

Pennsylvania Legislative Update

From the Buchanan Ingersoll & Rooney State Government Relations Group

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Attorneys & Government Relations Professionals

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The 2011-12 Budget:

- Eliminates 66 appropriation line items.
- Reduces funding for more than 226 appropriations.
- Consolidates 52 items.

The House Stands in Recess Until Monday, September 26, 2011

The Senate Stands in Recess Until Monday, September 19, 2011

\$27.149 Billion Budget Delivered On Time

For the first time in eight years, state government met the constitutionally mandated June 30 deadline to have a budget plan in place. In the end, the general appropriation for fiscal year 2011-12 is \$27.149 billion, which represents a decrease of 4 percent or \$1.1 billion. It has been reported that this is the largest reset of state spending since at least 1970.

It wasn't an easy budget cycle for anyone. Governor Tom Corbett and the General Assembly had to close what was initially a \$4.2 billion deficit. The economy continues to lag, federal stimulus money is no longer available and revenues did not meet the state's expectations five out of the last eleven months. The vast majority of a budget surplus was held in reserve because massive debts related to pensions and other government borrowing will need to be addressed in the near future.

There are no new taxes or state tax increases in the final budget. A roll-back of the Capital Stock and Franchise Tax is included. There is no tax or impact fee on Marcellus Shale.

A portion of the \$611 million-plus expected surplus was used for budget purposes.

Victories in the budget debate include decreasing the proposed 50 percent higher education cut to 19 percent for state-related universities, including the University of Pittsburgh and Temple University, and 18 percent for the State

System of Higher Education. The state will see a \$15 million increase in research and development tax credits for a total of \$55 million and funding that had been zeroed out for regional cancer institutes, medical center payments and physician practice plans was partially restored.

Beyond the budget, a key lawsuit abuse reform proposal was signed into law. While the new law won't directly impact the budget, supporters of the change in the state's "joint and several liability" law, also known as the Fair Share Act, say it will have a cost-savings benefit to the business and the medical communities. Additional tort reform measures are expected in the fall (see Comparative Negligence Bill Now Law on page 3). The House's WelFAIR package of reform bills (see Welfare Reforms Headed for Signature on page 4) and a property tax referendum bill (see Property Tax Referendum on page 4) also passed.

Capitol observers are looking toward a busy fall when the legislature is expected to take up additional tort reform bills and education reform, including school choice legislation. The governor and legislature are also expected to address the findings of Governor Tom Corbett's Marcellus Shale Commission report, in particular the question of a tax or impact fee on the natural gas industry, and the Transportation Funding Advisory Commission's recommendations, including possible public-private partnership (P3) legislation.

Business Competitiveness/Taxes

The new budget includes no new taxes or increases in state taxes. In addition, the budget reinstates the phase-out of the Capital Stock and Franchise Tax. This measure is expected to provide more than 100,000 employers \$70 million in tax relief.

The budget also brings state tax policy into line with the federal tax code. It increases the bonus depreciation

deduction to 100 percent for property placed into service before January 2012.

While not part of the budget, the passage of the Fair Share Act, a tort reform measure, is also considered a business competitiveness issue (see Comparative Negligence Bill Now Law on page 3).

Jobs Tax Credits

The Research and Development Tax Credit, which had been cut in half for the last two budget cycles, was not only restored but increased by \$15 million

for a total of \$55 million. The final budget also maintained funding for the Job Creation Tax Credit and the Film Production Tax Credit.

Higher Ed Funding Partially Restored

Funding for the five state-related universities won't be cut as much as what was originally proposed by Governor Corbett in his March budget address. Negotiations between the General Assembly and Governor Corbett's office brought the initially proposed 50 percent cut down to 19 percent. The actual reduction of state funding is 15 percent less than last year when federal stimulus dollars are taken out of the equation.

In the end, the University of Pittsburgh will be funded at \$138 million, Temple University at \$139 million, Pennsylvania

State University at \$263 million, Lincoln University at \$11 million, and the Veterinary College of the University of Pennsylvania at \$28 million.

The 14 universities in the State System of Higher Education will now only receive an 18 percent cut of current funding levels. Community colleges will receive an additional \$700,000 for regional community colleges services. The original community college line item was a total of \$258 million.

- State System of Higher Education will receive 82 percent of current funding, or \$412 million.
- State-related universities will receive 81 percent of current funding, or \$559 million.
- Community colleges will receive \$258 million, or 90 percent of current funding.

Basic Education

The state dollars for Basic Education Funding restores all of Pennsylvania's school districts to pre-federal stimulus (2008-09) levels. The final 2011-2012 budget increases K-12 funding \$230 million

over the governor's original proposal and restores \$100 million for Accountability Block Grants for school districts to spend as they see fit, including pre-K or all-day kindergarten programs.

School Vouchers

A proposal to pass school vouchers, the Educational Improvement Tax Credit (EITC) program, and charter schools, or similar legislation, did not pass before by the summer recess. In the Senate, **S.B. 1** (Piccola, R-Dauphin), which amends the

Public School Code to provide for school choice/vouchers, is considered a potential legislative vehicle in the fall. Another potential vehicle which includes school choice/vouchers and an expansion of the EITC is **H.B. 1708** (Christiana (R-Beaver).

Health Care

Overall, the Department of Health will receive \$224 million, \$8 million less than the previous fiscal year. In the Department of Welfare, \$10.6 billion state dollars appropriated for 2011-12, which is a \$1.7 billion increase in state dollars from last year. The Tobacco Settlement Fund was kept separate, as it always has been.

