Veto No. 1999-1

SB 852 June 25, 1999

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

I have on my desk for review Senate Bill 852, Printer's No.1216, which amends Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes.

As originally drafted, Senate Bill 852 would allow municipalities to use a written price quotation submitted by facsimile transmission.

While I am supportive of the use of facsimile transmission in the municipal bidding process, an unrelated amendment was added which prohibits a municipality or school district from levying an amusement or admissions tax on events at a convention center owned by a municipal authority and located in certain first class townships in third class counties. The only facility in the Commonwealth that meets these criteria is the Luzerne County Convention Center.

I am supportive of the elimination of, or the placement of limitations on, the assessment of amusement or admissions taxes in the Commonwealth. These taxes often place a substantial burden on businesses involved in the tourism industry. Some entertainment and recreational facilities have contemplated leaving the Commonwealth because of high amusement taxes. The loss of these businesses would result in a loss of jobs for our citizens.

However, if the amusement tax is to be lifted or limited, it should be done so in a uniform and consistent manner for all subjects of the tax. In 1998, I signed Act 50, which adopted local tax reform. Act 50 capped existing amusement and admissions taxes at the rate imposed by any political subdivision as of June 30, 1997. Political subdivisions that adopt the tax after that date may not impose the tax at a rate higher than 5%. This type of Statewide limitation was an appropriate and positive step towards limiting the imposition of the amusement tax. To unilaterally deprive one municipality or school district in which a specific facility is located does not provide fair or uniform relief from these taxes.

In fact, I believe the exemption of the convention center from amusement or admissions taxes in Senate Bill 852 violates section 1 of Article VIII of the Constitution of Pennsylvania. Section 1 of Article VIII provides that:

> "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

In *Leonard v. Thornburgh*, 507 Pa. 317, 489 A.2d 1349 (1985), the Pennsylvania Supreme Court held that the Philadelphia City Wage Tax, which imposed differing tax rates upon residents and nonresidents of Philadelphia, did

not violate the Uniformity Clause of either the Pennsylvania or the United States Constitution. In that case, residents of the city were subject to a wage tax at a higher rate than nonresidents. The Court held that nonresident wage earners used city services to a lesser extent than city residents. Unlike residents, nonresidents did not benefit from the twenty-four hour and seven day per week availability of the services. Because there was concrete justification for imposing a higher tax rate on resident wage earners than on nonresidents, the local tax was constitutional, *id.* at 1353. There is no similar rational basis for the different tax treatments in Senate Bill 852.

Patrons of an event at another recreational or entertainment facility in the same municipality would be required to pay the amusement or admissions tax, while the convention center would be exempt. Patrons at another facility cannot be distinguished from patrons of the convention center who will not be subject to the tax. Therefore, under Senate Bill 852, the municipality or school district would be required to impose a tax in an unconstitutional manner.

Therefore, because of the policy and constitutional problems raised by Senate Bill 852, I am hereby returning Senate Bill 852, Printer's No.1216, without my signature.

THOMAS J. RIDGE

Veto No. 1999-2

SB 309 June 25, 1999

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

I have before me Senate Bill 309, Printer's No.1187, which amends the Public School Employees' Retirement Code: to provide for creditable nonschool service for individuals with service in the Cadet Nurse Corps and the Peace Corps; to extend the filing date for limited early retirement; and to create an exception to the termination of annuities under the system.

The 15-day extension, to July 15, 1999, of the application deadline for early retirement for school employees with 30 or more years of credited service is reasonable in order to allow certain teachers who have fallen a few days short of 30 years under the current deadline to take advantage of the program. However, the bill creates several unrelated precedents which could prove detrimental to the School Employees' Retirement System (PSERS).

First, Senate Bill 309 reduces from two years to one year the minimum amount of service Cadet Nurse Corps members need to be eligible to purchase service credit. In addition, since the adoption of Act 23 of 1991, active members and retirees who retired after December 31, 1988, have been able to purchase this credit. The bill restricts the Cadet Nurse Corps purchase option to individuals retiring between January 1, 1984, and September 1, 1988. The reason for this restriction is not clear. While it is unusual to permit certain classes of retirees to purchase service credit, it is even more unusual to limit the purchase to only certain members of that class. This restriction may impair the contract of those active members and retirees who are currently eligible to purchase the Cadet Nurse Corps credit, but have not yet done so.

Senate Bill 309 permits an active member or multiple service member to purchase up to two years of service credit for nonschool service as a Peace Corps volunteer. The purchase must be made within three years of the effective date of Senate Bill 309 or within three years of entry into school service subsequent to the Peace Corps service, whichever is later. While I am supportive of recognizing service in the Peace Corps, the bill provides no alternative method for the purchase of that service. Therefore, the employee is likely to pay less than the full actuarial cost of the increased benefit acquired through the purchase, resulting in an increase in the unfunded liability of PSERS and an unfairness with respect to other members with eligible nonschool service who must pay the full actuarial costs to purchase that service.

Senate Bill 309 also permits an annuitant to be employed by a school district, intermediate unit or area vocational school as a coach, director or sponsor of a school activity under a separate contract without cessation of annuity payments or forfeiture of the 10% retirement incentive if the contract specifies that no service

credit would be earned in the PSERS and no contributions are made to PSERS by the retiree, the public school employer or the Commonwealth for work provided under the contract.

Finally, Senate Bill 309 permits an annuitant to be employed by a school district, intermediate unit or area vocational-technical school on a less-than-full-time basis as an instructor or administrator of an adult education or basic literacy education program without cessation of annuity payments or forfeiture of the 10% retirement incentive if the contract specifies that no service credit would be earned in the PSERS and no contributions are made by the annuitant, the public school or the Commonwealth for work provided under the contract.

These provisions would allow those who took early retirement incentives to be reemployed to perform the same services or part of those services. This is inconsistent with the goal of early retirement, which is the reduction of complement.

The Public School Employees' Retirement Code has consistently expressed that, except in emergencies, a retiree returning to school or State service ceases to receive a pension and must become an active, contributing member of the system. Authorizing a retiree to return indefinitely to school service in a nonemergency situation is fundamental change that permits a retiree to receive supplemental retirement income from the same employer that provided the additional incentive to retire.

These provisions establish a lack of uniformity in the system as they apply only to those retirees returning to service to perform services in a specified position. Annuitants returning to perform other school service would remain subject to cessation of their pensions and forfeiture of 10% of the retirement incentive.

Such a program would provide a strong inducement for employees to retire early who would not otherwise choose to retire. Employees are given incentives to retire early, with substantial replacement of their current income. Senate Bill 309 would then provide additional compensation to work in part-time positions after retirement. This creates the strong potential for higher total income for lower work commitments. It is difficult at this time to quantify the additional cost that might result under this proposal.

Because of lack of uniformity, possible impairment of contract and related uncertainties and inequities created by the various proposals contained in Senate Bill 309, I am hereby returning Senate Bill 309 without my signature.

THOMAS J. RIDGE