

(The veto of House Bill 1514 was overridden by the General Assembly on November 16, 1994, and became Act 1994-95.)

Veto No. 1994-4

HB 1514

October 13, 1994

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

I am returning herewith, without my approval, House Bill 1514, Printer's No.4179, entitled "An act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for the suspension of operating privileges for failure to respond to a citation and for the enhanced vehicle emission inspection program."

This bill amends Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes to clarify the Department of Transportation's (department) authority to suspend the operating privileges of a person for failing to respond to an out-of-State citation for a traffic violation (other than parking). It also makes numerous changes to the Commonwealth's enhanced emissions testing program, scheduled to go into effect on January 2, 1995.

The bill requires the Department of Transportation to immediately suspend the development and implementation of a centralized, test-only emissions program until March 31, 1995; requires the Department of Transportation to develop and submit to the Environmental Protection Agency (EPA) by March 1, 1995, an alternative emissions testing program that consists of a decentralized test and repair program or a hybrid program combining both decentralized test and repair and test-only components; prohibits the expenditure of any department funds in furtherance of a centralized program until EPA approves the alternative program; requires the Governor to obtain EPA approval to remove the Commonwealth from the Ozone Transport Commission; orders the Governor to immediately suspend the implementation and enforcement of the Employer Trip Reduction Program; and sets fees or costs for entities testing and/or repairing automobiles.

I strongly object to all of the provisions of this bill, set forth as an amendment to 75 Pa.C.S. § 4706, which relate to vehicle emissions testing and the Employer Trip Reduction Program. These provisions endanger the health, safety and welfare of Pennsylvanians and the economy of the Commonwealth. They would subject the people of the Commonwealth to avoidable increases in health risks associated with breathing polluted air, take money directly out of the pockets of hardworking men and women by costing the Commonwealth jobs and jeopardize the receipt of substantial and much-needed Federal moneys for the Commonwealth's highway program. Finally, the alternative plans proposed by the bill would make the inspection process more inconvenient and more expensive for the motorists of Pennsylvania.

The Federal Clean Air Act amendments, passed by Congress and signed into law by President Bush in January 1991 require states to drastically reduce air pollution. The standards set by EPA are stringent, are on fixed timetables and require air pollution reductions from both automobiles and businesses. Since Congress placed Pennsylvania into a group of states described as the Northeast Ozone Transport Region, a geographic area stretching from Maine to Virginia, Federal law requires the implementation of an "enhanced automobile emissions testing program" in 25 out of 67 Pennsylvania counties based solely on population criteria.

If Pennsylvania fails to comply with the Federal requirements, EPA must, by law, impose draconian sanctions, which include the loss of more than \$1.1 billion annually in Federal highway funds and a so-called "two-for-one offset" for new or expanded air pollution sources. This "offset" would require that businesses eliminate two sources of pollution for every new or increased source or business created in Pennsylvania. Moreover, if after being sanctioned a state fails to cure the deficiency to EPA's satisfaction, the Clean Air Act directs the Federal Government to impose its own program on Pennsylvania to ensure that the state meets the requirements of the Clean Air Act.

The first three years of the Commonwealth's efforts to implement the stringent, complicated and technical mandates of the Federal Clean Air Act reflected a remarkable degree of cooperation between the General Assembly and my administration. For example, in 1992 the General Assembly passed a law directing the Department of Transportation to implement an enhanced vehicle emissions testing program, specifically authorizing the department to enter into a contract for seven years or more with a vendor to establish and operate a centralized testing program. The act created a ten-member Vehicle Emissions System Inspection Program Advisory Committee to provide advice and recommendations to the Pennsylvania Department of Transportation on establishing and implementing an enhanced testing program. The committee, made up of representatives from the Legislature, the American Automobile Association and the Automotive Service Association of Pennsylvania, determined that the only way to meet the EPA's stringent standards with the least amount of cost and inconvenience to Pennsylvania motorists was to implement a centralized emissions testing program. Throughout 1992 and 1993, the General Assembly and the administration relied on EPA's representation that the only way the Commonwealth could meet the Clean Air Act's stringent performance standards was to implement a centralized-testing program.

This cooperative effort continued when, based on the authority granted to it by the General Assembly, the information provided by EPA and the assistance and input of the Advisory Committee, the department promulgated regulations adopting an enhanced, biennial, centralized, test-only program to take effect January 1, 1995. On June 3, 1993, after a public comment period,

the Independent Regulatory Review Commission (IRRC) approved the department's regulations.

