ALLEGHENY INSTITUTE FOR PUBLIC POLICY

Addressing Urgent Issues: A Legislative Agenda for Allegheny County and Pennsylvania

Allegheny Institute for Public Policy

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305 Mt. Lebanon Blvd.◆ Suite 208 ◆ Pittsburgh, PA 15234
Phone: 412-440-0079 Fax: 412-440-0085 www.alleghenyinstitute.org

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Introduction and Purpose

There are a number of pressing issues facing Pittsburgh and Allegheny County that can be effectively addressed only through actions of Pennsylvania's Legislature and Governor. And while some of the problems primarily affect Pittsburgh and Allegheny County, remedial legislative steps will have salutary impacts on the state and other counties and municipalities around the Commonwealth.

Over the years the Allegheny Institute has studied, written about, given testimony about and debated the key policy issues the City and County confront. Drawing on our extensive body of research we have compiled a report focusing on eight pressing issues that require action by the state Legislature and Governor.

This report is a collection of overviews of these crucial issues. Each issue overview includes a statement of the problem, makes specific recommendations for needed legislative action and includes supporting analysis along with references to Allegheny Institute Reports and Policy Briefs that provide more in depth discussions of the evolution, magnitude and intractability of the problem.

While all the issues discussed are important, the four needing most urgent legislative attention from the viewpoint of Pittsburgh and Allegheny County are presented first—the Port Authority, the Pittsburgh Oversight board, Municipal Bankruptcy, and Act 111. Still, Property Assessment, Teacher Strikes, Prevailing Wages, Economic Development are very important for the County and the state. Except for the Oversight Board our recommendations for meaningful remedial legislative action on any of the problems will be helpful to the entire state.

Port Authority

The Problem:

The Port Authority (PAT) is effectively bankrupt and has become dysfunctional. In short, PAT cannot carry out its mission of providing affordable transit service to the residents of Allegheny County who depend on public transportation. The agency is saddled with very high operating costs stemming from extraordinarily high wage rates and crippling benefit costs. In 2010, PAT has budgeted $128 for benefits compared to $141 million in planned spending on wages and salaries—a ratio of over 90 percent. The agency faces an unfunded liability of almost $600 million for retiree health care benefits. In response to a projected $47 million deficit, PAT has announced a 35 percent bus service reduction to go along with a 15 percent cut in 2007-2008.

Given the legacy cost problem, the very high wage structure and the contractual work and personnel rules, when revenues fall short of planned spending the agency has only two options available; slash service and reduce employment and payroll expense and/or raise fares substantially.

PAT is simply unable to fix its own problems because of past contract commitments. And as matters now stand the legacy costs and other unavoidable benefit commitments will continue to absorb ever larger fractions of available revenue forcing the agency to make more cuts and depriving more County residents of transits services. Clearly, this situation is not in the best interests of the residents or employers.

Therefore, it is imperative that the government in Harrisburg take action without delay to repair public transportation in Allegheny County.

Recommendations for Legislative Steps:

1. Address the bankruptcy issue. As matters now stand contractual benefit and legacy costs are swallowing up more and more of PAT's revenue and creating a death spiral for the organization. Only bankruptcy provides a way for PAT to deal with the ever increasing and ruinous burden of pay and benefit costs. Under the Pennsylvania constitution, benefits promised under contract cannot be taken away by legislation or unilateral actions by public officials. Bankruptcy under Federal statutes is the only avenue open to local governments to get needed relief. Unfortunately, under current Pennsylvania law, authorities are not permitted to file for bankruptcy. Therefore, the Legislature must amend relevant statutes to allow PAT to enter into Chapter 9 bankruptcy.

2. Moreover, the General Assembly should pass accompanying legislation creating an independent oversight board for PAT and give it the power to force the transit agency to file for bankruptcy if the existing board of directors refuses to do so. The oversight board would also have veto power over all major capital projects.

3. The Legislature should rewrite the act creating the Port Authority to remove PAT's monopoly over transit services in Allegheny County. Further, the newly created oversight board would have the authority to work with regional agencies or private transit companies to begin providing service on routes PAT has discontinued. This should also include the authority to lease surplus PAT equipment to these agencies for a dollar a year as an inducement to offer service. No other state subsidy would be forthcoming.

4. Eliminate the right of transit workers to strike. Strikes or threats of strikes have been a major factor in the all too generous compensation and work rule settlements over the years that are largely responsible for PAT's horrendous financial situation.

5. Empower the oversight board to impose a complete hiring freeze. As retirements and other attrition of workers occur, begin outsourcing the service previously covered by the former employees. In effect, over time continuously reduce PAT's payroll and legacy cost buildup. Because of terms of the Federal Transit Act, any worker displaced by having his/her job outsourced would be entitled to a year's wages for each year of service up to 6 years wages in a severance package. Thus, retirement and attrition offer the only financially viable path to privatization or other outsourcing of service.

As can be seen from the recent announcement of a 35 percent cut in bus service with more likely coming in less than a year, it is time for Harrisburg to act decisively, forcefully and expeditiously.

Supporting Analysis

There is s lot of hand wringing over the Port Authority's (PAT) plans to cut bus service dramatically to deal with the agency's nearly $50 million budget shortfall. While civic leaders, businesses, and riders are very concerned and are imploring the state to come up with more money, they ought to be focused on PAT's outrageous cost structure and the lack of any real effort to address those costs—leaving major service cuts and layoffs as the only way to lower expenditures.

In a 2008 *Policy Brief* (*Volume 8, Number 35*), we looked at a sample of twenty transit systems from around the country using cities of varying sizes, including PAT, and compared their bus operating expenses per passenger trip. 2006 data from the National Transit Database (NTD) showed PAT to have the highest expense per trip at $4.30 and well above the twenty city sample average of $3.22 and much higher than larger cities such as Los Angeles ($2.09) and Chicago ($2.77).

