Veto No. 1988-1

HB 183 June 2, 1988

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

I return herewith without my approval, House Bill 183, Printer's No.3150, entitled "An act amending the act of May 25, 1945 (P.L.1050, No.394), entitled 'An act relating to the collection of taxes levied by counties, county institution districts, cities of the third class, boroughs, towns, townships, certain school districts and vocational school districts; conferring powers and imposing duties on tax collectors, courts and various officers of said political subdivisions; and prescribing penalties,' further providing for the compensation of tax collectors in first class townships."

House Bill 183 rewrites section 34 of the Local Tax Collection Law of 1945 in order to allow tax collectors in townships of the first class, who also serve as township treasurers, to receive more than the $10,000 maximum compensation currently allowed for serving in both positions. The bill retains this cap as it applies to the person's income as township treasurer but removes it as it applies to the person's income as tax collector. Instead, persons serving this dual role in townships of the first class may be paid, as tax collector, five percent of all township taxes received or collected, without any maximum dollar amount. The bill does permit the township commissioners to set a different rate or amount of compensation by ordinance.

I have no objection to the intent of the General Assembly in allowing these tax collectors their first increase since the $10,000 figure was established some 43 years ago. Even so, I believe that caution should be exercised to assure against unintended windfalls that could result in certain areas of the Commonwealth through a blanket removal of the cap. I cannot agree, however, with the provision in House Bill 183 which purports to exonerate those tax collectors who have been receiving more income than the current law allows. Current law clearly and unequivocally sets the maximum total compensation of a person serving as treasurer and tax collector in a township of the first class at $10,000.

Moreover, Article III, § 26 of the State Constitution provides in part that "no bill shall be passed giving any extra compensation to any public officer, servant, employe, agent or contractor, after services shall have been rendered or contract made . . ." In passing House Bill 183, the General Assembly has determined that the $10,000 limitation is no longer appropriate for the services performed by local tax collectors. It may also be argued that the income cap has been too restrictive for the greater part of the past four decades since its enactment. The fact remains, however, that our Constitution prohibits retroactive increases in compensation.

For these reasons, I must return House Bill 183, Printer's No.3150, without my signature.

ROBERT P. CASEY

Veto No. 1988-2

HB 1729 July 7, 1988

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

I have before me House Bill 1729, Printer's No.3155, entitled "An act providing for the regulation of professional wrestlers and promoters; imposing a tax on certain receipts; requiring the posting of performance bonds; and providing penalties."

This bill would remove professional wrestling exhibitions from the control of the State Athletic Commission and would also reduce the gross receipts tax on these exhibitions from 5% to 3.5%.

While the bill does continue certain limited restrictions on wrestling promoters and contestants, the activity would become largely de-regulated. I note that this fact is contrary to the recommendations of the Legislative Budget and Finance Committee auditors in their review of the Athletic Commission under the Sunset Law of 1981. The audit report found that "continued state regulation of professional wrestling appears necessary to protect the safety and welfare of both participants and members of the audience." Information compiled by the Department of State indicates that approximately thirty other states currently regulate wrestling and several others plan to begin regulation in the near future.

Another issue raised by House Bill 1729 has to do with the age of participants in professional wrestling exhibitions. Current law prohibits minors under age eighteen from participating. Given the risk of physical injury involved, this prohibition reflects a sound public policy which should not be abandoned in a rush to de-regulate organized wrestling.

The well-known wrestling circuit is not the only activity that would be affected by a repeal of Pennsylvania's wrestling control law. This became apparent a few years ago with the sudden popularity of so-called "tough guy contests" in which contestants would attempt to knock out their opponents in a no-holds-barred fight. The General Assembly responded by defining this barbaric form of prize fighting as criminal conduct. House Bill 1729 would weaken that 1983 law as it applies to contests that can be characterized as wrestling exhibitions.

