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. 4142, “An Act providing for reporting dates for capital gains revenue and transferring certain funds.”

Section 1 of this legislation limits the amount of volatile revenues that may be incorporated in the annual operating budget, and also provides a mechanism for building a significant level of reserves to help mitigate the negative effects on programs and services during difficult fiscal times such as the present one. Moreover, it does so in the manner that I proposed in my recent message returning this section for amendment. I strongly support this provision and I appreciate the acceptance of my recommendations. I urge its re-enactment at the first available opportunity.

Unfortunately, however, this bill also includes entirely unrelated provisions that attempt to address certain borrowing by the Commonwealth and state entities. These provisions contain raise significant policy concerns that regrettably require me to veto the bill. The state Treasurer and many independent authorities that these provisions affect have pointed out these same defects and have expressed these same concerns. Although the Treasurer and I offered suggested amendments to the bill to address these concerns, none of these amendments was adopted.

There are two sections with significant problems. First, Section 2 amends subsection (b) of section 26 of chapter 304 of the Acts of 2008 to require the Secretary of Administration and
Finance and the chairman or executive director of the Turnpike Authority certify that, in their judgment, no feasible alternative exists to a pledge of the Commonwealth’s full faith and credit to support certain refinancing bonds of the Turnpike Authority within 24 hours of receiving a certification from the Authority that the counterparty has exercised the related interest rate swap agreements. A certification from the Authority confirming the counterparty’s exercise of the swap agreements last September was previously received, making it impossible to comply with the 24-hour reporting requirement and thus potentially calling into question the Secretary’s legal authority to issue the guaranty for the related bonds. In addition, chapter 304 does not authorize the Secretary to issue a guaranty secured by a full faith and credit pledge of the Commonwealth, rendering the required certification language inconsistent with the subject-to-appropriation guaranty pledge actually authorized by the statute. Lastly, the Secretary and the Turnpike Authority should not be required to certify that no feasible alternative to the Commonwealth guaranty exists even if the secretary has no intention of issuing the guaranty, as the language of the bill requires.

Section 3 of the bill, defining “derivative financial products,” is also problematic in that the definition includes financial instruments that are not derivatives. For example, the definition includes “a call option on a bond”, which suggests that any bond subject to early prepayment, including fixed-rate bonds that have no association with a derivative financial product whatsoever, would be treated as a derivative financial product for purposes of the legislation. As a result, virtually every debt issuance by any quasi-public entity or independent authority would be subject to the approval of the Secretary and the Governor and, in some instances, the state Treasurer. Aside from the logistical problems this additional layer of approval would pose, it would compromise the financing benefits for taxpayers derived from independent authorities and from their legal and financial separation from the Commonwealth and would be viewed negatively by the rating agencies.

In addition to these problems, the reporting requirements and the approval requirements for derivative financial products entered into by quasi-public entities and independent authorities are overly burdensome and unnecessary. Much of the information required to be reported can be found in the audited financial statements and other reports of the related entities. In addition, the derivative transactions of these entities are already subject to new reporting requirements and to review by the Finance Advisory Board under legislation passed just last year.

For these reasons, I return House Bill No. 4142 unsigned.

Sincerely,

DEVAL L. PATRICK,

Governor.