Veto No. 1990-1

SB 498 March 28, 1990

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

I return herewith, without my approval, Senate Bill 498, Printer's No.1908, entitled "An act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for payment of fees and taxes when applying for a certificate of title; providing for commercial drivers; further providing for buses, for antique and classic vehicles, for exemptions from licensing, for classes of licenses, for school bus drivers, for issuance and content of driver's license, for production of a driver's license or evidence to avoid certain penalties, for revocation or suspension of operating privilege, for schedule of convictions and points, for surrender of license, for chemical testing to determine amount of alcohol or controlled substance, for occupational limited licenses, for judicial review, for violations concerning licenses, for driving under foreign license during suspension or revocation and for certain indemnification payments; providing for registration of limousines; authorizing dealers of motor carrier vehicles and designated agents of the Department of Transportation to be agents for the Department of Revenue for certain purposes relating to the motor carrier road tax identification marker; further providing for penalties for operation of certain vehicles without required identification markers, for reckless driving, for driving under the influence of alcohol or controlled substance, for enforcement agreements and for reports by courts; and providing for careless driving."

Senate Bill 498 amends the Vehicle Code by adding a new chapter to regulate commercial drivers in Pennsylvania, putting in place specific requirements of the Federal Commercial Motor Vehicle Safety Act of 1986. These provisions are necessary to assure that Pennsylvania does not lose federal highway funds after September 1993 and that Pennsylvania commercial drivers will be licensed by April 1, 1992. Without this chapter, the Commonwealth stands to lose at least $20 million in federal highway funding in 1993 and in excess of $40 million annually thereafter. Equally important, however, are the requirements for testing and licensing of drivers of heavy trucks which are necessary for the protection of every person who travels on the streets and highways of Pennsylvania. Clearly, the vast majority of commercial operators have proven day after day and mile after mile that they already have the skills to handle their rigs safely. This bill was designed to guard against the minority of truckers who do pose a threat to public safety by requiring all commercial operators to live up to a reasonable standard of competence and knowledge.

The General Assembly has also included in this bill several miscellaneous changes to the Vehicle Code unrelated to the requirements of the 1986 Federal law. Among those is a proposal for a limited operator's privilege for motorists whose licenses are suspended but who can demonstrate a need to

use their vehicles in order to earn a living. This so-called "bread and butter" license is available, in one form or another, in most of our sister states. Under Senate Bill 498, drivers could obtain this limited occupational license unless their operator's license was suspended for one or more of the offenses enumerated in the bill. These include drunk driving, felony offenses and offenses committed while operating a commercial vehicle, among others.

Unfortunately, the list of offenses that would disqualify a motorist from getting a "bread and butter" license falls far short of what is needed to protect our people from truly dangerous drivers and those who callously violate the laws of the Commonwealth.

For example, under Senate Bill 498, "hit and run" drivers would be allowed to stay on the road with a "bread and butter" license even if they ran away from an accident where someone was killed or seriously injured. People who endanger our children by passing a stopped school bus would still be allowed to drive their car or truck to pursue their occupation. Even lawbreakers who turn off their car lights to elude police officers would qualify for a "bread and butter" license under this legislation.

During this same session of the General Assembly, I signed two new laws to deny driving privileges to certain kinds of offenders, without regard to whether they committed a traffic violation. Act 92 of 1989 requires a license suspension for at least three months for any person convicted of a drug offense. This measure was intended to send a strong message to "casual" drug users that they will be risking more than they bargained for if they continue to abuse drugs illegally. Under Senate Bill 498, that same drug offender could still apply for an occupational license and the Department of Transportation would have no grounds to deny it.

Just last month, the General Assembly overwhelmingly approved a new automobile insurance reform law which finally placed some meaningful penalties on uninsured motorists who had been driving up the cost of car insurance for the vast majority of drivers who act responsibly by insuring their cars. Senate Bill 498 would seriously weaken that effort by allowing those caught driving without insurance to keep their operating privilege if they claim they need it for work.

These are just a few examples of the safety loopholes in the "bread and butter" concept contained in Senate Bill 498. Perhaps the most serious flaw, however, is the fact that the bill provides no mechanism for the Department of Transportation to revoke an occupational license once it has been granted, even for subsequent violations of the Vehicle Code.

Because of the deadlines imposed by Congress for the licensing of all commercial operators, I urge the General Assembly to quickly approve new legislation to place Pennsylvania in compliance with the requirements of Federal law.

At the same time, the Legislature should revisit the concept of an occupational limited license. If new legislation is to contain such a provision, it must be more carefully drafted to protect the public saftey.

Finally, I am informed by the Juvenile Court Judges' Commission that amendments to Senate Bill 498 are needed to protect against unintended pen-

alties being imposed upon juvenile offenders. The new bill should clearly recognize the existing distinctions in our judicial system between adult and juvenile offenders.

