

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