VETO MESSAGES

OF

HON. ROBERT B. MEYNER

Governor of New Jersey

SUBMITTED TO THE SENATE AND THE GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY

1958
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STATEMENTS—POCKET VETOES

1958

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 10, 1958.

ASSEMBLY BILL No. 500

To the General Assembly:

Pursuant to Article V, Section I, paragraph 15 of the Constitution, I appended to Assembly Bill No. 500, at the time of signing it, a statement of certain items, or parts thereof, to which I objected, so that such items, or parts thereof, should not take effect.

The items, or parts thereof, to which I objected were:

"To the Speaker of the General Assembly, for transfer to legislative commissions for expenses thereof, when resolutions provide therefor.....	$50,000 00
"To the President of the Senate, for transfer to legislative commissions for expenses thereof, when resolutions provide therefor.....	50,000 00
	$100,000 00"

In a statement appended to Senate Bill No. 300 of the 1956 Legislative Session, being the General Appropriation Act for the 1956-57 fiscal year, I objected *inter alia* to a similar item. In the message to the Senate concerning that item, it was pointed out:

> "With respect to the $100,000.00 item, designated 'Legislative Commissions Fund', for transfer to legislative commissions for administrative expenses, when resolutions of either or both houses of the Legislature, as the case may be, provide therefor, I do not believe that this would establish a desirable precedent. No

such general fund available merely by resolution of the Legislature or of either house has existed in the past. It has been the practice to request and appropriate specific amounts for specific commissions. There is no reason which would warrant deviation from the established salutary budget practice.''

My reasons for so acting at that time apply equally to Assembly Bill No. 500.

In addition, funds appropriated in such a general and vague manner are subject to use in ways that may be unwise or otherwise not in the public interest. Judging from past experience, this risk seems to be especially high in the months preceding the November elections, when some commissions tend to become unusually active.

It also seems inequitable to provide funds to meet the expenses of unidentified legislative commissions, whether of present or future existence, when the Legislature has so far failed to discharge the State's obligation to those persons who labored on its behalf following the shocking disclosures which came to light in the 1954 investigation of the Division of Employment Security.

It should be observed that these items, totalling $100,000.00, were not a part of the original appropriation bill but were added by Senate amendment. It should also be observed that at about the same time the Senate refused to provide what I believe to be necessary revenues to balance appropriations, as a result of which the total estimated resources available exceed total appropriations in Assembly Bill No. 500 by only $344,606.00. This is less than one-tenth of 1% of total appropriations, and I consider it to be unwise, especially in the light of the uncertainties generated by present business conditions and the impact they may have upon estimated revenues.

For these reasons, I objected to the items, or parts thereof, noted above in Assembly Bill No. 500 and I am attaching hereto a copy of my statement in connection therewith.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

BRENDAN T. BYRNE,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
June 19, 1958.

STATEMENT ON ASSEMBLY BILL No. 500

Pursuant to Article V, Section I, paragraph 15 of the Constitution, I am appending to Assembly Bill No. 500, at the time of signing it, this statement of each item or part thereof to which I object so that such items or parts so objected to shall not take effect.

On page 7:

"A 10. LEGISLATURE

"To the Speaker of the General Assembly, for transfer to legislative commissions for expenses thereof, when resolutions provide therefor	$50,000 00
"To the President of the Senate, for transfer to legislative commissions for expenses thereof, when resolutions provide therefor.....	50,000 00
	$100,000 00"

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

BRENDAN T. BYRNE,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
December 8, 1958.

SENATE BILL No. 68

To the Senate:

I am returning herewith Senate Bill No. 68, without my approval, for the following reasons:

This bill establishes fixed annual salaries for the surrogates, registers of deeds and mortgages, county clerks and

sheriffs in all counties of the State, according to a population scale of the counties. In each population category, the salary to be paid to the incumbent of each of these offices is specifically set forth and is set at the same level for all of the offices.

While I am not in disagreement with the underlying idea of revising, coordinating and, where desirable, increasing the salaries of these county officers, due regard must be given to the fact that the salary raises provided in Senate Bill No. 68 must be paid, not by the State, but by the various counties. Moreover, this bill would affect not only the salary level of the incumbents of the enumerated offices but also the salary levels of a larger number of subordinate officials not mentioned in the bill. For example, deputy surrogates and executive clerks in the surrogate's office are entitled to a salary which is to be fixed locally but which is not to exceed three-fourths of the annual salary of the surrogate, N. J. S. 2A:5–16. Similar statutory provisions apply to the assistants to the county clerks, sheriffs and registers of deeds and mortgages, R. S. 40:38–28, 40:39–21 and 40:41–31.

The primary responsibility for the county budget and the county tax rate rests with each board of chosen freeholders. Mandatory increases in these salary levels, therefore, will tend to reduce the control that local officials will have as to budgeted items. Furthermore, it is questionable whether any mandatory salary schedule can serve a useful purpose for very long. The present salary schedule has been amended and supplemented approximately 30 times. In the light of this history, it would seem more realistic to establish, not a specific salary, but rather a salary range starting with the existing minimums and with maximums at the level proposed by Senate Bill No. 68, giving to the board of chosen freeholders the authority to fix the specific salary within that range.

Finally, Senate Bill No. 68 provides merely that all acts or parts of acts inconsistent with it are repealed. As I have indicated there are approximately 30 acts which are concerned with the salaries here under consideration. If any new salary schedule is to attain a firm and clear status, these overlapping and outmoded measures should be specifically repealed and our statute books cleared of outdated provisions.

I am, accordingly, returning Senate Bill No. 68 herewith, without my approval.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

BRENDAN T. BYRNE,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
July 31, 1958.

SENATE BILL NO. 172

To the Senate:

I am returning herewith, without my approval, Senate Bill No. 172. The reasons are as follows:

The bill appropriates $10,000.00 for the use of the Senate committee established by Senate Resolution No. 6, to investigate the administration of the Bingo and Raffles Licensing Laws by the Legalized Games of Chance Control Commission.

It should be observed that this bill would supplement P. L. 1957, c. 113, the annual appropriation act for the fiscal year 1957-1958; it would, therefore, appropriate the sum indicated for the fiscal year which ended June 30, 1958. It was introduced on April 7, 1958, prior to the introduction on April 17, 1958, of the general appropriation bill for the current fiscal year, Assembly Bill No. 500. It was not passed until June 16, 1958, only two weeks before the end of the last fiscal year.

Article VIII, Section II, paragraph 2 of the Constitution provides, among other things, that:

> "All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year * * *."

Obviously, the intended appropriation could not possibly have been applied to the stated purposes during the two-week period which remained between the passage of the bill and the end of the last fiscal year. In addition, this expenditure was not provided for in the general appropriation law for the current fiscal year, although it could have been ascertained or reasonably foreseen when Assembly Bill No. 500 was introduced. There is no provision for the reappropriation of any unexpended balance of the amount called for by the bill.

Although these considerations make it necessary to return the bill without my approval, this should not in any way handicap the realization of the legitimate objectives of Senate Resolution No. 6; the committee there created is directed to investigate the operation and administration of the Bingo and Raffles Licensing Laws. This work is conducted by a duly constituted State agency, which, I am informed, maintains detailed and exhaustive records and data, from which it can, with relatively little difficulty or expense, provide the Senate committee with the information it may legitimately require.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

BRENDAN T. BYRNE,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT.

SENATE BILL No. 215

STATEMENT

I am filing in the State Library Senate Bill No. 215 (1958) without my approval.

This bill was delivered to me less than 10 days prior to the adjournment of the Legislature sine die on the last day of the last legislative year, January 13, 1959. Under Article V, Section I, paragraph 14(b) of the Constitution, this bill cannot become a law if not signed within 45 days, Sundays excepted, after said adjournment. In these cir-

cumstances there is no provision for a veto, but I deem it in the public interest to state my reasons for deciding not to sign the bill.

The bill would prohibit occupancy of a "house-type semitrailer or trailer" by any person while it is in motion upon a highway in this State. Section 2 would authorize the Director of the Division of Motor Vehicles to promulgate special regulations for the construction and equipment of house-type semitrailers and trailers, notwithstanding the provisions of article 3 of chapter 3 of Title 39 of the Revised Statutes, and to refuse registration when such requirements are not met.

Under present law no motor vehicle manufactured after July 1, 1935 may be registered in this State unless equipped with "safety glass". This requirement was enacted in New Jersey and elsewhere as part of the effort to eliminate unnecessary injuries from sharp edges of broken glass in vehicular collisions. The purpose of the bill is to make it possible, by regulation, to waive the present "safety glass" requirement in the case of house-type trailers, upon the ground that a great many of these mobile homes are not so equipped and accordingly cannot be registered in this State. It is said that the cost of equipping such trailers with safety glass would be prohibitive. In an effort to reduce or eliminate the obvious dangers arising from the use of ordinary glass, the first section would prohibit occupancy while in motion. A penalty of up to $50.00 or imprisonment for up to 30 days, or both, is provided in section 3.

I do not find that there is any fixed meaning or statutory definition of the terms "house-type semitrailer or trailer." In the trade and in the market, trailers of a length of less than 24 or 25 feet are known as "travel trailers"; those over 25 feet in length, sometimes up to 55 feet, are often referred to as "mobile homes". "Travel trailers" are said to run about 6 to 8 feet in width; "mobile homes" may be as wide as 10 feet, and some models are designed to be expanded to 15 feet in width.

Quite obviously, the smaller units, which may be adapted for convenient use for travel and touring purposes, are vehicles. The requirement for safety glass ought not to be relaxed for them, in any case. The larger models, however, can hardly be regarded as vehicles. They are, and

are used as, dwellings. Their size and weight, in conjunction with the usual passenger automobile often used to move them on the highway, are such that to permit registration and use as vehicles would be inappropriate. They are not, in fact, "vehicles". Present law adequately provides for their transfer from one location to another, when needed, under proper controls.

It is not suggested that this bill represents a proposed uniform law on the subject, or that such uniform legislation is under study. In addition, the prohibition against occupancy, applying as it would to the passenger-occupant, would have unintended application to civil suits in case of injury, since the Motor Vehicle Act violation may be admissible as evidence of contributory negligence. See, for example, *Evers v. Davis,* 86 N. J. L. 196 (E. & A. 1914); *Kolankiewiz v. Burke,* 91 N. J. L. 567 (E. & A. 1917); *Rizzolo v. Public Service etc.,* 111 N. J. L. 107 (E. & A. 1933); *Jones v. Lahn,* 1 N. J. 358 (1949).

ROBERT B. MEYNER,
Governor.

Dated: March 6, 1959.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT.

SENATE BILL No. 217

STATEMENT

I am filing in the State Library Senate Bill No. 217 (1958) without my approval.

This bill was delivered to me less than 10 days prior to the adjournment of the Legislature sine die on the last day of the last legislative year, January 13, 1959. Under Article V, Section I, paragraph 14(b) of the Constitution, this bill cannot become a law if not signed within 45 days, Sundays excepted, after said adjournment. In these circumstances there is no provision for a veto, but I deem it in the public interest to state my reasons for deciding not to sign the bill.

This bill would establish a minimum salary rate and a series of 5 equal increment steps for certain sergeants-at-arms now serving in the Chancery Division of the Superior

Court, and who served in its predecessor, the Court of Chancery. It would have the effect of directing by statute a particular range to be established by the Civil Service Commission.

This is an undesirable method for attempting to make salary adjustments. It is the function of the Civil Service Commission to establish ranges and salary increments on as uniform a basis as possible so as to maintain the greatest possible equality of compensation for equivalent services and responsibilities. To attempt this function by statute is to create future inequities as it would deprive the Civil Service Commission of the flexibility which it needs. This bill illustrates the point well, because after its passage, the Commission established a policy of providing 6 increments rather than 5. Thus, the very employees the statute seeks to aid would be deprived of an increment to be received in the future by other employees.

Suitable ranges and increments can be established by the Commission with respect to these employees under its present authority.

ROBERT B. MEYNER,
Governor.

Dated: March 6, 1959.

1959

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 122

To the General Assembly:

I return Assembly Bill No. 122 herewith, without my approval, for the following reasons:

This bill would supplement Chapter 60 of Title 40 of the Revised Statutes. It would provide that where the residential property of any person is acquired by the State or any of its agencies or authorities for the purpose of constructing a highway to be used as an expressway, freeway, parkway or thruway, the owner so dispossessed may apply to the governing body of the municipality to purchase "at private sale" real property owned by the municipality. It would then authorize the governing body to make such sale "at a fair market value" on terms and conditions fixed by the governing body and agreed to by the applicant even though the land so sold may have been a part of lands improved and used for park purposes.

The bill is obviously intended to provide a mechanism to alleviate to a degree the problems which flow from the construction of projects which involve the taking of residential lands and the resettlement of the persons formerly located there. The object is, of course, a desirable one and it is unfortunate that the particular method chosen to alleviate the condition cannot be approved. The difficulties with the bill are as follows:

(1) It is a special bill because the same reasons which support it in the case of a taking for highways of a special kind are equally applicable to instances where the taking is for ordinary highways or for other governmental purposes;

(2) The provision for disposition of municipal lands at private sale is unwise policy in the absence of suitable statutory controls. See R. S. 40:60–26 (b) and (c);

(3) The bill completely fails to make any requirement that the land obtained from the municipality be used for residential purposes;

(4) The present statute dealing with park lands, R. S. 40:60–27, requires as a condition to any such sale that there be obtained in exchange other lands contiguous to the park lands at least equal in area to the lands conveyed. The present bill contains no mechanism to protect against the unwise disposition of needed park lands under the pressure of supposed need;

(5) Although the bill purports to authorize the disposition of park lands, this enactment would be ineffective as to any case where the municipal title is subject to a reverter for breach of condition;

(6) Even if it be assumed that the displacement caused by the condemnation of the kind described made it difficult to find other residential accommodations in the same municipality, there is nothing to suggest that the person so displaced could not without difficulty locate suitable residential accommodations in another municipality. It must be remembered that upon condemnation the State agency or authority compensates the owner for the value of the property condemned and the money so received is, therefore, available to purchase other accommodations.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 138

To the General Assembly:

I now return Assembly Bill No. 138 without my approval, for the following reasons:

This bill declares that no toll shall be charged by the New Jersey Turnpike Authority for the passage over the Turnpike of certain specified types of vehicles such as ambulances, first-aid, fire-fighting or police vehicles, which require emergency passage or otherwise in the performance of their duties.

The vehicles covered by the bill are limited to those operated by the State of New Jersey, or by a New Jersey municipality, county or non-profit organization. In this respect the scope of the bill is narrower than the practice actually followed on the Turnpike, which allows toll-free passage of such vehicles from our neighboring states as well as from within this State. Since the object of the bill, and more, is in fact achieved without a statute, the bill is unnecessary.

If the bill attempted to go beyond the scope of the actual practice followed by the Authority, it would be ineffective because the Authority practice matches the permission it has to allow toll-free passage under the terms of its bond resolution, which is a part of its contract with bond-holders. No statute can constitutionally vary those terms by legislative fiat. 1947 Constitution, Article IV, Section VII, paragraph 3.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 167

To the General Assembly:

I return Assembly Bill No. 167 herewith, without my approval, for the following reasons:

This bill would supplement chapter 15 of Title 9 and amend section 26:8–40 of the Revised Statutes. The bill provides for the legitimation of a child born out of wedlock in cases where the child's mother subsequently marries a person who is not the father, upon filing proof of the marriage and a statement signed by both that they desire to establish the same relationships, rights, duties and obligations between said child and themselves as though the child had been born to them in lawful wedlock. The amendment to R. S. 26:8–40 would provide for the issuance of a new birth certificate in the same manner as is now done where a child is legitimated by the subsequent marriage of its natural parents.