ROBERT P. CASEY

Veto No. 1990-2

SB 1046 March 28, 1990

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

I am returning herewith, without my approval, Senate Bill 1046, Printer's No.1665, entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for automatic retirement of judges and districts justices."

Senate Bill 1046 would extend the point of automatic retirement for judges and district justices from the date of "attaining the age of 70 years," currently provided in Section 3351 of the Judicial Code, until "December 31 of the year in which **[judges and district justices]** attain the age of 70 years." The current wording of Section 3351 tracks the language of Article V, Section 16(b) of the Pennsylvania Constitution which provides that "[j]ustices, judges and justices of the peace shall be retired upon attaining the age of 70 years." Because the language of Senate Bill 1046 conflicts directly with the language of Article V, Section 16(b) of the Pennsylvania Constitution, I am compelled to veto this bill.

Our Supreme Court has very recently confirmed that the terms of Article V, Section 16(b) "are mandatory and...express in the simplest language possible the absolute will of the sovereign people of the Commonwealth that jurists must retire upon reaching their seventieth birthdate." ***In re Stout***, 521 Pa. 571, 581, 559 A.2d 489, 494 (1989). The pertinent language is "short and straightforward, without embellishment, expansion or ambiguity..." ***Id.*** at 577, 559 A.2d at 492.

In holding that Article V, Section 16(b), requires judges to retire upon reaching their 70th birthdate, the Supreme Court in ***Stout*** cited a number of other cases in which it had earlier rejected contentions that the Pennsylvania Constitution somehow permitted judges to continue serving beyond their 70th birthdates. Specifically, the Supreme Court cited its own recent decision in "***Gondelman v. Pennsylvania***, 520 Pa. 451, 554 A.2d 896 (1989), wherein **[the Supreme Court]** emphatically held constitutional the mandatory retirement provision at age seventy and held that jurists after attaining said age could serve only in a senior judge capacity." ***Stout***, 521 Pa. at 579, 559 A.2d at 493. The Supreme Court also cited its earlier decision in "***Firing v. Kephart***, 466 Pa. 560, 353 A.2d 833 (1976), wherein **[the Supreme Court]** held that a district justice must retire upon attainment of age seventy..." ***Id.***

The Supreme Court in ***Stout*** rejected a similar contention that under extenuating circumstances a Supreme Court justice could serve beyond her 70th birthday, stating:

> As a matter of our own constitutional law, this section applies to all jurists upon their attaining the age of seventy and it must be applied here as it was applied in our recent case of ***Gondelman, supra***. Any other reading of this section would put us in the precarious position of extending a constitution-

> ally fixed term of judicial office, which we cannot do. However appealing the power to do so might appear under even extenuating circumstances, we are bound to give effect to the clear language of the Constitution.

Stout, 521 Pa. at 582, 559 A.2d at 495.

A statute cannot amend the Constitution. Here, that is precisely what the General Assembly is purporting to do under Senate Bill 1046. The framers of our Constitution made it clear that a judge must be retired upon reaching the age of 70. The General Assembly may not extend that term of office by statute, as it has attempted in Senate Bill 1046. Therefore, I am compelled to return Senate Bill 1046 without my signature.

ROBERT P. CASEY

Veto No. 1990-3

SB 775

October 12, 1990

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

I return herewith, without my approval, Senate Bill 775, Printer's No.2485, entitled "An act amending Titles 20 (Decedents, Estates and Fiduciaries) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, reducing the time for advertisement of accounts to two weeks; adding a section providing that documents submitted to the register of wills, except for probate, may be attested to by an affidavit or by a verified statement; broadening the class of property deemed disclaimed when a spouse takes an elective share; avoiding automatic modification of wills and inter vivos conveyances that are made in contemplation of a marriage or divorce; adding a rule of interpretation for wills and conveyances regarding corporate fiduciaries; confirming existing law that a gift to any unfunded trust is valid; adding a chapter relating to contracts concerning succession; authorizing personal representatives to make certain temporary investments; allowing fiduciaries to hold certain securities in book-entry form; further providing for notice to parties in interest; further providing for rights of claimants; authorizing the guardian of the estate of a minor to distribute certain income without court approval; adding the Pennsylvania Uniform Transfers to Minors Act; adding provisions relating to guardians of incapacitated persons; clarifying the jurisdiction of the court to appoint certain temporary guardians; authorizing the court to exercise all rights and privileges under certain contracts which provide for payments to an incompetent or others after the incompetent's death; authorizing the court to modify the estate plan of an incompetent to reflect changes in applicable tax laws; permitting certain powers of attorney to be executed by mark; ensuring the validity of durable powers of attorney; authorizing the court to allow a shorter period of notice to an absentee; providing that as a matter of law divorce revokes any revocable beneficiary designation made in favor of the former spouse; further providing for the annexation of accounts; further authorizing the court to divide trusts; further authorizing the court to grant declaratory relief with respect to certain interests in real property; exempting spousal transfers from inheritance taxation; providing for the taxation of certain spousal trusts; adding conforming amendments to Titles 13, 18, 23 and 42; amending Title 72 to exempt spousal transfers from inheritance taxation; and making technical changes."

