Veto No. 2003-1

SB 940 December 30, 2003

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

I am returning herewith, without my approval, Senate Bill 940, Printer's No.1328, entitled "An act providing for intergovernmental cooperation in cities of the second class; establishing an intergovernmental authority; providing for financing, for bankruptcy and for sovereign immunity; and making an appropriation."

I am vetoing Senate Bill 940 because I do not believe its enactment will help the City of Pittsburgh resolve its fiscal problems.

On January 6, 1992, I was sworn in as the 121st Mayor of the City of Philadelphia. At that time, Philadelphia faced a financial crisis that was even more severe than that which is confronting Pittsburgh today. We embarked on a course of cost-cutting initiatives and contract renegotiations that took $250 million a year out of the cost of operating the government (which had an operating budget of $2.3 billion). For this accomplishment, Philadelphia received nationwide acknowledgment. We were looked at as a model of cost cutting, waste elimination and the willingness to make tough choices. However, the full story of how Philadelphia regained fiscal stability, and became one of the nation's comeback cities, included additional revenue which came when the Pennsylvania Legislature enabled Philadelphia to collect an additional one percent sales tax.

I believe the roadmap for recovery for Pittsburgh must include every conceivable cost-cutting option, some restructured contracts and additional revenue sources. Senate Bill 940 does nothing to achieve the latter. In fact, by attempting to preempt the State's ability to put the City under Act 47 protection, the bill reduces the options for additional revenue(s).

Senate Bill 940 does take a strong step in the right direction by creating an Intergovernmental Cooperation Authority (ICA) and imbuing it with strong powers to control the City's budget – to insist on waste elimination and cost cutting and to ensure that the City produces a truly balanced budget. The oversight of a control board was crucial to our recovery in Philadelphia.

In the attached letter to a bipartisan group of Allegheny County legislators, I stated that I would sign a bill such as Senate Bill 940 if it (a) did not preempt Act 47, (b) included a specific requirement that the ICA board report back to the Legislature and Governor as to whether the City needed additional revenues and what the best sources of revenue are, if needed, and (c) required the ICA to report on the revenue issue and on other cost-cutting measures in 60 days. None of these provisions are found in Senate Bill 940; I must therefore veto this bill.

As of this date, the City of Pittsburgh is under the protections of Act 47. If, upon its return, the Legislature adopts legislation that creates a control board with a procedure that could lead to the quick adoption of revenue sources if the experts on the board deem them necessary, I would sign that legislation and we would consider taking the City out of Act 47.

For the reasons set forth above, I must withhold my signature from Senate Bill 940, Printer's No.1328.

EDWARD G. RENDELL

ATTACHMENT:

December 19, 2003

To the Members of the Allegheny County Delegation:

I am very impressed with the hard work you have put into finding a solution to the fiscal crisis facing the city of Pittsburgh. I believe we can take a major step forward in the next few days to establish a group of experts that can sift through the complicated issues involved and make recommendations to us that will solve them.

To move this process forward I would be willing to sign the original Senate approved version of Senator Orie's bill, S.940, Printer's Number 1297, with a few specific changes.

First, that the bill makes no reference to Act 47;

Second, that the Intergovernmental Cooperation Authority (ICA) established under the bill is explicitly directed to examine the need to enhance revenue to the City and identify specific revenue options; and

Third, that the ICA is required to report back to the Governor and the Legislature on its findings in 60 days. This will allow the ICA recommendations to be considered in Harrisburg before the Act 47 process could be expected to result in new revenue sources.

While this legislation would not authorize new revenue sources, I expect that DCED Secretary Yablonsky will shortly make his decision on Act 47. When the ICA returns with its recommendations, we can take up the issues of spending, revenue and the City's Act 47 status again. Thank you for all your efforts on this difficult subject.

Sincerely,

Edward G. Rendell
Governor

Veto No. 2003-2

HB 1222 December 31, 2003

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

I am returning herewith, without my approval, House Bill 1222, Printer's No.3127, entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for identification of incorrect debtor; further defining "other specified offense" for purposes of DNA data and testing; further providing for summary offenses involving vehicles, for law enforcement records, for duration of commitment and review; establishing a cause of action for unauthorized enactment or enforcement of local ordinances governing agricultural operations; providing for certain attorney fees and costs; and further providing for sentence of intermediate punishment and for assessments."

During my campaign for Governor the Pennsylvania Farm Bureau posed a question to me in a written questionnaire.