Finally, I must object to the reduction of the gross receipts tax on wrestling exhibitions in the absence of some additional source of revenue to support the other duties of the Athletic Commission which would remain after de-regulation of professional wrestling. The Department of State has undertaken a long-overdue program to reform the Commission's operations. This includes substantial improvements in the training of the Commission's regional personnel and various other steps to improve the safety of events held under the Commission's jurisdiction. House Bill 1729 would result in a revenue shortfall of approximately $80,000 in this fiscal year, seriously inhibiting the Department and the Commission in their efforts at reform.

For all these reasons, I must return House Bill 1729, Printer's No.3155, without my signature.

ROBERT P. CASEY

Veto No. 1988-3

SB 345 October 21, 1988

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

I return herewith, without my approval, Senate Bill 345, Printer's Number 2449, entitled "An act amending the act of March 4, 1971 (P.L.6, No.2), entitled 'An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties,' further providing for certain corporate taxes; providing for the exclusion of construction of hydroelectric generating facilities from the tax on utilities; and further providing for the realty transfer tax."

Senate Bill 345 amends the Tax Reform Code to allow three exemptions from the Realty Transfer Tax, and an exemption is added to the Public Utility Realty Tax for the construction phase of hydroelectric facilities. An exemption is added to the definition of passive income under the Personal Income Tax in order that options or commodities dealers or equity specialists may become Subchapter-S corporations for Pennsylvania tax purposes.

Senate Bill 345 removes from the definition of taxable value for the purposes of the Realty Transfer Tax the value of any executory agreement for future improvements in effect at the time of transfer. The bill also provides exemptions from the Realty Transfer Tax for transfers between members of the same family of an interest in a family farm or from a member of a family farm partnership. In addition, the bill exempts transfers from a conservancy organization to any governmental agency.

Provisions of Senate Bill 345 also amend the Public Utility Realty Tax (PURTA) to provide an exemption from the tax for the construction period of a hydroelectric facility effective January 1, 1990, and applicable to construction periods after January 1, 1987. Current law provides for a ten-year exemption from the tax from the start of operation.

Senate Bill 345 also amends the definition of "small corporation" to exclude income earned by options or commodities dealers or equity specialists from the definition of passive investment income. Passive income is limited to 25% in order to qualify as a Subchapter-S corporation. The effect of corporation Subchapter-S election on State tax revenues is to exempt these corporations from the Corporate Net Income Tax and to tax the income under the Personal Income Tax rate at about one-fourth the tax rate for corporations.

I cannot approve Senate Bill 345 for the following reasons:

1. Enactment of this bill will result in significant current and future year General Fund revenue losses.

- Provisions relating to the Realty Transfer Tax will result in a fiscal year 1988-1989 General Fund revenue loss of at least $8.2 million due to the retroactive effective date of July 1, 1988. About one-third of the loss is due to refunds.

- The change in the definition of passive investment income will result in future losses of approximately $3 million per fiscal year.

- The PURTA exclusion, with its retroactive provision which requires a refund of taxes, will result in a loss of revenue in the 1989-1990 fiscal year of $300,000 and $700,000 for 1990-1991.

2. Changes in the Realty Transfer Tax statute will result in nonconformity between the State and local tax base for realty tax purposes. Action on the part of local jurisdictions to adopt the State tax base will result in local revenue losses. These reductions in State revenues from the Realty Transfer Tax occur at a time when the Administration and the General Assembly are considering Local Tax Reform legislation which will distribute a portion of this tax money to local jurisdictions.

3. It is questionable whether the PURTA exemption for hydroelectric facilities will provide enhancement of rural development when there is no indication that industry construction plans will be altered because of this exemption. In addition, the exemption period for these facilities is not specifically limited to any time period. While Federal regulation may require that the project be constructed within a three-year time period, there are no provisions in Senate Bill 345 which would make the same limit.

The provisions in this bill which deal with Realty Transfer Tax exemptions for family farm partnership transfers and transfers from a conservancy group to a governmental entity do have merit. I would favor approval of these provisions if they are contained in a separate bill at a later date.

I am herewith returning Senate Bill 345 without my signature.