On November 5, 1993, the Commonwealth submitted its proposal for a centralized testing program to EPA. Following a competitive bidding process, the department entered into a seven-year agreement with a private vendor to establish and operate centralized test centers throughout the State. As of this date, the vendor claims to have made nearly \$150 million in capital investment and contract commitments in order to meet the January 1, 1995, implementation deadline. Finally, in February 1994 the Pennsylvania General Assembly passed a law (Act 2 of 1994) requiring that Pennsylvania adopt a centralized test-only enhanced emissions testing program unless Congress changed the Clean Air Act or EPA amended its regulations. Neither Congress nor EPA has done so.

Unfortunately, in March of 1994 this cooperative relationship was threatened when the EPA for the first time agreed to allow a state (California) to implement a "hybrid" enhanced emissions program. The California program combines a centralized test-only component with a decentralized test and repair program. Although the "hybrid" system sounds attractive at first glance, California was required to implement more stringent testing criteria since EPA has determined a hybrid system is less effective in cleaning the air. *In addition, California motorists will be required to pay two to three times as high an inspection fee for their test.*

The legislature's own Legislative Budget and Finance Committee held hearings this past summer to explore whether an alternative system would be suitable for Pennsylvania. In June of this year the committee issued a report concluding that, in light of the threat to EPA sanctions, the potential liability to the vendor and the increased costs associated with a noncentralized system, *a centralized program "would involve the least risk to the Commonwealth" and provide significant cost savings.* On August 31, 1994, the EPA approved the Commonwealth's centralized emissions testing program. This approval marked the culmination of the cooperative effort of my administration and the General Assembly to bring Pennsylvania into compliance with the Clean Air Act with a minimal cost and inconvenience to Pennsylvania motorists.

The bill before me, which represents a drastic "about-face" by the General Assembly, would completely dismantle the cooperative efforts described above.

First, by requiring an immediate suspension of the centralized program until March 31, 1995, the General Assembly is risking the loss of billions of dollars for highway projects. Many of these highway projects are necessary, if not vital, for the creation of jobs and the continuation of economic growth in the Commonwealth. Delaying implementation could also lead to severe restrictions on the ability of manufacturers to build new factories and facilities in our State. For example, under the "two-for-one" sanction, if a new factory generating 50 tons of pollutants per year were to be built, at least 100 tons of pollution would have to be eliminated by other sources, such as

by closing a factory. We must not jeopardize the present and future jobs of hardworking men and women and the economic growth of Pennsylvania.

Even assuming that EPA were to agree to allow a suspension of the centralized program until March 31, 1995, it could take as much as two years to implement an alternative program, given the time-consuming regulatory and bidding process that must be followed. Others may indulge in speculation as to whether sanctions will be imposed. As Governor, I have the obligation to *ensure* that they are not imposed. Implementation on January 2, 1995, of the centralized emissions testing program, based on EPA's model program, avoids these sanctions.

The threat of sanctions is alone a sufficient basis for vetoing this bill. However, by requiring the department to implement a decentralized test and repair program (which is specifically prohibited by EPA regulations) or a "hybrid" program, this bill would impose a more costly and burdensome program on motorists that will be less effective in cleaning the air and will require a more expansive and stricter testing program.

The existing centralized testing program requires only one test every two years, at a cost of just \$17 (only 50 cents more per year than the current "basic" test). Centralized test centers will be open a minimum of ten and a half hours on weekdays, eight hours on Saturdays, without an appointment and with an average test taking a mere 12 minutes. Hybrid or decentralized tests may have to be done every year and at a significantly higher fee (anywhere from \$35 to \$100). Since hybrid or decentralized programs are less effective in cleaning the air, the EPA requires that automobiles meet tougher testing criteria, which will lead to twice as many cars failing the test. While a centralized program allows for automobiles that fail the emissions tests to be excused from having to make repairs, upon the payment of a fee set by Congress, the EPA has placed limits on the ability of states, such as California, to issue such waivers under a hybrid or decentralized system -- resulting in motorists being forced to fix or scrap automobiles that fail the more stringent tests.

It is also significant that the hybrid program that EPA has approved for California only allows for certain newer vehicles to continue to be tested by a local mechanic, as they are currently tested in Pennsylvania. Individuals owning cars six years or older must be tested at a centralized test-only site with more stringent criteria than the centralized test Pennsylvania intends to implement on January 2.