The object of the bill evidently is to further protect the innocent victims of unwise parents. However, this desirable objective cannot, in my opinion, be accomplished in the manner proposed.

In effect, the bill would establish a method of administrative adoption having much the same effect as a regular adoption under chapter 3 of Title 9 of the Revised Statutes (the adoption act). A great deal has been done in the way of modernizing our adoption statutes, the entire act having been revised in 1953 by Chapter 264 and I know of no reason why the instances which would be covered by Assembly Bill No. 167 cannot be thoroughly and adequately met by suitable proceedings under the present adoption act.

It is said that formal proceedings under the adoption act may involve some risk of publicity which could undesirably disclose the fact that the child was illegitimate. This is not the case since the adoption act carefully provides for hearings by the court *in camera* and for a sealing of the records which "shall at no time be open to inspection unless the court, upon good cause shown, shall otherwise order". The same provision is set forth with respect to the index of adoption proceedings, see Section 15, Chap-

ter 264, P. L. 1953. On the other hand, unintentional though it may be, proceedings under Assembly Bill No. 167 would of themselves be direct information that the child was illegitimate since the proceedings can only be taken under the proposal when the child was born out of wedlock. Thus the very objective sought to be achieved would be entirely frustrated by the establishment of a special procedure applicable only to the special case mentioned.

Further, if it be said that it is desirable to provide a simple administrative method to accomplish the object of an adoption there would then be raised the question why the bill should be limited to illegitimate children. The same considerations might equally be applied to the case of a mother who is widowed or divorced and upon her remarriage, the person whom she marries is willing and desires to adopt the child or children of her former marriage. Yet the proposed bill makes no provision for this equally appealing situation.

I find it difficult to subscribe, however, to any proposals which unduly simplify the adoption procedure. Our present adoption act is very carefully designed to make certain that the Superior Court acting through the Chancery Division supervises the adoption process as *parens patriae* of the child and is directed by the act to place the welfare of the child above all other considerations. The mere marriage of the mother and the willingness of her husband to adopt may well not be in the best interest of the child. This is a fact that can only be determined accurately on a case by case basis.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 174

To the General Assembly:

I return Assembly Bill No. 174 herewith, without my approval, for the following reasons:

This bill would amend N. J. S. 2A:151–44 which deals with the procedure by which applications are processed for the purpose of obtaining pistol permits.

The amendments attempt to establish separate procedures in the case of a person who is a resident of the State of New Jersey from the procedure to be used when the applicant is a non-resident. In the case of a non-resident the bill would require that he first obtain a permit or license "in the State of his residence or employment" and that he attach a certified or photostatic copy of that permit to his application in this State.

This provision could obviously lead to unexpected confusion. For example, if the applicant resides in New York and is employed in New Jersey, the new provision would require that he obtain a permit in the State of his employment (New Jersey) before obtaining a permit in New Jersey. In addition, in a case where the non-resident requests the permit only in connection with employment he will not have possession of the firearm in the State of his residence and there will be no occasion or basis upon which he can obtain a permit in the State of residence.

From an examination of the bill it is difficult to ascertain what state of facts creates the need for legislation. It may be that the objective is to provide to the New Jersey officials relevant data in the possession of authorities in the State of residence in order to assist them to pass upon an application here. If that is the case, the objective can be achieved much more simply, merely by requiring that where an applicant is a non-resident, the New Jersey official who reviews the application shall first obtain a suitable report from the authorities in the State of residence.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Governor.

Attest:
H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 193

To the General Assembly:

I now return Assembly Bill No. 193 without my approval, for the following reasons:

This bill was introduced for the purpose of amending the 5-year escheat statute (P. L. 1951, ch. 304, N. J. S. 2A:37–29 to 44) in order to provide better procedural flexibility, to reduce the expense of this kind of proceeding, and to provide indemnity to persons in the position of stakeholders, who are required by existing law to transfer property they hold to the State's custody.

The text of the bill had been prepared with great care and after extended discussion with representatives of a number of local corporations which are annually required to turn over escheated property under this statute. The underlying object was to improve the act in the respects to be noted below, so that the obligation to comply would be less burdensome. This was in furtherance of New Jersey's historic policy to maintain a harmonious and friendly climate for the many business enterprises within our borders.

At the time this bill originally passed in the Assembly, one of the corporate representatives suggested that the provision to report a claim "immediately" might be too strictly construed, and suggested that the provision be changed to read that the claim is to be reported "with reasonable dispatch."

Complying with this request, my staff sent a memorandum to all members of the Senate on April 27, 1959, so that the requested amendment could be made in that House:

> "Assembly No. 193 in Senate, A & R of Laws Comm. (1) The present 5-year escheat section, N. J. S. 2A:37–30 applies to moneys, dividends, interest, and wages. However, possibly in borrowing language from the 14-year statute, the term 'personal property' is used in several places. This is changed to read 'moneys'.
>
> "(2) The act now provides for a single, fixed form of action, only in the Superior Court, creating unfore-

seen problems. Example: in the *National* case, 16 N. J. 486, a N. J. corporation holding escheatable funds merged with a foreign corporation. The N. J. proceeding was futile as the new corporation could not be served, and the statute fails to provide for suits in other courts. Section 1 amends the act to allow the State Treasurer to claim the funds on behalf of the true owner, and section 2 permits appointment of a receiver or administrator who can sue in any court when our court cannot reach the defendant. This directly parallels methods used for estates of insolvents and decedents to solve the same problem.

"(3) Section 3 amends the act to allow the court to fix a method of notice other than the mailing of a letter or postcard which has proven unsuitable for numerous items of only a few cents in amount. Any method permitted by court rules will be available with this change.

"(4) Where test cases have settled basic laws, many holders of funds would prefer to transfer custody without the expense of a lawsuit. The change of section 1, and the indemnity provided by section 4, will allow this to be done voluntarily. The indemnity clause is in line with similar provisions of this kind.

"(5) The changes in the remaining sections are needed to fit in with the above.

"(6) It has been asked that there be an amendment, which seems to be entirely proper, as follows:

p. 4, sec. 4, line 17: delete the word 'immediately', and in lieu thereof insert: ', with reasonable dispatch,' "

Although there were no known objections to the bill with the requested change, the Senate failed to act for some time, and the subject was accordingly taken up at the weekly legislative conference on a number of occasions. There was never any communication or explanation from the Senate until late in the evening of May 25, 1959 (which was to be the last legislative day before the summer recess), when the Senate passed the bill with amendment. Since an amendment had been requested, it was naturally assumed that it was this change that had been made, and the General Assembly thereupon proceeded to pass the Senate amendment late that same night, under emergency resolution.

When the bill was later checked, however, it was discovered that instead of making the requested amendment, the Senate had added an entirely new section changing N. J. S. 2A:37–29 to require that 12 years, instead of the present provision for 5 years should elapse before the State received custody of the escheated funds.

Although the bill had been taken up several times in conference, the intention to make this change in the law and the reasons for desiring to do so were never disclosed by any member of the Senate majority which controlled the bill in caucus. There has been no explanation to this day.

At the legislative conference of November 12, 1959, the question was explicitly put, and a request was made to correct the bill by deleting this unexplained change and by making the change originally asked. No explanation for the Senate's action was given at that time. Instead, my office was requested to supply a memorandum outlining the situation. This was done the next day, copies being sent to the President of the Senate and the Assistant Minority Leader of the Assembly, among others, as follows:

"1. This bill was passed in the Assembly, amended in the Senate, and is on 2nd reading in the Assembly.

"2. As introduced, the bill brings the present statutory procedure into line with the procedure generally governing in rem actions with absent defendants, and it adds an indemnity provision to protect the custodian who turns over the funds.

"3. After Assembly passage, the custodians (mostly corporations) asked that the provision for 'immediate' notice to the State be altered to provide for notice 'with reasonable dispatch.' This was approved and a memorandum was sent to the Senate requesting that change.

"4. In the Senate, however, the requested change was not made. Instead, a new section was added amending N. J. S. 2A:37–29, which now authorized a proceeding to obtain custody after 5 years' absence, so as to require 12 years' absence. This amendment would vitiate the entire act for the following reasons:

"(a) The first escheat act, passed in 1946, provided for the taking of unclaimed personal property of un-

known or absent owners after 14 years (N. J. S. 2A:37–11 to 28).

"(b) In subsequent decisions, it was held that property claims which had been barred by the 6-year statute of limitations could not be claimed under the 14-year statute. See *Standard Oil Co.,* 5 N. J. 281 (1950).

"(c) Thereafter, a custodial statute was passed 1951. This is N. J. S. 2A:37–29 through 44, and is the act involved in A-193. It provided for a separate court proceeding by which the State obtains *custody only,* on behalf of the absent owner, after 5 years. By having the State take custody after 5 years, the running of the 6-year statute of limitations is halted. See *Sperry etc. Co.,* 23 N. J. 38.

"Another 2 years, for a total of 7 years, must elapse before the funds held in custody can be escheated (N. J. S. 2A:37–34) and this step is taken only after a court proceeding on notice (N. J. S. 2A:37–36 to 38).

"(d) To change the *custodial* act from 5 years (as the present law reads) to 12 years (as the Senate amendment proposed), would allow the 6-year statute of limitations to run and would effectively cut off the escheat programs begun in 1946 and improved in 1951."

It is clear from the foregoing analysis that the Senate amendment would emasculate the 5-year custodial escheat act, and the bill must therefore be returned without approval.

The history of the way in which this bill was handled in the Senate is a prime example of the public disservice which results from the uncommunicative technique of the caucus system employed by the Senate majority party to control legislation absolutely. The bill was a desirable one, there is not to this day any known objection to it, yet the Senate caucus saw fit to tack on a change which would have been to the disadvantage of the public and has not seen fit to disclose its motives or explain its reasons.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 248

To the General Assembly:

I return Assembly Bill No. 248 herewith, without my approval, for the following reasons:

This bill would amend R. S. 54:34–2, 54:34–2.1 and 54:34–3 by inserting express provisions dealing with legally adopted children and brothers and sisters of the whole or half blood.

The question of the rate classification of adopted children was litigated and settled by the Supreme Court in *Palmer v. Kingsley,* 27 N. J. 425 (1958). In that case the court held that the Transfer Inheritance Tax Act is to be read in conjunction with the adoption act of 1953 with the result that adopted children are to be given the same treatment for rate classification purposes as natural children.

The decision of the Supreme Court carries its own force and the accomplishment of this objective does not require amendment of the statute. While it may be desirable to amend the Transfer Inheritance Tax Act to conform with the Supreme Court opinion, such a course would require extremely careful preparation to insure, for example, that the issue of adopted children, the adopted children of a deceased adopted child, adoptive brothers or sisters, adopted children of a stepchild and all the other possibilities were thoroughly checked out and provided for. This bill is not drawn to accomplish that purpose.

On the contrary, examination of the bill discloses that its purpose is to limit the rate classification to a child or children of a deceased legally adopted child and presumably to exclude their issue, the adopted children of a deceased adopted child, adoptive brothers and sisters and adopted children of a stepchild as well as perhaps other categories. In this respect the amendments would cut down the effect of the recent Supreme Court decision.

It is the policy of the State, under the adoption act of 1953, to extend to adopted children in full all of the rights, privileges and relationships which attach to natural children. I am aware of no reason which would justify a departure from this broad principle in connection with the

determination of rates for inheritance tax purposes. I do not believe that full recognition of the legal effect of an adoption would in any way seriously affect the amount of State revenues derived from the inheritance tax law.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 264

To the General Assembly:

I return Assembly Bill No. 264 without my approval for the following reasons:

The bill would validate the purchase of certain Federal bonds by municipalities in instances where the maturity date was more than twelve months after the purchase date.

Several technical defects were corrected in Assembly Bill No. 668 which was introduced as a substitute for this one, and which has since been passed by both Houses and approved by me (P. L. 1959, c. 160).

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT.

ASSEMBLY BILL No. 347

STATEMENT

I am filing Assembly Bill No. 347 in the State Library without my approval.

This bill was delivered to me less than 10 days before the adjournment sine die of the Legislature on January 12, 1960. Under Article V, Section I, paragraph 14(b) of the Constitution, such a bill does not become a law if not signed within the 45 day period, Sundays excepted, following the adjournment sine die. I deem it in the public interest to state my reasons for deciding not to sign the bill.

This bill purports to incorporate in a statute certain principles of the law of wills which have developed in the courts. The first principle is that of "incorporation by reference". This deals with a process by which a will declares that some other writing is to be taken as though it had been copied out in full in the will. What the statute does, in effect, is to permit testator to say simply that he gives certain property to the trustee of a particularly identified trust which is in writing, without having to use the express words usual to a formal incorporation by reference. It thus limits its treatment of this principle to cases where the document incorporated is one that creates a trust. The principle is much broader than this, and if legislation on the point is desirable, it should deal with the whole scope of the principle. Some writers have asserted that the principle permitting an incorporation by reference has been rejected in New Jersey. Examination of the cases cited indicates the assertion to be incorrect. The cases involved are instances where the incorporation was not accomplished, for one reason or another, but none of them assert that an incorporation cannot be achieved when the legal requirements are satisfied. Thus, *Smith v. Smith,* 54 N. J. Eq. 1 (Ch. 1895), is a case where the language of the will was broad enough to include oral instructions, with no writing which was in existence when the will was made. *Condit v. Reynolds,* 66 N. J. L. 242 (E. & A. 1901), *Hartwell v. Martin,* 71 N. J. Eq. 167 (Ch. 1906) and *Magnus v. Magnus,* 80 N. J. Eq. 349 (Ch. 1912) involved references to external oral or written instructions which the testator might change from time to time after executing the will.

Murray v. Lewis, 94 N. J. Eq. 681 (Ch. 1923) is sometimes cited although the report discloses that testator expressly directed that the paper referred to was not to be considered part of his will. *Hackensack Trust Co. v. Hackensack Hospital Association,* 120 N. J. Eq. 14 (Ch. 1936), involved an attempt to incorporate an altered document or documents dated subsequent to the will. Consequently, the recognition of the principle in the early case of *Condit v. De Hart,* 62 N. J. L. 78 (S. Ct. 1898) stands unimpeached.

While experienced lawyers can cite many examples of effective incorporations by reference, it may be felt desirable to have a statutory expression in view of the paucity of reported decisional law and in view of the inaccurate evaluations of the cases noted above. If so, it would better take the form of an expression that, without in any way limiting the ways in which there may be a valid incorporation by reference under the law of this State, a will may effectively incorporate by reference the provisions it specifies of a writing, a copy of which is physically attached to the will or which is otherwise clearly and unambiguously identified with certainty. Such a writing would not be limited to trust instruments, or, in fact, to any executed instrument; it might be a simple schedule set up separately for convenience and incorporated by reference to avoid duplication and possible variation of terms.

This approach, it seems to me, would represent a better policy by giving express statutory sanction to the underlying principle, it would set out the most reliable and unambiguous methods for achieving an incorporation by reference, and would in no way prevent the use of other methods recognized in the law. See, for example, 1 Scott, Trusts, Sec. 54.3, p. 367.

The second principle dealt with by the bill is that which the writers refer to as the doctrine of "facts of independent significance." It has been public legislative policy for centuries, that wills be made in writing, signed and published by the testator in the presence of witnesses and attested by them. "The prescribed formalities of execution are the legislature's idea of safeguards necessary to prevent tentative, doubtful or coerced expressions of desire from governing succession to one's property. Hence, no will is valid unless there is compliance with all the statutory requirements." Atkinson, *Wills,* p. 292. This is the present law and policy in New Jersey.