Using recently updated 2009 data from NTD, we look at how PAT has fared relative to other transit agencies three years later. The table below shows the results.

Transit Agency	2009 Operating Expense per Trip	Transit Agency	2009 Operating Expense per Trip	Transit Agency	2009 Operating Expense per Trip
Indianapolis	$5.55	Kansas City	$4.25	Philadelphia	$2.95
Dallas	5.45	Denver	4.10	Baltimore	2.92
Houston	4.60	Cincinnati	3.66	Milwaukee	2.91
Pittsburgh	4.44	Minneapolis	3.58	Atlanta	2.84
Miami	4.43	Charlotte	3.53	Chicago	2.47
Cleveland	4.36	Louisville	3.46	Los Angeles	2.41
Columbus	4.26	Nashville	2.99	*20 City Average*	*$3.76*

PAT's expense per trip ranking fell from highest to fourth. Almost all bus systems in the sample had increases in expenses per trip. Nashville and Chicago were the only systems with declines. PAT's rise in per trip expense was just over three percent while others including Cleveland, Dallas, Houston and Indianapolis reported sharp increases. Keep in mind that PAT's cost of $4.44 per trip is still much higher than the sample average of $3.76.

Chicago was the only transit agency with a decrease in total operating expenses from 2006 to 2009 (nearly five percent). PAT's total expenditure increase was less than one percent while Indianapolis jumped the most at 32 percent followed by Atlanta and Baltimore at 27 percent each. The twenty city sample average increase was 14 percent. By paring service on routes with low ridership PAT has made some progress in slowing the growth in per passenger costs.

There were nine transit systems with drops in passenger trips during the 2006-09 period. Cleveland had the biggest slide at 34 percent followed by Dallas at 25 percent. Houston and Indianapolis dropped 17 percent each. PAT experienced a smaller decline of 2.5 percent. Of the transit systems with ridership gains, Nashville led with a rise of 33 percent.

Large increases in total operating expenditures (Indianapolis) and/or large decreases in passengers (Dallas, Houston, and Indianapolis) have caused these cities' per trip expenses to leap over Pittsburgh in the 2009 ranking.

Eliminating the systems with very large drops in passenger service (15 percent or more— Cleveland, Indianapolis, Houston, and Dallas), lowers the sample average cost per passenger trip from $3.76 to $3.45. It also pulls Pittsburgh back to the top of the remaining sixteen city list as shown in the table below.

City	Operating Expense/Trip	City	Operating Expense/Trip	City	Operating Expense/Trip
Pittsburgh	$4.44	Minneapolis	$3.58	Milwaukee	2.91
Miami	4.43	Charlotte	3.53	Atlanta	2.84
Columbus	4.26	Louisville	3.46	Chicago	2.47
Kansas City	4.25	Nashville	2.99	Los Angeles	2.41
Denver	4.10	Philadelphia	2.95	*Average*	*$3.45*
Cincinnati	3.66	Baltimore	2.92		

In short, PAT continues to operate an expensive bus system with per trip costs well above the levels in comparably sized cities such as Cincinnati, Charlotte, Minneapolis, and Milwaukee. Even though PAT has reduced payroll by over 200 positions and cut service by some 15 percent since 2007, which helped hold down the expenditure increase over the last three years, the agency's employee compensation costs are still up slightly as result of rapidly increasing benefit expenses. The ratio of benefits to wages and salaries in 2010 stands at 91 percent ($128 million for benefits to $141 million in wages and salaries) and will reach 100 percent very soon. PAT's unfunded liability for health care tops $560 million.

As we have argued in the past, PAT needs to begin a program of outsourcing routes or allowing other carriers to offer service on routes that are being eliminated. Furthermore, the state needs to provide an incentive for management to get concessions from employees by offering to match permanent pay and benefit concessions. The legislature should eliminate PAT's monopoly status in Allegheny County so other service providers can operate in areas underserved by PAT. Finally, Harrisburg must take away the transit workers' right to strike. That power is a major cause of the financial mess and will continue to plague the system if not removed.

From Allegheny Institute *Policy Brief Volume 10, Number 63* "PAT Bus System Still Very Expensive"

Other Institute publications on this topic:

A Plan to Mitigate Bus Service Cuts
Flexible Healing of PAT is No Cure
Senatorial Connector Criticism Gets Lame PAT Response
Port Authority Irresponsibility: A Never Ending Story
The Bell Tolls for PAT: Do They Hear It?

Pittsburgh's Oversight Board

The Problem:

By law, the Intergovernmental Cooperation Authority, commonly referred to as the Oversight Board, will go out of existence in 2011 unless the Legislature and the Governor pass and sign language extending its life. Even though the City of Pittsburgh will remain in Act 47 financial distressed status and nominally be under the supervision of the Act 47 coordinator, the termination of the Oversight Board would represent a distinct loss of power to control City finances.

The provisions of Act 11, which created the Oversight Board, requires arbitrators in public safety labor contract negotiations to take into account factors relevant to the City's ability to pay as well as compensation of employees in comparable municipalities. The loss of the Oversight Board would remove that important requirement. Secondly, under separate legislation the City is prohibited from imposing an earned income tax on non-residents but that prohibition expires upon the termination of the Oversight Board. Thus, maintaining the Oversight Board is key to preventing the City from passing this divisive tax that will ultimately harm the City more than help.

In sum, the General Assembly will need to take action early in 2011 to stop the termination of the Intergovernmental Cooperation Authority.

Recommendations for Legislative Steps:

1. The Legislature should act expeditiously to pass a bill extending the life of the Intergovernmental Cooperation Authority for at least five years, with an expiration date of December 31, 2016 unless legislative action is taken earlier to further extend the life of the Authority.