This bill makes a variety of changes to the taxation of estates in Pennsylvania, several of which would result in significant revenue losses to the Commonwealth. The most severe revenue impact would be caused by the elimination of the existing six percent tax on transfers to a spouse of property held in only the decedent's name. Under the bill, this tax would phase out over a five-year period, beginning on July 1, 1991. Elimination of this tax would

cost the Commonwealth over $4 million next fiscal year, increasing to approximately $62 million in the fifth year of implementation.

In order to fill that kind of revenue gap, the General Assembly would have to either reduce spending in future years or increase other revenues to replace those lost inheritance tax dollars. There are times and circumstances when those hard choices are made easier, when reducing or eliminating a particular tax levy would remove an unfair burden from those who can least afford to pay.

Unfortunately, that is not the case with this particular tax. Contrary to the claims of its proponents, this bill would do very little to help poor widows. Most lower- and middle-income couples own their homes and other assets jointly and, therefore, will pay no inheritance tax when one spouse dies.

In fact, each year, fewer than 5,000 Pennsylvanians die leaving property that is taxable to their spouse. Less than half that number leave small estates valued below $50,000. All of those small estates added together pay less than five percent of the tax to be eliminated by the bill. The people who pay the bulk of this tax, and the ones who will benefit most by its repeal, are some of the wealthiest people in Pennsylvania.

When fully operational, the bill would provide a $30 million tax break for about 1,000 of our wealthiest residents. That money has to come from somewhere. It would come from the pockets of working men and women across Pennsylvania in the form of higher taxes or reductions in essential programs. Pennsylvania can ill-afford to be cutting taxes for the rich in the face of growing demands for funding essential programs like special education, higher education, senior citizens' programs, environmental cleanup, health care and other critical human needs.

If this legislation were in reality a benefit designed for poor widows, I would sign it. But, it is not. It amounts to a huge giveaway to the rich, masquerading as a benefit to the poor.

I remain deeply concerned about people who are not wealthy, who lose their spouse and find themselves faced with tax bills as a result.

Therefore, I am asking the legislative leaders to work with all interested groups to craft a law that will provide relief to those people for whom this tax constitutes an unconscionable economic burden at the traumatic time of loss of a spouse. That legislation must not, however, be a windfall for the rich.

This bill contains a number of other changes designed to avoid ~~or defer~~ the payment of inheritance taxes. In particular, the bill would no longer apply the tax to a surviving spouse who inherits a life estate. Such property would only be taxable to those who subsequently inherit it, after termination of the life estate, and the tax would be based upon the value of the property at that time. This provision could have a significant impact upon Commonwealth inheritance tax revenues, particularly in the first year of implementation. While it is difficult to estimate the potential losses with precision, they would certainly exacerbate the revenue drain caused by the proposed repeal of the tax on spousal transfers.

In addition to these tax law changes, Senate Bill 775 would establish new rights for persons alleged to be incapacitated and in need of guardianship services.

Without question, reform of Pennsylvania's antiquated guardianship law is long overdue. I urge the General Assembly to pass new legislation to address the needs of incapacitated persons within the limits of available state funds.

ROBERT P. CASEY

Veto No. 1990-4

SB 1511 October 12, 1990

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

I return herewith, without my approval, Senate Bill 1511, Printer's No.1992, entitled "An act amending the act of December 14, 1967 (P.L.746, No.345), entitled 'An act relating to and regulating the business of savings associations heretofore designated under other acts and special charters variously as building and loan associations and savings and loan associations; defining the rights, powers, duties, liabilities, and immunities of such associations; affecting persons engaged in the business of savings associations; affecting the members, account holders and borrowers of such associations; affecting Federal savings and loan associations whose principal office is located in the Commonwealth; prohibiting the transaction of business in this Commonwealth by foreign savings associations; conferring powers and imposing duties on certain departments and officers of the Commonwealth and on the courts, recorders of deeds; creating a Savings Association Board and defining its powers and duties; prohibiting certain actions and imposing penalties, and repealing certain acts,' providing for reciprocal interstate operations; permitting the formation of mutual holding companies; further providing for acquisitions of the stock of a savings association; revising proxy rules; and making repeals."

I am not convinced that this legislation is in the best interests of Pennsylvania savings and loan institutions and their investors. At this time, legislation giving our institutions broader powers to form mutual holding companies and to acquire, or be acquired by, out-of-state thrifts seems quite premature. Until more progress has been made by the Federal government in reforming the deposit insurance system and the financial services industries, especially the thrift industry, I do not believe Pennsylvania should rush into such a substantial revision of our own statute.