The final budget did include \$450,000 for regional cancer institutes. In 2010-2011 this line item was set at \$942,000, but was zeroed out in Governor Corbett's 2011-2012 budget proposal. Partial funding was also restored. The governor's original proposal also recommended no funding for Academic Medical Center Payments and Physician Practice Plans, but funding was partially restored at 50 percent of last year's levels.

The physical health managed care organizations received a 3.5 percent increase and behavioral health organizations received a 2 percent increase in the final budget. In addition, there is \$13 million in state funds for pay-for-performance payments (P4P) earned by managed care organizations.

The hospital assessment fee rate was increased to 3.22 percent and payments are being funded at the 75 percent mark from 2010-11 including obstetric and neonatal services, burn centers, critical access hospitals, trauma centers and uncompensated care payments in the Tobacco Settlement.

"Comparative Negligence" Bill Now Law

Governor Tom Corbett signed into law Senate Bill 1131, better known as the Fair Share Act, which changes the state's "joint and several liability" law, to a "comparative negligence" law.

Before the tort reform legislation was enacted, a defendant in a law suit could be held 100 percent liable for damages. The new law ensures that defendants in most cases would only have to pay their share of the judgment.

At a Capitol Rotunda bill signing, the governor said the new law will keep businesses and health care providers from being driven out of the state by frivolous litigation.

"The Fair Share Act is a key component in addressing one of the most important issues to Pennsylvania – jobs," Corbett said. "This bill announces to the rest of the world that Pennsylvania is open for business.

"This legislation is critical to improving the state's legal climate, which has direct bearing on the economic climate," Corbett said. "It affects the cost of goods and services. It affects the cost and availability of health care. It will encourage companies to move here, grow here and stay here. "

A similar measure has passed twice before. The first time, the law was struck down by the Pennsylvania Supreme Court for technical reasons. After its second passage, former Governor Ed Rendell vetoed it.

Capitol observers expect to see additional tort and lawsuit reform measures begin to move through the legislature this fall. Among those reforms expected to be considered are certificate of merit, protection of the innocent sellers, a statute of repose in product liability actions, the apology rule and an effort to "fix" the current unfair allocation of fault in asbestos cases.

Property Tax Referendum

Governor Corbett's call for legislation to require voter approval if school district officials propose new property tax increases greater than the rate of inflation passed. While not tied to the budget, the governor and the legislature considered it a step toward property tax relief.

In the final hours before the summer recess, the House amended **S.B. 330** (Scarnati, R-Jefferson) which would amend Act 1, the 2006 law mandating referendums when a school property tax exceeds the rate of the consumer price index.

The goal was to have no exceptions to the referenda requirement, but in the end, three exceptions were inserted.

- Pension costs. Adds to the current exception if the tax hike would pay for increases in pension costs, stipulating

that exception would only be applied if the school district's current rate of teacher's salaries and the number of teachers stayed the same.

- Special Education. Allows school districts to seek a tax hike to cover the portion of a special education cost increase that exceeds the district's special education state funding.
- Some other forms of debt.

House Majority Leader Mike Turzai, (R-Allegheny), said 39 other states have referenda for school district budgets or for school district increases in taxes.

Welfare Reforms Headed for Signature

A package of reforms to the state's welfare system is on its way to the governor for signature. The reforms were amended into **H.B. 960** (Gingrich, R-Lebanon), the Welfare Code.

Dubbed WelFAIR (Fairness, Accountability, Integrity and Responsibility), the initiative includes random drug testing for welfare applicants who have been convicted of a prior drug felony and requiring the use of a fraud detection program that would run welfare applicants' information through an income eligibility verification system before providing benefits.

In addition, the package included a measure to prevent "benefit shopping," where people apply for welfare benefits in a county other than the one in which they live in order to receive higher benefit payments. Under this initiative, applicants would receive benefits based on their place of permanent residence. Additionally, changes will be made to

the special allowance program under the Department of Public Welfare (DPW). Those changes are expected to reduce the cost of this program by up to 25 percent.

House Republicans have said rooting out waste, fraud and abuse at the Welfare Department could save the state hundreds of millions of dollars.

No Bankruptcy for the City of Harrisburg

The City of Harrisburg will not be able to file for bankruptcy under a law passed by the General Assembly and is expected to be signed by the governor. The measure did not go as

far as a proposal by Senator Jeffery Piccola (R-Dauphin) that would have required the city to accept and implement a financial recovery plan presented to the city under Act 47.

Executive Nominations

As of June 24, all of Governor Tom Corbett's cabinet appoints have been confirmed.

The Senate unanimously confirmed **Pamela A. Witmer** of Dauphin County to the Pennsylvania Public Utility Commission (PUC). Witmer will succeed Commissioner Tyrone J. Christy, whose term on the PUC has expired.

Witmer most recently led an energy and environment practice for a Harrisburg-based governmental and public relations firm. From 2000 to 2007, she was president and CEO

of the Pennsylvania Chemical Industry Council, a trade association. She formerly served in the Department of Environmental Protection under Governor Tom Ridge as the lead legislative liaison, where she successfully steered legislation through the General Assembly to create the Department of Environmental Protection and the Department of Conservation and Natural Resources. She also served on the Corbett Transition Team's Energy & Environment Committee.

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