There are also hidden costs associated with a decision to proceed with a hybrid or decentralized program. EPA's audit of our basic emissions program in 1989 found that 50 percent of emissions mechanics observed were not following proper test procedures. A covert follow-up audit by the Pennsylvania Department of Transportation reported that 33 percent of the local stations audited committed major infractions of the inspection regulations. As a result, the Legislative Budget and Finance Committee report predicted that for Pennsylvania to implement a California-style hybrid system

it would cost as much as \$13 million in annual administrative and oversight costs *required by the EPA*, compared to the estimated \$1.9 million to oversee a centralized program. This would be a serious drain on the Motor License Fund, taking still more funding away from highway maintenance and construction programs. This bill does not provide any revenue source to pay for these additional costs.

Finally, the bill does not even address the enormous potential impact this last-minute legislative about-face will have on the contract with the vendor and potentially the contractual liability of the Commonwealth. The company has already begun construction of 73 of 86 proposed sites. It estimates that it has spent \$70 million and contractually committed an additional \$77 million for these facilities. This bill exposes the taxpayers to an enormous claim for damages which would have to be defended in court at great expense to the taxpayers and, if a court decided against the Commonwealth, could result in the imposition of a huge judgment for damages which the taxpayers would be forced to pay.

Moreover, I cannot suspend, as the bill requires, implementation of the Employer Trip Reduction Program. This program, which is currently in effect for large employers in the five-county Philadelphia area, is mandated in the Federal law and must be implemented in order for the Philadelphia area to meet stricter air quality standards because of its classification as a "severe" nonattainment area. Suspending this program at the eleventh hour could jeopardize Philadelphia's effort to upgrade its classification to a "serious" status -- an effort currently underway and spearheaded by the Economic Development Partnership's Clean Air Work Group. It could also lead to sanctions and/or the need for small businesses and industry to implement costly pollution reduction measures, stifling job growth.

The General Assembly has attempted in the bill to cap the costs and fees to ensure that our testing program is "user friendly" and carried out with a minimal cost to everyone affected by the Federal law -- motorists, service stations and taxpayers alike. I share that desire and believe our current centralized program meets these goals. The vendor is contractually required to meet specific performance standards with respect to driving time, waiting times and operating hours. A failure to meet these standards will subject the contractor to heavy fines and penalties -- provisions that will be strictly enforced. Indeed, as an added convenience to motorists, the contractor has already agreed to expanding the testing program into additional evening hours. I have also instructed the Department of Transportation to work with the Department of Environmental Resources, the EPA and the General Assembly to investigate other ways that our *centralized* program can be improved even more to ensure the maximum convenience for motorists; *as long as the improvements do not in any way subject Pennsylvania to sanctions which would jeopardize our highway or jobs programs or increase the risk to the public health.*

Suffice it to say, the provisions of this bill do not meet those requirements. Indeed, if this bill becomes law, it will only be a question of *when*, not *if*, sanctions will be imposed. These sanctions will jeopardize Pennsylvania jobs, critical highway projects and the ability of Pennsylvania to attract new business to the State. These dire consequences are not based on conjecture. They are based on the findings contained in the LB&FC report, confirmed by correspondence that I have received directly from the Administrator of the EPA, and reflected in recent comments made by the EPA's regional administrator.

To compound the problem, this bill will require the Commonwealth to implement a program that is less likely to effectively clean the air and will be more costly and burdensome, not only to Pennsylvania motorists, but to all taxpayers in the Commonwealth. This bill would expose the people of the Commonwealth to risks which I cannot approve for all the reasons indicated. In addition, the bill is based on a profound misconception of the alleged benefits of a hybrid or decentralized alternative program.

As Governor, I have the responsibility to act in the best interests of the people of the Commonwealth. The facts supporting implementation of a centralized testing program are overwhelming and incontrovertible. The sanctions to be imposed on Pennsylvania and the adverse impact they will have on Pennsylvania and each and every citizen of Pennsylvania, either directly or indirectly, are not imaginary. They are real. The best interests of the people of this Commonwealth require that I veto this bill because it places the health of our citizens at risk, threatens our progress in retaining and creating Pennsylvania jobs and jeopardizes our critical highway programs.

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

ROBERT P. CASEY