ROBERT P. CASEY

Veto No. 1988-4

SB 279 October 23, 1988

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

I am returning herewith, without my approval, Senate Bill 279, Printer's No.2294, entitled "An act providing for the licensing of clubs to conduct games of chance, for the licensing of persons to manufacture and distribute games of chance, for suspensions and revocations of licenses and for fees and disposition of revenues; requiring records; providing for local referendum on gambling by electorate; prescribing penalties; and making repeals."

In withholding my approval of Senate Bill 279, I am mindful of several realities underlying the widespread support this measure attained in the General Assembly. The principal beneficiaries of this legislation would include veterans groups, fraternal benefit societies, religious and charitable organizations, volunteer fire, ambulance and rescue companies and other nonprofit clubs (although, clearly, manufacturers and distributors for profit of games of chance would benefit substantially as well). Without question, the vast majority of these organizations provide invaluable social, philanthropic and charitable services to their communities and to the Commonwealth.

It was because these nonprofit groups contended that they often cannot rely solely on contributions from their own members or the general public in order to survive and continue their good works for the public benefit, that the General Assembly responded, in a limited way, by enacting the Bingo Law in 1981. Like Senate Bill 279, the Bingo Law was restricted to certain nonprofit organizations with a need to raise funds for charitable and civic purposes.

Unfortunately, the licensing scheme contained in Senate Bill 279 lacks most of the controls which the General Assembly saw fit to impose on the conduct of legalized bingo. The contrast between the two schemes is in the extreme, from the definitions of the games, to the eligibility of potential licensees, to the penalties for violation of the laws. Practically every issue addressed, however imperfectly, in the Bingo Law, is glossed over in Senate Bill 279 in a way that invites the broadest interpretation and offers little opportunity for effective regulation or enforcement. A few examples should suffice to illustrate the point.

Where the Bingo Law limits games to twice a week and $4,000 a day in prizes, Senate Bill 279 contains no such limits. Where the Bingo Law prohibits advertising of prize amounts, Senate Bill 279 is completely silent. Where the Bingo Law bars convicted felons from operating or benefiting from games, Senate Bill 279 is again silent. Where five-year prison terms are possible for violations of the Bingo Law, Senate Bill 279 imposes only summary penalties for operating without a license and no penalty at all for any other

violations, except only sales to minors which carries a maximum of one year in prison.

The lack of effective penalties is just one reason why Senate Bill 279 would be almost completely unenforceable. Two other major reasons are the choice of the Department of Revenue as the licensing and enforcement agency and the failure of this legislation to provide sufficient funds to enforce its provisions. The Revenue Department would be required under this bill to conduct a hearing on each license application with the municipality where the games will be conducted. This State agency has no logical connection to the conduct of games in a local community other than the collection of taxes due the Commonwealth. Unlike the State Lottery, these games will not provide any proceeds to the Commonwealth for any purpose. Again, the Bingo Law offers a far more appropriate connection between the regulator and the licensee. Bingo is licensed by county treasurers or other county-level officials.

Given the choice of the Revenue Department in Senate Bill 279, however, the bill allows only two percent of the licensing fees to be retained and used for all costs of administration, investigation and enforcement. With respect to the licensing of game operators, this two percent limitation equates to just $2.00 per licensee, hardly enough to process the application paperwork, let alone investigate the applicant's eligibility, conduct hearings and respond to complaints of possible violations. It is clear that the added responsibility placed on the Department of Revenue and the Pennsylvania State Police by this bill would require millions of additional tax dollars to carry out.

This so-called "Small Games of Chance" proposal has the potential to be anything but small. As Governor of the Commonwealth, I cannot condone a proposal that allows unlimited growth of games and proceeds, unlimited eligibility of manufacturers, distributors and operators, and where the only real limits are on the resources available to enforce and control the conduct of the games.

ROBERT P. CASEY

Veto No. 1988-5

SB 769 November 25, 1988

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

I am returning herewith, without my approval, Senate Bill 769, Printer's No.2295, entitled "An act amending the act of December 17, 1981 (P.L.435, No.135), entitled 'An act providing for the regulation of pari-mutuel thoroughbred horse racing and harness horse racing activities; imposing certain taxes and providing for the disposition of funds from pari-mutuel tickets,' further providing for licenses for commissioners, employees and participants at horse races; providing for distributions from the Fair Fund; providing for nonprimary location wagering; and making a repeal."

Senate Bill 769 would authorize each of Pennsylvania's licensed horse and harness racing tracks to establish several so-called "nonprimary locations" for the purpose of conducting pari-mutuel wagering. These locations are apparently intended to include amenities, such as dining facilities and other features, to make them resemble the clubhouse facilities of a racetrack. In essence, however, Senate Bill 769 would permit the establishment of approximately two dozen gambling parlors in communities throughout Pennsylvania. This amounts to a substantial expansion of gambling activity in the Commonwealth, involving the creation of entirely new outlets for that activity. While I recognize the various economic aspects of this proposal, I am convinced the negative effects of the bill far outweigh the potential benefits.

It is true that the horse racing industry in Pennsylvania has experienced declining revenues in recent years for a variety of reasons. Senate Bill 769 could help to reverse that trend, but not only by encouraging current gamblers to bet more of their money at the new off-track parlors. Rather, and primarily, it would be because those parlors were successful in attracting new players who do not now bet the horses. Their success would depend on their ability to entice people who were not already enticed by the tracks themselves, by the advent of telephone wagering in 1981 or by intrastate simulcasting of races starting in 1984.

Since Senate Bill 769 represents a substantial expansion and extension of gambling in the Commonwealth, I must return the bill without my signature.

ROBERT P. CASEY

Veto No. 1988-6

HB 1733 December 16, 1988

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 1733, Printer's No.3950, entitled "An act reenacting and amending the act of October 4, 1978 (P.L.883, No.170), entitled 'An act relating to conflicts of interest involving certain public officials serving in State or State agencies and local political subdivision positions and prohibiting certain public employees from engaging in certain conflict of interest activities requiring certain disclosures and providing penalties,' adding definitions; further providing for the membership, powers and duties of the State Ethics Commission and for persons who must file statements of financial interests; reestablishing the State Ethics Commission; making an appropriation; and making a repeal."

House Bill 1733 would re-authorize the State Ethics Commission for another four years pursuant to the Sunset Act of 1981. In addition, the bill contains substantial revisions of existing ethical standards and creates new procedural requirements applicable to Commission investigations and hearings. These latter requirements include notice to the subject of an ethics complaint, opportunity to be heard, access to evidence and other due process protections commonly available in administrative agency proceedings. I believe these due process provisions are entirely appropriate given the nature of Ethics Commission investigations and the potential consequences of a decision adverse to the subject of a complaint.

There are a number of other provisions in House Bill 1733 which clearly are in the public interest. In particular, the power given to the Ethics Commission to order restitution of improper financial gain and the protection given to "whistle-blowers" address significant gaps in current law.

Unfortunately, in other important respects, this bill would seriously weaken the ethical standards that now apply to public officials at the State and local levels of government. For example, current law requires that public officials and employees and candidates for public office file reports identifying their financial interests and sources of income. These reports must include any gifts received in amounts of $200 or more from persons other than family members. House Bill 1733 would exempt from public disclosure a large portion of what current law requires to be listed. Only gifts over $500 would have to be disclosed and then only if they fail to meet one of several broad exceptions. For example, if the public official gave anything in return for the gift, no matter how insignificant by comparison with the value of the gift he received, no disclosure would be required. If someone paid the travel and accommodation expenses of a public official, when the expenses could have qualified for government reimbursement, no reporting would be required.

With regard to conflicts of interest, House Bill 1733 again creates several broad exceptions to the basic prohibition against conflicts. On the one hand, the bill prohibits public officials and employees from using their government positions for personal financial gain. On the other hand, the bill specifically authorizes legislators to be paid for obtaining State grants and contracts for their constituents. Secondly, State law currently prohibits legislators from participating as a principal in any transaction which will allow them to benefit from State grants and contracts. House Bill 1733 repeals this provision and allows all public officials to negotiate for the receipt of public benefits unless it can be proven that they used the authority of their office in some way to obtain those benefits.