Therefore, I am returning Senate Bill 1511 without my signature.

ROBERT P. CASEY

Veto No. 1990-5

SB 313 November 29, 1990

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

I am returning herewith, without my approval, Senate Bill 313, Printer's No.321, entitled, "An act amending the act of May 1, 1933 (P.L.103, No.69), entitled 'An act concerning townships of the second class; and amending, revising, consolidating, and changing the law relating thereto,' authorizing the establishment of boards of health; providing for their powers and duties; and making repeals."

The General Assembly has presented to me for approval two bills which provide for the establishment of boards of health in townships of the second class. Those provisions are contained in Senate Bill 313, Printer's No.321 and House Bill 2353, Printer's No.4327. The provisions in each bill are identical but for a provision in House Bill 2353 which would prohibit township health officers and inspectors from entering upon the performance of duties unless certified as qualified by both the Department of Environmental Resources and the Department of Health and the filing of annual reports with each State agency.

I am electing to veto Senate Bill 313 and approve House Bill 2353, because House Bill 2353 contains other provisions amending the Second Class Township Code which should be enacted into law and because the addition of the Department of Environmental Resources as a certifying agency for township health officers and inspectors will add an important component to the qualification procedure for persons who will be authorized to perform important public functions relating to the health and safety of the citizens of townships of the second class and this Commonwealth.

Therefore, for the reasons set forth herein, I hereby disapprove this bill.

ROBERT P. CASEY

Veto No. 1990-6

HB 614 November 29, 1990

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

I return herewith, without my approval, House Bill 614, Printer's No.4196, entitled "An act amending the act of December 19, 1984 (P.L.1140, No.223), entitled 'An act relating to the development of oil and gas and coal; imposing duties and powers on the Department of Environmental Resources; imposing notification requirements to protect landowners; and providing for definitions, for various requirements to regulate the drilling and operation of oil and gas wells, for gas storage reservoirs, for various reporting requirements, including certain requirements concerning the operation of coal mines, for well permits, for well registration, for distance requirements, for well casing requirements, for safety device requirements, for storage reservoir obligations, for well bonding requirements, for a Well Plugging Restricted Revenue Account to enforce oil and gas well plugging requirements, for the creation of an Oil and Gas Technical Advisory Board, for oil and gas well inspections, for enforcement and for penalties,' further providing for definitions, well permits, well registration, inactive status, plugging requirements, well reporting requirements, bonding, the Oil and Gas Technical Advisory Board, public nuisances, civil penalties, determination of compliance, unlawful conduct, surcharges for new wells; exempting certain wells from bonding requirements; and further providing for local ordinances."

House Bill 614 would make several substantial changes to the Oil and Gas Act of 1984. Among other things, the 1984 Act required the owner or operator of a gas or oil well to file a bond in the amount of $2500 per well or a $25,000 blanket bond to cover all their wells. These bonds were intended to provide some security for the Commonwealth should the owner or operator fail to plug a well and restore the well site when the well is no longer useful.

Unplugged wells allow commingling of clean waters with contaminated waters, allow gas to leak into water supplies and coal mines and allow potentially flammable gas to escape at the surface. DER has documented hundreds of instances where abandoned, unplugged or improperly plugged wells have threatened our environment and public health and safety. In some cases, families have been forced to evacuate their homes and their water supplies have been contaminated. Pennsylvania's 1990 Water Quality Assessment identified oil and gas drilling contaminants as a major problem in the thirty-county oil and gas area.

Despite all this evidence of environmental damage from unplugged wells, House Bill 614 would exempt more than half of the known active oil and gas wells from any bonding requirements, if the well is registered within a year. This exemption would apply to all wells drilled before 1975. Those owners and operators who already met the bond requirement for their pre-1975 wells

would receive a credit toward bonding wells drilled after January 1, 1975. In other words, the entire cost of plugging any well started more than fifteen years ago would fall on the taxpayers of Pennsylvania if the owners fail in their obligation. The Office of the Budget has estimated this potential cost at $85 million on the conservative assumption that only 10% of these wells will ultimately be abandoned to the Commonwealth for plugging.

House Bill 614 shifts responsibility from the well drillers to the taxpayers in other ways. Under current law, DER can allow a well to be considered inactive, without being plugged, for five years if the operator demonstrates that the well has future utility. House Bill 614 would extend the period of inactive status to a minimum of ten years and weaken the criteria by which DER would determine that the well will be used in the future. Operators who have no real intention of using the wells later could simply delay their obligation to plug until they go out of business. Coupled with the elimination of the bonding requirement, this change virtually guarantees that the responsibility for plugging a large number of pre-1975 wells will fall on the Commonwealth.