Disregarding certain special situations, this means that if a person tries to direct who shall inherit his estate by employing some informal method, such as a letter of instructions, or the like, his attempt cannot be recognized in law and his estate will pass without a will. There are some situations, however, in which a will is properly executed, but it is necessary to obtain information outside the will itself in order to determine who is to be the beneficiary. Thus, the will may make a gift "to my children", without giving their names; or "to the woman I marry", who is not then known; or "such persons as may be in my employ at the time of my death". In cases like these, the courts have carried out the testator's wishes without needing to have any real concern over the reference to external facts, because it is plain that the testator is not attempting to control the disposition of his estate by methods not complying with the Wills Act. This is so since "The sole and primary purpose of such an act is other than the control of the disposition under the will, though that may be an effect resulting from the act. The test is whether the facts have a primary significance apart from the disposition of the property bequeath." *Clark v. Citizens etc.,* 38 N. J. Super. 69, 79 (Ch. 1955). But the opposite result follows when the facts outside the will do not have independent significance; this is the case where the naming of the beneficiaries or fixing of amounts is attempted by a separate writing not executed as a will. The reason is that the only purpose of the informal writing is to make a testamentary disposition. It has no other significance, purpose or meaning. *Clark,* supra, at p. 80.

In recent years, application of the doctrine of independent significance has taken a rather highly specialized form, in which the will makes a gift to the trustees of a trust created by a separate instrument (which may be an inter vivos trust created by the same or by another person, or by the will of another person), so that the property given under the will can be added to the other trust and administered by the same trustee. This is referred to as a "pour-over". It is in connection with this special application that a number of differences of viewpoint have developed, with which most of this bill attempts to deal. Unquestionably, the doctrine itself and its general application to a pour-over are recognized in New Jersey. *Swetland v. Swetland,* 100 N. J. Eq. 196 (Ch. 1926), aff'd. 102 N. J. Eq. 294 (Ch. 1928); *The First Mechanics National Bank v. Norris,* 134 N. J. Eq. 299 (Ch. 1943).

There is no need, nor, indeed, would it be either appropriate or desirable, to attempt in this statement a categorical analysis of the full scope and limits of the rule as it has developed in New Jersey. Suffice it to say that a great number of possible variations of circumstances which might appear in one case or another have given rise to extended learned discussions about just how far the rule does go in one jurisdiction or another, as well as what the rule ought to be. The following articles or other works are of great value on the subject: *Lauritzen,* "Can a Revocable Trust be Incorporated by Reference?", 45 Ill. L. Rev. 583 (1950); *Palmer,* Testamentary Disposition to the Trustee of an Inter Vivos Trust, 50 Mich. L. Rev. 33 (1951); *Shattuck,* "Pour-Over Trusts—A Renewed Warning to Draftsmen", 91 Trusts and Estates 207 (1952); *Stephenson,* Drafting Wills and Trust Agreements, p. 435 (1953); *McClanahan,* Bequests to an Existing Trust—Problems and Suggested Remedies", 47 Cal. L. Rev. 267 (1959); *Polasky,* "Pour-Over Wills—and the Statutory Blessing", 98 Trusts and Estates 949 (1959); 5 New Jersey Practice, Sec. 48, p. 123; 1 *Scott,* Trusts, sec. 54; Powell on Trusts, sec. 510.

One of these authors notes, significantly, that "Just as the courts have failed to agree upon applicability of theory, so the scholars who have written on the subject have neither achieved unanimity in terms of their appraisal of existing cases nor in terms of the result which *ought* to be reached." *Polasky,* op. cit. *supra,* at 951.

The reason is not difficult to find. A simple listing of some of the possible variations is sufficient:

> The separate trust (often called the "receptacle trust") may be set up by testator himself as an intervivos trust.
>
> The receptacle trust may be set up by another person, either as an intervivos trust or by a will.
>
> The receptacle trust might be set up before the will, or during the period between the will's execution and testator's death or after testator's death.
>
> The receptacle trust may be irrevocable and unamendable, or it may not be.
>
> The receptacle trust instrument may be executed at one time but may not have taken effect, or the trust under it may not have been established, until another time.

The terms of the receptacle trust may have been changed before the will, or in the period between execution of the will and testator's death, or after death.

The discussions have accordingly centered about efforts to secure legislation covering these and other points. About 17 states have enacted one variety of statute or another, and legislative proposals have been under consideration elsewhere. *Polasky* (op. cit. *supra,* at p. 949) observes that "These statutes, both existing and proposed, vary not only as to form but also, more importantly, as to the scope of the legislation and the philosophy underlying it." His subsequent analysis discloses this assertion to be a modest understatement. The statutes of four states appear not to deal with incorporation by reference; another twelve use language broad enough to cover it, but the opposite argument can be made. The most recent version of Connecticut's statute, enacted in 1959, appears to cover both but contains provisions inconsistent with one theory or the other. Ohio's statute deals with incorporation by reference but not with pour-over trusts.

The statutes of five states explicitly allow the receptacle trust to be created by a person other than testator. If the other statutes permit it, it is by implication only.

Eight statutes permit the receptacle trust to be established by the will of a person alive after testator has died; another limits this case to one where the other person dies within 6 months after testator and executed his will before testator's will was executed. Two statutes require the other person to predecease testator, while three require that a testamentary receptacle trust be in existence when the pour-over will is made, and two others only deal with inter-vivos receptacle trusts.

Some of the statutes require the receptacle trust to be in actual existence when the pour-over will is executed, while others indicate that it is only necessary for the document which will control the receptacle trust to be in existence. In one state, later establishment of the trust and even later execution of the other instrument is permitted. The question whether it is sufficient for the instrument to exist or whether the trust itself must have been established is evidently an uncertain matter under most of the statutes.

Without going into extensive detail, the statutes evidently vary considerably in specifying what requirements are to

be met at testator's death, the effect of a power to amend and of actual subsequent amendment, the effect of complete termination or revocation, the nature of the statute as curative or exclusive, the identity of jurisdiction over the trust, and other like matters.

One point not mentioned in any of the materials examined is the possible effect of the rule against perpetuities. The discussion seems to have largely concerned itself with narrow questions of wills theory, trust theory and tax implications. But since at least two separate instruments will be necessarily involved, one creating a receptacle trust and the other a pour-over will, and although the terms and provisions intended to control disposition may be identical, one may be in compliance with and the other may violate the rule. In the case of an intervivos instrument, the circumstances existing when it is executed will control the question of violation of the rule; but in the case of a will, it is the circumstances at testator's death that will control. In view of the myriad variations that are possible, it is conceivable that a receptacle trust may comply with the rule against perpetuities and the pour-over gift may not. Yet, none of the statutes, so far as can be ascertained, give any thought to this question although their language, using terms like "shall be valid and effectual", could result in unintentionally altering the application of the rule against perpetuities.

The question whether there is only one, or whether there are two trusts, as the result of a valid pour-over, seems to me to have been much magnified in importance and complexity. If the pour-over disposition is itself valid, the only question is one of the routines of administration and it ought to be sufficient to provide testator with the power to have the administration handled separately or on an integrated basis, as he may desire. It would only be necessary to provide that testator may direct his executor or administrator on distribution to transfer the pour-over assets to the trustee of the receptacle trust for administration by him as part of that trust. If desirable, a statute could also provide that when a will contains a pour-over provision, a single administration by the trustee of the receptacle trust shall follow unless the will contains different directions.

It is not possible, nor appropriate, to attempt here a complete catalogue of the deficiencies of the bill. It is

sufficient to point out the wide disparity of the comments received by me from eminent authorities and experts in the field. Thus, one has expressed approval of the provisions of section 2, to permit use of a revocable, unfunded life insurance trust, but questions whether section 1, in requiring that the trust be "established" does not create a conflict. Several others have suggested that the requirement of a writing to be made "before" execution of the will should be changed to apply to a writing made on the same date as the will, and not making the presumption at the end of section 1 rebuttable. Another suggestion is that when the trust is created by another person's will, there should be a requirement that it be created before execution of testator's will and that the other person shall have died prior thereto. A further comment is that the permission in section 4, to withdraw all of the property from the trust, should be deleted, and it has been observed that section 5 should be deleted as unnecessary and in possible conflict with section 3. Still others have expressed the view that competent draftsmen experience no unusual difficulties in this field and find no significant obstacles in fully achieving a testator's intentions without the statute. It is asserted that the bill might well have the effect of limiting and formalizing the flexibility of the law.

It is worth observing that one of the most recent articles on the subject points to a number of possible pitfalls as characteristic of what might be expected of "an unsuspecting layman-draftsman", or of "the layman-draftsman who has not thought the problem through." (*Polasky,* op. cit. *supra*). The unavoidable intricacies of wills and trusts law are such that the use of "layman-draftsman" ought not to be encouraged. Yet, this bill presumably would allow a person to execute a very simple will leaving all his estate to a separate nominal trust. He could create that trust, under the bill, just before making the will, and could express in it some very simple plan of disposition. Thereafter, he could endlessly alter the terms of the trust, changing beneficiaries, altering amounts, adding new conditions, and the like, all without ever again having to execute a will. Is this sound public policy? Certainly it would open a wide door to the handling of estate matters by the inexpert instead of by the expert. Legislative sanction would be given, in effect, to a kind of "blank check" will, which the maker could alter as to payee and amount at will thereafter, without any formality or assurance of competent

legal guidance. The possibilities are so broad as to involve the question whether the Wills Act would not become meaningless, at least in the most extreme case where testator and settlor are the same person and amendments to the trust are to be given effect for disposing of the pour-over assets. It is in this situation that attempts to justify application of the pour-over theory raise the thorniest questions in relation to compliance with the Wills Act, because it is here that the claim of "independent significance" is least persuasive; it is most obvious that the testator has tried to create for himself a power to change his testamentary disposition without an act of independent significance, and the theories collide head-on. The difficulties, it seems to me, are created by an unnecessary insistence on not complying with the Wills Act, and could easily be eliminated by the simple expedient of executing a codicil to confirm the testamentary purpose whenever the terms of the intervivos trust are changed. "This latter course of action is always possible. If the settlor can effectively amend his intervivos trust, he can also (if he wishes) change his will." *Powell,* op. cit. *supra.*

In this connection, it has been asserted that testamentary capacity may be lacking when the codicil is executed. If this be so, it is clear that the same standard of capacity would control the validity of the amendment to the trust, and nothing is gained by not complying with the Wills Act. This, of course, may not be the case where the settlor of the trust is a person other than testator, but then the question of circumventing the Wills Act is not likely to arise because the external acts of another person will probably have independent significance.

Thus, it has been pointed out that "To permit the testator to establish a nominal trust, execute a will with a 'pour-over', and subsequently dispose of the bulk of his estate by amendment of the trust without the formality ostensibly required by statute for testamentary disposition would, indeed, permit rather effective circumvention of the wills legislation" (*Polasky,* op. cit. *supra,* at p. 955). It is plain that so deep a policy question was not thoroughly considered in the passage of this bill. The five line statement on the bill hardly begins to touch upon the many complicated questions with which the bill would deal. There was no staff study or research, there were no public hearings, there was no attempt to obtain the expert comments and

analysis of the legal profession on the bill while it was before the Legislature.

It is of some significance to me that New Jersey's legal profession, which has long enjoyed the quiet reputation of competence and skill in the fields of estates and trusts, has successfully achieved the intention of testators with small or large estates without becoming involved in extensive litigation. There is but a handful of reported decisions touching on this subject as proof of this performance.

Beyond this, however, if it should be deemed desirable to enact legislation in this field, it is plain that the need is for *uniformity* of legislation among the 50 states, rather than for legislation *per se,* in any single state. The brief enumeration above illustrates well how widely divided are the views of the states which have adopted statutes. It will add little, if anything, to adopt still a different version in New Jersey.

It is also important to note that the object of uniformity is more likely to be achieved through the institution created for that purpose. The National Commissioners on Uniform State Laws discussed a draft of proposed uniform law at their 1959 meetings. Final action was not taken, and the draft is scheduled for further consideration in August of this year. If substantial agreement can be reached on a draft recommended by that group, it will be time enough to take up thereafter the question of legislation.

ROBERT B. MEYNER,
Governor.

Dated: March 4, 1960.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 349

To the General Assembly:

I am returning herewith Assembly Bill No. 349, without my approval, for the following reasons:

This bill would allow motor vehicles carrying land fill for a "reclamation of meadowland project" to travel along

county roads, State highways or municipal roads without regard to maximum gross weight of vehicle and load under existing statutes. It provides that the board of chosen freeholders of a county in which a project "is being or will be carried on" may authorize its county supervisor to issue a permit for the vehicle, fixing a maximum weight limit in the permit. Consent to the use of State highways or municipal roads is required where they are part of the route. Other provisions deal with financial responsibility of the vehicle operator, the obligation to pay for damage caused to any road, bridge or railroad crossing, and penalties for exceeding the limit fixed in the permit.

Under the Federal highway law (23 U. S. C. A. 127), maximum limits are fixed for highways which are part of the Interstate System, and if this bill became law, it would allow weights in excess of the Federal maximum and thereby disqualify New Jersey for the receipt of Federal highway funds.

I am satisfied, too, that the desired object can be achieved under existing law. Land fill of the kind this bill deals with is the usual by-product of excavation or other earth-moving phases of a construction project and can be carried in vehicles registered for use with constructor registration plates in proper cases. See N. J. S. A. 39:3–84.1 and 39:3–20.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 357

To the General Assembly:

I am returning herewith Assembly Bill No. 357, without my approval, for the following reasons:

This bill, together with Assembly Bill No. 359, proposes changes in the Banks' and Savings Banks' Officers' and

Employees' Retirement and Benefit Act (P. L. 1953, c. 124), which was added to the 1948 Banking Act (P. L. 1948, c. 67). Since both bills are before me and are interrelated, they will be considered together.

The 1953 law established a framework within which banks and savings banks might establish plans to provide retirement and related benefits for their officers and employees, subject to the supervision of the Commissioner of Banking and Insurance.

Together, these two bills would remove banks from the scope of the present law, which would then apply only to savings banks, and establish an entirely new framework for banks other than savings banks.

The suggested alteration was given extended analysis and discussion with bank and savings bank representatives and the Commissioner of Banking and Insurance. The conclusions reached were that banks and savings banks should continue to be governed by a single statute, and that if the present statute is unsatisfactory in any respect it should be modified to cure the defect for the benefit of all types of banks and savings banks alike. A new bill for this purpose is now under study and will be introduced at the next session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL NO. 359

To the General Assembly:

I now return Assembly Bill No. 359, without my approval, for the following reasons:

I have outlined the reasons for not approving this bill in my message dealing with Assembly Bill No. 357, which discusses both that bill and this one.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL NO. 361

To the General Assembly:

I return Assembly Bill No. 361 herewith, without my approval, for the following reasons:

This bill would have amended chapter 56 of P. L. 1946 dealing with savings and loan associations and building and loan associations by authorizing a participation in mortgage loans in conjunction with out-of-State associations, to the extent and under the conditions permitted by the rules and regulations of the Federal Savings and Loan Insurance Corporation.

Quite aside from the risk of constitutional infirmity which might arise from the attempt to incorporate the Federal rules and regulations by reference (New Jersey Constitution 1947, Article IV, Section VII, paragraph 5), I consider this mechanism quite undesirable. The factors which may persuade the Federal Savings and Loan Insurance Corporation to adopt a given rule or regulation are likely to be

based on nation-wide factors which may or may not be in the interest of associations subject to the law of New Jersey. It is preferable in extending the authority which this bill proposes, to have it controlled by rules and regulations promulgated by the Department of Banking and Insurance subject to the standards that those rules and regulations shall conform as closely as may be to the Federal rules consistent with due consideration for local conditions.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 722, passed by both houses and signed into law as Chapter 183 of P. L. 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
August 10, 1959.

