

## Veto No. 1994-5

HB 1099

October 14, 1994

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

I am returning herewith, without my approval, House Bill 1099, Printer's No.2148, entitled "An act amending the act of June 3, 1937 (P.L.1333, No.320), entitled 'An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections,' Providing for a warning of violations on envelopes for official absentee ballots; authorizing county boards of elections to place nonbinding referendums on ballots; providing for special elections for senators and representatives in the General Assembly and for the posting of referendum questions at polling places; further providing for powers and duties of the Secretary of the Commonwealth, for the printing of constitutional amendments or other questions on election ballots and for absentee ballots; authorizing the filing of certain reports by facsimile; making an appropriation; and making editorial changes."

This bill amends the Pennsylvania Election Code to authorize the county boards of elections to place nonbinding referenda on the election ballot, extend the deadline for voting by absentee ballot, revise procedures for filling vacancies in the General Assembly and authorize the reporting of postfiling report deadline campaign contributions by facsimile.

Except for the provisions authorizing nonbinding referenda, the bill represents an expansion of the voting rights and franchise of our citizens and promotes the goals of representative democracy. I would be otherwise disposed to approving this bill, but I cannot do so because the referendum provision undermines the very same good government objectives which the other provisions promote. If legislation would be presented to me which expands absentee ballot voting rights, insures representation and protects against undue influences in campaign financing, I would approve it.

The provision authorizing nonbinding referenda violates the fundamental principles of representative democracy embodied in our constitution and upon which the whole system of government throughout this Commonwealth is built. Among my highest responsibilities as Governor is to uphold the Constitution of this Commonwealth. This is an especially compelling responsibility when the very foundation of the constitution itself is being targeted. Therefore, I object to and disapprove this bill.

The bill authorizes county boards of elections "to place nonbinding proposals on the ballot in a manner fairly representing the content of a petition for decision by referendum at an election." There are no other provisions in this bill which define or delineate the referendum process, including the manner in which the referendum would be initiated. It is my understanding that this provision was intended to respond to the recent court decisions in *Board of Elections of Schuylkill County v. Blythe Township*, 143 Pa.Cmwlth. 341, 600 A.2d 231 (1991) and *Hempfield School District v. Election Board of Lancaster County*, 133 Pa.Cmwlth. 85, 574 A.2d. 1190 (1990), where the court held that county election boards do not have any discretion to place a nonbinding referendum on the election ballot, absent express statutory authority to do so. At the very least, this bill is a poor and overly broad attempt to grant the express statutory authority that the court requires.

The Pennsylvania Constitution does not permit, nor does it provide for, "initiative and referendum" or authorize a general initiative and referendum process. This is not a surprise or a new and inventive constitutional construction. In 1776, at the very beginning of this Commonwealth, the people exercised their sovereign powers to create a republic grounded in a representative government.<sup>1</sup> This very fundamental decision to adopt this form of constitutional governance as the foundation for an orderly society continued to be expressly, consistently and firmly embodied in the constitutions of 1790, 1838, 1874 and the amendments recently made in 1968.<sup>2</sup> This same fundamental principle applies to local government also, as creatures of the State.

In order for the legislature to enact a law providing for initiative and referendum, it must find a provision in the constitution giving it the authority to do so. The only provisions in the constitution which permit initiative and referendum are limited to very specific subject matters and circumstances: Article IX, § 2 (adoption, amendment or repeal of home rule charters), Article IX, § 3 (adoption, amendment or repeal of optional plans of government), Article IX, § 5 (intergovernmental cooperation agreements), Article IX, § 8 (municipal consolidation, merger and boundary changes), Article IX, § 10 (local government debt limits), and Article XI, § 1 (constitutional amendment). There are no other provisions of the constitution which authorize initiative or referendum. Moreover, a proposal to permit by general law a system for taking advisory referenda in local governments was rejected by the Constitutional Convention of 1968. Proposal No. 1001,

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<sup>1</sup>"The supreme legislative power shall be vested in a house of representatives of the freemen of the Commonwealth, or state of Pennsylvania." Pa. Const., 1776, Section 2.

<sup>2</sup>"The legislative power of this Commonwealth shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives." Const., (1790) Art. I, Sec. 1; (1838) Art. I, Sec. 1; (1874) Art. II, Sec. 1; (1968) Art. II, Sec. 1.

Journal of the Constitutional Convention, page 100 (December 12, 1968).

The referendum provision of this bill, even though it is limited to non-binding proposals, effectively and as a matter of reality subjects the decision making and governing powers of local governing bodies to virtually constant plebiscites. It could essentially incapacitate local representative governments and in the end render their functions and purpose irrelevant and encourages and becomes an incentive for local government officials to abdicate the duties of their public office. It is not difficult to envision local governments submitting every important and controversial issue to a plebiscite out of fear of constituent reprisals. This is the very essence of the constitutional problem with this provision of the bill. It goes beyond the question of whether initiative and referendum are authorized by the constitution. It violates the fundamental tenet of representative government ordained by the constitution. Elected representatives most certainly must be responsive to those who elected them, but they are also elected for the purpose of acting responsibly. If they act in a manner which is neither responsive or responsible, the recourse of the voters is at the ballot box.

Beyond these constitutional problems, the provision could bring unfairness and chaos to the process of governing the municipalities and school districts of the Commonwealth. Every decision of governing would be second guessed. Vocal minorities and special interest groups who are dissatisfied with the outcome of a decision could force questions onto the ballot, making implementation of decisions difficult. Issues which often involve several complex factors would be targeted by sound bite rhetoric. Persons promoting their own political self-interest could easily abuse the process.

For all of these reasons, I disapprove of this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY