

## Veto No. 2002-1

HB 412

November 6, 2002

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

I am returning herewith, without my approval, House Bill 412, Printer's No. 4206, entitled "An act amending the act of March 10, 1949 (P.L.30, No.14), entitled 'An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto,' further providing for employment criminal background checks, for health recommendations, for high school certificates and for mandated waivers; and making a repeal."

House Bill 412 as originally introduced sought to require the Pennsylvania Department of Insurance to provide school districts with information on the Children's Health Insurance Program (CHIP) and notification forms for parents of students about CHIP and its eligibility requirements. During the course of the legislative process, the Senate amended the bill to: require a prospective employee of a school district who has not been a resident of the state for at least two years to submit a federal criminal history background check; give school districts the sole authority to determine what shall be affixed or denoted on diplomas and transcripts; eliminate sections 751 and 751.1 of the Public School Code from the Mandate Waiver Program; and repeal Article XII-A of the Public School Code, known as the Professional Teacher Assessment Act, which includes the Professional Development Assistance Program.

The CHIP provisions and the federal background check provisions warrant enactment. However, the remaining provisions of the bill make it such that I have no choice other than to withhold my approval of House Bill 412.

First, this legislation would effectively prohibit Commonwealth officials and agencies from directing the placement of any information on a student's high school transcript or diploma. The most immediate effect of this provision would be to invalidate a regulation recently promulgated by the State Board of Education requiring placement on transcripts of the scores achieved by students on the Commonwealth's Pennsylvania System of School Assessment (PSSA) test. Because of the damage that this provision would have on the effectiveness of the PSSA as a critical tool for student assessment and public school accountability, I cannot approve of this amendment to the Public School Code.

In January 1999, the State Board of Education (State Board) promulgated regulations regarding Academic Standards and Assessments. These regulations, codified as 22 Pa. Code Chapter 4, created a new framework for curriculum and instruction in Pennsylvania's schools by establishing rigorous, world-class academic standards and aligned student assessments. The State

Board established the PSSA test as the key tool for student assessment. Under Chapter 4 as originally adopted, students who attained a score of proficient or advanced on the PSSA were to receive a Pennsylvania Seal of Proficiency or Distinction affixed to their high school diploma. The regulations also provided that a notation of the award would be made on the student's school transcript.

As the time for implementation of the "seals" provision approached, the State Board received comments from more than 70 local school boards raising concerns that this provision infringed upon the local authority of school boards to award high school diplomas. In response, the State Board worked with representatives of higher education and business, local school boards, school superintendents, teachers, students and parents to develop recommendations for addressing those concerns.

As a result of this collaboration, and consistent with the express direction of the General Assembly made in section 32 of Act 2002-88 enacted just four months ago, the State Board amended the Chapter 4 regulations to: (1) remove the requirements for placing seals of proficiency and distinction on high school diplomas and noting this on student transcripts; (2) add requirements for school districts to issue certificates of proficiency or distinction, to be supplied by the Commonwealth, to students who score proficient or above on State-administered assessments; and (3) require the placement of PSSA scores on student transcripts starting in the 2003-04 school year. See 32 Pa. Bull. 5266 (October 26, 2002). It is this last requirement of the newly amended regulations that House Bill 412 would invalidate.

As the Commonwealth moves toward a higher level of accountability in education, not only for our school districts, schools and teachers, but also for our students, this measure is just one crucial tool to help accomplish that goal. The possibility of such an acknowledgment of academic achievement will encourage our students to put forth their best on the PSSA. Now, student achievement demonstrating proficiency or excellence in meeting the State academic standards will be recognized. These regulations represent an important change intended to balance respect for the authority of local school boards with providing a credible incentive to students to put forth their best effort when taking the PSSA in a consistent uniform manner across the Commonwealth. Increasingly, school districts have already recognized the importance of and benefits from noting student test scores on transcripts, including the Neshaminy, Council Rock and Pennsbury school districts, which have utilized this measure for years.

House Bill 412 ignores the efforts of those who have worked hard to achieve this balance and threatens it by removing the ability of the Commonwealth to have any role with respect to student diplomas and transcripts. While diminishing the value of the PSSA as a comprehensive and valid assessment tool, the legislation provides no alternative for any Statewide uniformity or consistency in student assessment and public school accountability. Consequently, I cannot approve of this change in the law.