ASSEMBLY BILL No. 411

To the General Assembly:

I am returning herewith, without my approval, Assembly Bill No. 411, for the following reasons:

This bill would direct that the "standard plans and specifications for school buildings prescribed by the Commissioner of Education" shall authorize a minimum height of 9 feet for classroom ceilings.

In 1955 the rules governing schoolhouse construction prescribed by the State Board of Education were changed to reduce the minimum authorized average height for a classroom ceiling from 10 feet 6 inches to the present minimum, 9 feet 6 inches. As a part of the study which preceded that change, school districts were requested to take alternate bids on 10 foot 6 inch and on 9 foot classroom ceilings. This revealed that a 1 foot 6 inch reduction in classroom average ceiling height could be expected to yield an average saving per classroom of $315.00. As against this anticipated saving, however, it was known that a ceiling

only 9 feet high would create a lighting problem which could be solved only by a costly type of lighting system. It was the considered judgment of the Board that the saving of approximately $100.00 per classroom to be expected from a further reduction to 9 feet would have been offset, and probably exceeded, by the increased cost of lighting fixtures. The authorized minimum therefore was reduced to 9 feet 6 inches.

The Department of Education has had this matter under continuing study since 1955. It advises me that there has been no development in the field of school lighting since that time which would warrant a different analysis.

Apart from the particular issue of classroom ceiling minimum average height, this bill is also objectionable on a fundamental ground. By R. S. 18:2–4, the State Board of Education is authorized to prescribe standards of schoolhouse construction. This is a sound delegation of authority of the sort essential in modern government. The Board has the facilities for continuing study of the many facets of the field, and its flexible administrative authority enables it to respond promptly to improvements in schoolhouse construction technique and equipment. At such time as a 9 foot minimum height appears feasible, the Board is fully empowered to establish it under existing law. I believe it would be unwise to supplant this sensitive administrative authority with rigid statutory standards in such matters of detail as that with which this bill is concerned.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 415

To the General Assembly:

I return Assembly Bill No. 415 herewith, without my approval, for the following reasons:

This bill would amend R. S. 34:15–15, dealing with the statutory obligation placed upon an employer to furnish "medical, surgical and other treatment, and hospital service" to injured workmen. The amendment consists of adding an express reference to "chiropractors' services" in seven places in this section.

As the statute now reads, the obligation is to furnish such "medical, surgical and other treatment, and hospital service" as is necessary to cure and relieve the effects of the injury, and for restoration of functions where possible. This obligation is made subject to the provisos that:

1. The obligation is limited to $50.00 for professional services and $50.00 for hospital services unless the Division of Workmen's Compensation determines, on petition and hearing, that the treatment and services are necessary and reasonable in amount;

2. The employee may secure the treatment and services when the employer refuses or neglects to provide them;

3. The employer is relieved of the obligation to reimburse unless he was first requested to furnish the treatment or service or unless the need was obvious and the employer failed to furnish the treatment or service with knowledge of the injury and the need;

4. Notification is not required when it was not possible to give it or when the peculiar circumstances of the case justify the expenditure assumed by the employee.

After the present section makes use of the basic phrase "medical, surgical and other treatment, and hospital service", it thereafter refers to this category by a variety of non-uniform expressions, as follows:

*a. "physicians' or surgeons' services . . . hospital service";

*b. "physicians' or surgeons' services . . . such hospital service or appliances";

*c. "such physicians' and surgeons' treatment and hospital services";

d. "such treatment and services";

*e. "such physicians' treatment and hospital services";

f. "the same";

g. "such services";

h. "the same";

*i. "such physicians' treatment and hospital services, apparatus and appliances";

*j. "such physicians' and surgeons' treatment and hospital treatment";

*k. "similar physicians', surgeons' and hospital services".

The expressions marked with an asterisk are those in which the word "chiropractors' " is inserted by the bill; the other expressions are left unchanged.

There can be no doubt that the phrasing of the present section leaves much to be desired in the way of draftsmanship. Nonetheless it is plain that it is hardly improved, and, in fact may be worsened, by the proposed amendment.

Presumably, the object is to make clear that the services of a chiropractor are included among those authorized by the act. In my judgment, the amendment is unnecessary and would add to the confusion.

What has evidently been overlooked is that the enacting clause covers the whole category of "medical, surgical *and other* treatment" (emphasis added), and the fact that the various provisos which follow refer variously to "physicians" or to "physicians or surgeons" cannot reduce the scope of the enacting clause. Thus, the services of a chiropractor, where they are in fact necessary and where the cost is reasonable in amount, are included in the phrase "other treatment". I am informed by the Division of Workmen's Compensation that this is the interpretation followed in practice and that payment for the services of a chiropractor are in fact required where the statutory requirements are met.

If this amendment were enacted, it could carry the implication that professional services of a type not expressly

mentioned in the provisos cannot be required of the employer, despite the breadth of the phrase "other treatment". Thus, for example, there would be doubt whether the services of a dentist (who is nowhere mentioned) could be required to be provided, although, as is well known, such services are essential for certain types of injury such as a jaw fracture.

Further, while inserting specific mention of "chiropractors" in the seven places noted, the bill fails to cure the omission of a reference to "surgeons" in items (e.) and (i.), listed above, or to make consistent the varied references to "treatment" (basic phrase, plus items c, d, e, i and j, above), and "services" (items a, b, g and k, above) in speaking of physicians and surgeons; nor the partial references to "appliances" and "apparatus and appliances" in items (b.) and (i.), above.

In summary, then, I am satisfied that the proposed amendment is unnecessary since chiropractic services are included in the term "other treatment" when the conditions of the act are satisfied, and that while the section could be vastly improved by redrafting, this bill fails to achieve that object. It should be noted, too, that whether the proposed amendment be made or not, the allowance of the cost of chiropractic services will be a matter of fact to be determined in each case; there must be a proper relation, as there must be for any service, between the nature of the injury and the capacity of the requested service to cure and relieve the workman of the effects of the injury and to restore the functions of the injured member or organ where possible.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 433

To the General Assembly:

I return Assembly Bill No. 433 herewith, without my approval, for the following reasons:

This bill would amend section 39:3–84 of the Revised Statutes. Actually two amendments are involved. The first amendment deals with commercial motor vehicles of the tractor-semitrailer type. Under present law the combined length of the two units is limited to 50 feet but the length of the semitrailer is limited to 35 feet. The amendment leaves the 50 foot limit unchanged but removes the 35 foot limit applicable to the semitrailer in order to permit the use of current models, under which the total 50 foot length may be divided as between the tractor and the semitrailer. This part of the bill appears to be unobjectionable.

The second amendment in the bill would eliminate the present statutory maximum width of 96 inches applicable to buses and in its place would vest authority in the Board of Public Utility Commissioners to prescribe the maximum width in the same manner as it prescribes maximum lengths under present law.

This part of the bill, in failing to make any provision to conform to Federal requirements in connection with Federal highways, would have run the risk of making New Jersey ineligible for the receipt of Federal highway funds.

A better flexible mechanism is to require that before there be action by the Board of Public Utility Commissioners, it should first receive an appropriate certification by the Division of Motor Vehicles with respect to the safety of a proposed width limitation, and a certification from the State Highway Department with respect to the conformity of a proposed width with Federal highway requirements. There should also be a provision that in no case shall a width be prescribed which would disqualify the State from receiving Federal highway funds.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 714, passed by both houses and signed into law as Chapter 171 of P. L. 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT
January 12, 1960.

ASSEMBLY BILL No. 439

To the General Assembly:

I return Assembly Bill No. 439 without my approval for the following reasons:

The bill provides that a full time employee of a county, municipality or school district who is required to work on a legal holiday in the course of his regular work week "shall be entitled" to a compensatory day of leave "at the option" of his employer. The provision is made inapplicable to uniformed members or dispatchers of a police or fire department, and to Saturdays and Sundays.

The bill was amended twice in the Assembly and once in the Senate before it was passed, resulting in an ambiguous patchwork that is compounded by an attempt to include a number of conditions, exceptions and modifiers in a single sentence. Thus, at one stage the bill gave the employee the right to have either a day's pay or a day's leave; the employer was given the option to decide which. By amendment, the provision for a day's pay was removed, but the option was left in with no subject to which it could logically apply. Further, section 2 still directs that "additional compensation" so earned "shall be paid", although the provision for a day's pay is gone.

The Senate had this bill from April 6 to May 25 when it passed it with amendments, May 25 being the day when both Houses planned to recess for the summer and on which 169 bills were voted on in the two Houses. If the bill could not have been properly redrawn by that day, it should not then have been passed. I suspect that the drafting problems resulted from not knowing just what the facts were and not having a clear idea of the object to be achieved.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT
January 12, 1960.

ASSEMBLY BILL No. 480

To the General Assembly:

I return Assembly Bill No. 480 without my approval for the following reasons:

The bill provides that when a criminal complaint or accusation has been filed and has been dismissed or withdrawn, the court in which it was filed may order all evidence of the complaint and the proceedings expunged from the record. The same provision would apply when no indictment was found on the charge and no subsequent complaint was made on the same charge. The expungement order is limited to the court in which the complaint was filed. Notice of application by the accused is to be given to the county prosecutor and such others as the court may direct.

The concept of the bill is presumably patterned after N.J.S. 2A:164–28 which provides for expungement of the record of conviction in certain cases. Presumably, it is reasoned that a like amnesty from the record should be extended to persons against whom a charge was made but was dismissed or withdrawn, but the proposal suffers from a number of fatal defects.

In the first place, the record of dismissal is the very means by which the accused can prove that the charge was not proved; he would be ill-advised to expunge it. Second, the order would only expunge records in the court where the complaint was filed; a criminal complaint can and does generate a host of records in other places, and these would remain in existence but robbed of the official record to sustain them. Some of these records are beyond the power of the State to expunge, such as those which are sent to Federal law enforcement agencies. Nor is it clear just how the expungement would be accomplished. Would the jacket with the original papers be destroyed? How would the record be expunged from the bound volumes in which the court minutes are written? What would be done if the complaint were filed in the municipal court and transferred to the county court for grand jury consideration? Suppose there had been a conviction, and a reversal on appeal fol-

lowed by a dismissal on the new trial; how would the printed record on appeal in our casebooks be expunged? In what way would any newspaper accounts of the charge, or the personal recollections of those involved, be expunged? Suppose one with personal knowledge of the event were to declare its occurrence, and be sued for defamation; where would he get proof of the truth if the record were gone?

It may be argued that some of these troublesome considerations apply with equal force to N.J.S. 2A:164–28 but that merely raises the question whether the present statute is a wise one. At least under the present act, a period of 10 years must elapse before any application may be made, and the accused's conduct over that period may provide a sound basis for judging whether rehabilitation is complete. In addition, the language of the present act indicates that there is an intention to limit it to cases where the record shows but a single conviction. In the present bill, there is no required waiting period, and the only restriction is that there be no subsequent complaint *on the same charge*; presumably an expungement would be permitted in the face of a string of complaints and even convictions so long as they were on different charges.

It is difficult to justify the expungement of official records on any ground. Expungement runs counter to the very purpose for which official records are kept, and mere expungement of the record does not serve to erase the fact itself. The kind of record involved in this bill is often of great value to law enforcement officers and to the public. If these records result in the creation of a problem to the persons involved, some device or routine other than expungement should be sought as the solution.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Governor.

Attest:

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 532

To the General Assembly:

I return Assembly Bill No. 532 herewith, without my approval, for the following reasons:

This bill proposed a supplement to the "Savings and Loan Act" (P. L. 1946, c. 56). Its object was to permit savings and loan institutions to make loans of the type known as modernization loans on a basis permitting discount in advance of the interest portion and establishing the maximum rate and other terms for the regulation of this special category.

A related bill, Assembly No. 600, dealt with the same subject in the case of banks.

Examination of the two bills disclosed that Assembly No. 532 failed to conform to the provisions applicable to banks under Assembly No. 600. For example, there was no provision in the savings and loan bill setting a maximum for the aggregate amount that might be advanced in connection with a single parcel of property, nor was there any provision that the repayment installments be of the same amount or that no charges be made other than those permitted by the bill. There was no limitation as to the taking of security or limiting the kind of security that might be required in the light of the special interest rates permitted.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 719, passed by both houses and signed into law as chapter 182 of P. L. 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 539

To the General Assembly:

I return Assembly Bill No. 539 without my approval for the following reasons:

The bill would allow members of the Consolidated Police and Firemen's Pension Fund to withdraw all of the accumulated deductions credited to their individual accounts in case of a withdrawal from service or other cessation of employment other than death, retirement or a suspension or discharge which bars the member from reappointment under the civil service law.

This involves the same fund discussed in my message returning Senate Bill No. 67. I noted there that this fund had become so hopelessly insolvent that from 1944 no new members have been allowed to join it, and since 1952 a very expensive salvage program has been under way, calling for payments by municipalities and the State for 30 years to get this fund out of the red.

The reason for the fund's insolvency is that annual contributions were too small to accumulate the reserves needed to pay benefits. It is these inadequate contributions which this bill would allow a member to withdraw. The proposal is unsound. The best simple analogy would be a bill to allow a policy holder to obtain repayment of his fire insurance premiums because his house did not burn down. No pension or insurance system can operate on that basis unless the right of withdrawal were taken into account in computing the premium, which would have to be higher.

The fact that the law does not allow withdrawal was one of the factors entering into the computation of the deficit now being made up, and this bill would destroy the validity of that computation. Besides, the records of contributions were hopelessly incomplete when the fund was salvaged in 1952, and it would probably be impossible to establish the facts for individual members.

Respectfully,

ROBERT B. MEYNER,
Governor.

[SEAL]
Attest:

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 571

To the General Assembly:

I return Assembly Bill No. 571 herewith, without my approval, for the following reasons:

This bill proposed the amendment of R. S. 39:4–26 which deals with the special arrangement which is made for the movement on the highways of items of unusual size or weight, such as road building machinery, structural units incapable of dismemberment and the like, which may not conform with the statutory requirements dealing with the dimensions and widths of ordinary vehicles.

Under present law these special situations are dealt with by a procedure under which the trailer or semitrailer which is to carry the objects is first registered with the Director of Motor Vehicles upon payment of a fee of $150.00 followed by the obtaining of a permit from the Director of Motor Vehicles for State highways, or from the county supervisor or supervisor of roads for county roads or from appropriate municipal officials for municipal roads. In practice this mechanism results in the planning of an appropriate route and time of day for the movement of these unusually large objects.

The amendment proposed by this bill was intended to eliminate the need to register and pay the registration fee in cases where the home State of the vehicle extended similar exclusion to vehicles registered in New Jersey, on a reciprocity basis. However, through an apparent oversight the amendment was so drawn as to eliminate not only the registration or registration fee but also the permit requirements.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 721, and was passed by the Assembly, but the Senate took no action. If this legislation is desired, therefore, it will be necessary to reintroduce the corrected bill in the 1960 session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL NO. 600

To the General Assembly:

I return Assembly Bill No. 600 herewith, without my approval, for the following reasons:

This bill would have amended Sections 53, 54 and 56 of the Banking Act, Revision of 1948 (P. L. 1948, c. 67).

Under present law banks are authorized to make improvement loans in net amounts up to $2,500.00 payable over a period of three years and one month with a maximum discount rate of 6%. The purpose of the amendment was to further authorize the making of such installment loans in amounts up to $3,500.00 repayable over a period of five years and one month, with a maximum discount rate of 5½%.