Proponents of House Bill 614 have argued that the existing bonding requirements place an unfair burden on smaller operators. I have indicated to the proponents of this legislation a willingness to lessen the bonding burden of the small operator so long as the solution does not relieve them of responsibility for plugging and site restoration. At my direction, my staff, as well as staff of the Department of Environmental Resources, met on numerous occasions over a period of two years with representatives of the operators, small and not-so-small, to address their special problems. As one example, to enable the small operator to meet the bonding requirements on existing wells, a proposal for affordable phased collateral deposits spread out over a period of years was offered. The operators continued to insist on exempting existing wells. Certainly the elimination of all bonding requirements for older wells, regardless of the number of wells each person owns or operates, is not in the public interest.

Unfortunately, House Bill 614 goes well beyond what might have been necessary to grant appropriate relief to the many small independent well operators in Pennsylvania. The net effect of the bill would be a significant increase in the abandonment of environmentally unsafe wells without proper plugging, an increased potential for environmental harm and significantly increased costs to the taxpayers to clean up the resulting environmental damage.

For these reasons, House Bill 614 is inconsistent with the broad public interest of the people of Pennsylvania and, therefore, I am withholding my approval from the bill.

ROBERT P. CASEY

Veto No. 1990-7

SB 1136 November 30, 1990

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

I return herewith, without my approval, Senate Bill 1136, Printer's No.2611, entitled "An act providing for control and licensing of video poker machines in this Commonwealth; creating the Video Poker Machine Control Commission and providing for its powers and duties; and providing for local option and for distribution of revenue."

Senate Bill 1136 would legalize so-called video poker machines for the first time in Pennsylvania. This bill creates a licensing scheme for manufacturers, distributors, machine owners and "licensed establishments" (including bars and other liquor licensees and racetracks). A Video Poker Machine Control Commission would be established to grant licenses, investigate violations of the act through its own enforcement agents, prescribe winning percentages and audit the receipts of machines. The bill provides for a local referendum by which voters in each municipality may decide whether to permit video poker machines. Net profits from machines would be divided according to a prescribed formula: 34% to the machine owner; 34% to the licensed establishment; 14% to the municipality; 11% to the school district; 5% to the State Lottery Fund and 2% to the Attorney General.

Players could wager up to $2.00 on each "hand" with a potential payoff of up to $500 per game. There would be no limit on the number of games played.

Senate Bill 1136 amounts to a major expansion of legalized gambling in Pennsylvania. If every municipality opted to allow video poker, the bill provides the means for over 20,000 bars, restaurants, clubs and other establishments to become mini-casinos simply by paying a fee of $300 annually for each machine. Under this bill, tens of thousands of what have been called electronic slot machines could appear throughout the Commonwealth practically overnight.

While the bill creates a licensing body called a control commission, the bill itself contains very few controls against the Statewide proliferation of these gambling devices. Any neighborhood bar would qualify for up to three machines. All they really need is a liquor license. The bill does not even disqualify convicted criminals from obtaining licenses to manufacture, distribute or own video poker machines.

The high profit potential of this type of gambling device makes this industry extremely attractive to criminal elements. The historical link between illegal video poker machines and organized crime has been documented by a wide variety of law enforcement authorities, including the Pennsylvania State Police, the Pennsylvania Crime Commission and district attorneys across the Commonwealth. It would be completely unrealistic to suggest that criminals will lose interest in a highly profitable activity simply because the

State has decided to legalize it. Nor am I unmindful of the effects of this kind of gambling activity on Pennsylvania families, a concern which has been expressed by numerous social organizations and churches.

I understand that many legislators who voted in favor of this proposal were motivated by a desire to help a struggling tavern industry or to boost the revenues of local governments and schools without further increases in local property taxes. I am certainly not unsympathetic to the difficulty faced by Pennsylvania's tavern industry, as well as any other legitimate business, when economic conditions and changing societal attitudes challenge their ability to survive. I believe most Pennsylvanians would agree, however, that expansion of gambling is not the right cure.

Nor is this bill the answer to the financing of local government or our public school system. The percentages of profits dedicated to these purposes under the bill do not reflect a serious desire to relieve local tax burdens. They amount to an enticement to local officials and taxpayers merely to assure voter approval of video poker gambling in each locality.

There is surely money to be made under this bill. But the real profits would be won by the manufacturers and distributors of the machines and by the licensed establishments where they are placed.

This bill would significantly expand legalized gambling in Pennsylvania. It would take Pennsylvania one clear step closer to casino gambling and, for those reasons, the bill is not in the best interests of this Commonwealth.

ROBERT P. CASEY

Veto No. 1990-8

HB 2687 December 7, 1990

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 2687, Printer's No.3728, entitled "An act authorizing the State Armory Board of the Department of Military Affairs and the Department of General Services with the approval of the Governor, to sell and convey a tract of land, together with the building and structures thereto, in the City of Chester, Delaware County, Pennsylvania."