> Do you believe municipalities and municipal officials should be penalized for passing ordinances against agriculture that they know state law prohibits them from passing? If so, what penalties should be assessed?

This was my response:

> There has been a harmful lack of leadership in Harrisburg resulting in penalties for farmers, township officials and local taxpayers. Pennsylvania's Right to Farm Law has been ignored all too frequently. Farm organizations like the Farm Bureau have been in court to fight unlawful ordinances from townships . . . the Nutrient Management Law provides for statewide preemption of local ordinances and the Right to Farm Law is supposed to protect farmers from local nuisance ordinances. But who protects farmers when those laws are ignored? I will direct members of my administration to address this issue in a comprehensive and progressive way. We will work to solve, not run from this issue and we will do so at the state level.

I am today vetoing HB 1222 because I do not believe it addresses this very complex issue in a "comprehensive and progressive" way.

No industry is more important to this state's heritage and tradition and to the vitality of our economy than agriculture. It is our state's single largest employer and generates $45 billion in revenue each year for our state's economy, over 70% of which is related to livestock operations. We have over 59,000 farm families in Pennsylvania. The Legislature and several Governors have recognized these facts in creating and implementing Pennsylvania's landmark Farmland Preservation Program in which we have

now invested over $500 million. My proposed economic stimulus program recognizes emerging technologies and the diversification of agriculture and includes a new loan fund dedicated to assisting Pennsylvania farmers to become more productive and more profitable.

It is also undeniably true that agriculture in our state is changing. For many reasons, we are losing family farms and we have seen a significant increase in larger farming operations (often corporate) known as CAFOs (Concentrated Animal Feeding Organizations) or CAOs (Concentrated Animal Operations).

The Legislature has taken steps to balance the changing nature of agriculture and legitimate concerns about how these operations impact on our environment through both the "Right to Farm" Act and the Nutrient Management Act (the "NMA"). Section 17[1] of the latter preempts the right of local governments to pass ordinances in contravention of the NMA.

> . . . Under [*sic*] adoption of the regulations authorized by section 4, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this act if the municipal ordinance or regulation is in conflict with this act and the regulations promulgated thereunder. Nothing in this act shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the regulations promulgated under this act, provided, however, that no penalty shall be assessed under any such local ordinance or regulation for any violation for which a penalty has been assessed under this act.

Notwithstanding this express prohibition and the overall rationale of the "Right to Farm" Act, there have been significant instances of local governments enacting nuisance ordinances the directly violate state law.

Consider the case of Douglas Graybill and his daughter and son-in-law. They own a farm in Granville Township and operated a dairy farm exclusively until 1996 when they decided to erect two hog finisher barns. They built and populated these finishers in 1997. A small number of residents went to the Township seeking an ordinance prohibiting any manure storage within 1500 feet of any public road, property line, drilled well or body of water. This ordinance would have stopped any future expansion of any animal agriculture in the Township. In contrast, the NMA specifies 200 feet as the required setback for CAOs or CAFOs and, as stated above, bars any local government from passing any ordinances that are more restrictive than state law.

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[1]"Section 1717" in original.

Mr. Graybill took a copy of the relevant sections of the NMA and the applicable regulations published in the PA Bulletin to the township supervisors and their attorney. Their response was "I hope we don't get sued." The Bradford County Planning Commission and the State Conservation Committee warned the supervisors that the ordinance was most likely in violation of the NMA. Despite this, the ordinance was passed. Mr. Graybill contacted the State Agriculture Department and the Attorney General asking for the Commonwealth to step in and enforce the NMA by telling the township that the ordinance was illegal. He was told the Commonwealth did not have the power and that he, the aggrieved citizen, had to sue the Township. He sued and won, but the cost was $80,000 in legal fees.

Mr. Graybill wrote me about this experience and said that if municipalities prevail in implementing restrictive agricultural ordinances that farmers can challenge only through costly legal proceedings, then "we can kiss animal agriculture goodbye and the rural infrastructure of Pennsylvania will collapse." Mr. Graybill is correct. Unfortunately, his case is not an isolated one.

HB 1222 seeks to address the situation that confronted Mr. Graybill:

> If the Court [*sic*] determines that the local agency enacted or enforced an unauthorized local ordinance governing normal agricultural operations willfully or with wanton disregard of the limitation of authority established under state [*sic*] law, the court may order the local agency to pay the plaintiff reasonable attorney fees and other litigation costs incurred by the plaintiff in connection with the action.