In this respect the object was the same as Assembly Bill No. 532 which had the same object for savings and loan associations.

However, the bill in the course of amendment of the present act failed to correlate existing provisions in Section 54 with respect to the promulgation of rules and regulations by the Commissioner of Banking and Insurance on loans other than property improvement loans under this bill.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 717, passed by both houses and signed into law as chapter 180 of P. L. 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Governor.

Attest:

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL No. 627

To the General Assembly:

I return Assembly Bill No. 627 herewith, without my approval, for the following reasons:

This bill would have validated deeds purporting to have been made by a corporation, which corporation is no longer in existence or exercising corporate powers when the deed has been recorded before January 1, 1948, in cases where the deed might otherwise be invalid by reason of the fact that the certificate of incorporation was filed only in the county clerk's office but not in the Secretary of State's office. Prior to the amendment of R. S. 14:2–4 in 1939, it was not uncommon for corporate certificates to be filed only in the county clerk's office and for the incorporators to fail to make the additional filing in the Secretary of State's office as then required by that section. As a result of this practice there were many instances of corporations which might be formed and which might be corporations *de facto*. A great deal of uncertainty was created by reason of the inability of interested persons to ascertain necessary facts from the Secretary of State whose office is intended to be the central filing office for this purpose and difficulties were placed in the way of the collection by the State of the fees required by law in exchange for the granted corporate powers.

This validating bill fails to take account of the fact that the *de facto* corporation enjoyed the benefits of a corporate existence without having paid the fees and taxes required by law and which are paid by persons who complied with the law. If the deeds of such corporations are to be validated, it would be only proper to require as a condition that there first be paid the fees and taxes which the corporation would have paid if the statute had been observed.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 712, and was passed by the Assembly, but the Senate took no action. If this legislation is desired, therefore, it will be necessary to re-introduce the corrected bill in the 1960 session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Governor.

Attest:

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

ASSEMBLY BILL NO. 706

To the General Assembly:

I return Assembly Bill No. 706 without my approval for the following reasons:

The bill would validate proceedings for the issuance of local school bonds, and the bonds issued thereunder, despite the failure to file a supplemental debt statement as required by R. S. 18:5–87.

While the bill does not apply to meetings or elections occurring after its enactment, it would apply to all past proceedings without limit. This makes it impossible to ascertain how broad the scope of the bill may be.

Further, while there is a proviso excluding instances where an action, suit or proceeding to contest the validity of the meeting or election has been heretofore instituted in any court of this State, it fails to make the proviso applicable to proceedings for review by an administrative agency and it also fails to allow a reasonable time to initiate a proceeding after enactment. I have alluded to this problem in previous messages. See S-142 (1954), S-315 (1954) and A-83 (1956), for examples.

Most validating acts for bond issues are prepared in the offices of bond counsel, and when provisos to save pending or future proceedings are included, they tend to vary considerably in language. This problem can be eliminated by the simple process of enacting a general law to deal with it, and I recommend that course to the Legislature.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
May 11, 1959.

SENATE BILL No. 2

To the Senate:

A basic constitutional infirmity and some fundamental defects in operational fairness compel me, pursuant to Article V, Section I, paragraph 14(b) of the Constitution, to return Senate Bill No. 2 for reconsideration, with my objections.

This bill would establish a general college scholarship program administered by a new commission of 9 members. Scholarships would be $400.00 a year or the tuition, whichever is less. The number of scholarships awarded annually would equal 5% of the number of high school graduates. The grants would be based mainly on financial need and the result of a single competitive examination.

This does not mean that the scholarships would go to the top 5% of the graduates. The 5% provision merely fixes the number.

At present, 250 new scholarships are given at Rutgers and 200 at the six State colleges each year. Since these are public colleges, the public pays for the scholarships. These programs would be cancelled by the bill.

The history of public school systems in this country shows that the reason for providing public facilities was that private schools were not able to meet expanding educational needs. Offering an opportunity for a good education to those youngsters who are blessed with talent is essential to the growth, progress and security of our State and Nation. Where instituted, however, public programs have been designed to function side-by-side with private programs.

It is interesting to note that of those New Jersey students who went on to college in 1956, over 67% went to private colleges in and out of the State, but of those going to college within the State, about 48% went to private schools. In other states with similar scholarship programs, such as California, Illinois, Massachusetts and New York between 25% and 30% of the students use their scholarships at public colleges, and 70% to 75% at private colleges. These

figures indicate that in New Jersey a little over half of the college facilities for its youngsters are provided by the State.

Moreover, our school population is growing. Where some 15,000 of our students entered college in 1956 with some 6,000 attending schools in New Jersey, it is estimated that 5 years hence there will be 25,000 going on to college and 11,000 of these attending schools within the State.

The State Board of Education several years ago recognized that a scholarship program should be adopted to make available tuition for needy, apt students who might choose to go to private colleges. This was in close accord with my own views, as I firmly believe that the sound evolution of our society depends upon extending educational opportunities to those who have the capacity for advancement but lack the financial means. For this reason I have twice recommended to the Legislature the adoption of a scholarship program. In principle, I see no reason why the winners of such new scholarships should not be allowed to use them at private colleges as well as public ones.

Since all these questions are of critical importance, I decided to hold a public hearing so that I might learn the views on all sides. It was generally agreed by those who spoke at the hearing, including those who felt that the bill should be signed as it stands, that Senate Bill No. 2 does present a number of difficult problems. It was urged by some that the defects could be cured by subsequent legislation. The oral presentations, as well as the expressions sent to me by mail, have been most helpful as a guide in reaching a decision.

I have concluded that it is in the public interest to adopt a new scholarship law. A patent constitutional infirmity, however, precludes me from accepting this bill in its present form.

We have just experienced with last year's Sunday Closing law the difficulties which such a course presents. The constitutional question there was at least debatable in view of the conflicting severability clauses. I there urged legislative correction of the bill, but no action was taken. Here, the infirmity is clear and obvious. I would be doing less than my sworn duty if I were to sign this bill when it contains provisions flatly prohibited by the Constitution. It would be a grave disservice if I were to launch a program so im-

portant to so many into prolonged litigation to ascertain its validity. It is the duty of each branch of government to comply with the Constitution. If the Legislature had itself held public hearings, these defects might have been revealed and corrected before passage.

1. *Administration*

The bill establishes a scholarship commission with no attachment to the administrative structure of State government. Article V, Section IV, paragraph 1 of the Constitution contains a mandatory requirement that all administrative offices shall be allocated by law among and within the principal executive departments. I am obliged by my oath of office to see that this requirement is met. More than 5 years of experience as Chief Executive convinces me that sound administrative practice requires that there be a clear chain of command and someone directly responsible to the Executive for the proper performance of the duties of a commission such as this.

At the 1947 Constitutional Convention, Governor Alfred E. Driscoll made his views very clear on this point. He considered it one of the "most important recommendations that has been made," to have the Constitution itself provide "for a limited number of departments so that we may have a workable family group." In order of importance, he placed this ahead of "strengthening the Governor's veto power" and "the term of the Governor", as well as "the right of succession". He conceived each department as "headed by a single individual" who would be the "representative of the Governor" and who would be "responsible for the general over-all operation of the department". He pointed out that before the present Constitution there were "better than a hundred individual departments, agencies, and commissions with whom the Governor must work" and urged that there be "no more than 20 principal departments", within which there should be distributed "all the functions" of the Executive branch, so that in enacting legislation, the Legislature and the Governor "would be forced" to inquire as to what "established agency of government is this new function of government most closely related?" The result would be to "allocate this new duty to that particular department within the Executive branch where it can be strengthened by the experience of the old activity" and bring " a new point of view to the old ac-

tivity''. (Proceedings, Constitutional Convention of 1947, Vol. V, pgs. 42-45.)

The importance of this aspect was also emphasized by the Commission to Study Organization and Operation of the Executive Branch of the State Government. In its January 10, 1956 report, that Commission, headed by Hon. Thomas J. Hillery, presented a set of charts showing the then organization and noted, of the charts:

> ''They provide an immediate tool for appraising proposed new legislation affecting organization in the Executive Branch. In fact, it can be said that from now on no such legislation should be enacted until its relationship to existing organization has been studied.'' (Report, p. 7)

After reviewing that set of charts I think it is clear that the proposed commission should be established as an advisory commission to the State Board of Education and within the Department of Education.

Since there is no choice but to return the bill, it is desirable that other defects revealed by the hearing and by a study of the bill should be made at the same time.

2. *Effect on present programs*

Should the present State scholarship programs be abolished, with students going to Rutgers or to the State colleges applying for scholarships as part of a new system? I see no objection, and in fact consider it desirable, to treat all scholars alike and on an equal basis, whether they are to go to a public or a private college. The present bill, however, presents 4 difficult problems:

(a) Notices have already gone out from Rutgers and the State colleges as to scholarships for this Fall under present programs. While the bill protects the ''renewal or continuance'' of scholarships already awarded, it does not clearly protect those who will receive their ''initial'' awards this Fall.

(b) The program at the six State colleges is designed to meet a different need, namely to attract students into the teaching profession in which we would otherwise risk a serious shortage. This program ought not to be cut off by the new one, as this bill does.

(c) The present program at Rutgers includes a small but important number of scholarships at the Rutgers Law School. Under the bill, this program would end as the scholarships could only be used in an undergraduate school. In the process of trying to help more students, we ought not to reduce the help we are already giving.

(d) The State now provides a number of scholarships, or assistance of like nature, as part of the program carried out by the State Rehabilitation Commission. These are by way of training of physically handicapped persons so as to help them to engage in remunerative occupations. This program should not be affected.

3. *Size of the program*

The bill fixes the number of initial awards at 5% of the previous year's high school graduating classes. This does not mean that the scholarships would go to the top 5% in each graduating class, as many who have written me believe. Since only 15% of the number graduated each year go to New Jersey colleges, the bill would actually provide scholarships to 33⅓% of them. I also note that the figure of 5% would mean about 3,000 scholarships for 1960 and nearly 5,000 for 1975.

The citizens of New Jersey should understand that under our Constitution, the Legislature and the Governor cannot pass a law binding future Legislatures or Governors as to the appropriation of State funds. No money may be drawn from the State Treasury except under appropriations made by law; appropriations may be made only year by year; and the total appropriations in any year may not exceed the State's anticipated revenue. Article VIII, Section II, para. 2.

Hence, to attempt to fix the number of scholarships on a formula of this kind may amount to an illusory promise. It would justifiably lead the public to expect that 3,000 or 5,000 new scholarships would be awarded in a given year (four times that number to include renewals), only to find the number to be less if the funds were not appropriated. I do not think it wise or desirable to have the bill make any promise as to the number of scholarships to be awarded each year. That number will always be determined by the dollar amount available for appropriation, and by the number of eligible students.

One of our major objectives should be to try to reach the students who are qualified but who wouldn't otherwise attend college. Education today is probably the most effective way in which a democracy can furnish equality of opportunity. Since the early 1900's, when persons up to age 21 were a large part of the labor force, the professions, business, commerce and industry have largely abandoned apprenticeship methods and have looked to the colleges to provide the talent of the future. Our educational system acts as a screening force by which the most able persons are brought into important positions in American life. Too many of these able people do not go on to college, for a variety of reasons. In some cases the reason is financial. A sound scholarship program should aim to induce that able group to undertake their further education.

We lack data and experience with which to judge how many of them are in need in this State. Such statistics as are available now are not sufficiently up-to-date, nor precise enough to be reliable. Sound judgment is difficult. We know, for example, that many capable young women, often at the head of the class, enroll in secretarial courses in high school. While they are desirable college material, they either did not take courses to qualify them for college, or else are not interested. They are not necessarily in financial need, and a scholarship program will not reach them.

Although it will be difficult to get much of a start for the college year beginning this September, it will be worth while if we can persuade at least some who could go on, but lack the funds, to enter college. Our study and experience under the program will disclose what shape it should take thereafter.

4. *Limitation to New Jersey colleges*

I realize that some supporters feel strongly that the scholarships should be used only at New Jersey colleges. In 3 of the 4 states with similar programs, this restriction is imposed. In the fourth, the scholarship may be used at a public college only within the State, but at a private college in or out of the State.

If we are to do our best to help the student, he should be allowed to make the best choice he can, and a restriction to in-State colleges cannot be justified here, although it may be justifiable elsewhere. Thus, in California, where there is such a restriction, about 90% of the students go to Cali-

fornia colleges anyway. The facilities are in fact within the State and there are no other large ones nearby. Similarly, in New York, which has the same restriction, 75% go to New York colleges. Again, the fact is that the colleges are located mainly within the State, with some additional facilities in nearby states. Those two States have facilities which are ample, not only as to size but also as to variety of educational specialty.

The physical facts in New Jersey are much different. In the southern area, we have meager college facilities within the State, but there are extensive choices just across the river in Philadelphia. To the north, our western counties are conveniently located near excellent schools in Pennsylvania, and our eastern counties are within a short distance of the great facilities in New York City. For those students who live in one of these areas, it would be distinctly unfair to prevent attendance out of state. If financial need is present, it is obvious that the cost of a college education may well be less of a burden if he is allowed to attend the nearest college of his choice, even though it be in another state. I recommend that out of the number of scholarships provided by appropriation, one-sixth be permitted to go to colleges outside New Jersey. Further experience will indicate if this ratio should be changed.

5. *Financial Need*

The bill properly requires a showing of financial need as well as of scholastic promise. However, as it is drawn, it fails to take account of 3 situations which, while they may not be frequent, are important.

If a student does not have need when he first enrolls in college, he cannot thereafter receive a scholarship under this bill even though his need should become great, as, for example, if his father should die after the boy starts college.

Conversely, if a student shows financial need before he starts college, then even if he should have no need later on, the bill would require continuance of the scholarship for the full 4 years.

Lastly, in the most impecunious cases the student must often work for 2 or 3 years after high school before he can think of going to college even with a scholarship. Such a student cannot obtain a scholarship under the present bill.

It has also been pointed out that while the bill forbids a student from receiving a scholarship if he is receiving another one from the State, it does not prohibit double scholarships where the other one is a private scholarship. This may or may not be important, but in the absence of full facts it is difficult to resolve the question now. If the question of need is reviewed annually, the effect of the private scholarship can be taken into account in weighing need.

6. *The scholastic factor*

Assuming that financial need is shown, the bill would grant or deny scholarships solely on the basis of a single competitive examination. It would make no difference whether the applicant had been a good student or a poor student in high school, nor would his aptitude for college work be a permitted factor.

I am satisfied that the scholastic factor cannot be tested solely on the basis of a single competitive examination. Provision should be made to take account of other relevant factors, as well as to establish standards of relative weight to be given to the scholastic factor and the financial need factor.

In view of the need for the changes outlined above, a number of other changes can be made by way of clarification and accuracy of expression, and these are included with my major recommendations outlined above.

I accordingly return Senate Bill No. 2 for reconsideration and recommend it be amended as follows:

On page 1, title, lines 2, 3 and 4: delete "for use by qualified students in any accredited New Jersey institution of collegiate grade, and repealing section 18:16–33 of the Revised Statutes"

On page 1, section 2, line 1, after "All", insert "undergraduate", and after "except" insert: "scholarships under section 18:16–33 of the Revised Statutes, scholarships based on a major factor other than scholastic standing and financial need, and"

On page 1, section 2, line 2: After "awarded" insert: "and administered"

On page 1, section 2, line 3: Before "renewal" insert: "initial award,"

On page 1, section 2, line 4: After "scholarships" insert: "applied for or"

On page 1, section 3, line 1: After "Scholarship" insert: "Advisory", and after "Commission" insert: "in the Department of Education"

On page 1, section 3, line 6: Delete "non-tax-supported" and substitute "private"

On page 1, section 3, line 7: After "State" insert: "at which scholarships awarded under this act may be used, and which are conducted not for profit"

On page 2, section 3, line 14: At the end of section 3, add: "The Commission shall meet at the call of the chairman, or at the request of a majority of the commission, and shall gather information as to college attendance, college costs, scholarship programs and other financial aids to students, and other data relevant to the State competitive scholarship program, and shall advise the State Board of Education of its views from time to time with respect to such program. The State Department of Education shall furnish the Commission with such research and clerical assistance as may reasonably be required to fulfill its functions."