Second, House Bill 412 substantially diminishes the important efficiencies and economies that have been achieved under the Mandate Waiver Program by removing from the reach of the program sections 751 and 751.1 of the Public School Code. A popular education reform initiative, the Mandate Waiver Program became law in 2000 as part of the Education Empowerment Act (Act 16). Under the program - prescribed by section 1714-B of the Public School Code - boards of school directors and boards of control can seek from the Secretary of Education waivers from compliance with certain provisions of the Public School Code, the regulations of the State Board of Education and standards of the Secretary of Education. The provisions apply to Pennsylvania school districts, intermediate units and area vocational-technical schools (AVTS). Relief may be granted if the waiver will allow the school to improve its instructional program or operate in a more effective, efficient or economical manner.

Section 751 of the Public School Code prescribes detailed bidding requirements for most school construction projects and significant maintenance and repair work to be performed on public school facilities. Under the Mandate Waiver Program, the Secretary of Education is empowered to grant waivers from the detailed requirements of section 751 if doing so would allow the school entity requesting the waiver to accomplish the project in a more effective, efficient or economical manner. Of the 282 waivers received by the Department of Education since the program's inception, nearly 35% have been for waivers of section 751, making this section the most popular waiver request for local education agencies (LEAs). Section 751 waivers allow locally elected school officials to make the decisions on how construction costs are contained within a school district's budgets based on local issues, concerns and priorities rather than being bound by outdated and cumbersome bidding requirements.

Section 751 waivers offer relief by permitting the Secretary to waive the requirement that LEAs enter into multi-prime contracts for construction of additions or renovations to facilities. Other requested relief authorizes qualified maintenance staff on school payroll to complete projects in excess of \$5,000 or AVTS students enrolled in construction trades to compete real life construction projects at their school. Waivers to make emergency repairs to school facilities are also granted.

As of October 22, 2002, Pennsylvania school districts, and ultimately their taxpayers, are projected to have saved an estimated \$28 million due to section 751 waivers. These waivers allow locally elected school officials to make the decisions on how budgets are spent based on local issues, concerns and priorities. These waivers also offer relief from outdated, inflexible and cumbersome bidding requirements in the Public School Code and, as has been shown by data supplied from the applicants, costs that benefit few at taxpayers' expense.

The widespread use of section 751 waivers has saved local taxpayer dollars and helped school districts to control their costs. Elimination of these provisions, as proposed by House Bill 412, would only serve to increase the

burdens of State mandates on our school districts. Moreover, enactment of this legislation while the General Assembly is engaged in a Special Session seeking to find solutions to the dependence of school districts on local property taxes sends the wrong message to the taxpayers of this Commonwealth. To enact legislation that restrict school districts from utilizing cost-saving measures contradicts the very purpose of this Special Session.

Finally, House Bill 412 repeals Article XII-A of the Public School Code, known as the Professional Teacher Assessment Act. Enacted just 18 months ago as part of Act 2001-4, the Professional Teacher Assessment Act establishes the Professional Development Assistance Program (PDAP). Aligned to Pennsylvania academic standards, the PDAP measures the content knowledge of teachers in math and reading at the elementary-, middle- and secondary-school levels and focuses on improving the effectiveness of the over \$100 million spent annually on teacher professional development by the Commonwealth and our local school districts.

Administered anonymously with only aggregate scores being made available to the school districts and preparing institutions for assistance in designing professional education activities, the test is structured by domains to match the PSSA tests and Chapter 4 standards at the 5th, 8th and 11th grades.

PDAP information can dramatically help school districts in planning effective professional development in these teachers' classrooms. The PDAP results give colleges and universities a means to assess their own education programming strengths and weaknesses, helping to identify gaps or best practices in education, training and curriculum, and provide the Department of Education a useful tool in their five-year evaluation of the teacher preparation programs. This can only lead to better-prepared, better-trained and better-educated teachers.

Additionally, school districts can utilize this information in their hiring decisions. For example, even with only one full year of testing completed, the information from this program indicates that Pennsylvania's school districts should focus on teachers prepared in the Commonwealth's colleges and universities, rather than West Virginia colleges, since Pennsylvania graduates score higher on PDAP assessments than their West Virginia counterparts. PDAP also addresses what the Commonwealth's teachers need to keep up to date with K-12 content requirements in order to meet State student standards and provides school districts and State agencies with a correctly focused direction for making professional development expenditures to aid student performance on the PSSA assessments.

