APPENDIX D

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June 9, 1993

Mr. Phillip T. Frangos
Deputy Secretary of State
Michigan Department of State
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Lansing, Michigan 48918

Dear Mr. Frangos:

You have asked if the Department of State may assign a public act number to Senate Bill No. 537. As you know, the Senate, on May 18, 1993, voted to recall from the Governor and then to vacate the enrollment of Senate Bill No. 537. The House did not join in either action.

The Michigan Supreme Court has considered whether and how bills passed by both houses of the Legislature and presented to the Governor for his consideration can be recalled from the Governor. In Anderson v Atwood, 273 Mich 316; 262 NW 922 (1935), the Supreme Court termed the following statement of law "a well settled rule":

> "In the absence of a constitutional restriction the legislature may, by concurrent action of both houses, recall a bill which has been presented to the governor; but such recall will not have the effect of making the bill operative as a law, or affect the validity of the measure as finally passed and approved by the executive. The recall is effective if a bill is willingly returned upon request supported by the concurrent action of the two houses, although the request is not by means of a joint resolution; but after a bill has been passed in the legal and constitutional form by both houses of the legislature, and transmitted to the governor for his signature, neither branch of the legislature can, without the consent of the other, recall the bill for the purpose of further legislative action thereon." 59 C.J. p. 578. (Emphasis added.)

273 Mich at 319-320.

A similar conclusion was reached by the Delaware Supreme Court in Opinion of the Justices, 174 A2d 818 (1961). That case in turn quoted with approval from a New York case, People v Devlin, 33 NY 269, as follows:

> "This bill had passed both houses and been sent to the governor for his approval. The recall by the assembly was an infringement of parliamentary law. It was an attempt to do alone what if it could be done at all, required the joint action of both senate and assembly."

174 A2d at 819.

The Delaware Supreme Court held:

> One house of the legislature may not lawfully recall from the Executive a bill duly enacted by both houses.

174 A2d at 820.

The Florida Supreme Court in a 1947 decision reached a similar conclusion:

> The return of House Bill 122 by the Governor to the House of Representatives could not constitutionally confer on this Honorable Body the jurisdiction or power again to place the measure on its calendar and by a majority vote of the House reconsider the vote by which it was originally passed or to entertain a motion and by a majority vote to indefinitely postpone the bill.

State ex rel Schwartz v Bledsoe, 31 So2d 457, 460 (1947).

The Florida Supreme Court went on to hold, quoting from an earlier decision, State ex rel Florida Portland Cement Co v Hale 176 So 577, 581 (1937):

> "We hold that neither the House of Representatives nor the Senate of the Legislature of Florida could by its independent resolution recall from the hands of the Governor a bill which had been duly passed by the Legislature, had been authenticated and transmitted to the Governor for his consideration, and that the action of the Governor in transmitting the bill to the House of Representatives in the instant case was a matter of

> courtesy and had no effect upon the validity of the act which had been duly and constitutionally passed and transmitted to him for his consideration."

31 So2d at 461.

It should also be noted that while the May 18, 1993, Senate Journal shows that the motion "requesting the return of" Senate Bill No. 537 simply "prevailed", the motion "that the enrollment be vacated" was supported by nineteen Senators. 1993 Journal of the Senate, 1193, 1198 (No. 43, May 18, 1993). Nineteen Senators is, of course, one less than Const 1963, art 4, § 26, requires to pass a bill. That section provides, in pertinent part:

> No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house.

However, since the case law set forth above is clear, there is no need to resolve whether "a majority [vote] of the members elected to and serving" in the Senate was necessary.

Based on the foregoing, it is clear that Senate Bill No. 537 is now law and it should be assigned a public act number.

Very truly yours,

Stanley D. Steinborn
Chief Assistant Attorney General