On page 2, section 4, line 3: After "for" insert: "an approved course of", and after "in" insert: "eligible"

On page 2, section 5, line 2: After "shall" delete the remainder of the line and all of lines 3 and 4 and substitute: "be determined by the number of qualified applicants and the amount of the appropriations made available for the purpose from time to time."

On page 2, section 7, line 5: Delete: "has been or"

On page 2, section 7, line 6: After "year" insert: ", or was so graduated within 3 years,"

On page 2, section 7, line 8: After "period" insert: ", or is an undergraduate enrolled in an approved course of undergraduate study in an eligible institution of higher education"

On page 2, section 7, lines 12 and 13: Delete "Scholarship Commission" and substitute: "Board of Education, which shall provide for the relative weight to be given to such need in relation to scholastic eligibility and other relevant factors"

On page 2, section 7, line 17: After "examination," insert: "aptitude, previous scholastic achievement and other relevant factors,"

On page 3, section 7, line 19: Delete "Scholarship Commission" and substitute "Board of Education"

On page 3, section 8, line 2: After "charged" insert: "him"; also, delete "a regular" and insert "the"

On page 3, section 8, line 3: Before "institution" insert: "eligible"

On page 3, section 8, line 4: Before "institution" in sert: "eligible"

On page 3, section 8, lines 8 and 9: Delete "chairman of the State Scholarship Commission" and substitute "Commissioner of Education"

On page 3, section 8, line 9: Delete "commission" and substitute: "State Board of Education"

On page 3, section 9: Delete the entire section and substitute the following:

"Each State competitive scholarship is to be awarded for the period of 1 academic year. It may be renewed annually after the initial award, without an additional competitive examination, until the holder has received a scholarship for a total of 4 academic years or until he has received a baccalaureate degree from an eligible institution, whichever occurs first. The scholarship may remain in effect only for a year in which the holder is regularly enrolled as a full-time student in such institution in a course of study leading to a baccalaureate degree, maintains academic progress meeting standards established by the State Board of Education, and continues to demonstrate financial need. The State Board of Education may provide by rules and regulations for the making of reports and statements by the scholarship holder and the institution he is attending as to enrollment, use or application of the award, academic progress, financial need, and other data needed to determine continued eligibility. Any portion of an annual award which is not used shall be refunded to the State Department of Education."

On page 3, section 10: Delete the entire section and substitute the following:

"An eligible institution is an institution of collegiate grade which offers a college curriculum leading to or accreditable toward a baccalaureate degree and which is accredited or approved by the State Department of Education. A State competitive scholarship may be used in any eligible institution except that of the total number of scholarships available for initial award in any year, not more than 1/6 of that number may be used in eligible institutions located outside the State."

On page 3, section 12, line 1: Delete "Scholarship Commission" and substitute "Commissioner of Education"

On page 3, section 12, line 2: After "examinations", delete "for" and substitute: "and for the determination of financial need and other factors governing the award and renewal of"

On page 3, section 12, line 3: After "examinations" insert "and other relevant factors", and at the end of the line, delete "commission" and insert "commissioner"

On page 3, section 12, line 5: At the end of section 5 add: "The commissioner shall also determine which holders of scholarships previously awarded are eligible for the renewal of such scholarships."

On page 3, section 13: Delete section 13 in its entirety.

On page 4, section 14, line 1: Delete "14" and substitute "13", and also delete "Scholarship Commission" and substitute "Board of Education"

On page 4, section 15, line 1: Delete "15" and substitute "14"

On page 4, section 15, lines 2 and 3: Delete the phrase "involved in the State scholarship program"

On page 4, section 15, line 3: Delete "such" and substitute "eligible"

On page 4, section 16, line 1: Delete section 16 in its entirety and substitute:

"15. Such part of the funds appropriated for the current fiscal year for State scholarships of the kind

provided for by this act as may be necessary may be applied to the expense of administering the provisions of this act."

On page 4, section 17, line 1: Delete "17" and substitute "16".

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

DOROTHY G. SMITH,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
July 27, 1959.

SENATE BILL No. 8

To the Senate:

I am returning herewith Senate Bill No. 8, without my approval, for the following reasons:

This bill would establish a public body to be known as the "New Jersey Higher Education Assistance Fund". The Fund would render financial aid and assistance to residents of the State who attend or plan to attend college. The Fund would also be authorized to enter into agreements with various financial institutions which would result in the furnishing of such aid and assistance.

Since this bill fails to assign the Fund to a principal department, it would appear to be in conflict with the provisions of Article V, Section IV, paragraph 1 of the Constitution. Even if the Fund were deemed to be a corporation, rather than a governmental instrumentality, the bill would be in apparent conflict with the provisions of Article IV, Section VII, paragraph 9 of the Constitution which require that corporate powers be conferred by general law.

Since I have already approved Assembly Bill No. 160 (Chapter 121, P. L. 1959) which deals with the same subject matter, I have not endeavored in this message to discuss the certain other shortcomings of this bill. I should like to direct the attention of the Legislature, however, to the fact

that it seems unwise and wasteful to have both a scholarship grant program and a loan program administered by two separate agencies. I recommend, therefore, that the enactment of a single comprehensive law under which both grants and loans for scholars would be administered by a single administrative office or instrumentality be given consideration so that an applicant may, by a single application and process, be considered for a grant, for loan, or where his financial need is great, for both.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
July 27, 1959.

SENATE BILL NO. 9

To the Senate:

I am returning herewith Senate Bill No. 9, without my approval, for the following reasons:

This bill would appropriate the sum of $50,000.00 to the Department of Education to inaugurate the development of the project to be carried out by the "New Jersey Higher Education Assistance Fund" which would have been created by Senate Bill No. 8. The bill further provides that it would remain inoperative until the enactment of Senate Bill No. 8.

I have today returned Senate Bill No. 8 for the reasons expressed in my statement attached thereto. This alone would necessitate the return of this bill. I should like to note additionally, however, that the Fund contemplated by Senate Bill No. 8 was not allocated to any principal department. The appropriation made by this bill, therefore, could not have been used by the Fund even if it were created since appropriations made to a department cannot be used for a wholly independent agency. *New Jersey Turnpike Authority v. Parsons,* 3 N. J. at 246-248 (1949).

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 29

To the Senate:

I return Senate Bill No. 29 herewith, without my approval, for the following reasons:

This bill would have amended Section 15 of Chapter 345, P. L. 1941. That section establishes the height at which highway signs are to be placed. The bill called for changes in the distances above the crown of the pavement for the location of signs. In dealing with the treatment of existing highway signs it provided that they should remain valid although not in conformance with the new heights, until December 31, 1960. This date was too short to allow a reasonable opportunity to the Highway Department to make the necessary measurements and determinations and to make changes in height where necessary.

A corrective bill making the necessary changes has been introduced as Senate Bill No. 212, passed by both houses and signed into law as Chapter 185 of P. L. 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 32

To the Senate:

I now return Senate Bill No. 32 without my approval for the following reasons:

This bill would supplement chapter 188 of the Laws of 1954, dealing with the allowance of sick leave in the public schools. It provides that whenever the school employee is on sick leave as the result of an injury caused by an accident

arising out of and in the course of employment, the leave is not to be charged to the annual or accumulated sick leave. It also permits payment of full salary or wages during such absence but not to exceed 1 year, less a credit for any workmen's compensation award for temporary disability.

The bill is defective for several reasons. The main ones are that it does not say what shall happen if the employer does not make the permissive salary payment, and it gives the employer only the choice of either paying full salary or none at all.

These and other defects are cured in a substitute bill, Assembly Bill No. 695, which has been passed and signed and is now Chapter 175 of the Laws of 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
April 27, 1959.

SENATE BILL No. 33

To the Senate:

I am returning herewith, without my approval, Senate Bill No. 33, for the following reasons:

This bill would amend N. J. S. 2A:3–17 which now fixes the salaries of the judges of the County Court in those counties having more than one judge, at $18,000.00. The amendment would strike out the dollar amount and substitute language to make the salary the same as that of a Superior Court judge.

The pattern of our judicial structure is such that I am satisfied that there should be a differential in the salaries as a judge progresses upward. The present differential is $2,000.00, and should be retained.

I have recommended this year an increase of $2,000.00 for all full-time judges, from county district court to Supreme Court. A bill for that purpose has passed the Assembly and awaits Senate action. I could not justify both that bill and this, as that would grant a $4,000.00 increase to some County Court judges, and $2,000.00 to all others.

Respectfully,

(signed) ROBERT B. MEYNER,
Governor.

Attest:

DOROTHY G. SMITH,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
March 9, 1959.

SENATE BILL No. 60

To the Senate:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I am returning herewith Senate Bill No. 60 with my objections for reconsideration.

Under existing law, the State Sanitary Code requires that trash and garbage be disposed of by the sanitary landfill method or by incinerators rather than by open dumping. Under the terms of chapter 38, P. L. 1958, municipalities were empowered to provide by ordinance for such disposition by March 31, 1959, such ordinance to prevail over the State Sanitary Code as to the time within which such methods are to be established.

The present bill would extend to June 30, 1960, the time limit which municipalities would be authorized to establish for that purpose.

The factual basis for the bill is that there are some municipalities, primarily in rural districts, where the population density is very low and where municipal collection and disposal are not yet provided. It is claimed that application of the Code at this time would work hardship on such municipalities because of the small population in relation to the cost of securing equipment.

In those instances where the concentration of population is low, I can appreciate that economic considerations may justify the proposed authority to extend the date. At the same time, there are other locations in highly populated areas where open dumping is extensive, often close to residential areas and sometimes across the boundary line in a contiguous municipality. In these cases further extension cannot be permitted since open dumping provides a breeding place for rats, insects and other vermin.

This factual conflict can only be resolved on an administrative basis so that the varying facts of each location can be taken into account.

I am accordingly returning herewith Senate Bill No. 60 for reconsideration and with the recommendation that it be amended as follows:

> On page 1, section 1, line 11, immediately following the word "prevail", insert the following: "; provided, however, that no such ordinance shall take effect until it shall have been submitted to and approved by the State Commissioner of Health, who shall, in each case, make his determination on the basis of the extent of the need to establish such methods in the particular area affected".

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

DOROTHY G. SMITH,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL NO. 67

To the Senate:

I herewith return Senate Bill No. 67 without my approval for the following reasons:

This bill purports to amend chapter 253 of the Laws of 1944 by modifying the pensions payable to the widows and children of local police and fire personnel.

Where the member had retired on pension without service disability and subsequently died, the present pension is ½ of average salary with a maximum of $1,000 per year. This bill would increase the pension in all cases (not merely the maximum) to a flat $1,200 per year, without regard to average salary.

Where the member died while in service (but not in the course of duty), or where he was retired on a non-service disability, the present pension is also ½ of average salary, with a maximum of $1,000 per year; the bill would increase this as well to a flat $1,200 without regard to annual salary.

In both these categories, if there are surviving children under 18 but no widow, the pension is divided equally, subject to the limits of $1,000 per year for all and $20 per month for each where there are two or more and $25 per month if there is only one. The bill would raise these limits to $1,200, $40 and $50, respectively.

The present pension of $1,500 which is payable when the member died on duty after June 1, 1948 is not changed, but every pension payable for a death before that date would be raised to $1,200.

The foregoing changes are set out in sections 1 and 2 of the bill, amending R. S. 43:16–3 and R. S. 43:16–4.

Section 3 provides that the cost of these increases is to be met ⅔ by payments from the State and ⅓ by payments from the municipalities.

The changes proposed by this bill are in substance the same as those proposed by Senate Bill No. 61 (1956). That bill was passed by both Houses but was not approved by me and did not become law. My reasons were set forth extensively in my statement of March 5, 1957.

The pension systems involved have a history going back to 1885. From that date to 1917, 26 different pension laws were passed, and in that year a Commission study noted that the systems lacked adequate reserves to meet costs. In 1920, a single law was passed to cover all these funds, but the recommendation to provide adequate reserves was not enacted, and the funds remained insolvent. In 1927, the State undertook to contribute half its annual revenue from certain insurance taxes to help stabilize the funds, but despite this, by 1931, the funds had a total deficit of $99.5 million.

By 1944, this situation had grown worse and legislation in that year prohibited acceptance of any new members by the old funds, and established a single new pension fund for police and fire personnel hired thereafter. This new fund was actuarially sound. The old funds were continued for their then members, and the State undertook to contribute $1. million per year, in addition to the tax revenue noted above, to help maintain them.

In spite of that assistance the aggregate deficit of the old funds, in the 20 year period from 1931 to 1951, more than doubled to a total of over $209. million.

Accordingly, in 1952, the old funds were overhauled and combined into a single fund, with salvage contributions to gradually make up the accumulated deficit over a 30 year period. These salvage contributions were to be paid, ⅔ by the municipalities and ⅓ by the State. Although it was then estimated that the State's share would be about $2.75 million per year for 30 years, the actual need turned out to be $3.5 million the first year, and reached nearly $4.4 million in the current fiscal year.

All of the above background is set out in full detail in my statement of March 5, 1957, on Senate Bill No. 61 (1956), to which reference is made. The only substantial difference between that bill and Senate Bill No. 67 is that the present bill would have the extra cost divided as between the State and the municipalities, while the 1956 bill imposed the entire cost on the State.

The extra cost of these increases would amount to about $22,000,000 if the contributions are made between now and July 1, 1983, when the 1920 fund is to be covered by full actuarial reserves. Of this, $14,700,000 would have to be paid by the State and $7,300,000 by the municipalities. Additional State appropriations would have to be about $568,000 per year above the present level, which is already more than 75% higher than was originally expected.

If the extra cost were met annually, without full reserves by July 1, 1983, it would require payments of at least $665,700 (⅔ of it paid by the State) in the first year, and increasing thereafter for some time. Payments would accrue beyond the year 2000 A. D.

The employees involved were not State employees, but local employees. They were members of funds that despite

the warnings of the study commissions noted above, were unwilling to face the facts and make the contribution rates needed for a sound pension system. When, in 1952, these funds were in the red to the tune of over $200,000,000, the program to salvage them was adopted, at substantial cost to the State. That settlement closed the matter so far as the State was concerned. If the municipalities feel they should liberalize benefits to the members of the closed 1920 fund for their own employees, and are willing to bear the cost that might be another matter. I cannot, however, approve a bill which would still further increase the burden upon the State beyond that which it assumed when the fund was salvaged.

The proposal of the bill has other defects. The group involved cannot, in fairness, be treated separately. Whatever considerations might justify the increases now proposed will doubtless apply with equal reason to other groups not included, and if this bill were to become law, they would quite properly request equal treatment. The older history of pension legislation shows that the piecemeal approach, treating separate small groups separately, is fraught with danger and financial risk. Deficit by small doses should be studiously avoided, for it is a cumulative poison.

The method to use is that employed for the 1958 Inadequate Pension Bill, by which all groups similarly situated were given equal treatment, keyed to the factors bearing a reasonable relation to the desired object.

