacts is current will be substantial. Moreover, the clearinghouse may not necessarily result in any greater access to these organizations by people seeking services. It is more likely that someone who is seeking a local support group for survivors of breast cancer will talk with their doctor for a reference than contact the Department of Public Welfare for that information.

Promoting the use of self-help support groups is certainly a worthwhile endeavor. House Bill 2102, however, would create a structure which duplicates efforts which already exist, would not necessarily result in expanded access and would be difficult to operate. For these reasons, I hereby withhold my signature from House Bill 2102, Printer's No.4238.

ROBERT P. CASEY

Veto No. 1994-9

SB 1746 December 28, 1994

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

I hereby publicly proclaim and file with the Secretary of the Commonwealth my disapproval of Senate Bill 1746, Printer's No.2215, entitled "An act amending the act of August 14, 1991 (P.L.342, No.36), entitled 'An act providing for the preservation of the State Lottery Fund; further providing for pharmaceutical assistance for the elderly; further providing for transportation assistance to the elderly; providing for pharmaceutical purchasing; conferring powers and duties upon the Department of Aging, the Department of Revenue and the Department of Transportation; imposing penalties; and making repeals,' further providing for human service shared-ride transportation services for older adults."

This bill would amend the Lottery Fund Preservation Act by providing one-time grants from the Lottery Fund to shared-ride transportation providers to offset losses incurred during the winter of 1994. The amount of the grant to each provider would be calculated based on the ridership for the corresponding time period in 1993. Approximately $2.2 million from the Lottery Fund would be used to provide these grants.

The shared-ride transportation providers are reimbursed from the Lottery Fund for services provided to older Pennsylvanians. Seniors who utilize these services contribute 15% of the fare, and the Lottery Fund pays the remaining 85%. If transportation services are not provided, no reimbursement is due to those providers.

The shared-ride program is only one of a variety of services to our senior citizens paid for by the Lottery Fund. Others include the property tax and rent rebate program, the PACE pharmaceutical program, the PENNCARE medical assistance program and operating subsidies for Area Agencies on Aging. Money generated by the Lottery Fund is annually appropriated or executively authorized for these various programs. All money paid out of the Lottery Fund is on a reimbursement basis -- reimbursement for actual services rendered to seniors.

I cannot allow the appropriation of Lottery Fund money to pay for services which were not provided.

Last year's severe winter weather visited many hardships on our Commonwealth. State and local government budgets were strained to the breaking point as these governments attempted to clear roadways and provide essential services to our citizens. Retailers and others in our business community suffered from a lack of customers willing to brave the elements in order to consume goods and services. An additional collateral effect of the

weather was a reduction in ridership of the shared-ride transportation program.

While the winter weather may have placed an unanticipated burden on shared-ride transportation providers, this burden was felt throughout the private and public sectors. I cannot single out and make whole one group at the expense of others.

The Pennsylvania Department of Transportation previously has made payments to public transportation providers pursuant to the authority provided to the department under the Lottery Fund Preservation Act. That act authorizes the department to utilize *General Fund* moneys to subsidize public transportation providers who experience operating losses under the free transit program. The act does not authorize the use of Lottery Fund money for these purposes, and I will not permit such a use as proposed by this bill.

I recommend that the General Assembly give this issue a more thorough review. If, after public review and comment, the General Assembly continues to believe that reimbursement for services not provided is appropriate, then it should incorporate the necessary language into the 1995-96 General Fund Budget.

I therefore withhold my signature from Senate Bill 1746, Printer's No. 2215.

ROBERT P. CASEY