

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