2. Upon the passage of a bill extending the life of the Board, the Governor and the four appointing legislators should consider placing new members on the Board. Some of the members were appointed by people who no longer hold the positions necessary to make appointments and by law can be replaced immediately. Moreover, all five board members serve at the pleasure of their appointing legislators or Governor and can be replaced. Ideally, new appointees will bring renewed vitality to the Board and cause it to act more effectively and with more discipline to guide the City to financial health.

Supporting Analysis

Next year marks the end of the current life span of the Intergovernmental Cooperation Authority (ICA) for Cities of the Second Class, commonly known as the Oversight Board. Created by Act 11 of 2004, which was signed into law on February 12 of that year, the statute's language declares the Board "shall exist for a term of at least seven years". An act of the Legislature is required to extend the life of the Board beyond 2011.

Depending on how the statute is interpreted with respect to when the clock started ticking the seven year time frame can vary from February through December 31, 2011. The statute additionally notes that the Board must have approved the City's operating budgets and five-year financial forecasts for the preceding three years. If that requirement is met, the Secretary of the Department of Community and Economic Development (DCED) will initiate proceedings to shut down the Board. The Board did give approval to the City's 2008, 2009, and 2010 budgets though there were thorny issues such as the proposed tuition tax, long-term debt, and parking tax reductions in each of those budgets. In light of the fact that Pittsburgh's financial difficulties will not be going away anytime soon there is an urgent need to address the future of the Authority.

The new Governor (who appoints the Secretary of DCED) and a new Legislature will take office in January. With all the other critical issues facing the new government, dealing with the Oversight Board could slip through the cracks and might be shut down by default.

Note the life span of Pittsburgh's Oversight Board differs from Philadelphia's cooperation authority in that the statute governing the latter specified that the board—in place since 1991—will exist "for a term not exceeding one year after all its liabilities, including, without limitation, its bonds, have been fully paid and discharged". The current estimate is June of 2023 based on its $534 million in outstanding bonds. The Act 47 recovery team for Pittsburgh is in place for an indefinite time period and is only disbanded upon determination of the Secretary of DCED (the City petitioned for termination of Act 47 distressed status in 2007 but was denied and a revised recovery plan was subsequently written).

Taxpayers, City officials, members of the General Assembly and the Governor might be wondering about the upside of keeping two overseers in place, especially since the statutory clock is ticking on one of them. There are three major detrimental impacts of terminating Pittsburgh's Oversight Board in 2011.

First, the criteria for arbitration awards will be weakened. The law that requires collective bargaining and binding arbitration for police and fire personnel in the Commonwealth (Act 111) is silent on what factors have to be taken into consideration when there is a contract dispute. The Oversight Board law has language that requires arbitrators in a City dispute to give consideration to the approved financial plan for the City as well as "relevant market factors, such as the financial situation of the assisted city, inflation, productivity, size of work force, and pay and benefit levels in economically and demographically comparable political subdivisions".

Act 47 has language that says a contract negotiated while a municipality is in distressed status cannot violate the fiscal plan, but Act 11 has specific language on what must be taken into consideration in arbitration awards, which are considered a mandate to the employer no matter the effect on costs or managerial control. Thus, if enforced by the Oversight Board, the arbitration awards under Act 111 can be better controlled.

Second, the door to a commuter tax is opened. A separate piece of legislation that created the payroll preparation tax stipulates that an increase in the earned income tax on non-residents (which would also be levied on residents) is prohibited in the City of Pittsburgh but the prohibition "shall expire upon the termination of the [Oversight Board]". The specter of a commuter tax in the form of a wage tax increase has been non-existent since the Legislature crafted the payroll tax and the numerous other tax changes that came along with it.

To be sure, there have been other attempts to create new sources of taxation (tuition tax, sugary drink tax) to keep taxes that were to be reduced at higher levels (the parking tax prior to the passage of Act 44 of 2009) and there will be continued attempts to grab revenue from whatever possible source. But the divisive and destructive consequences that come from a commuter tax have largely been silent as a result of the statutory framework in place.

Third, the state loses an extra set of eyes to oversee the City. Recall that in 2005 there was a chance that the Oversight Board would go out of business because of its cost and a lawsuit with the Act 47 team over the firefighters' contract. When it was decided that the Board would stay in place, one state senator noted "I think there is value to the ICA being there, an independent body from the business and political community to watch over the city." The intent seemed to be that the Oversight Board would take a broader view than that of the Act 47 team.

It is also important to recall that the Oversight Board has the power to intercept certain City funds and withhold them if the City fails to adhere to the board's instruction.

So what's to be done now? **For the aforementioned reasons it seems simple. The General Assembly needs to extend the existence of the Oversight Board. Perhaps for another five years with the end date specified in the legislation. The legislation could state the Board will exist until December 31, 2016 unless action is taken to extend the board prior to that date. This is crucial to eliminate the murkiness as to the date of termination.** Extending the life of the ICA will ensure that five year contracts for police and fire, which could go to arbitration, would be done under the more stringent and limiting language of Act 11.

If the Board is renewed, the Governor and the four Legislative leaders (two from each chamber and two from each party) will be in the position to appoint new members. Some of the members were appointed by people who no longer hold the power of appointment and by law must be replaced or re-appointed by the new leaders (the Speaker, House minority leader and the

Governor). Those Board members whose appointing legislative official is still in place are subject to replacement at the discretion of the appointing official.

Thus, all five members could be replaced, but three (the Governor and the two House appointees) are clearly in line to be removed. And given the length of service of many of the Board members, it might be time for some changes, especially if the new Governor and Legislature wish to see more forceful application of the ICA's powers to improve the City's financial picture.

