Veto No. 1991-1

HB 244 May 3, 1991

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

I am returning herewith, without my approval, House Bill 244, Printer's No.1438, 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,' requiring notice and public hearings prior to the closure, sale, lease or transfer of any State-owned institution."

This bill does not permit any department of the Commonwealth to close, sell, lease or otherwise transfer the ownership or operational control of any State-owned institution or to materially reduce the work force or services at a State-owned institution unless the department holds a public hearing in the affected area and secures approval from the General Assembly. By its own definition, this bill would apply, without limitation, to schools, colleges, universities, armories, hospitals, mental hospitals, mental retardation centers and correctional facilities. Its provisions would not only be triggered by closures or other transfers of ownership and control, but also by any reduction in staff equal to 25% of the then existing staff complement.

The following procedure is required by the bill for approval by the General Assembly. The departmental proposal is submitted to the President pro tempore of the Senate and the Speaker of the House of Representatives. They each refer the proposal to a standing committee of the respective chamber over which each presides. Each such committee is then required to hold a public hearing and issue a report to their respective chamber. The committee report and the accompanying proposal are then placed before both the House of Representatives and the Senate on their respective calendars. If the General Assembly would disapprove the departmental proposal within five legislative days after receiving the committee report, the proposed action of the department is stopped.

This bill is unconstitutional because it violates the principle of separation of powers by providing for a legislative veto of administrative actions which executive agencies are authorized by existing law to perform. The principle of separation of powers requires that once the legislature enacts a law, it can neither retain participation in the administrative process nor control the details of seeing that the law is fully and faithfully executed. The paramount significance of this principle has been recognized under the Federal Constitution by the United States Supreme Court in the leading cases of ***Immigration and Naturalization Service v. Chadha***, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983), and ***Bowsher v. Synar***, 478 U.S. 714, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986). The Supreme Court of this Commonwealth accorded the principle the same paramount constitutional status under our Constitution in the case of ***Commonwealth v. Sessoms***, 516 Pa. 365, 532 A.2d 775 (1987), wherein it adopted the ***Chadha*** and ***Bowsher*** reasoning. This bill gives the legislature active participation in the administrative process of managing State-owned institutions in a manner which violates the very essence of the fundamental principle of separation of powers — i.e., the constitutional necessity to avoid absolute governance by one branch of government, in this case, the legislature.

It is absolutely clear from the Federal and State court decisions that the legislative branch of government can constitutionally affect the administration and execution of duly enacted laws only through the passage of new and subsequent legislation which either establishes new governmental policy or clarifies existing governmental policy. This bill does not meet this test.

Under the system of government ordained in our Constitution, bicameral consideration of legislation and its presentation to the Governor for review and approval are inherent and integral to the principle of separation of powers. Article III, Sections 1, 2, 3 and 4 of the Constitution require a full and complete consideration of bills by each chamber of the legislature. The legislative process required by these sections insures a deliberative process focused on promoting rational and sound public policy. Article IV, Section 15, as well as Article III, Section 9, of the Constitution require that all legislation be presented to the Governor for approval. This requirement of presentment to the executive branch of government is a safeguard which protects against the enactment of improvident laws. Together, the bicameral process and the involvement of the executive branch of government in the enactment of laws require a constitutional procedure which must be exhaustive and which cannot be short circuited.

Moreover, upholding the principle of separation of powers is more than a mere academic exercise. It goes to the very heart of the ability of the executive branch of government to efficiently and effectively carry out the laws of this Commonwealth.

The ability of the Governor to manage executive agencies without interference is especially important when economic conditions require decisive action to reduce costs and control spending. This bill severely limits the Governor's ability to deal responsibly on an ongoing basis with the operations of various State institutions. To this extent, the bill not only violates the specific

constitutional requirements for legislative action, it also establishes an unacceptable public policy that would undermine the constitutional principles those requirements were designed to protect.

Therefore, for the reasons set forth herein, I hereby disapprove this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY

Veto No. 1991-2

HCRRR 2 May 3, 1991

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

I return herewith, without my approval, House Concurrent Regulatory Review Resolution No.2, entitled "A concurrent resolution disapproving a medical assistance regulation submitted by the Department of Public Welfare."

House Concurrent Regulatory Review Resolution No.2 would finally disapprove Regulation 14-384, promulgated by the Department of Public Welfare. Regulation 14-384 was designed to curtail the ever-expanding costs of operating the Medical Assistance Program and to place Pennsylvania in compliance with a Federal mandate governing payment for nursing home care, thereby insuring continued receipt of the Federal dollars so vital to the program's operation. The savings expected to be realized from implementation of these initiatives is $1,994,000 for this fiscal year and $12,307,000 for fiscal year 1991-92. These savings have been built into the department's 1991-92 budget submission.

