

SESSION OF 2010

Veto 2010-2 1513

(The veto of House Bill 101 was overridden by the General Assembly on November 17, 2010, and became Act 2010-104.)

Veto No. 2010-2

HB 101

October 22, 2010

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

I am returning herewith, without my approval, House Bill 101, Printer's Number 4389. I regret doing so, as there are favorable provisions within the legislation which I support.

Prior to the passage of House Bill 101, the Administration put the legislature on notice that this bill was seriously flawed; we informed the Education Committees of the House of Representatives and the Senate, the Appropriations Committees in both chambers, and the Leaders' Offices of the serious constitutional infirmity in the provision of the bill which exempts non-profit entities that rent to charter school entities from payment real property taxes.

Having supported many of the initiatives included in this legislation—including provisions related dating and sexual violence education and prevention, affordability of textbooks for college students and recognition for Vietnam veterans—withholding my signature from this bill is certainly not easy for me. It is my hope that the legislature will act quickly in January to pass legislation encompassing these reforms. Though I understand the importance of the aforementioned provisions of this legislation, I am required to review each bill that reaches my desk for any constitutional defects, and this bill is constitutionally flawed.

Our Constitution requires uniformity of taxation, with limited exemptions which are enumerated as follows: (a) the General Assembly may by law exempt from taxation: (i) actual places of regularly stated religious worship; (ii) actual places of burial, when used or held by a person or organization deriving no private or corporate profit therefrom and no substantial part of whose activity consists of selling personal property in connection therewith; (iii) that portion of public property which is actually and regularly used for public purposes; (iv) that portion of the property owned and occupied by any branch, post or camp of honorably discharged servicemen or servicewomen which is actually and regularly used for benevolent, charitable or patriotic purposes; and (v) institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.

This bill is constitutionally infirm insofar as it would provide a real property tax exemption for property that is leased to a charter or cyber charter school or an associated foundation *by a nonexempt entity*. Leased property does not constitute real property "of" the public charity under Pennsylvania's Constitution or under the existing statute which defines a purely public charity,

Act 55 of 1997. Although I am not supportive of this purpose, and many respected parties who understand our school funding system share my view, as evidenced by the letters attached, if the legislature wishes to legally provide for this property tax exemption for these entities, they can do so by amending Act 55 to include these entities in the definition of a purely public charity. Further, as written this exemption would itself constitute a violation of the Uniformity Clause, as lessors of property to other tax exempt entities would not enjoy a similar exemption, and, as such, I must withhold my signature from this bill.

EDWARD G. RENDELL