Unless the General Assembly is prepared to rewrite Act 111, or to write prescriptive legislation that holds the line on existing City taxes and prevents the creation of new ones, forces the City to adopt a spending cap, it would do well to renew the ICA and appoint some new Board members who will bring new energy and ideas to the oversight efforts.

From Allegheny Institute *Policy Brief Volume 10, Number 61* "What Will Become of the Oversight Board?"

Other Institute publications on this topic:

Taxing Higher-Ed
City Bookkeeping on Brink of Collapse

Chapter 9 Municipal Bankruptcy

The Problem:

Legacy costs threaten the ability of some municipalities to carry out their core functions. They are being confronted by two painful choices. Either raise taxes substantially and further cripple the business climate and economic growth or slash municipal services threatening public safety and lowering quality of life. Under Federal bankruptcy law states act as gatekeepers for the bankruptcy process: they are free to prohibit filings, place conditions on filing, and must specifically authorize local governments to file. Pennsylvania's bankruptcy language is contained in Act 47 and requires a tedious, difficult and drawn out process that is very hard to negotiate for municipalities facing an immediate crisis. Given the severe financial problems facing some Pennsylvania municipalities, the Legislature should consider remedial action.

Recommendations for Legislative Steps:

1. Streamline the bankruptcy filing process for municipalities currently outlined in Act 47, including possibly removing the process from Act 47 procedures. The statute should specify who has the authority to file and the financial conditions necessary for bankruptcy consideration.

2. Extend bankruptcy filing permission to school districts and authorities.

3. Create a quasi-judicial independent bankruptcy board of legal and financial experts with authority to hear and approve or disallow requests from municipalities, school districts, and authorities to file for Chapter 9 bankruptcy. Establish clear and objective criteria for the board to consider in the process of hearing requests. Establish time limits for hearing and responding to requests and provide for an appeal process.

4. Enact protections to prevent abuse and capricious misuse of bankruptcy provisions.

5. Specify the Commonwealth's role in ensuring that the terms of bankruptcy court rulings are carried out and provide for state monitoring of the municipality to help prevent a return to the financial situation requiring the bankruptcy.

Supporting Analysis

A Tribune Review article of November 8 reminds once again just how desperate the unfunded pension plan situation is for many Pennsylvania communities, including the two largest cities as well as several midsized cities. With assets to liabilities ratios below 50 percent in Pittsburgh, Philadelphia and Scranton and others below 65 percent, there can be little doubt that a crisis is at hand.

Legislators are saying it is time to get serious. But if the plans being contemplated are not more forceful than the municipal legislation passed in 2009 or the legislation recently passed to deal with the state's own pension difficulties with SERS and PSERS, we can expect little correction of the underlying problems and no lasting improvement in the underfunding situation.

Drastic steps need to be taken and very soon.

Dealing with the pension difficulties will require legislators to face up to the real problem. Simply put, most of the troubled public sector pension plans are too generous. Many municipalities and school districts, along with the Commonwealth, are saddled with long term obligations to retired and current employees that cannot be met without: (1) diverting large amounts of revenues from fundamental, core functions of those governing bodies or (2) raising taxes to such a punitive level that the affected economies and tax bases suffer diminished growth or shrink.

Attempts to fix this legacy cost problem by having the state assume more of the responsibility to fund school district and municipal pensions as well as its own will choke off efforts to reduce spending and lower the business tax burden that is and has been so detrimental to the Commonwealth's ability to grow economically.

The search for effective and meaningful answers must address the size and growth in pension liabilities—what is owed to retirees and eligible employees. Several proposals have been discussed such as having new employees put in 401 (k) or similar defined contribution plans. Clearly, that is a major initial step but unfortunately will not make a significant dent in the problem for many years.

It is time to tackle the issue head on. Pennsylvania needs to make two fundamental legislative changes. **First, the legislature must make it easier for municipalities to enter into Chapter 9 bankruptcy to deal specifically with massive unfunded pension obligations for which there is no solution other than ruinous tax hikes or crippling service cuts.** As we pointed out in a *Policy Brief (Volume 10, Number 8)* earlier this year, the Act 47 process might be too tedious and cumbersome for a municipality in a drastic and dire situation. We are recommending changes to Act 47 to facilitate declaration of distressed status as well as some specific language regarding municipality entry into Chapter 9.

<u>Second, the state might want to think about extending the permission to seek Chapter 9 bankruptcy to its authorities and school districts</u>. Our report on municipal bankruptcy (#09-05) noted that states are free to prohibit or place as many pre-conditions it wishes on its local subdivisions when it comes to Chapter 9 bankruptcy. As a result of amendments to the U.S. code nearly twenty years ago there has to be explicit permission by the state for a municipality to file for Chapter 9 bankruptcy. Since Act 47 only deals with municipalities, school districts and authorities are not allowed to file.

<u>Obviously, legislative language changing Act 47, or making municipal bankruptcy in Pennsylvania more accessible, must be very careful to avoid permitting capricious misuse of the bankruptcy provisions.</u> Once in Chapter 9, state law—including the Pennsylvania Constitution's language in Article I, Section 17 about not abrogating contracts and treating public sector benefits as sacrosanct—must yield to the Federal code. A memorandum from a U.S. Bankruptcy court involved in a case dealing with a Chapter 9 filing in California stated "when a state authorizes its municipalities to file a Chapter 9 petition it declares that the benefits of Chapter 9 are more important than state control over its municipalities".

It is important to note that in private sector bankruptcy the Federal bankruptcy code supersedes the Article I, Section 17 language regarding abrogation of contracts. Thus it seems reasonable that in a municipal bankruptcy the Federal code would also take precedence.