Annex B of the regulation requires that the Veteran's Aid and Attendance and Housebound Allowance Benefit be counted as income available to be applied toward the payment of nursing home care for an eligible veteran and the support of his community-based dependents. Nursing homes operated by the Bureau of Veterans Affairs have always counted this allowance as available to partially defray the cost of care. Under Federal law, the department has no choice but to deduct this benefit from payment to nursing homes funded under the Medical Assistance Program. I am informed that Pennsylvania is currently the only state not in compliance with this Federal mandate. This resolution would keep the department out of compliance with this mandate and, thereby, place the Commonwealth in very real danger of losing substantial Federal funds.

Annex A of the regulation revises the department's provider payment policy for cost outlier care, which is extraordinarily costly care rendered in specified burn or neonate cases. Under this regulation, the reimbursement factor will be reduced from 100% to 80% of the unaudited costs claimed by the hospital. This measure is expected to eliminate unrestrained payments to provider hospitals.

The 80% reimbursement factor is significantly higher than the 60% reimbursement factor authorized under Federal law. Moreover, it will be more than adequate to meet the reasonable costs of providing care in efficiently and economically operated hospitals without impairing access to care. Under this change in payment schedules, treating hospitals will have an incentive to locate appropriate follow-up care for these cases.

In the last decade, medical assistance expenditures have nearly doubled. One of the major factors contributing to this extraordinary growth has been

the overall rise in the case load population. In fact, from July 1988 to September 1990, the number of persons eligible for medical assistance has grown by 11.8 percent, from 1,174,317 to 1,312,986. This growth stems both from the detrimental effect of the national recession as well as the required implementation of Federal programs which states must make available to more low-income mothers, children, the elderly and the disabled. In addition to the burgeoning case load, the cost of services has dramatically increased. Recent changes in Federal law have required states to assume more and more of the higher costs of care.

Obviously, available revenues have not kept pace with these huge cost increases. Our challenge, then, is to trim costs where possible, without reducing the level of essential medical care presently afforded to medical assistance recipients. Regulation 14-384 will have absolutely no effect on the level of care provided to those in need. What it will do is allow the Department of Public Welfare to get greater control over some of the excessive costs of providing that care.

Because of its negative fiscal impact and its threat to Federal financial participation in Pennsylvania's Medical Assistance Program, I am compelled to veto House Concurrent Regulatory Review Resolution No.2.

ROBERT P. CASEY

Veto No. 1991-3

SB 1059 August 4, 1991

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

I return herewith, without my approval, Senate Bill 1059, Printer's No.1504, entitled "An act amending the act of April 9, 1929 (P.L.343, No.176), entitled, as amended, 'An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth, or any agency thereof, and all receipts of appropriations from the Commonwealth, authorizing the Commonwealth to issue tax anticipation notes to defray current expenses, implementing the provisions of section 7(a) of Article VIII of the Constitution of Pennsylvania authorizing and restricting the incurring of certain debt and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth,' providing an amnesty program for the payment of delinquent taxes; providing for the examination of books and records by the Department of Revenue; further providing for certain interest payments and the rates of interest, for the settlement of taxes and for the filing of liens and writs of revival; providing certain subpoena powers to the Department of Revenue; providing for unfair sales of cigarettes; and making a repeal."

Senate Bill 1059 amends The Fiscal Code to create an amnesty program for taxpayers, to add provisions to the Unfair Cigarette Sales Tax Act, with amendments, and to add or change several Department of Revenue enforcement powers, including provisions relating to examination of records, settlement, lien revival and the use of sampling during audits.

I have previously indicated my willingness to accept a limited form of tax amnesty as part of our overall effort to boost tax collection during the current fiscal year. Unfortunately, the amnesty program contained in Senate Bill 1059 is seriously flawed in several aspects. These flaws in draftsmanship have an adverse impact on our revenue estimates and would, if left uncorrected, throw the budget out of balance.

The definition of "taxpayer" in the bill includes only those taxpayers required to remit taxes under The Fiscal Code and Title 72 of the Consolidated Statutes. However, there are no taxes that are required to be remitted under either tax law and, therefore, no one would be eligible for tax amnesty. Further, even if the bill could be given effect, the definition of "eligible liability" is overly broad and would reward those who are known consistent tax-evaders. Also, due to the broad definition of "eligible tax," the so-called "amnesty" revenues would merely supplant revenues that are currently being collected. In other words, under this bill the department would reap substantial revenues that it already expects to collect, but would lose the interest and penalties it would otherwise expect to realize, but for the amnesty features of this bill.

An amnesty program which provides relief only to those whose liability is not known to the department or to those who only have known liabilities which are too old to be effectively enforced would be productive. However, this bill tends towards being a pure giveaway for known tax "cheats" and, therefore, is highly unfair to the vast majority of law-abiding taxpaying Pennsylvanians.

I remain willing to work with the General Assembly to arrive at a more limited tax amnesty program, one that can be effectively administered without unnecessarily sacrificing interest and penalties which the Commonwealth expects to receive.

ROBERT P. CASEY