The provisions mentioned above, taken together with blanket exemptions from the conflict of interest prohibitions for officials who appear before government agencies and for the personnel and hiring practices of public officials, would establish new, weaker standards for the conduct of government employees in Pennsylvania. In addition, the bill would apply those new standards retroactively, thereby affecting the legality or propriety of conduct after its occurrence, and could prevent municipalities from imposing more stringent standards on their own local officials.

I believe enactment of House Bill 1733 would seriously erode public confidence in government officials. What is needed is an ethics bill which merits the respect of the people of Pennsylvania and, at the same time, provides clear guidelines to government employees who honestly desire to conform their conduct to the requirements of the law.

An unfortunate, but unavoidable, consequence of my veto of House Bill 1733 is that the Ethics Commission must begin winding down its operations. This action does not mean that there will be an ethical void in Pennsylvania until further action by the General Assembly. On the contrary, this veto preserves the stronger ethical standards that are now in effect under current law and those stronger standards can still be enforced by the Attorney General while the General Assembly develops new legislation.

I urge the General Assembly promptly to enact new legislation to continue the Ethics Commission prior to its final termination, now scheduled for June 30, 1989.

ROBERT P. CASEY

Veto No. 1988-7

SB 202 December 21, 1988

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 202, Printer's No.2522, entitled "An act amending the act of June 25, 1982 (P.L.633, No.181), entitled, as reenacted and amended, 'An act providing for independent oversight and review of regulations, creating an Independent Regulatory Review Commission, providing for its powers and duties and making repeals,' further providing for the membership of the Independent Regulatory Review Commission and for the procedure for regulatory review; changing the termination date for the commission; and making repeals."

Senate Bill 202 would re-authorize the Independent Regulatory Review Commission (IRRC) for another three years pursuant to the Sunset Act of 1981. In addition, the bill expands the scope of IRRC's authority over the regulatory process in several areas and imposes new conflict of interest standards on the IRRC commissioners.

The commission was originally established for several express purposes identified by the General Assembly. IRRC was designed to "curtail excessive regulation" by the executive branch and to assist in the "ultimate review by the General Assembly of those regulations which may be contrary to the public interest." In order to carry out those functions, IRRC was given broad authority to review agency regulations using a number of specific review criteria. These include, among others, the "reasonableness" of the proposal, the "need" for it and even the question of whether it represents a "substantial" policy decision that ought to be reviewed by the Legislature. These criteria, and others in the act, call for judgments which in the first instance are entrusted to the executive branch of government. Article 4, section 2 of our State Constitution imposes a duty on the Governor and the executive agencies to make certain the laws are "faithfully executed." This particular provision is one of the cornerstones of the constitutional separation of powers between and among the three branches of government. To say that the regulatory function is entrusted to the executive branch, however, does not mean the various executive agencies could not tolerate any review by other branches of government. Clearly, both the agency and the public can benefit when suggestions are made for reducing the cost of a regulatory program or avoiding duplication or excessive "red tape."

Review by agencies outside the executive branch becomes intolerable when it becomes so intrusive into executive decisionmaking that discretion is effectively removed from department heads or their priorities are effectively frustrated by excessive delays and bureaucratic hurdles built into the review process.

Senate Bill 202 allows IRRC to substitute its judgment in place of the department which proposed the regulation under review. If the department decides, after studying all comments received from the public, that a regulation should be finally adopted, Senate Bill 202 allows IRRC to block that action. After the department has published its proposed regulations, received comments and incorporated those changes it deemed appropriate, IRRC may delay implementation for months based upon its own judgment of what the public interest requires. The reality is that too often the interests being served by excessive delay are the special interests which lobby IRRC so effectively rather than the interests of the public at large.