Employees and retirees deserve to be and must be protected to the greatest extent possible consistent with the level of financial distress of a community filing for bankruptcy. At the same time there must be recognition of responsibility. Cities that have made overly generous commitments and now cannot meet their obligations cannot reasonably expect taxpayers in other municipalities who have been more prudent to provide the funds necessary to solve the legacy cost problems of irresponsible communities. Retirees enjoying handsome pension and other benefits in a city that cannot afford to pay for current basic services have no ethical or moral claim on taxpayers in other communities.

Obviously, many hearings and debates will be necessary before these dramatic proposals can move toward legislative language and bill enactment. Still, the very process of entertaining the possibility of forceful steps could engender some meaningful, voluntary compromise that would help ease the crisis substantially.

At the very least, Chapter 9 bankruptcy in Pennsylvania should offer municipalities or school districts an opportunity to renegotiate the terms of pension plans for future retirees such as increasing the number of years needed to be eligible for full benefits; limiting the use of overtime or other non-standard pay in the calculation of retirement benefits; and reducing the percentage of annual pay received for each year of service.

Along with a new municipal bankruptcy statute, the Legislature must reform Act 111 to force arbitrators to take local financial conditions into account in their contract awards. The right to strike of public sector employees, including teachers and transit workers, must be repealed. By restoring balance in contract negotiations these actions would help prevent some of the more egregious situations that have developed around the state. Taxpayers and residents needing core government services deserve no less.

When dire situations such as the pension crisis arrive, it is necessary to confront the real causes of the problem and not kick the problem down the road for someone else to deal with later when it will surely be much worse. Adequate provision of core government services without wrecking the economy with exorbitant taxes must not be held hostage to earlier decisions made by governing bodies to award excessively generous benefits to public employees.

From Allegheny Institute *Policy Brief Volume 10, Number 62* “Time to Get Serious About Public Sector Pensions”

Other Institute publications on this topic:

Chapter 9 Bankruptcy: What it Means for Pennsylvania’s Municipalities
Will Legacy Costs Force Pittsburgh into Chapter 9 Bankruptcy?
What Happens in a Chapter 9 Bankruptcy?
Harrisburg Contemplates Bankruptcy
Are Public Pensions Becoming a Financial Suicide Pact?

Public Safety Collective Bargaining and Arbitration

The Problem:

Pennsylvania's system of collective bargaining and binding arbitration for police and fire personnel (Act 111) has been in place for over forty years. It has not been examined for possible revision since the late 1970s. Many cities and towns feel that the arbitration system is tilted toward public safety unions and gives those unions an upper hand in negotiations. There are no criteria spelled out in the statute as to what must be taken into consideration when arbitrators make a contract award. Pennsylvania stands alone among neighboring states in the degree of union favoring imbalance in the binding arbitration law. For example, there is no requirement to consider the municipality's ability to pay when crafting an award.

Recommendations for Legislative Steps:

1. Transform the current arbitration process to one that is more judicial and objective in nature.

2. Only neutral and professional arbitrators should be involved in a labor dispute. No arbitrator should hear a case in the county where the arbitrator resides. The state should create a pool of well trained arbitrators who would be assigned by the state to hear cases.

3. Arbitrators should have the freedom to craft an award that focuses on criteria such as compensation paid to equivalent employees in comparable municipalities, inflation, per resident staffing levels by profession, and most importantly, the financial situation of the municipality and its ability to afford the proposed settlement. Arbitrators should be free to craft an award, even if, at their discretion, that means starting from zero.

Supporting Analysis

In a [2003 interview], the mayor of Pittsburgh disclosed that the 2001 contract he negotiated with firefighters was not politically motivated nor out of line. In fact, according to him, he was only giving them what they would have achieved through arbitration under the state's collective bargaining law for police and fire personnel, Act 111 of 1968. Such a comment will give taxpayers little confidence they will see public safety costs be brought under control anytime soon.

The arbitration system in Pennsylvania is clearly favorable to the police and fire unions in Pittsburgh. In fact, round after round of arbitration has produced benefits for one union that gets matched by the other on the next negotiation, constantly ratcheting up the cost of public safety.

In a trend we documented in *Policy Brief 3-35*, public safety expenditures rose from 33 percent of the general fund budget in 1984 to over 50 percent in 2002. It is a primary reason why the City is in its present shape and is pleading with state lawmakers to permit it expanded taxing powers. If state lawmakers want to help the City, it would be far more productive to amend Act 111 than to grant additional taxing powers that will do nothing to stop the spiraling public safety budget.

The City has expressed frustration with Act 111 and several study groups have urged changes to the law. The primary change the City wants is to allow financial status to be taken into consideration when arbitration is used. While that is an important change, it is not nearly sufficient to fix the problem and restore balance to the system. If the City is able to get a new start but has to operate under the same arbitration system, it won't be long before another financial crisis develops. Additionally, the financial status of the employer will always be viewed as having little or no relevance so long as there is an opportunity to raise tax revenues. The lesson from teacher negotiations has demonstrated that point time and again.

The two fundamental changes that must occur to make Act 111 much better in the long-term concern; first, the selection and qualifications of the arbitrators and second, the requirement that objective, measurable criteria be used to determine contract awards.

The present system for selecting the arbitrators under Section 4(b) is a shared arrangement: the public employer selects one, the union chooses one, and those two appointees then select the third. While this arrangement provides representation for both negotiating parties, it is a virtual guarantee that the public safety unions will get the better end of the deal. After all, if the public employer is predisposed to spend public funds on a variety of non-essential functions and outlandish development schemes, why would it suddenly reverse course and exhibit a tight control on a basic government function?

