

VETOES

Annapolis, Maryland 21401

Re: Senate Bill 460

Dear Governor Schaefer:

This is to advise you that we have reviewed for constitutionality and legal sufficiency Senate Bill 460, a bill establishing procedures for the regulation and approval of capital leases. In our view, the bill contains legislative veto provisions of doubtful validity that might not be severable from the bill in its entirety.

Senate Bill 460 amends the State Finance and Procurement Article to regulate the making of capital leases. Such leases would ordinarily be limited to newly constructed facilities and are an alternative to the conventional capital construction process. See page 4, lines 9 and 10 and page 5, lines 6 and 7. These leases would be subject to preliminary as well as final approval by the Budget Committees of the General Assembly before being submitted to the Board of Public Works. See page 5, lines 23-26 and page 6, lines 25-29.

As we have noted on a number of occasions in the past, since the U.S. Supreme Court's decision invalidating legislative veto in INS v. Chadha, 462 U.S. 919 (1983), there appears to be scant legal support remaining for the constitutionality of such measures. See e.g., Bill Review Letter on H.B. 1516, dated May 8, 1987. Because Chadha involved an interpretation of federal rather than Maryland constitutional requirements, because we have not formally overruled our prior opinion on legislative vetoes, 63 Opinions of the Attorney General 125 (1978), and because the legislative veto provisions we have examined were in most cases severable from the remainder of the legislation, we have not ordinarily urged the unconstitutionality of bills containing such questionable provisions. In this particular case, we note that the legislative veto provision might not be severable from the remainder of Senate Bill 460.

For all these reasons, it is our view that Senate Bill 460 contains legislative veto provisions of doubtful constitutionality that might not be severable from the bill in its entirety.

Very truly yours,
J. Joseph Curran, Jr.
Attorney General

Senate Bill No. 460