

through the Assigned Claims Bureau. In this way the cost of payments made to uninsured claimants is spread equitably among all the *carriers* in the Plan." (Emphasis supplied.) 247 Pa. Superior Ct. at 34, 371 A.2d at 1024

In that case the Superior Court assumed that the costs incurred by the Bureau and the Plan, as delineated in Section 108(b)(1) of the Act, are to be allocated fairly and equitably only among obligor insurance companies licensed in Pennsylvania to write insurance.

On the basis of the foregoing, you are hereby advised that obligated governments and self-insurers are not required to participate in the Plan or the Bureau. Therefore, any money which has been collected from self-insurers by the Plan and the Bureau should be refunded as soon as possible.

Due to the fact that this opinion impacts on the Insurance Department's self-insurance regulations (31 Pa. Code Chapter 66) which provide at § 66.6-2 that self-insurers must certify that they have entered into an agreement with the Plan to pay their fair share of the claims, costs and expenses of the Plan, we are sending a copy of this opinion to the Insurance Commissioner and directing him accordingly.

Sincerely,

LINDA S. LICHTMAN
Deputy Attorney General

VINCENT X. YAKOWICZ
Solicitor General

ROBERT P. KANE
Attorney General

OFFICIAL OPINION NO. 77-19-A

Senate Bill No. 1187 of 1977, Printer's No. 1538—Act No. 14-A of 1977—Article III, §§ 1, 3, 4, 8, 9, 11, 24 of the Pennsylvania Constitution—Article IV, §§ 15, 16 of the Pennsylvania Constitution—Article VIII, § 12 of the Pennsylvania Constitution.

1. General appropriation bills may not automatically reenact the existing General Appropriation Act for the succeeding fiscal year.
2. Senate Bill No. 1187, Printer's No. 1538 is such an impermissible automatic reenactment.

Harrisburg, Pa. 17120
December 20, 1977

The Honorable Milton J. Shapp
Governor of Pennsylvania
Harrisburg, Pennsylvania

Dear Governor Shapp:

You have requested our advice with respect to the effect of signing Senate Bill No. 1187, Printer's No. 1538, which has passed both houses of the Legislature.*

The bill amends the Act of August 20, 1977 (No. 11-A), known as the "General Appropriation Act of 1977" by reducing a number of items heretofore appropriated by the aforesaid Act. In addition, the bill purports to amend the Act by providing that in the event a general appropriation bill is not finally enacted by the first day of the fiscal year to which it relates, the General Appropriation bill finally enacted for the preceding fiscal year shall be reenacted and remain in effect until the General Appropriation Act for the next succeeding year takes effect subject to any amendments and subject to the availability of revenues. The bill further provides procedures for the implementation of this process.

It is our opinion that the amendments purporting automatically to reenact the existing General Appropriation Act for the succeeding fiscal year and providing procedures for such implementation are unconstitutional and therefore have no effect whatsoever.

These amendments to the General Appropriation Act of 1977 violate the following provisions of the Constitution.

Article III, § 1 of the Constitution provides, "No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose."

The automatic reenactment of an appropriation bill violates this provision in that it would constitute a law passed without a bill.

Article III, § 3 of the Constitution provides, "No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof."

The amendment violates this provision in that it is not expressed in the title. The title merely gives notice of "changing certain appropriations" for the fiscal period July 1, 1977 to June 30, 1978. As noted by Justice Mitchell in *Commonwealth v. Gregg*, 161 Pa. 582, 29A.297

* *Editor's Note:* Signed by the Governor on December 21, 1977, as Act No. 14-A of 1977.

(1894), "the history and purpose of that section are well known. It was aimed at the objectionable practice of putting a measure of doubtful strength on its own merits, into the general appropriation bill . . . in order to compel members to vote for it or bring the wheels of government to a stop. The same constitutional intent is embodied in Section 16 of Article IV giving the Governor power to disapprove separate items of appropriation bills." 161 Pa. at 586-587, 29A. at 297.

Article III § 4 provides that every bill shall be considered on three different days in each House. It further provides that no bill shall become law unless on its final passage the vote is taken by yeas and nays, the names of persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded as voting in its favor.

The automatic reenactment of the appropriation bill violates this provision in that no bill would be considered in each House; no vote would have been taken nor the names recorded of the persons voting for and against such reenactment; and a majority of the members elected to each House would not have voted in favor thereof.

Article III, § 8 provides that the presiding officer of each House shall sign all bills passed by the General Assembly and the signing shall be entered on the journal.

An automatic reenactment without a bill violates this section of the Constitution.

Article III, § 9 of the Constitution provides that every order, resolution or vote to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be re-passed by two-thirds of both Houses.

