February 21, 2008.

To the Honorable Senate and House of Representatives:

Pursuant to Part the Second, Chapter I, Section I, Article II of the Constitution of the Commonwealth, I am returning unsigned House Bill No. 4089, “An Act Authorizing The Appointment of Certain Persons As Firefighters In The City Of Fall River.”

Under this bill, six named individuals are given absolute preference on the civil service list for appointment to the Fall River fire department. Designed to ensure equal opportunities for applicants, civil service lists rank applicants by merit, while also providing preference for certain individuals like veterans and survivors of firefighters who die in service. Under M.G.L. c. 31, §26, firefighter applicants who take the civil service exam are ranked in the following order:— (1) disabled veterans, (2) veterans, (3) widows or widowed mothers of veterans who were killed in action or died from a service connected disability, (4) all others in the order of their test scores. Section 26 also provides that the survivors of firefighters (or police officers) who lose their lives while responding to a fire shall receive absolute preference on the list.

I understand that the six named individuals took the civil service exam in 2004, and five of the six named individuals took the exam again in 2006. None of the six ranked sufficiently high on the 2004
civil service eligibility list to be hired during the two years that list
was in effect. Moreover, after almost fifteen months on the 2006 list,
the five individuals who took the exam again remain well below a
substantial number of higher ranked individuals, including veterans
and applicants who scored higher on the exam. Vaulting these six
individuals over the veterans and others who are above them on the
list would be unfair and would compromise the goals of the civil
service system.

In addition, giving these six individuals absolute preference would
likely violate Article 10 of the Declaration of Rights. The Supreme
Judicial Court has held that the legislature may pass special laws to
address unusual circumstances, but not if the special law “single[s]
out any person for special privilege or advantages at the expense of
the rights of another.” Route One Liquors, Inc. v. Secretary of Admin­
istration and Finance, 439 Mass. 111, 121-122 (2003). This bill does
precisely that:— it singles out six individuals for a special privilege,
at the expense of those who pursuant to statute rank significantly
higher (disabled veterans, veterans, and those with higher scores). In
sum, the civil service exam is created to avoid patronage and special
treatment of the nature authorized by this bill.

For these reasons, I return House Bill No. 4089 unsigned.

Respectfully submitted,

DEVAL L. PATRICK,
Governor.