

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