Lastly, it should be noted that the title of the bill is somewhat inaccurate. It purports to amend and supplement the 1944 act, while in fact it amends R. S. 43:16–3 and R. S. 43:16–4, and supplements Title 43 of the Revised Statutes.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL NO. 92

To the Senate:

I return Senate Bill No. 92 herewith, without my approval, for the following reasons:

This is one of a group of bills prepared by the New Jersey State League of Municipalities as the result of review by its committees, for the commendable purpose of clearing up statutory defects which are encountered by election clerks. The particular problem which this bill attempts to deal with arises from the question considered in *Johnson v. Reichenstein,* 50 N. J. Super. 116 (App. 1958). In that case the question faced was whether the statute governing the nomination of candidates for municipal office, in fixing the number of "legally qualified voters" whose signatures are required, intended that the persons signing be in fact registered to vote in addition to having the constitutional qualifications entitling them to vote. Although the particular point raised in that case is now settled by the court decision, it was evidently felt there should be an attempt to pick up other terms than "legally qualified voter" and to express a statutory purpose that all such terms are intended to require that the person be in fact registered.

Unfortunately the subject bill does not accomplish the desired purpose. The mechanism chosen is the addition of a definition in the very first section of the election law, R. S. 19:1–1. The proposed definition states that each of 4 specified terms, namely, "legally qualified voter", "duly qualified voter", "duly qualified registered voter" or "qualified voter" is to mean a person who not only has the qualifications fixed by the statutes and Constitution but who also is in fact registered. However, the definition fails to deal with a number of other terms which are in fact used in Title 19 such as, "duly qualified elector", "qualified elector", "elector", "legal voter", and so on. At the same time it is by no means certain that a complete list has been compiled of all the places where the defined terms are used in Title 19 and that they are in all instances used in a context in which it is intended that actual registration be required.

It would be better to locate all the sections of the election law as well as of the Optional Municipal Charter Law where this problem is dealt with and to amend those sections to use a single term to express the desired idea. Short of this method, the only other safe mechanism would be a separate supplemental section declaring that in all cases where a nominating petition or a referendum is dealt with by statute, the persons signing the same must be persons who are in fact registered as well as satisfying other constitutional and statutory requirements.

The difficulties outlined above have been discussed with the New Jersey State League of Municipalities and that organization will undertake to prepare suitable legislation along the lines indicated in place of the present bill.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 93

To the Senate:

I return Senate Bill No. 93 herewith, without my approval, for the following reasons:

This bill would amend R. S. 19:7–4 by adding a provision limiting each party, candidate or public question to a single challenger at any one time for each polling place, unless the district board permits more than one.

R. S. 19:7–1 now provides for the appointment by each party of 2 challengers for each election district. R. S. 19:7–2 provides that each candidate may himself serve as a challenger and may also appoint 2 challengers for each election district. The same section also permits the county board, on the application of the proponents or opponents of a public question, to appoint 2 challengers each to represent the proponents or opponents in each election district.

The practical object sought by Senate Bill No. 93 is to control the total number of challengers who may be present in the polling place at the same time, having in mind, no doubt, that the presence of a large number of challengers in small polling places may unreasonably discourage voting by citizens who mistakenly suppose that they will have a long wait before voting.

I see no objection to the purpose, but am satisfied that it would be better achieved by a more carefully drawn provision, enacted as a separate section supplementing chapter 7 of Title 19 of the Revised Statutes.

As a result of conferences with experts in election procedures and representatives of the New Jersey State League of Municipalities, a suitable draft has been prepared and was reported and passed by the General Assembly as Assembly Committee Substitute for Assembly Bill No. 463. While the Senate did not act on that bill, I believe that its improved text will meet with legislative approval in the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 96

To the Senate:

I return Senate Bill No. 96 herewith, without my approval, for the following reasons:

The bill would amend section 1–10 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210). That section deals with publication and delivery of the report of the charter commission to the municipality.

The present statute gives rise to two problems:

(a) in some cases the charter commission has failed to file with the municipal clerk any document that could be

regarded as the official copy of the report, which the clerk should have for official record purposes; this phase has been especially troublesome when there was a minority report;

(b) there have been problems about publication or the supplying of copies.

My objections to the present bill, which attempts to make clarifying amendments, are that it still leaves uncertain questions, as by giving no indication of what is meant by "publish", by failing to deal with minority reports, and by containing an awkward provision that the municipal clerk is to deliver a copy of the report "to the governing body" as well as to its members. Delivery "to the governing body" usually means delivery to the municipal clerk himself.

Following discussions with experts in the subject, changes to the bill to eliminate these defects have been prepared.

These changes are embodied in Assembly Bill No. 466 (Aca), as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 97

To the Senate:

I return Senate Bill No. 97 herewith, without my approval, for the following reasons:

This bill would amend section 5–6 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210). That section now provides that vacancies in any elective office are to be filled for the unexpired term at the next general election which is

not less than 60 days after the vacancy occurs; with authority in the council to fill temporarily the vacancy until such election.

The proposed amendment would allow filling of the vacancy by appointment only when it occurs in the third year of the term and less than 60 days before the general election. The object is to avoid what would in most cases be an election for a very short period.

The purpose seems entirely desirable, but my objection is that the proposed language to accomplish it is not entirely clear.

After conferences on the subject, a redraft has been prepared. In reviewing these changes, it will be observed that since Article II, paragraph 1 of the Constitution fixes the day for general elections as "the first Tuesday after the first Monday in November", the day which is 60 days before it will always be the ninth Friday before general election day, and the latter form is preferable as it makes the computation of the date and its expression much simpler.

These changes are embodied in Assembly Bill No. 467 (Aca), as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT;
January 12, 1960.

SENATE BILL No. 98

To the Senate:

I return Senate Bill No. 98 herewith, without my approval, for the following reasons:

This bill would supplement Article 17 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210) by adding

a section requiring that candidates for elective office in cities of the first class be residents thereof for at least 2 years, and, in the case of ward officers, that they be residents of the ward for at least 8 months.

My objection is that the language of the bill does not clearly express this intention, thus creating a risk that further corrective legislation would be needed.

These changes are embodied in Assembly Committee Substitute for Assembly No. 468, as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 99

To the Senate:

I return Senate Bill No. 99 herewith, without my approval, for the following reasons:

This bill would amend section 17–4 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210). That section now prescribes the form of certificate to be used on nominating petitions, and uses the terms "legally qualified voters" and "qualified elector". The amendment would change these terms in two places to read "duly qualified registered voter", supposedly to conform the statute to the decision in *Johnson v. Reichenstein,* 50 N. J. Super. 116 (App. 1958), which held that persons who were qualified to vote and who were in fact registered, were contemplated by this section.

My message in connection with Senate Bill No. 92 (1959) will explain why the presently offered amendments should not be made; in addition there is a further objection in that

the term "qualified elector" is left unchanged in line 20 of section 1 of the bill.

I do not believe any disadvantage would flow from leaving the section as it stands, without change, since its meaning is now settled by the above decision. If, however, the Legislature feels the text should be conformed to the opinion, I believe the object would be better served by the use of a clearer phrase.

These changes are embodied in Assembly Bill No. 469 (Aca), as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL NO. 100

To the Senate:

I return Senate Bill No. 100 herewith, without my approval, for the following reasons:

This bill would amend section 17–5 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210), dealing with examination of, rejection and correction of defects in nominating petitions.

The object of the amendment is to insure that the Clerk keeps the original petition, while providing to the candidate a method for correcting defects. Some clerks have had the experience of finding petitions which were returned to the candidate for correction come back with the clerk's notations crossed out and others written in, making it difficult to conduct an orderly examination of the papers.

The object is a worthy one, but my objection is that the language of the bill leaves open a number of important questions. These have been reviewed at conferences with persons who have worked with the present law, and corrections have been prepared.

These changes are embodied in Assembly Bill No. 470 (Aca), as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 102

To the Senate:

I return Senate Bill No. 102 herewith, without my approval, for the following reasons:

This bill would amend section 17–11 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210), dealing with the method of determining the existence of a majority vote and the need for a runoff election. The change incorporates the so-called "Reichenstein formula", which was rejected by the Supreme Court in *Trugman v. Reichenstein,* 27 N. J. 280 (1958).

The problem arises when more than a single office of a given kind is to be filled, and the voter is instructed to vote for 2, 3, 4 or 5 persons from among the candidates. Under the "Reichenstein formula" incorporated in the bill, the votes cast for each candidate for the office are added together and the total is divided by the number of offices to be filled. The resulting quotient is assumed to represent the number of voters who voted for 1 or more of the candidates, and one-half of that quotient, plus one, is taken as the measure of a majority of the persons voting. The

Supreme Court pointed out that since some voters may vote for fewer than the number of officers to be elected, the computed majority under the formula would tend to be less than the actual figure, and also that the language of the present statute calls for "a majority of the votes cast in the (municipal) election", meaning the number of voters who actually voted at the polls for any office.

The amusing circumstance is that the determination of a majority presents a problem only when modern voting machines are used; it is a simple matter with paper ballots. The reason for this is that voting machines are not ordinarily supplied with a counter to tally the number of voters who cast one or more votes within a bracket for which more than one office is to be filled. If this number were shown on the machine, one-half plus one would provide the desired number indicating a majority.

I have accordingly caused inquiry to be made to determine whether such counters can be added to present voting machines. The manufacturer reports that a single such counter can be installed in a way capable of being hooked up with any part of the ballot space and with any number of spaces. The cost would be low compared to the cost of a single runoff election.

For these reasons, I think the present form of the bill is open to objection first, because it does not amend the key phrase "majority of the votes cast in the election"; second, because it requires an artificial formula when none is needed as in the case of paper ballots or voting machines equipped with a separate counter.

These changes are embodied in Assembly Bill No. 472 (Aca), as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 103

To the Senate:

I return Senate Bill No. 103 herewith, without my approval, for the following reasons:

This bill would amend section 17–12 of the "Optional Municipal Charter Law" (P. L. 1950, c. 210). That section deals with a runoff election when the required majority is not received in the regular election. The amendment attempts to deal with the problem, which has in fact arisen, when a person who is still a candidate for runoff dies between the dates of the regular and runoff elections. See *McCarthy v. Reichenstein,* 50 N. J. Super. 501 (App. 1958).

My objection is that the language of the amendment is suitable only for the case where the candidate who dies is the lowest in number of votes among those included in the runoff. Thus, where two candidates are in a runoff, if the one highest in votes should die, the second candidate would be the only candidate. Appropriate changes are needed.

These changes are embodied in Assembly Bill No. 473 (Aca), as passed by the Assembly on November 16, 1959. While the Senate took no action at its subsequent meeting, I believe the corrected bill will be enacted at the coming session.

Respectfully,

ROBERT B. MEYNER,
Governor.

[SEAL]
Attest:

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 23, 1959.

SENATE BILL No. 138

To the Senate:

I return Senate Bill No. 138 herewith without my approval for the following reasons:

This bill would supplement chapter 56 of Title 2A of the New Jersey Statutes (the Partition Act). It would author-

ize a judicial proceeding, in the nature of an action for partition, in which the court could order the sale of lands held in divided ownership as between the ores, mines and minerals below the surface and the remainder of the lands.

Such divided ownership is not a tenancy in common or a joint tenancy or an estate in coparcenary, else partition could be had under present statutes. On the contrary, the exact relationship may be one of a large and varied number of contractual arrangements: there may be a license to take minerals, this being an incorporeal right, *The East Jersey Iron Co. v. Wright,* 32 N. J. Eq. 248 (Ch. 1880); or a lease or a conveyance, with or without provision for forfeiture or reverter in case of failure to remove the minerals in a specified time, *Suffern & Galloway v. Butler,* 19 N. J. Eq. 202 (Ch. 1868), aff'd., 21 N. J. Eq. 410 (E. & A. 1869).

Assuming an actual conveyance of the minerals in place, which is probably the case intended here, the severance of the estates in the soil and in the minerals can be as thorough and complete as the division of a tract into smaller lots and their conveyance into separate ownership. The only difference is that in the case of minerals the division is horizontal instead of vertical.

In proceedings for partition, an order for sale is not made unless physical partition cannot reasonably be made. In the situation dealt with by this bill either the parties or their predecessors in interest have agreed upon a physical partition upon whatever terms are set out in the underlying deeds or other instruments, so that the question whether a sale should be ordered is not reached. Further, the present owner of the soil more likely than not acquired his title "subject to" and not "in common with" the separate interest of the owner of the minerals. In such case there would be no justification for a proceeding to compel the owner of the minerals to sell his property, along with that of the owner of the soil, and divide the proceeds. It is not uncommon for the ownership of the minerals to be acquired by conveyance and thus owned in fee, "absolutely and forever". The owner, absent a covenant or condition in the deed, is under no obligation to exercise actual possession, or to extract the minerals or to maintain works. Indeed, such conveyances are often made to assure the grantee of reserves which he may not need to work for many years. To impose such condition by statute with respect to existing ownership would at the very least be most inequitable if not in viola-

tion of our constitutional restriction against the impairment of contracts (1947 Constitution, Art. IV, Sec. VII, par. 3) and against deprivation of property without due process of law (U. S. Constitution, Amendment XIV).

For those instances where the owner of the minerals has disappeared, or has in fact abandoned his property (to be distinguished from abandonment of the works on the property), existing law dealing with adverse possession, actions to quiet title, and the like, are more than adequate.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 23, 1959.

SENATE BILL No. 152

To the Senate:

I return Senate Bill No. 152 herewith without my approval for the following reasons:

This bill would supplement chapter 62 of Title 40 of the Revised Statutes by authorizing municipalities served by a privately owned sewer utility to construct sewer mains, manholes and other incidental sewer construction and then to lease them to the private company. The cost of building the sewers would be charged against the real property benefited, and the proceeds received from the lease "may" be divided pro rata and paid to those owners of assessed property as are users of the private sewer.

The bill expressly provides that the terms of the lease are to be negotiated between the municipality and the privately owned company, without fixing any standards or limits. Nor is there provision for submission of the lease for approval to an appropriate agency. In addition, a mere resolution is required to authorize the lease, and this is not required to be published as is an ordinance. Further, the

bill expressly provides that no authorization by the legal voters shall be required.

The arrangement is clearly unsound and unwise. In substance, it uses the power of the municipality to assess for improvements as a method to finance construction costs for a privately owned company. This means that the local property owners would be compelled to put up the money without even having the protection and benefits usually accorded to those who make voluntary investments.

The complete lack of control or of supervisory power over the negotiated lease terms cannot be justified, nor can the provision that lease proceeds be divided up among "users", when the money would be raised from those lands "benefited". As is well known, land is benefited by an improvement even though the owner may make no use of the improvement, as, where the land is vacant. The financial benefits of this arrangement could flow to the stockholders of the privately owned company, rather than to the residents and taxpayers of the municipality. I am informed that in the particular situation for which this bill is said to be intended, the assessment might run as high as $8,000.00 per family.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 23, 1959.

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL No. 160

To the Senate:

I return Senate Bill No. 160 herewith without my approval, for the following reasons:

This bill would supplement Chapter 46 of Title 40 of the Revised Statutes by authorizing the governing body of a municipality, by resolution (which is not required to be published), to grant tenure of office to any person holding

the office of "Luxury Tax Administrator" after 10 continuous years in office, even though he was appointed for a fixed term.

I am informed that no such office with the title "Luxury Tax Administrator" is actually created by statute; nor is it entirely clear whether the word "luxury" refers to the tax or to the administrator. In any event, all that the municipal retail sales tax law says is that "Such ordinance shall provide for the collection of the tax by an officer of such municipality who shall be designated in the ordinance; * * * " (P. L. 1947, ch. 71, N. J. S. A. 40:48–8.19).