The IRRC review process sets up an elaborate series of roadblocks which must be navigated before any department can actually implement laws enacted by the Legislature. The changes contained in Senate Bill 202 could be expected to add months to that process which already averages nine months from proposal to final adoption. Clearly, the public is not well served when long delays prevent government from acting quickly in areas such as environmental protection, economic development and the delivery of vital services to our elderly or infirm citizens.

Fortunately, there are other means available to State agencies to communicate their interpretations of laws and regulations to those citizens affected by them. Agencies publish policy statements, guidelines, manuals and handbooks so that applicants for government benefits and others will know how the agency will apply statutory or regulatory language in making its decisions. These guidance documents are not regulations and have never been subject to review by IRRC. That would change dramatically under Senate Bill 202. If this bill became law, literally every document that describes how an agency program operates would be subject to "review" by IRRC and the special interests. The inclusion of policy statements and other similar documents under IRRC review would allow IRRC to substitute its policy for executive policy, to operate as a "shadow government" able to frustrate executive action at the whim of five unelected commissioners.

Obviously, IRRC is not equipped with a staff and budget large enough to examine all agency policy statements. The size of the commission is not the issue, however; rather, it is the degree of authority that body would be given over functions entrusted solely to the executive branch by our Constitution. This unprecedented grant of authority even extends to reviewing the Governor's decision that a regulation must be allowed to go forward in order to respond to an emergency. The fact that the power to second-guess the Governor's emergency declaration would be shared under this bill with a small number of legislators does nothing to make this usurpation of power any more palatable or constitutional.

Like the inclusion of manuals and handbooks under IRRC's review authority, this special commission power over emergency regulations is simply very bad public policy. Our system of government already provides numerous opportunities for special interest groups to challenge executive actions. If they feel an agency has abused its discretion, the courts are available to have the action invalidated. If the General Assembly agrees that

a regulation does not respond adequately to legislative intent, the law can be clarified by new statutes. Interest groups and individual legislators have ample opportunity to comment before regulations are finally adopted by executive agencies. But, in the final analysis, the executive branch must be free to execute the laws under our system of coequal, distinct branches.

Senate Bill 202 attempts to usurp the authority of one of those branches under the guise of curtailing excessive regulation. I believe this bill violates the separation of powers required by our State Constitution. Therefore, I am compelled to return Senate Bill 202 without my signature.

ROBERT P. CASEY

Veto No. 1988-8

SB 525 December 21, 1988

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 525, Printer's No.578, entitled "An act amending the act of March 4, 1971 (P.L.6, No.2), entitled 'An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties,' further providing for exclusions from retail sales tax."

Senate Bill 525 would exempt from the sales and use tax "the retail sale or use of snow-making equipment." The revenues from this tax on the retail sale or use of goods within the Commonwealth have been gradually eroded over the years by piecemeal exemptions. The exemption created by Senate Bill 525 would be the forty-sixth since the tax was first enacted in 1971. Clearly, some special tax considerations, such as those applied to food, clothing and other necessities, are in the public interest. This category of exemption is for the benefit of the consumer of basic essential commodities, and it furthers a consistent overall taxation policy for the Commonwealth and its citizens.

The exclusion created by Senate Bill 525 falls within another category of special sales tax advantages designed solely to benefit a particular industry. I am opposed to this kind of special legislation and, therefore, I withhold my signature from this bill.

ROBERT P. CASEY

Veto No. 1988-9

SB 942 December 21, 1988

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 942, Printer's No.2554, entitled "An act making appropriations to the Attorney General, the Auditor General and the Treasury Department for general government operations; making appropriations to the Auditor General and the State Treasurer for transition expenses of the Attorney General, the State Treasurer and the Auditor General; and making repeals."

This bill makes appropriations of $75,000 each to the Attorney General, Auditor General and State Treasurer for transition expenses. I have this day already approved House Bill 2412, Printer's No.3873, which also provides $75,000 for each of these departments during the transition period. Therefore, Senate Bill 942 is unnecessary for this purpose.