A far better system of selecting arbitrators would have the following components:

- **State oversight: A pool of arbitrators would be housed in the state's Department of Labor and Industry and be classified as civil servants, free of political pressure. Panels of arbitrators would be appointed from the pool to hear cases around the state.**
- **Neutrality: Arbitrators would have no interest or connection to the dispute. No arbitrator could participate in a case in the county where he or she resides.**
- **Professionalism: Arbitrators would be certified by a professional organization/ association and would be qualified to hear cases involving workplace matters for police and fire personnel and their employers.**
- **Accountability: A review panel should oversee the arbitrators' decisions and have the final say on the award.**

Second, once arbitration has commenced, the board should have freedom to craft an award, even if it means starting from zero. This process must be guided by objective, measurable criteria, including, but not limited to:

- **Comparison with similarly sized cities to see what their police and fire personnel earn and the benefit package they receive.**
- **Examination of staffing levels.**
- **Examination of productivity level changes.**
- **Examination of hours worked per-week.**
- **Inflation since the approval of last contract and projected for the term of the contract.**
- **Average income growth in the municipality.**

Clearly, as far as possible, market forces should factor into how wages are determined and what type of benefits should be awarded. There should never be a provision that shields employees from layoffs in times of financial distress. Adopting these measures is the only way to ensure that pay increases are compatible with market forces and that any burden of benefits that are not enjoyed elsewhere are placed on taxpayers that fund the system. These changes would help move the present collective bargaining system from one in which outcomes are basically decided before arbitration is convened to one where there is a chance that public safety unions won't automatically get everything they want.

From Allegheny Institute *Policy Brief Volume 3, Number 40* "Loosening the Grip of Binding Arbitration"

Other Institute publications on this topic:

The Power of Act 111
Binding Arbitration Sprouts in Green Tree
Act 111 in Need of Overhaul
Addressing the Imbalance in Pennsylvania's Act 111

Teacher Strikes

The Problem:

Pennsylvania leads the nation in the number of teacher strikes. Nearly sixty percent of all teacher strikes across the nation over the last decade have occurred in the Commonwealth. Teacher strikes not only disrupt the education process, but can tear apart a community. The social consequences are displayed by strained relationships between teachers and the community and parents. Strikes have financial as well as social consequences. Financial burdens are created by increased property taxes due to inflated teacher contracts and child care costs during the strike. Teachers are public employees and civil servants and should be treated accordingly.

Recommendation for Legislative Steps:

1. The Legislature should pass a statute preventing teachers from striking. If the two parties cannot reach a contract agreement, the impasse would be sent to binding arbitration. An independent disinterested panel of state employed experts would be assigned to fashion a contract taking to into account the financial condition of the school district, current tax levels, and pay and benefit packages in other districts around the country.

2. Impose a penalty that takes away two days pay for and benefits for every day teachers miss regularly scheduled school time due to a strike or walkout. This type of penalty is imposed in other states such as neighboring New York, which also penalizes the union by forbidding it to collect dues for one year. In Florida, teachers who strike face decertification and fines up to $20,000 per day. Georgia and Tennessee also reserve the right to terminate teachers who walk the picket line. All of these penalties have been upheld in court.

Supporting Analysis

Pennsylvania is one of thirteen states across the country that allows teachers to strike. The others are Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, Montana, Ohio, Oregon, Vermont, and Wisconsin. Pennsylvania has been the leader in teacher strikes since 2000 with more than 100 labor stoppages. Illinois is a distant second (33) and Ohio comes in third (28). The number of school districts is not the primary factor in determining the number of strikes. Pennsylvania has 500 school districts compared to 612 in Ohio and 893 in Illinois.

The frequency of strikes demonstrates the power wielded by the teachers' unions. Pennsylvania's public school teachers enjoy an average pay level that is greater than the national average and they enjoy extremely generous health care and pension benefits. When broken into its hourly rate, teachers in Southwest Pennsylvania enjoy higher pay than the typical hourly earnings of white-collar professionals. **Strikes embolden teachers and have made them something of a protected class. Districts capitulating to union demands, under the threat of strikes, are responsible for the ever-increasing legacy costs that must be paid by taxpayers.**

From Allegheny Institute *Policy Brief Volume 10, Number 40* "Pennsylvania is #1…in Teacher Strikes"

Other Institute publications on this topic:

Penn Hills Teachers Strike: Mean Spirited and Spiteful
Hourly Pay: Teachers Vs. White Collar Workers
Tallying Recent Teacher Strikes Across the Nation
Teachers Strike; Pennsylvania Strikes Out
Pennsylvania: Still the Leader in Teacher Strikes

Assessing Real Property

The Problem:

The state's highest court, upon hearing the appeal of a case involving Allegheny County's base year assessment plan, decided that the plan violated the uniformity clause of the Pennsylvania Constitution and handed the case back to County courts to oversee a reassessment. The Supreme Court did not declare all base years unconstitutional leaving them to be decided on a case by case basis. As such the Court's Allegheny County ruling has created significant uncertainty and apprehension in the many counties that utilize a base year approach to property assessment. Moreover, the Common Pleas judge who first ruled the County was in violation of the Constitution noted in his decision that Pennsylvania is one of only a handful of states that do not require reassessment of property at some specific minimum interval.

All base year assessment schemes eventually produce large errors in assessments and enormous inequities in tax burdens with the under assessed paying less than their fair share while the correctly assessed and over assessed pay more than their equitable share. In light of these problems the Legislature should move to establish a modern assessment system that adopts the principle of assessments at regular intervals.

Recommendations for Legislative Steps:

1. Amend the base year statute so that no county can keep a base year in place indefinitely and re-assessments must take place at intervals of no more than five years—or less.