It appears that there is only one such official in the entire State. This is typical of the kind of legislation that is passed all too often, for the benefit of but one person or but one place.

If there be any merit to the proposal to give tenure to the Luxury Tax Administrator, we have suitable laws for that purpose already. Under P. L. 1947, chapter 350 (N. J. S. A. 40:46–6.14 ff), tenure may be granted to municipal tax collectors by referendum approved by the voters. In addition, under the "Optional Municipal Key Positions Law", P. L. 1950, chapter 211 (N. J. S. A. 40:46–39 ff), a method is established for determining the qualifications to be imposed as a condition to acquiring tenure. Senate Bill No. 160 contains no equivalent safeguards.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 23, 1959.

SENATE BILL No. 183

To the Senate:

I return Senate Bill No. 183 herewith without my approval, for the following reasons:

This bill would supplement the Public Employees' Retirement-Social Security Integration Act (ch. 84, P. L.

1954), by allowing any public employee member of the system who was born prior to January 1, 1889 to elect to make social security contributions retroactively from January 1, 1956, in addition to the regular contributions, and to waive the death benefits provided by section 41 (c) (2) of the act. Upon such election, which is to be within 6 months, the member is to be entitled to receive pension benefits without offset for social security payments.

The bill does not say whether the person electing is required to be still in employment at the time of election, or whether he may be a retired member. The implication is that he could be a retired member because the specified date of birth would mean that the member is over 70 years of age now.

Nor does the bill clearly say whether the making of payments without offset is to be retroactive to January 1, 1956, although it does say that the election and waiver are to be effective as of then, and social security contributions are to be made from that time.

Supposedly, the waiver of death benefits and payment of social security contributions are offered in the expectation that they will balance out the extra amount which elimination of the offset would cost the fund. This theory does not hold.

Systems such as that now under discussion depend wholly for their soundness upon the averaging out of the contributions and benefits of a large number of individuals who compose the group. This underlies all forms of insurance. The system is inevitably disrupted when attempts are made to go back and rearrange the relationship of some individuals in the group retroactively on a basis different than that of other individuals. The value of each member's rights at retirement are actuarially computed under the present law. If more is to be paid than was so computed, someone has to pay it. If the member himself pays the difference, he gains nothing and there is no point to the option. If he pays less than the difference then, since existing rights of other members should not be reduced in order to pay his increase, it would fall to the taxpayer to do so.

Further, I am unable to discover any basis for selecting the birth date of January 1, 1889. If the option proposed is to be made available to members born before that date, why

should it not be made available to those born after? In the absence of any rational basis for the classification, the bill is a special law increasing the emoluments of public employees in violation of Article IV, Section VII, par. 9 (5) of the Constitution.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 23, 1959.

SENATE BILL No. 199

To the Senate:

I return Senate Bill No. 199 herewith without my approval for the following reasons:

This bill would amend P. L. 1958, c. 36, which was intended to permit municipalities which border upon the Atlantic Ocean and which maintain a municipal convention hall, to improve the convention hall by enlarging or renovating it, and to incur indebtedness not exceeding $2,000,000.00 for that purpose.

The present law would authorize notes to be issued for such purpose with the limitation that at least 25% of the maximum indebtedness was to be included in the current municipal budget and at least 25% in each of the budgets of the 3 fiscal years next ensuing.

The supposed object of the proposed amendments is to permit the first repayment to be included in the first year succeeding the issuance of notes rather than in the budget for the year of issuance. For this purpose, the amendment would require the first 25% to be included in the municipal budget in the first ensuing year after the total amount is borrowed and at least 25% in each of the budgets of the three fiscal years.

The language of the amendment seems to raise more problems than it solves. It should be noted that the authorization is to incur an indebtedness of not more than $2,000,000.00, and to finance the cost of the improvement by the issuance of notes. This provision, taken in conjunction with the language dealing with the notes, is not inconsistent with a legislative intention that out of the total indebtedness (which can refer to the contract or contracts for the work), at least 25% is to be discharged in the first year, by way of a down payment, leaving up to 75% of the total indebtedness to be financed by notes and satisfied during the next three years. Taken in this sense, there is no inconsistency in the present statute.

Beyond that, however, the phrasing of the amendment would impose no requirement for the budgeting of any payments unless the maximum amount had been borrowed. There are other ambiguous questions left in this technical field of municipal obligations:

1. It is not clear whether the borrowing authorization was intended to be an additional floating debt limitation or whether it would be exhausted once this act had been utilized.

2. The law does not specify whether the bonds issued thereunder may be sold at public or private sale.

3. There is no provision with respect to the levy of an appropriate tax to pay off the notes.

These difficulties preclude my approval of the bill. If the exact nature of the problem were more precisely defined, there should be no great difficulty in preparing a suitable bill without these defects.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT.

SENATE BILL NO. 211

STATEMENT

I am filing Senate Bill No. 211 in the State Library without my approval.

This bill was delivered to me less than 10 days before the adjournment sine die of the Legislature on January 12, 1960. Under Article V, Section I, paragraph 14(b) of the Constitution, such a bill does not become a law if not signed within the 45 day period, Sundays excepted, following the adjournment sine die. I deem it in the public interest to state my reasons for deciding not to sign the bill.

This bill would amend N. J. S. 3A:10–2, which deals with the computation of the commissions allowable to fiduciaries upon the settlement of their accounts. The amendment consists of a sentence, inserted at the end of the section, stating that the value of corpus for the purpose of computing commissions "shall be" the true and reasonable value as of the date of the close of the intermediate or final account. The stated value is to be determined by the court.

It is said that the problem which this amendment would resolve arises in cases where a fiduciary is to be replaced due to death, incapacity or resignation, and the allowance is computed upon the original value of corpus as inventoried, without regard to substantial appreciation of value during the period of his stewardship. The result, it is contended, is to under-compensate the original fiduciary and over-compensate the successor, since the latter would have his commissions computed on the basis of values at the termination of the trust. It is also maintained that while the courts in some counties will give recognition to the appreciation of market values, courts in other counties claim they lack the power to do so. Thus, the object is that uniformity be provided by amendment to the statute.

Very few of these matters are to be found among the reported court decisions, and there is no feasible way of attempting to ascertain with certainty whether the practice does in fact vary from one county to another.

Certain points must be noted in order to understand fully the present state of the law, the exact nature of the problem, and the effect which the proposed amendment would have.

The section to be amended, N. J. S. 3A:10–2, must be read together with the preceding one, N. J. S. 3A:10–1. That section directs that the allowance of commissions on corpus in excess of $100,000 is to be made with reference to the "actual pains, trouble and risk in settling the estate, rather than in respect to the quantum of the estate." This gives meaning to the provisions of N. J. S. 3A:10–2 which establishes the maximum limits, in terms of a percentage, which may be allowed.

Further, compensation of a fiduciary is made in two ways: first, by the allowance of commissions on income at the rate of 6% (without court allowance), and second, by the allowance of commissions on corpus.

In cases where there is no change of fiduciary no particular problems seem to exist, although there are suggestions of a Federal tax disadvantage in some instances. In all cases, that part of the compensation which is paid as commissions on income involves no problems requiring correction. As to corpus, the checking of allowances against a maximum computed on inventory value for intermediate accounts, and on market value on final account, merely means that if there is an appreciation of value, the determination of ultimate maximums is postponed until the final accounting.

Where there is a substitution of fiduciaries, however, the point made is that in long periods of inflation the outgoing fiduciary may be unfairly prejudiced unless his corpus commissions are determined on the basis of current market value.

If this be true in some cases, the proposed language does not adequately meet the problem for a variety of reasons, and concern has been expressed that it would create new and unrelated problems.

First of all, the few reported decisions support the proposition that the court may (not "shall") give effect to current maket value in fixing corpus commissions on intermediate accounts. In re *Cox,* 21 N. J. Super. 287 (Ch. 1952); In re *McMillin,* 120 N. J. Eq. 432 (Ch. 1936). Thus, in the *Cox* case, assets with an inventory value of $228,702 had appreciated in value to over $1,400,000 when the account was drawn—more than six times. The opinion rightly observes that while an increase in value is a proper element in fixing commissions, it is not especially persuasive when

the increase results mainly from market increases without any appreciable achievement by the fiduciary.

The amendment consequently appears to be unnecessary for the stated purpose since it is evidently the law now that current value may be looked to by the court in order that fair compensation may be made on intermediate accounts.

On final accountings, of course, the rule is well established that the maximums are to be calculated on the basis of inventory or market value, whichever is higher. *Appleby v. Appleby,* 140 N. J. Eq. 8 (Ch. 1947), *aff'd.,* 140 N. J. Eq. 404 (E. & A. 1947).

I am satisfied that in a proper case, such as where a fiduciary is being replaced with another, the court presently possesses full power to look to current values in fixing what will be the final allowance for compensating the outgoing fiduciary. The extent to which it will be so persuaded will naturally depend upon the many variables which must be weighed in each case. This, however, is more compatible with the object of achieving justice to the outgoing fiduciary, the incoming fiduciary, the income beneficiaries and the remaindermen. All these interests must be nicely balanced, and I doubt that the proposed amendment, being mandatory, would allow the essential breadth of discretion. Allowances are not disturbed unless the commission allowed was "grossly inadequate". See *The National State Bank v. Nadeau,* 57 N. J. Super. 53 (App. 1959).

If any attempt to improve this statute (last amended by P. L. 1957, ch. 80) is to be made, it should be preceded by a thorough analysis of all its aspects. New Jersey has a substantial body of extremely capable lawyers who are thoroughly skilled in the intricacies of trust and estate law. Our State and County bar associations have capable committees on probate, trust and estate matters. A full survey of the subject by these groups should precede any amendment of the kind proposed here.

Comments received from a number of such individuals point up the variety of the aspects to be considered. Thus, one comment notes that mandatory use of market values would unduly prejudice the fiduciary holding assets which have declined in value (as bonds often do when common stocks are on the rise), and that the expense of revaluation of unlisted securities, real estate, mineral interests, and the like, can be prohibitively high. Another observes that

the amendment would fail to allow for corpus assets which have been distributed before the date of the account—a common circumstance in the case of executors, administrators and guardians.

One suggestion is that corpus values should be taken as the highest market value of each asset during the entire period of administration. Another is that valuations be based upon original inventory values plus any net increase in market value (excess of aggregate increases over aggregate declines). A further thought offered is that the present statute be retained for executors and administrators and a new section drawn for trustees and guardians, designed to permit the taking of annual corpus commissions, with appropriate safeguards.

Obviously, very careful study and reflection will be needed. No matter what formula is devised, there will always be cases where full allowances on a $500,000 estate will inadequately compensate the fiduciary for his actual "pains, trouble and risk," while a low rate of 2%, or 3% on a $5,000,000 estate may be a generous allowance.

The point to be kept in mind is that the true index should always be the extent of the "pains, trouble and risk"—a quantum meruit approach that is most likely to be fair to all interests—and to find ways by which the necessary statutory maximums will not unduly result in undercompensation for some or over-recognition of mere paper profiits for others.

ROBERT B. MEYNER,
Governor.

Dated: March 4, 1960.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
July 27, 1959.

SENATE BILL No. 215

To the Senate:

I am returning herewith Senate Bill No. 215, without my approval, for the following reasons:

Senate Bill No. 215 purports to amend chapter 196, P. L. 1954, by adding thereto the following language:

> "and whenever any of the public holidays, except Saturdays, enumerated in section 36:1–1 of the Revised Statutes can and shall fall on a Saturday, the Friday next preceding shall be deemed a public holiday."

This new language is much broader than the provisions of the present act which operate only upon public offices of the State, counties and municipalities, and which serve only to treat Saturday as a holiday in those public offices. The existing law does not extend to any other area beyond public offices. The amendatory language, however, is a wholly independent sentence joined by a connective "and" and is not so limited. It declares that whenever any holiday listed in Section 36:1–1 of the Revised Statutes, other than Saturday, can and shall fall on a Saturday "the Friday next preceding shall be deemed a public holiday." This language is so broad that it would make such Fridays a public holiday for our financial and banking institutions as well as public offices. It would also result in the closing of the courts. I doubt that such an extensive curtailment of public and private activity was intended by this bill.

A number of municipalities have indicated that a bill of this nature would be highly undesirable from the standpoint of normal operations. Municipal offices must be kept open to serve the public and the public already has difficulty getting to public offices under existing schedules.

Moreover there is a cost factor in declaring such Fridays to be public holidays. The payroll costs per day for the State approximate $400,000.00. I have been informed that it would cost the State at least $110,000.00 for each such Friday to provide essential services in the Department of Institutions and Agencies alone. The counties and municipalities no doubt would have comparable cost increases.

Finally, I should like to point out that this bill suffers from a technical defect which makes approval impossible. Senate Bill No. 215 purports to amend chapter 196, P. L. 1954, but the wording of the title of the bill and its body are not those of the 1954 act. The title referred to in Senate Bill No. 215 is that of P. L. 1946, c. 129, which created this provision. The section which Senate Bill No. 215 would amend is not that of the 1954 act but that of P. L. 1955, c. 196.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 228

To the Senate:

I return Senate Bill No. 228 herewith, without my approval, for the following reasons:

This bill would have supplemented Chapter 47 of Title 40 of the Revised Statutes by authorizing the governing body of a municipality to validate the appointment of persons in the police or paid fire department under certain circumstances where the original appointment was defective because the appointee had not attained the age of 21 years at the time.

The bill was defective in that it was prospective in a form that would have unwisely provided a basis for disregarding the minimum age requirements. In addition, the provision as to the disposition of pension rights and the like upon ratification were broader than necessary to meet the needs of the case.

A corrective bill making the necessary changes has been introduced as Assembly Bill No. 716, passed by both houses and signed into law as Chapter 188 of P. L. 1959.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 12, 1960.

SENATE BILL No. 257

To the Senate:

I return Senate Bill No. 257 herewith, without my approval, for the following reasons:

This was an independent bill with no reference to existing law. It provided that any person with 10 years or more of experience with a beach patrol unit or as a lifeguard at a

public beach should be eligible for appointment by a municipality to a beach patrol or as a lifeguard for a public beach notwithstanding the fact that the appointee is under contract with a board of education to render services as a teacher or otherwise.

The need for this bill is obscure. Inquiry has determined only that in a few instances, municipal officials have been of the impression that the municipality could not hire as lifeguards persons who were at the time employed as teachers on some theory of dual employment.

The problem does not appear to be a real problem. Persons employed by boards of education do not appear to be municipal employees. In *Merrey v. Board of Education, etc.*, 100 N. J. L. 273 (S. Ct. 1924) it was held that a school district board is a corporate entity separate and distinct from the municipal corporate entity. The court pointed to a number of statutory provisions contained in Chapter 1, Laws of 1903, Second Special Session. Similar provisions are now found in R. S. 18:5–1.1, 18:6–21, 18:6–23 and 18:6–24.

There does not appear to be any law prohibiting school teachers from undertaking any other kind of employment during periods of time when they are not required to be rendering services at the school or otherwise for the school district. Thus it is common knowledge that many teachers hold part-time jobs in the evenings or on week-ends, holidays or during school vacations of either short or long duration. Whether that additional employment be with a private employer, or in self-employment, or with a municipal corporation is obviously immaterial. There appears to be no reason why a person who is a school teacher should not, on Saturdays and Sundays, be employed as a lifeguard at a public beach or at private swimming facilities or be employed at any other occupation so long as he performs the services for which he is employed by the school district.

Respectfully,

[SEAL] ROBERT B. MEYNER,
Attest: *Governor.*

H. CURTIS MEANOR,
Acting Secretary to the Governor.

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