Pennsylvania's 118,000 plus professional classroom teachers represent some of the best-prepared and most effective teachers in the nation. The use of tests as a professional screening tool is just one of the many reasons for the high quality of our teachers. The use of the Professional Development Assistance test enables teachers to maintain their professional edge by helping them, and the educational establishment itself, focus on areas of strength and areas for improvement. School districts such as Central York and Central Dauphin are

currently using the results of the assessment to plan their professional development program.

Repeal of the Professional Teacher Assessment Act would hamper these efforts. Repeal would also remove a potential source of support for the federal requirement of the No Child Left Behind Act of 2001, which requires each classroom to be under the direction of a highly qualified teacher by 2005. Moreover, PDAP has shown promising results in a relatively short period of time. Eliminating the program at this stage is shortsighted and does a disservice not only to the teachers themselves, but also to the Commonwealth's children.

For these reasons, the provisions of House Bill 412 prohibiting the Commonwealth and Department from having any role in the content of a student's high school diploma or transcript, the elimination of the cost-saving impact of the section 751 waivers and the abrupt end to the Professional Development Assistance Program cause me to withhold my signature from House Bill 412, Printer's Number 4206.

**MARK S. SCHWEIKER**

## Veto No. 2002-2

HB 1553

December 15, 2002

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

I am returning herewith, without my approval, House Bill 1553, Printer's No. 4748, entitled "An act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for judicial review, for learners' permits, for identification card, for carrying and exhibiting driver's license on demand and for notice of change of name or address; requiring compliance with Federal selective service requirements as part of application for learners' permits or drivers' licenses; prohibiting operators from using mobile phones under certain circumstances; further providing for footrests and handhold on motorcycles, for driving under the influence of alcohol or controlled substance and for required financial responsibility; providing for lighted lamp requirements for motorcycles; and further providing for periods for requiring lighted lamps, for scope and application of provisions relating to size, weight and load and for refunds relating to liquid fuels and fuels tax."

House Bill 1553 as originally introduced sought to remove the handle bar height restrictions on motorcycles. During the course of the legislative process, the General Assembly amended the bill to make omnibus amendments to the Vehicle Code, including provisions to refine the judicial review documentation provisions relating to the suspension of the registration of a motor vehicle for failure to have insurance coverage as required by law. The bill was also amended to prohibit the issuance of a motorcycle learner's permit to an individual aged 16 or 17 who has not successfully completed a motorcycle safety education program. In addition, House Bill 1553 requires the Department of Transportation to issue an identification card to any person ten years of age or older, exempts engineers, conductors, brakemen or any other members of the crew of a locomotive or train from the requirement to carry and exhibit a driver's license upon demand, and requires written notification to the department of a name change for a driver's license and written notification to the department of a change in address or name within 15 days of such change for an identification card. This legislation requires department assistance with federal Selective Service requirements, clarifies the provisions relating to the suspension of registration and operating privilege proceedings for failure to have the required financial responsibility on a motor vehicle, and clarifies the obligations of persons upon lapse, termination or cancellation of financial responsibility. The bill prohibits the use of mobile phones while driving by a driver with a learner's permit, requires the display of lighted head lamps for motorcycles and provides for extra-duty escort by the Pennsylvania State Police of oversize or overweight loads. Finally, the legislation calls for the transfer up to \$1,000,000 from the Liquid Fuels Tax Fund to a restricted

receipts account known as the Recreational Trails Trust Fund for the acquisition, creation and maintenance of trails used by motorized recreational vehicles and for enforcement in State forests and State parks.

The vast majority of House Bill 1553 would provide for a more effective administration of vehicles on the Commonwealth's highways and bridges, along with making these highways safer for the traveling public. In addition, several of the provisions contained in this bill have already been enacted in Act 152 of 2002. These include the motorcycle handlebar, lighted lamp and financial responsibility provisions. However, the unconstitutional transfer of up to \$1,000,000 from the Liquid Fuels Tax Fund make it such that I have no choice other than to withhold my approval of House Bill 1553.

