

THE GOVERNOR

GOVERNOR'S OFFICE

[36 Pa.B. 1357]

Notice of Veto

March 15, 2006

*To the Honorable House of Representatives
of the Commonwealth of Pennsylvania*

I am returning House Bill 1318 without my approval.

Elements of this bill will cause significant interference with the fundamental right to vote and violate the U. S. Constitution as well as Article I, Section 5 of the Pennsylvania Constitution, which states: "Elections shall be free and equal; and no power *civil or military*, shall at any time interfere to prevent the free exercise of the right of suffrage." I, therefore, must veto this legislation.

At a time of growing apathy and cynicism among our citizens regarding elections, I believe that the government should be doing everything it can to *encourage* greater participation in the electoral process, not *discouraging* participation by placing additional limitations on the right to cast a vote. Moreover, without compelling evidence of a problem with the current system of voter identification in Pennsylvania, I see no reason to enact laws that will result in voter confusion and disenfranchise legitimately registered voters. Beyond the basic constitutional threshold, House Bill 1318 unnecessarily requires every voter to provide identification before casting a vote in every primary and general election.

Some proponents of the bill claim that no one is actually being denied the right to vote--that voters are merely being asked to comply with a simple requirement meant to reduce the instances of voter fraud. They point to the various acceptable forms of identification that are listed in the bill as support for their defense that the provision is not an attempt to suppress voter turnout. Regardless of how long the list of acceptable forms of identification is, there are people who may not be in a position to produce any of them; people who live in a household

where the lease and utility bills are in someone else's name, people in nursing homes, and those who may have been temporarily displaced from their residences, to name just a few. As federal judge Harold Murphy very eloquently stated in a recent case discussing a similar bill enacted in Georgia, "For those citizens, the character and magnitude of their injury--the loss of the right to vote--is undeniably demoralizing and extreme, as those citizens are likely to have no other realistic or effective means of protecting their rights."

Others have suggested that this voter identification provision is needed to reduce the instances of voter fraud in Pennsylvania. However, I have not seen any evidence of widespread voter impersonation in Pennsylvania that would justify imposing this additional burden on voters. Elizabeth Milner, the Chair of the Pennsylvania League of Women Voters, agrees. In her letter urging a veto, Ms. Milner says, "*Show us the fraud*. Proponents of House Bill 1318 have failed to document a single instance in which the outcome of a Pennsylvania election was affected by individuals posing as registered voters. Indeed, the National Commission on Election Reform found that there is *no evidence* that the fraudulent acts the voter ID provision seeks to address exists anywhere in the United States."

The Pennsylvania method of signing voters in and comparing their signatures to what is on file with the County Election Board has been in effect for more than 70 years. It is a tried and proven method of ensuring that a bona fide voter has appeared at the polling place to vote. In fact, the current voter identification system works so well that neither the poll workers, who manage our Election Day operations, nor our County Commissioners, to whom we entrust the oversight of the election process, believe that it needs to be changed.

This bill would also slow down the voting process and create longer waiting periods before citizens could cast their votes. During the 2004 election, we all saw many voters leave their polling places without casting votes because of the long lines they faced. As the Pennsylvania Chapter of the AARP said in their letter to me urging a veto: "Equally troubling is the negative impact this law would have on the voting process. Requiring voters to produce identification cards will significantly increase the time needed for overworked poll workers to process each voter. The end result will be longer lines and increased wait times to vote, which may serve to disenfranchise voters and lower voter turnout."

In making the decision to veto this bill, I reviewed the many letters I have received from well-respected organizations across the commonwealth. The spectrum of those who urge this veto--from the League of Women Voters to the Pennsylvania Council of Churches, from the AARP to the NAACP, from the Congreso de Latinos Unidos to VotePA and Pennsylvania Acorn--is evidence of the public concern regarding this unnecessarily burdensome act being imposed by this legislation.

While the voter identification provision is at the heart of the reason that I am vetoing this bill, there are other provisions that are also seriously problematic.

This legislation requires, by July of this year, the closing of hundreds of locations across the

state currently serving as polling places, some of which have been the standard polling place for thousands of voters for decades. Again, without any evidence of a real problem, this legislation bans the use of certain types of buildings as polling locations. Of course, I believe that the best place to cast a vote is in a building generally accessible to the public. I also know that our County Commissioners do the best they can to find locations in which voters can feel confident that their vote is cast without undue influence. I urge that any restriction upon the type of locations used for polling places occur only after a competent study has been conducted of the existing polling places and of the options available for alternative locations, if such options are necessary. Moreover, if any future action is taken to restrict locations, it is imperative that such action be defined in consultation with our County Boards of Election so that there is certainty that the timeframes for compliance can be achieved without any negative impact upon those seeking to exercise their franchise.