The standard of "willfully or with wanton disregard of the limitations of authority established under state [*sic*] law" is a difficult one to establish in a legal proceeding, so I do not believe it will chill township supervisors from enacting reasonable efforts to regulate agriculture operations not covered by state law. HB 1222 also allows local government to sue farmers and recover costs when the farmers file a "frivolous" lawsuit. Therefore, I believe that the goal of that part of HB 1222 that allows farmers to recover court costs is a legitimate one that addresses a need to protect not just agribusiness but small farms as well.

So why am I today vetoing HB 1222? Because if we are to succeed in striking a balance between legitimate business interests of the agriculture community and the quality of life concerns of our municipalities, I believe we should and must take a comprehensive approach. Unfortunately, while meritorious as far as it goes, HB 1222 only addresses one aspect of the nutrient management problem the Commonwealth faces – it does not address the legitimate environmental concerns that have been fostered by a flawed and deficient system. In short, it does not deal with these problems in a "comprehensive and progressive way."

Recently, we have seen some striking examples of the significant problems that can occur under our prevailing nutrient management system.

For example, one of the larger hog farms in Pennsylvania, owned and managed by one of the larger swine producers in the state, was permitted to house 7,200 sows, piglets, gilts, and nursery pigs, severely polluting a drinking water source. (These animals produce 3.6 million gallons of hog manure each year.)

Currently, the only state law that addresses disposal of this type of sewage is the NMA. But the NMA is only concerned with the plant nutrient, or fertilizer, content of the manure, not other ancillary issues such as antibiotics and odor. Nor does the NMA prohibit animal sewage from being disposed of in late fall and winter when nothing is growing, and it allows livestock operations to send the manure to other farms that do not have nutrient management plans.

In the case of this particular hog farm, 11 farmers agreed to take some of the sewage. But even with those options, the manager still needed to dispose of some sewage in mid-November and hired an independent manure hauler to spread it on the fields of one of the farmers. The manure ultimately washed into the water supply, contaminating it with fecal coliform, which can cause illness. The residents of the Township then had to boil their water or use bottled water. The local elementary school had to bring in water and hand-washing stations to prevent the children from getting sick. So far, it had cost the municipality – which has an annual budget of $54,750 – at least $3,000 to provide bottled water. Because the farm followed its nutrient management plan, however, no state laws were violated. Nothing in the law requires Pennsylvania's largest hog corporation to reimburse the municipality or the school district's expenses.

We simply cannot address the nutrient management issues in a piecemeal fashion, an unfortunate unintended effect of HB 1222. I am convinced that our Administration and the Legislature should work as quickly and thoroughly as possible to develop a comprehensive plan to upgrade our nutrient management system and to strike the proper balance between the right of farmers to conduct their business with a clear understanding of applicable legal restrictions and their ability to operate in a profitable manner that takes into account real and genuine environmental concerns about our current system. Let me be clear – such legislation should include the relevant language from HB 1222.

Accordingly, I have directed Secretary of Agriculture Dennis Wolff and Secretary of Environmental Protection Kathleen McGinty to contact the heads of the House and Senate Agriculture Committees to begin work on this comprehensive approach as soon as possible.

To that end, I will sign legislation that includes:

- the provisions of HB 1222 discussed above;
- provisions to close the manure export loophole by requiring farms importing manure from CAFO's and CAO's to have signed agreements, nutrient balances sheets documenting allowable application rates, accurate record keeping and the same manure

application set backs and buffers as the farm that produced the manure;

- provisions that extend the type of farms that are required to submit nutrient management plans detailing their manure management procedures and application locations to the local conservation districts;
- provisions to require minimum buffer areas where no manure can be applied for all CAFOs and CAOs. Farms that import manure must meet the same buffer requirements as the farm that produces the manure;
- provisions that create new or improved financial incentives for farmers who need help in creating buffer areas or in obtaining new technology such as manure digesters; and
- provisions giving tax credits to any farmer for the costs of installing the technology necessary to convert manure to energy thus avoiding the need to apply manure to the soil when it is not being used for fertilizer. This technology is being used in Europe and we have already been contacted by an agribusiness that wants to install it in a new operation here in Pennsylvania.

Legislation including these provisions will provide a "comprehensive and progressive" solution to the balancing test before us while at the same time giving farmers the relief provided in HB 1222. I look forward to signing such legislation.

For the reasons set forth above, I must withhold my signature from House Bill 1222, Printer's Number 3127.

EDWARD G. RENDELL