2 Adopt the principle that the statistical measure known as the "coefficient of dispersion" (COD) can also trigger a reassessment if it reaches levels outside internationally and nationally acceptable standards. The adoption of such a principle would give guidance for counties and taxpayers alike to determine the validity and reliability of assessments

3. Give counties with the highest CODs three years to carry out their initial reassessments.

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Supporting Analysis

"…We hold that the base year method property valuation, as applied in Allegheny County, violates the Uniformity Clause. We therefore agree that a countywide reassessment is required and remand this matter to the trial court for implementation of that mandate consistent with this Opinion." So said the Pennsylvania Supreme Court in a unanimous decision on April 29, 2009.

Thus it is Judge Wettick, who ruled against the County's base year in July 2007, who will decide how to implement the Supreme Court's decision. Bear in mind that Judge Wettick had earlier ordered the County to fix the problems in the 2005 assessments—which the chief assessor had determined already met international assessment standards—and use them for 2006. The County demurred, rejecting the Judge's order and instead adopted the base year system using 2002 assessments as the base year values. These values had been maligned as terribly inaccurate by the Chief Executive when he was campaigning for office.

After weighing its options and arguing in front of Common Pleas Court, the County decided to begin the process of a new reassessment to be completed for the 2012 tax year.

And while the Court has ruled unambiguously about what must happen in Allegheny County, their opinion does not resolve satisfactorily what must happen in other counties using the base year system. Here's the problem. The Court ruled that the concept of using a base year system to assess property is not in itself inherently unconstitutional until the unrevised base year begins to create serious inequities in taxation. In essence, whether the base year system violates the Uniformity Clause is to be determined on a case by case basis. For Allegheny County their judgment is clear, for the rest of the state, murkiness and confusion.

The Court shot down the County's argument that a base year satisfied "the need to create and preserve a stable and predictable local real estate tax system". The predictability, argued the County, of using a base year would eliminate the cost of reassessments and the "substantial repercussions" of such reassessments. In addition to avoiding the cost and the fallout, the County felt that "the interest in stability and predictability outweighed the interest in keeping up with the latest changes and fluctuations in market values". The County also felt that there was not that many instances of widespread inequality and that, on the whole, its assessments were better than other counties.

The Court wholeheartedly disagreed, noting that although state assessment laws permit the use of a base year that is indefinite in nature, "those provisions, as applied [in Allegheny County] violate the Uniformity Clause". In other words, the County's search for predictability in the assessment system did not outweigh the need to satisfy the need for uniformity in taxation.

The Court summed up its arguments with this: "the County's reasons why its base year system's resulting non-uniformity should be tolerated—stability and predictability—cannot justify a taxing scheme that routinely taxes property owners with declining or stagnant property values at a higher rate of assessed-to-actual value than property owners with stable or appreciating property values".

What does this mean for other counties in Pennsylvania using a base year? The Court's decision leaves a lot of unanswered questions. It could be interpreted as a county using a base year may have some serious uniformity issues if it has been in place for a while. The failure of the Court to delineate further prompted Judge Baer to issue a concurring opinion pointing out the need to get clarification for the other counties.

In that concurring opinion, Judge Baer writes, "Absent the unlikely prospect of prompt legislative action, the Majority's decision not to offer substantive criteria for interpretation of the Uniformity Clause will result in ongoing uncertainty for the Commonwealth's many taxing authorities and property owners alike". The Majority opinion held that it is hard, if not impossible, to tell when a base year begins to violate the Uniformity Clause. At that point, the Court did what can best be described as a "punt" and gave the assessment ball to the General Assembly. They did point out that 22 states require annual reassessments while 26 others require periodic reassessment (*see our 2007 report on assessments*) so it is clear that Pennsylvania is out of step and the Court may have been nudging the Legislature to see that fact.

The Majority basically weighed the high probability of throwing the state into property tax chaos if it declared the base year unconstitutional against the equally strong likelihood of lawsuits by taxpayers who will cite the language in the Allegheny County ruling. They chose the latter. Judge Baer suggests using the statistic called "Coefficient of Dispersion" (COD), a measure of the error rates in assessed values, as a benchmark. He argues that "To permit counties and taxpayers alike to have guidance as to when such mutation from a constitutional to unconstitutional system is occurring, this Court should adopt [the COD]".

How would this work? If a county's COD reached 20 or more—a figure that is verified by the State Tax Equalization Board—it would then be inferred that the county's assessment has moved to the level of being non-uniform and would face two choices: reassess, or be ready to face lawsuits. The latest STEB data shows that 59 counties, including Allegheny, have a COD of 20 or greater.

Perhaps a better approach would be to have the Legislature amend the base year statute to require that a given base year cannot be in place indefinitely. The new language could require that a reassessment take place and new base year be established at least every five years. The amended language could allow three years to carry out the first reassessments for those counties with the highest CODs with others out of the acceptable range to follow in two more years.

As it now stands, there is no clear cut guidance as to which branch of state government should deal with the remaining problems. Someone needs to act before the court system is overwhelmed with lawsuits.

From Allegheny Institute *Policy Brief Volume 9, Number 25* "Supreme Court Tosses Out Allegheny County's Base Year Assessments"

Other Institute publications on this topic:

Assessment Fiasco Gets New Life
County Officials' Assessment Confusion
A Tax Ruling the Supreme Court Ought to Consider
Spot Appeals: Another Problem Created By Base Year Assessments

Mandated Wages

The Problem:

Local governments, both, municipal and county, have taken it upon themselves to mandate wages for firms receiving government assistance. Such market interference can be detrimental to the economic growth of the community as it forces firms to pay higher labor costs which are either passed back to the taxpayers or to leave the affected area and abandon jobs. At the very least it sends a negative signal to current and future companies that the government is willing to meddle in the marketplace creating one more impediment to be overcome. In areas already lagging most of the nation in economic growth, mandated wages should be eliminated.

Recommendations for Legislative Steps:

1. The Legislature needs to pass a statute preventing municipalities and counties from imposing mandated wages on private firms.