The offending amendment to House Bill calls for a "refund" to the Department of Conservation and Natural Resources (DCNR) of an amount equal to 50%, but not to exceed \$1,000,000, of the liquid fuels tax on fuel consumed in the operation of motorized recreational vehicles. This amount is to be deposited into a special nonlapsing restricted receipts account in the State Treasury to be known as the Recreational Trails Trust Fund. The Department of Conservation and Natural Resources is required to use these funds in accordance with the recommendations of the Snowmobile and ATV Advisory Committee for the acquisition, creation and maintenance of trails used by motorized recreational vehicles and for enforcement in State forests and State parks.

The use of gasoline and other motor fuel taxes to support the creation and maintenance of recreational trails for motorized recreational vehicles violates Article VIII, section 11 of the Pennsylvania Constitution. This section provides, in part, that

*All proceeds from gasoline and other motor fuel excise taxes, motor vehicle registration fees and license taxes, operators' license fees and other excise taxes imposed on products used in motor transportation after providing therefrom for (a) cost of administration and collection, (b) payment of obligations incurred in the construction and reconstruction of public highways and bridges shall be appropriated by the General Assembly to agencies of the State or political subdivisions thereof; and used solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and costs and expenses incident thereto, and for the payment of obligations incurred for such purposes, and shall not be diverted by transfer or otherwise to any other purpose...*

Constitution of Pennsylvania, Article VIII, section 11(a)(emphasis added). Moreover, section 2001.2 of the Administrative Code of 1929 further supports this restriction by stating

It is the sense of the Legislature that...Article VIII, section 11 of the Constitution of Pennsylvania must be unequivocally adhered to. Thus, all proceeds therein enumerated are to be used solely and exclusively for the purposes and to the extent provided therein.

71 P.S. § 511.2. Based on the direction given not only by our Constitution, but also our laws, the Department of Transportation has steadfastly adhered to these provisions in its use of gasoline and other motor fuel excise tax proceeds.

The amendment to section 9017 in House Bill 1553 seeks to use transferred monies for the “acquisition, creation and maintenance of trails,” a use prohibited by Article VIII, section 11, which limits the use of such taxes for “construction, reconstruction, maintenance and repair of and safety on public highways and bridges.” An examination of statutory definitions and case law has yet to reveal an interpretation of “public highways” that includes recreational vehicle trails.

While some may argue that this transfer of funds is a refund of tax monies paid by operators of motorized recreational vehicles, closer examination of the amendment shows this not to be the case. Section 9017 of the Vehicle Code does allow for the refund of liquid fuels and fuel taxes in limited circumstances. The amendment to House Bill 1553 attempts to create such an instance. However, it fails in that the monies are transferred, rather than refunded. True refunds are made to those who pay a tax, but are entitled to a reimbursement because they enjoy a tax exemption. Were the monies being returned directly to those who have paid the tax, these provisions might qualify as appropriate exemption justifying a refund. However, what the Legislature has presented in House Bill 1553 falls very short of being a permitted refund. The language of the amendment calls for a transfer of tax monies deposited into the Motor License Fund to the Department of Conservation and Natural Resources to be used for purposes not permitted by the Commonwealth’s Constitution.

In addition, current law already provides a funding mechanism for the maintenance and rehabilitation of motorized vehicle recreational trails. The Snowmobile and All-Terrain Vehicle Law contains a grant-in-aid program, which dedicates funding to municipalities, profit and non-profit organizations for construction, maintenance and rehabilitation of trails and facilities. 75 Pa.C.S. § 7706(b). This restricted account, funded by registration fees for snowmobiles and all-terrain vehicles, fines, penalties, fees and costs assessed and collected as a result of enforcement activities under this law, and revenue from the sale of publications or services relating to snowmobiles and all-terrain vehicles, has a balance of \$2,766,000 as of the third quarter of 2002. During fiscal year 2001-2002, the first grant-in-aid awards totaled \$706,000.00. The proposal in House Bill 1553 ignores the existence of this funding stream and serves only to pull much needed tax dollars away from highway and bridge construction and maintenance, and expenses incident to those uses.

In summary, because the intended use of the liquid fuels and fuels tax as set forth in the amendment to section 9017 of the Vehicle Code presents an unconstitutional diversion of funds under Article VIII, section 11 of the Pennsylvania Constitution, I must withhold my signature from House Bill 1553, Printer’s Number 4748.

MARK S. SCHWEIKER