In addition, this bill contains several errors of a technical nature. The bill contains incorrect amounts for the General Government Operation appropriations for the Attorney General and Auditor General. The General Assembly apparently intended merely to re-authorize the amounts contained in Act 5A, the General Appropriation Act of 1988. Instead, Senate Bill 942 authorizes the original amounts proposed in the budget bill prior to my item veto of each appropriation last July. As a result, Senate Bill 942 would actually increase the appropriations to these two departments by a combined $433,000.

This bill also purports to authorize the payment of per diem allowances for the Attorney General, Auditor General and Treasurer. These payments of $88.00 for each day the official was conducting business in Harrisburg would be in addition to the increased salaries they will receive as a result of Act 28 of 1987. Act 28 was an amendment to the Public Official Compensation Law which limits the compensation of these three officeholders to $84,000 annually and specifically prohibits any additional compensation. The per diem allowances in Senate Bill 942 are in direct conflict with that statutory limitation, and the conflict can be removed only by amendment to that organic law, not by descriptive language in an appropriation bill.

For all these reasons, I am withholding my signature from Senate Bill 942. This disposition makes it unnecessary to address constitutional questions that would otherwise be presented by this legislation.

ROBERT P. CASEY

Veto No. 1988-10

SB 1283 December 21, 1988

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 1283, Printer's No.1804, entitled "An act amending the act of June 24, 1939 (P.L.842, No.365), entitled 'An act relating to the acquisition of rights to divert water from rivers, streams, natural lakes, and ponds, or other surface waters within the Commonwealth or partly within and partly without the Commonwealth; defining various words and phrases; vesting in the Water and Power Resources Board certain powers and authorities for the conservation, control and equitable use of the waters within the Commonwealth in the interests of the people of the Commonwealth; making available for public water supply purposes, water rights heretofore or hereafter acquired but not used; providing for hearings by the Water and Power Resources Board and for appeals from its decisions; fixing fees; granting to all public water supply agencies heretofore or hereafter created the right of eminent domain as to waters and the land covered by said waters; repealing all acts or parts of acts inconsistent herewith, including Act No.109, Pamphlet Laws 152, approved April 13, 1905, Act No.307, Pamphlet Laws 455, approved June 7, 1907, Act No.64, Pamphlet Laws 258, approved April 8, 1937,' further defining 'water rights'; and providing for the application of the provisions of this act."

Senate Bill 1283 amends the Water Rights Act of 1939 to exempt from Commonwealth control the sale of water between water supply companies so long as the seller has obtained a water rights permit from the Department of Environmental Resources. I believe this bill would seriously hinder the Commonwealth's ability to ensure that all our citizens have an adequate and safe water supply.

The question, very simply stated, is whether the Commonwealth or local water companies will have the legal right to allocate scarce water resources when there are conflicting demands and needs between groups of consumers. Clearly, there can be only one answer to that question. Our recent experiences with giardiasis in the Northeast, with the pollution of water supplies in the West resulting from the Ashland Oil spill and with drought emergencies throughout Pennsylvania have underscored the critical need for coordinated management of this fragile natural resource.

I am advised by the Pennsylvania Emergency Management Agency (PEMA) that disruption of local water supplies for any measurable period of time could threaten the public health, fire safety and economic stability of the affected residents. PEMA cites the Ashland Oil spill as an example of this kind of threat. During that emergency, the only source of water for some communities over a five-day period was a system of fire hoses connecting hydrants and an interconnect with neighboring water systems. Without the

ability of State agencies like DER, PEMA and the Public Utility Commission to require water supply interconnects, small water companies would be at the mercy of the few major suppliers. Small companies would have little incentive to invest in these interconnections if they have no assurance that sufficient water will flow when they need it most.

The Water Rights Act provides the primary basis for the Commonwealth's water conservation program. Effective conservation of clean water depends upon our ability to keep track of all sources of supply available for distribution. Under Senate Bill 1283, any water company with a permit to withdraw surface water could divert that water to another locality, even across state lines. The Department of Environmental Resources would be powerless to prevent transfers that deplete the supply available for customers of the company selling the water. In fact, nothing in this bill requires that DER even be informed of an inter-company transfer.