Supporting Analysis

The phase "government assistance" can be a catch all that includes among others: direct contracts, economic development subsidies, abatements, or tax increment financing. The mandates are often called "prevailing wages" or "living wages" and are set well above any state or federal minimum wage. They can include payment for wages as well as additional compensation for the absence of benefits.

In early 2010 Pittsburgh City Council passed a prevailing wage law. The law requires any project with $100,000 of City and authority spending, including infrastructure, to a prevailing wage requirement. The actual amount of the prevailing wage would be calculated by the City Controller who would need to collect wage data on all affected job classifications. The law requires the City, as well as firms receiving City subsidies or contracts to also pay the prevailing wage. The implications on economic development efforts as well as on the City's own budget can be enormous.

Prevailing wages are market interference of the worst kind. They represent a tax on select businesses by forcing them to raise wages. The affected businesses have little recourse. They can either raise their price to cover the new costs or reduce the number of employees they hire.

If they operate in a competitive market, raising the price may not be an option and they will be forced to internalize the costs or perhaps shut down. If they have a government contract, they can pass the cost back to the government in the form of higher bids—which of course gets passed back to the taxpayers. Such wage requirements can have a negative effect on the number of jobs and the quality of the work product.

Proponents argue that companies receiving city subsidies have an obligation to pay prevailing wages. However, keep in mind that some investors utilize the subsidies because high taxes and poor regulatory and labor climates require them to use public assistance if they hope to have a viable enterprise. Having a government body change the rules after the fact sets a bad precedent and may keep future firms from entering the city.

Prevailing wages are a long-term disaster for any city wishing to implement one. While done under the guise of social justice, they might boost wages for a select few but they will ultimately cost more jobs for current workers as they are let go in favor of ones with higher productivity or chase away current or future firms. Furthermore, as workers' incomes rise they may become ineligible for government subsidies such as food stamps, Medicaid, or income tax credits, reducing or offsetting the benefits of the wage hike.

Alternatives to mandating wages are education and training. Those with more education and training tend to earn more than lower skilled workers. Other alternatives include increasing the earned income tax credits, child care, and housing assistance.

From Allegheny Institute *Policy Brief Volume 10, Number 2* "Prevailing Gamesmanship"

Other Institute publications on this topic:

Mandated Wage Mania in Allegheny
Living Wage: A Guarantee of Future Budget Crisis
Pittsburgh Needs to Rethink Living Wage
Why Living Wage is Wrong for Allegheny County

Economic Development

The Problem:

Pennsylvania's governments at all levels have essentially abandoned a free-market approach to economic development in favor of a top-down driven approach fueled by taxpayer subsidies in many forms. The problem is that for the billions of dollars dispensed in the name of economic development, Pennsylvania's job growth has not kept pace with the national average over the past decade. There are a myriad of economic development agencies at the state and local levels, each with their own approach and agenda for promoting development, with little real accountability for the money spent or actual jobs created. One of the more negative aspects of the generous incentive programs is that it conditions firms to wait for a deal before committing to an investment.

Recommendation for Legislative Steps:

1. Reduce the role of public sector economic development. The Commonwealth must shift to the development of an unambiguously business-friendly environment that will create incentives for firms to grow while at the same time removing many of the obstacles to business vitality thereby encouraging expansion of existing firms and new business formation as well as attracting out of state companies. All of this without having to lavish ever greater subsidies. Business taxes need to be cut and the onerous regulatory and labor climate facing businesses in the Commonwealth must be improved.

2. Audit all economic development programs and fold duplicative ones into others to result in an overall reduction of 75 percent of programs and a 50 percent reduction in outlays. The Auditor General should be provided the funding to create a group of staffers dedicated to constant monitoring of the state's economic development programs to ensure the taxpayers investment are protected. They also need to be able to track the number of jobs promised and actually created and have a mechanism to recover subsidies from firms that fail to deliver on their promises.

Supporting Analysis

Pennsylvania's economic development spending has been near the highest among all states, spending nearly five times the national average. A breakdown of the Commonwealth's expenditures shows the largest program expenditure falls under Community Assistance where money is redirected to local development agencies and community revitalization. Most states spent less on overall economic development efforts than the Commonwealth spent on the

Community Assistance program alone. Other high expense programs in Pennsylvania include Technology Transfer and Business Assistance.

Proponents of high spending levels claim it is a necessary investment for economic growth in Pennsylvania as it competes with rival states. But Pennsylvania is among the top spenders in economic development with very few states even approaching the Commonwealth's spending levels. But are the Commonwealth's enormous outlays producing commensurate job creation and economic growth?

From 2000 to 2008, before the recession hit full force, total private employment in Pennsylvania increased less than 2 percent. By contrast the level nationally rose by 3 percent with the country average being held down by slow growth in several northern and Midwestern state while several Sunbelt state enjoyed growth well above the national pace. Thus, despite development spending at or near the highest level in the nation, Pennsylvania's employment gains lagged behind the national performance. Furthermore, the fastest growing private sector in Pennsylvania, Education and Health Services—the sector adding the greatest number of jobs—is not even targeted by the vast majority of economic development programs and spending.

Moreover, it must be borne in mind that much of the job growth that did occur in Pennsylvania was driven more by national economic factors such as monetary policy, federal tax cuts, etc., than by the state's economic development efforts. Therefore, it is inappropriate to ascribe Pennsylvania's job gains to state development program efforts alone.

From Allegheny Institute *Policy Brief Volume 8, Number 50* "Pennsylvania Development Spending: Exorbitant and Wasteful"

Other Institute publications on this topic:

Economic Development Spending: Misguided and Wasteful
Pennsylvania's Ever-Expanding Economic Development Industry
Hoping for Growth: An Analysis of Government Economic Development Expenditures