While this bill offers limited improvements to the voting methods for overseas voters, I must point out that this bill does not afford any of the improvements to Pennsylvanians in the military who may be deployed within the borders of the United States. Moreover, the improvements for all overseas and military voters that will ensure their ability to cast an absentee vote are not included in this legislation. Among those key elements not included are: permitting computer electronic transmissions for absentee ballot applications; earlier filing deadlines for independent candidates so that ballots can be printed earlier and sent overseas in time for the voter to return the ballot before the deadline; and clear deadlines for county absentee ballot preparation so that every appropriately cast vote can be counted. I note that on December 12, 2005, the House of Representatives passed House Bill 544, which I proposed last Memorial Day and which includes all of these protections for our military and overseas voters. If we are serious about protecting the rights of our military and overseas citizens, the Senate should pass this bill immediately so that it can become law.

House Bill 1318 amends the Pennsylvania Election Code in ways that impose new requirements on voters and counties--some of which I believe violate the U. S. and Pennsylvania Constitutions. Other provisions require much more debate, understanding, and most certainly refinement before they can be enacted. Finally, this bill does not provide for the critical elements necessary to ensure that our overseas and military voters have a chance to vote--and to have their votes counted--in every election.

For all these reasons, I must withhold my signature from House Bill 1318.



Governor

[Pa.B. Doc. No. 06-475. Filed for public inspection March 24, 2006, 9:00 a.m.]

[36 Pa.B. 1359]

Notice of Veto

March 15, 2006

*To the Honorable House of Representatives
of the Commonwealth of Pennsylvania*

I am returning House Bill 1467 without my approval.

I do so because the Attorney General has determined that, as written, this bill does not comport with the Constitution of the Commonwealth of Pennsylvania. The Office of General Counsel concurs in his opinion, and I believe his opinion is based on sound interpretation and reasoning. I have attached General Corbett's opinion to this message.

I also return this bill because I have seen no evidence, in Pennsylvania, of a present problem with homebuilder liability insurance costs that would require a bill so far-reaching in scope and effect. The proponents of this bill suggest that it would afford both contractors and consumers equal opportunity to resolve their disputes without having to resort to expensive litigation. In fact, I believe this bill has the potential to cause both parties to become more involved in litigation, requiring them to pay unnecessary legal bills and, ultimately, driving up the cost of builders' insurance and new homes as a result.

While I am concerned about the Constitutional issues discussed in General Corbett's opinion, I also spent many hours studying the issues presented to me by those who proposed the bill, as well as those who asked me not to sign it. I listened carefully to the views of the representatives of the homebuilding industry who came to see me. I read their documents and examined the data they provided. I found that while some homebuilders, in fact, are facing increases in insurance liability costs, these increases are not a result of increased numbers of lawsuits--at least not in our state. Rather, they are a result of trends in the insurance and housing industry that are not addressed by House Bill 1467. Moreover, those who attempted to persuade me of the merits of this bill acknowledged that those homebuilders who have mandatory arbitration clauses in their contracts are afforded the same, if not greater, protections as those outlined in House Bill 1467. Thus, each homebuilder could include mandatory arbitration language in every contract and thereby accomplish as much, if not more, than this bill does.

I also considered the views of citizens who wrote to me on this issue, particularly those who are dealing with loss of equity due to the actions of the few unscrupulous contractors who prey on the unwary. In fact, in this review, I became convinced that a law to register contractors and homebuilders, accompanied by appropriate public reporting requirements, is critical to boosting the protection our citizens expect and deserve their government to provide. I also believe we need to legislatively establish a fund to compensate victims for damages caused by unscrupulous builders who do not have insurance and cannot, or will not, pay for

the full value of the problems they create.

Pennsylvania's homebuilders bring pride to our state and, of course, their great craftsmanship and productivity have been key ingredients in our recent economic turnaround. I remain willing and open to addressing real barriers to progress faced by this great industry. Likewise, I took an oath to ensure that Pennsylvanians are protected from the vagaries of our laws and our processes when either serves narrow interests. Pennsylvanians would be well served by legislation that addresses many of the legitimate concerns raised by homebuilders, and that creates a balance by imposing a registration and reporting requirement, and a victim's compensation fund. I look forward to working with our fine homebuilders and consumer organizations to help such a law become a reality.



Governor

THE GOVERNOR

OFFICE OF ATTORNEY GENERAL

General Corbett's Opinion

Dear Governor Rendell:

You have requested our opinion pursuant to Section 204(a) of the Commonwealth Attorneys Act, 71 P. S. 732-204(a), regarding the constitutionality of House Bill No. 1467 (HB1467), which has been passed by both houses of the General Assembly and presented to you for approval or veto. Upon careful review, and after consulting with the Office of General Counsel, we have concluded that HB1467 violates Article III, Section 18 of the Pennsylvania Constitution, and that its constitutionality under Article V, Section 10(c) is suspect.

Article III, Section 18 authorizes the General Assembly to enact workers compensation laws, but provides otherwise, in relevant part, that "in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property"

HB1467 would establish a mandatory procedure for claiming damages or other relief against a contractor because of a construction defect in a dwelling. The claimant would be required to follow the procedure prior to filing a lawsuit and as a condition of recovering the full amount of damages to which the claimant would be entitled by law upon successful prosecution of such lawsuit. The bill provides in Section 4 that "[t]his act shall not apply to any claim for personal injury or death." The bill does not similarly exempt a claim for injury to property.