The lesson of Pennsylvania's recent water emergencies should be that we need a more comprehensive approach to surface and groundwater management, not an approach that leaves water allocation decisions to the water wholesalers and retailers. Senate Bill 1283 has the potential to cripple this State's control over water allocation decisions. Therefore, I must withhold my signature from the bill.

ROBERT P. CASEY

Veto No. 1988-11

SB 114 December 22, 1988

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 114, Printer's No.2566, entitled "An act amending the act of May 5, 1933 (P.L.284, No.104), entitled, as reenacted and amended, 'An act imposing a State tax, payable by those herein defined as manufacturers and by others, on malt or brewed beverages used, sold, transported, or delivered within the Commonwealth; prescribing the method and manner of evidencing the payment and collection of such tax; conferring powers and imposing duties on the Department of Revenue, and those using or engaged in the sale, at retail or wholesale, or in the transportation of malt or brewed beverages taxable hereunder; and providing penalties,' extending the emergency malt or brewed beverage tax credits; and increasing the maximum credit."

Senate Bill 114 amends the Malt Beverage Tax Law by extending the emergency malt or brewed beverage tax credit to December 31, 1993, and increasing the tax credit to $200,000 from $150,000. The credit program is due to expire for expenditures made after December 31, 1988. The tax credit is given for qualifying capital expenditures for renewal and improvement of facilities in Pennsylvania.

This tax credit program was begun in 1974 for an "emergency" period to help local brewers remain in operation. At that time there were thirteen brewers in the Commonwealth. Since 1974 the number of brewers has declined by five to the present eight. Several of these brewers have been acquired by larger out-of-State brewers.

Current law provides this tax credit to all brewers with facilities in the Commonwealth. Senate Bill 114 would require that the brewers not only have facilities here, but also their headquarters and principal place of business, and have an annual production of 300,000 barrels or less in order to receive the credit.

In 1984, the United States Supreme Court struck down an exemption from the Hawaii Liquor Tax for certain alcoholic beverages produced only within that state. ***Bacchus Imports, Ltd. et al. v. Dias***, 468 U.S. 263, 104 S.Ct. 3049 (1984). Like the credit as revised by Senate Bill 114, the Hawaii exemption was designed to give a competitive advantage to taxpayers within the taxing jurisdiction and, particularly, those taxpayers which the Legislature determined were in need of a subsidy in order to remain competitive. The Court concluded that the Hawaii liquor tax exemption violated the Commerce Clause because it had both the purpose and effect of discriminating in favor of local products. The Court was not persuaded by the state's contention that there was no competitive advantage since these particular beverages were not produced in any other state. The rationale applied by the Supreme

Court in the ***Bacchus Imports*** case would be controlling in any challenge to Senate Bill 114.

Under Senate Bill 114, two plants producing the same beverage within the Commonwealth can have the same need to modernize equipment in order to thrive and to protect the jobs of the same number of Pennsylvania workers. Yet, if one of them has its headquarters in a sister state, their Pennsylvania facility could not qualify for the credit necessary to keep those jobs in the Commonwealth. This kind of discriminatory tax structure could actually work to the disadvantage of Pennsylvania residents simply because their employer is owned by a major out-of-State brewing company.

While I certainly believe State government should make every legitimate effort to promote Pennsylvania's proud tradition of smaller, local breweries, our taxing policy must be fairly applied to facilities located here and to the people employed by them. If the General Assembly deems it appropriate to continue the malt beverage tax credit, new legislation consistent with the Commerce Clause can be made retroactive to December 31, 1988, so that there would be no gap in the coverage of the credit for eligible breweries.

Senate Bill 114 is clearly in violation of the Commerce Clause (Article I, §8) of the United States Constitution. For that reason, I must withhold my signature from the bill.

ROBERT P. CASEY