This bill authorizes the Department of Military Affairs and the Department of General Services, with my approval, to sell and convey, by general warranty deed, real property located in the City of Chester, Delaware County, containing approximately 16,000 square feet with an Armory Building erected thereon, often referred to as the Chester Armory. The determination to sell the Chester Armory was made by the State Armory Board of the Department of Military Affairs pursuant to the provision of the Military Code set forth at 51 Pa.C.S. § 1507 (relating to sale of unusable armories and land).

I agree with the determination of the State Armory Board, and would otherwise approve this bill, but for the fact that another bill (Senate Bill 895, Printer's No.2628) currently before me for approval also contains identical legislative authorization for the sale of the Chester Armory. Senate Bill 895 also contains authorization for the sale of other real property of the Commonwealth which I also believe should be approved.

Since I believe that approval of this bill would be duplicative statutory authorization for the sale of the Chester Armory, I hereby disapprove this bill.

ROBERT P. CASEY

Veto No. 1990-9

HB 618 December 17, 1990

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 618, Printer's No.4322, entitled "An act amending the act of April 9, 1929 (P.L.177, No.175), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,' providing for resident State troopers."

House Bill 618 creates a Resident State Trooper Program in the Commonwealth. Under this program, regular Pennsylvania State Police officers would be assigned on a regular basis to a municipality or group of municipalities that do not have an organized police force in order to provide police protection and enforce all municipal ordinances and all other civil and criminal laws of this Commonwealth. These municipalities must contract with the Commissioner of the State Police and agree to pay the entire cost of providing the resident State trooper service. The Pennsylvania State Police force is authorized to hire 50 additional personnel to meet the needs of this program.

There are approximately 1,500 municipalities throughout Pennsylvania that are without an organized police force. The 50 additional State troopers that are authorized under this bill could not possibly meet the needs of all of these municipalities. The State Police force and each municipality would have to hire additional staff, including an increased legal staff, to prepare the necessary municipal contracts, develop a tracking system for statistics and costs, make billing arrangements for services rendered, coordinate the entire program and interact with each other.

These increased personnel requirements and administrative expenses could prove very costly to both the State Police and the contracting municipality. The bill would place additional burdens on the State Police complement level at a time of potential manpower shortages resulting from increased retirements.

The average salary and benefit package of a State trooper is approximately $50,000 annually. Since several troopers would be necessary to provide full-time coverage to each municipality or group of municipalities, this program at the outset will be more costly to the municipality than hiring their own police force and this is before all of the incidental administrative expenses are added.

The State Police are also faced with unreasonable time constraints since the program is due to expire December 31, 1991, and the State Police are required to put in place regulations to implement this program. This bill is effective in 60 days and would take a minimum of seven months to put final regulations in place. This leaves three months for municipalities to pass an ordinance that authorizes the municipality to enter into a contract with the State Police and subsequently hammer out all of the details of the contract. Conceivably, the State Police could exhaust almost a full year on a program that would expire before any contracts are signed or services rendered. It is important to note that this change within the force may require significant modifications to the collective bargaining agreements that are in place since the program would have an impact on selection, assignment, promotion and scheduling of troopers.

The State Police force is currently required under law to cooperate with counties and municipalities "in the detection of crime, the apprehension of criminals and the preservation of law and order throughout the State" but only to the extent that these crimes violate State law. Expansion of those duties to include enforcement of local ordinances would be inconsistent with the mission, education and training of the Pennsylvania State Police.

This bill would begin to move the State Police away from their traditional role as the elite law enforcement body in the Commonwealth. For that reason, as well as the significant costs of implementation both to the State and local municipalities, I am withholding my approval from House Bill 618.

ROBERT P. CASEY

Veto No. 1990-10

SB 1673 December 17, 1990

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 1673, Printer's No.2300, entitled "An act amending the act of May 27, 1937 (P.L.926, No.249), entitled, as amended, 'An act relating to the manufacture, repair, renovating, cleansing, sterilizing, and disinfecting of mattresses, pillows, bolsters, feather beds, and other filled bedding, cushions, upholstered furniture and bulk materials intended for use in such products intended for sale or lease, and to the sale or lease thereof; requiring the placing of tag and adhesive stamp on such material; providing for the sale of adhesive stamps; authorizing and requiring the Department of Labor and Industry to adopt rules and regulations; providing penalties; and repealing certain acts,' further regulating fees, registration, duties and penalties."

This bill deletes specific fees found in the Bedding and Upholstery Law and allows the Department of Labor and Industry to set new fees by regulation. These fees are paid to the Bureau of Occupational and Industrial Safety within the Department of Labor and Industry.

Although the bill intended to preserve existing fees until the Department of Labor and Industry could put new fees in place, a technical error in the drafting actually repeals these fees without providing for interim fee collection. Since the regulatory process is a lengthy one, the Bureau of Occupational and Industrial Safety would be unable to collect fees after the effective date of this act and would stand to lose almost $400,000 annually. By withholding my approval from Senate Bill 1673, the Bureau of Occupational and Industrial Safety will be able to continue to collect the current fees and the technical error can be corrected in the new legislative session.