The bill proceeds in Section 5(h) to limit the amount that a claimant may recover in a lawsuit seeking damages or other relief on account of a construction defect in a dwelling.

The limit set by Section 5(h) is conditional in that a claimant may recover the full amount of damages to which the claimant would be entitled by law if, in the mandatory procedure, the contractor offers the claimant either no monetary settlement or repair or a monetary settlement or repair that a judge or jury later determines to have been unreasonable. A conditional limitation, particularly one that hinges on so tenuous a thread as a claimant's prediction of how a judge or jury later will view the reasonableness of a contractor's offer, nonetheless is a limitation on the amount that a claimant may recover for an injury to property, which Article III, Section 18 prohibits.

In *Singer v. Sheppard*, 464 Pa. 387 (1975), the Pennsylvania Supreme Court rejected an Article III, Section 18 challenge to a provision of the No-Fault Motor Vehicle Insurance Act that eliminated recovery in tort for "non-economic damages" for a defined class of accident victims. *Id.* at 396-397. Observing that the Act, rather than restricting damages, created two classes of accident victims, each with different, but unlimited, compensable damages, the Court held that "[n]othing in Article III, Section 18 prevents the abolition or modification of a cause of action." *Id.* at 397. HB1467 neither abolishes nor modifies any cause of action; thus *Singer* is inapposite.

The Supreme Court has had little occasion to discuss the purpose of Article III, Section 18. In *Singer*, the Court said that the original purpose of Section 18 was to invalidate a statute that had imposed absolute dollar maximums on the damages recoverable by a negligently injured plaintiff. *Id.* at 396. In *DeJesus v. Liberty Mutual Insurance Company*, 439 Pa. 180, 184 (1970), the Court said that "the purpose of Section 18, as amended, was to permit the General Assembly to enact a workmen's compensation program, but to preclude the enactment of general legislation covering injuries other than those arising in the course of employment." Both statements were context-specific; neither affords much assistance in our review of HB1467.

As Commonwealth Court has explained regarding the construction of provisions of the Pennsylvania Constitution by the courts:

"the fundamental rule of construction which guides us is that the Constitution's language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption." Moreover, the general principles governing the construction of statutes apply also to the interpretation of constitutions. Thus, when the language of a constitutional provision "is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given it."

Jubelirer v. Pennsylvania Department of State, 859 A.2d 874, 876 (Pa. Cmwlth. 2004), *aff'd*, 582 Pa. 364 (2005) (citations omitted).

We too, must be guided by the language of Article III, Section 18, interpreted in its popular sense, which admits of but one interpretation: that the General Assembly may not limit the amount that may be recovered for injuries resulting in death or for injuries to person or property. HB1467 limits the amount that may be recovered for injuries to property because of a construction defect in a dwelling; it is therefore, in our opinion, unconstitutional.

Article V, Section 10(c) provides that "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts" The Supreme Court has interpreted this provision as conferring upon it exclusive power to prescribe the rules of practice and procedure in all actions in the Pennsylvania courts. *Payne v. Department of Corrections*, 582 Pa. 375 (2005).

HB1467 provides in Section 3(a) that "[i]n every action subject to this act, the claimant shall, no later than 75 days before initiating an action against a contractor, provide service of written notice of claim on the contractor" and in Section 3(b) that "[s]ervice of the notice of the claim shall be the *equivalent of service of a lawsuit* or demand for arbitration with respect to imposing on the contractor a legal obligation to pay as damages the cost of any repairs and/or monetary payment made to settle the claim." (emphasis added).

By making service of a written notice of claim the equivalent of service of a lawsuit, HB1467 arguably makes the mandatory procedure that follows, the provisions of which are conspicuously procedural in tone and effect, *procedural* within the meaning of Article V, Section 10(c). *See, e.g.*: Section 3(c) (claimant to provide contractor with evidence); Section 5 (a) (content of claimant's notice of claim); Section 5(b) (contractor to serve written response to notice of claim within 15 days); Section 5(d) (contractor to provide written response, with discoverable evidence, within 15 days of inspection or testing); Section 5(e) (claimant barred from initiating action without in-person meeting with contractor). Having concluded that HB1467 violates Article III, Section 18, we needn't render a definitive opinion as to whether it also violates Article V, Section 10(c). It is sufficient to observe that the constitutionality of HB1467 under Article V, Section 10(c) is suspect.

In summary, it is our opinion, and you are so advised, that HB1467 violates Article III, Section 18 of the Pennsylvania Constitution, and that its constitutionality under Article V, Section 10(c) is suspect. Since our opinion is rendered in aid of your decision to approve or veto HB1467, our advice is not binding.

Sincerely,
Tom Corbett,
Attorney General

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