The automatic reenactment of the appropriation bill violates this provision of the Constitution in that it purports to take effect without submission to or approval by the Governor. The amendment would have the effect of abrogating the constitutional power of the Governor to veto legislation.

Article III, § 11 of the Constitution provides that the general appropriation bill shall embrace nothing but appropriations for the Executive, Legislative and Judicial departments of the Commonwealth.

The automatic reenactment of the appropriation bill which further provides for the implementation of procedures violates this provision of the Constitution. See Official Opinion of Attorney General No. 16 (1957).

Article III, § 24 of the Constitution provides that no money shall be paid out of the Treasury except on appropriations made by law.

The automatic reenactment of the appropriation bill would not be an appropriation made in accordance with the Constitution and laws of

this Commonwealth and violates this provision. The amendment to the Act states that such reenactment shall be sufficient authority for the State Treasurer to make disbursements of funds. Such amendment in the bill is absolutely void insofar as it attempts to supersede the constitutional provision controlling this issue.

Article IV, § 15 of the Constitution provides that every bill which shall be passed by both Houses shall be presented to the Governor. If he approves, he shall sign it, but if he shall not approve, he shall return it with his objections to the House in which it shall have originated. If it is returned with his objections (veto), it may become law if approved by two-thirds of the members elected to each House.

The automatic reenactment of the appropriation bill violates this section in that it would have the effect of abrogating the constitutional power of the Governor to veto and the requirement of a vote approved by two-thirds of the members elected to each House to override such veto.

Article IV, § 16 provides that the Governor shall have the power to disapprove of any item or items of any bill making appropriations of money and further requiring a two-thirds vote of the members of each House to override the Executive veto.

The automatic reenactment of the appropriation bill violates this provision of the Constitution granting the Governor the power of item veto of appropriation bills and the requirement of a vote of two-thirds of the members of each House to override such item veto.

Article VIII, § 12 of the Constitution provides that annually, at the time set by law, the Governor shall submit to the General Assembly a balanced operating budget for the ensuing fiscal year setting forth in detail proposed expenditures classified by department or agency and by program and estimated revenues from all sources. It further provides that if estimated revenues and available surplus are less than proposed expenditures, the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency.

The automatic reenactment of the appropriation bill vitiates the purpose and effect of this provision of the Constitution.

This provision and the other provisions of the Constitution envision that each Governor in each year shall present a budget; that that budget shall be considered by the Legislature and that each Legislator shall have the power, duty and responsibility of voting for or against appropriations; that such bill must have a majority of the members of each House voting in favor thereof and their names and votes recorded; that such appropriation bill in each year shall be submitted to the Governor, who, pursuant to the Constitution, possesses the power to veto or item veto; and that the Legislature and each member thereof possesses the power to vote for or against the override of such veto.

The amendments which purport automatically to reenact an appropriation bill vitiate and abrogate so many of the aforementioned provisions of the Constitution of the Commonwealth of Pennsylvania that the amendments are in our opinion clearly and palpably unconstitutional and therefore have no effect whatsoever.

Sincerely,

VINCENT X. YAKOWICZ
Solicitor General

For: ROBERT P. KANE
Attorney General

OFFICIAL OPINION NO. 77-20

Department of Environmental Resources—Water Obstructions Act—Administrative Code—Navigable Rivers and Streams

1. An applicant for a water obstruction permit for facilities extending below the low water mark of a navigable river or stream must first obtain an easement or other interest in the submerged land below the low water mark from the General Assembly of the Commonwealth by a duly enacted statute.
2. Title to land located above the ordinary high water mark of a navigable river or stream is in the riparian owner of such land absolutely. The riparian owner also holds a qualified title to the land located between the ordinary high water mark and the ordinary low water mark. The title to the land below the low water mark is in the Commonwealth.
3. The Water Obstructions Act is a regulatory statute, the purposes of which are to preserve the public's right of navigation; to protect life and property from hazards created by unsupervised placement of water obstructions; to control the obstruction of flood flows; and to protect the regimen of streams.
4. Section 514 of the Administrative Code requires that specific authority from the General Assembly must be obtained for the grant of an easement, right of way, or other interest over or in land owned by the Commonwealth except a license for a public service line to a State building or State institution.

Harrisburg, Pa. 17120
December 30, 1977

Honorable Maurice K. Goddard
Secretary of Environmental Resources
Harrisburg, Pennsylvania

Dear Secretary Goddard:

This is in response to your request for an opinion concerning the issuance of permits under the Water Obstructions Act for facilities to be located below the low water mark of a navigable river or stream. Since the Commonwealth owns the bed of the river or stream below the low water mark, you have asked if it is necessary for an applicant for a