For this reason, I am withholding my approval from Senate Bill 1673.

ROBERT P. CASEY

Veto No. 1990-11

SB 634 December 19, 1990

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 634, Printer's No.2584, entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the tolling of statute of limitations."

This bill extends the statute of limitations for certain sexual offenses that are committed against children under the age of 18. The provisions contained in this bill are identical in purpose to the provisions contained in House Bill 1228, Printer's No.4349, which I have already signed into law. Since I believe that approval of this bill would duplicate language now contained in the Judicial Code, as a result of my approval of House Bill 1228, I hereby withhold my approval from Senate Bill 634.

ROBERT P. CASEY

Veto No. 1990-12

HB 2557 December 19, 1990

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 2557, Printer's No.4356, entitled "An act amending the act of April 9, 1929 (P.L.177, No.175), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,' further providing for fees for services by the Department of Health and the Department of State and for contracts by the Secretary of Transportation; further providing for an exception to the requirements for certificate of need; further providing for the powers of security or campus police officers; providing for the validation of certain fees collected by the Department of State; providing for health insurance claim forms; and authorizing the Department of Transportation to convey excess real property in cities of the second class to governmental agencies, quasi-governmental agencies and authorities."

This bill makes several amendments to the Administrative Code of 1929, including an amendment which provides an exemption from the certificate of need process required by the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act. The legislative language is drafted in such a manner so as to make the exemption available to a health care facility if it is "an exclusively charitable children's hospital exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) and that makes no charges to its patients nor accepts any third-party payments for services provided to its patients..." This exemption, while facially describing in general terms a classification of eligible facilities, is drawn so narrowly that it is effectively applicable to one and only one health care facility in the Commonwealth. While I certainly support and applaud the charitable purpose of the hospital to be aided by this exemption, this bill would

violate the constitutional principles contained in Article III, § 32 of the Commonwealth's Constitution which does not permit the General Assembly to pass a law which would have local or special application. Additionally, I am concerned that the exemption brings about an unequal treatment under the law in a manner which would violate the equal protection and due process of law guarantees afforded by both the United States Constitution and the Constitution of this Commonwealth.

The bill also circumvents without any apparent justification a regulatory process embodied in the Health Care Facilities Act enacted by the General Assembly for the review and approval of new institutional health services according to established criteria. The certificate of need process is designed to guard against the kind of unnecessary duplication of health care services that has added significantly to the cost of medical care in Pennsylvania. The law expressly states that no person may establish a new institutional health service within this Commonwealth unless a certification approving such facility is first obtained from the Department of Health. The exemption in this bill would provide special treatment based upon criteria irrelevant to the criteria and requirements of the certificate of need process and represents a frustration of the intent and purposes to be served by that process. Moreover, other persons and institutions which may have their own special circumstances beyond the criteria and requirements of the law would not be given the same opportunity to exclude themselves from the certificate of need process.

Finally, the process used by the Legislature in making this exemption a part of this bill violated mandatory constitutional directives contained in Article III, §§ 2 and 4 for the passage of bills. The purpose of these constitutional procedures is to ensure that all members of the General Assembly and anyone else interested in a legislative proposal may have sufficient time and opportunity to review the proposal with deliberation and circumspection. As our courts have said, this constitutional process for consideration of legislation by the General Assembly is more than a mere general guideline for facilitation of the legislative process. ***Consumer Party of Pennsylvania v. Commonwealth***, 510 Pa. 158, 507 A.2d 323 (1986).

The constitutional process for consideration of legislation requires that amendments be germane to the original purpose of the bill and that all legislative proposals be given three readings and be referred to committee. These constitutional provisions do not permit one chamber of the General Assembly to simply accept by a concurrence vote amendments inserted by the other chamber into one of its bills which significantly alters the original purpose of the bill without giving the bill further full consideration. House Bill 2557 was originally introduced as an amendment to the Administrative Code to provide for the imposition and collection of fees by administrative agencies. It was further amended by the Senate in the eleventh hour of the legislative session with a provision that makes a significant public policy change to a substantive provision of law which is both contained in another statute and not a part of the Administrative Code itself. It is difficult to understand how this last minute amendment is germane either substantively or technically to

the original purpose of House Bill 2557. Use of such a process is an affront to the requirements embodied in the Constitution that the legislative process give a full and open review to all legislative proposals, especially on very important matters of substantive law, prior to passage.

For the reasons set forth above, I hereby veto this bill. It is unfortunate that the original provisions of the bill relating to fees chargeable by the Department of State and the Department of Health must also fall as a result of my actions today. I encourage the Legislature to immediately address this fee issue when it reconvenes in its new legislative session.

ROBERT P. CASEY

Veto No. 1990-13

HB 329 December 20, 1990

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 329, Printer's No.4299, entitled "An act amending the act of May 31, 1945 (P.L.1198, No.418), entitled, as amended, 'An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; providing for the establishment of an Emergency Bond Fund for anthracite deep mine operators; and providing penalties,' further providing for proceedings involving contamination or diminution of water supplies; providing for pollutional discharges and bonds; extending the Emergency Bond Fund to anthracite surface mines; and making an appropriation."

House Bill 329 makes important changes to the Surface Mining Conservation and Reclamation Act of 1945 which would result in the replacement of water for those whose water is lost due to surface mining activities, encourage remining in previously mined areas, provide technical and financial assistance to mine operators for remining operations and allow mining without a permit where it is a necessary part of a government-financed reclamation contract.

The bill, however, also contains provisions which could result in significant degradation to the waters of the Commonwealth, the loss of the Department of Environmental Resources' jurisdiction over several major environmental programs and an unacceptable fiscal burden on taxpayers of this Commonwealth.

House Bill 329 adds to the potential degradation of the waters of the Commonwealth through the definition of "pollutional discharge." A "pollutional discharge" is defined as a discharge entering the waters of the Commonwealth and for which the Department of Environmental Resources demonstrates both a violation of water quality standards and degradation of the receiving stream.

The Federal Clean Water Act requires that all discharges comply with water quality standards, period. The second criterion, namely the degradation of the receiving stream, is not included in the Federal Clean Water Act and is, in fact, inconsistent with it. The United States Environmental Protection Agency, in a letter to Secretary Arthur Davis, states, "The goal of improving the quality of the nation's waters cannot be achieved...if the only standard for regulation is degradation of waters below existing levels of quality."

Also, the burden of proving that a discharge meets water quality standards under the Federal act is on the discharger, while House Bill 329 would place it on the Department of Environmental Resources. Again, this is in direct contradiction to the Federal Clean Water Act.

Under House Bill 329, point source discharges from mining sites permitted before March 31, 1983, would no longer have to meet the technology-based standards or water quality effluent limits established by the Federal Clean Water Act. This bifurcation of the standards and limits is unacceptable not only to the Department of Environmental Resources, but also to the United States Environmental Protection Agency and the United States Department of Interior, Office of Surface Mining.

This provision, coupled with others, presents the very real prospect of Pennsylvania losing both the delegation from the Environmental Protection Agency to manage the point source discharge permitting program and the recognition from the Office of Surface Mining to conduct a coal surface mining regulatory program. In the same letter to Secretary Arthur Davis, the Environmental Protection Agency stated their belief that these provisions are "inconsistent with these requirements of the Clean Water Act and the authorization to Pennsylvania to administer the NPDES permit program." The Office of Surface Mining also stated "it appears that several provisions of the bill are inconsistent with the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) or its implementing regulations." Loss of the coal mining regulatory program alone could result in the loss of $37.2 million annually in Federal funds. But, this bill portends a loss of greater magnitude than can be measured just in terms of dollars. That is the possible loss of all authority delegated by the Federal Government to the Commonwealth to regulate and control water pollution from coal mining activities in the Commonwealth.

A second related concern is that the bill provides, in part, that "the permittee shall not be required to make any provisions for the current or future treatment of drainage from previous mining" for all mine operators operating under permits issued prior to March 31, 1983. Presently, operators engaged in remining are liable for all drainage pollution without proof of fault. House Bill 329 provides that operators can only be held liable for "additional pollution."

The problem here is that in many cases, the Department of Environmental Resources lacks premining water quality data and thus would be unable to demonstrate "additional pollution." Also, it is virtually impossible to ascertain which portion of a discharge emanates from previous mining, and which portion emanates from current mining. Mine operators would be able to discontinue existing treatment of mine drainage at sites where the department could not meet this burden of proof. This elimination of operator liability will result in a cost to the Commonwealth of an estimated $13 million annually for the treatment of discharge at approximately 700 sites. The Pennsylvania Fish Commission, in a letter urging my veto of this bill, has termed these provisions as "a step backward in our efforts to protect Pennsylvania waters."

A final fiscal concern is that House Bill 329 contains four appropriations, totaling $5,650,000 and retroactive to July 1, 1990, which are not included in the Executive Budget for 1990-1991.

As I indicated initially, there are several aspects of House Bill 329 which I support. Therefore, I am directing the Department of Environmental Resources to prepare a new legislative package for introduction early next year, which can serve as the basis for continuing this dialogue. This package should include the provisions of House Bill 329 which deal with water replacement, encourage remining and in other ways address legitimate economic and regulatory concerns in ways that do not create a threat to the environment.

The bill before me, however, does create a threat to the waters of the Commonwealth, as well as jeopardizing several major environmental protection programs within the Department of Environmental Resources. For these reasons, I am withholding my approval of House Bill 329.

ROBERT P. CASEY