

No Budget Agreement Yet, But Spending Continues

Summary: In not too surprising news, the general fund budget for the Commonwealth of Pennsylvania was not approved by the start of the Fiscal Year 2017-18 (FY 17-18) on July 1st. A recent news report noted that a general agreement among the four legislative caucuses may have disintegrated and that the week of July 24th would be a critical one in the negotiation process.

How long could it go on? It is anyone's guess. How does it compare to recent years? Based on summaries from the Office of the Budget listing the enabling legislation for each budget and legislative history of each budget bill from the General Assembly's website, a snapshot of the past ten budgets (FY 07-08 to FY 16-17) has been prepared as follows:

- Only three were signed into law by the Governor on June 30th, the day before the state fiscal year begins, and they were consecutive budgets. Those were for FY 11-12, 12-13, and 13-14.
- Five other budgets (FY 07-08, FY 08-09, FY 10-11, FY 14-15, and FY 16-17) saw a signature by the Governor in July, the first month of the fiscal year that had commenced without a budget. The earliest date following the start of the budget year was for FY 08-09, with an approval date of July 4th, and the latest date was for the FY 07-08 budget, with a date of July 17th.
- Two budgets have stretched well past summer—FY 09-10, which was signed into law on October 9th of 2009, and FY 15-16, the longest impasse in the past decade, with a signature of the current Governor on March 28th of 2016.

The Legislature's FY 17-18 spending plan did go into effect on July 11th; but it did so without the Governor's signature. Because the legislation to provide the revenue to cover the spending has not been passed the budget is unbalanced and as a result does not comply with the Pennsylvania Constitution's language in Article VIII, Section 13. Thus, the continuing negotiations. At this point the FY 17-18 budget completion date is later than all but the FY 09-10 and FY 15-16 approvals.

We wrote two *Policy Briefs (Volume 15, Number 50 and Volume 16, Number 11)* on the FY 15-16 stalemate that lasted nine months and how it really did not affect the operations of state government. No state departments stopped operation, all the so called off budget spending continued including all the pass through funded programs, taxes were obviously collected, and no state workers were laid off and all salaries and benefits were paid—indeed there were some hires. Employees that were covered by the Federal Fair Labor Standards Act (FLSA) were paid due to a 2009 Pennsylvania Supreme Court ruling: that ruling was based on rectifying the language of the state Constitution and the Federal law regarding “prompt payment of wages to FLSA covered employees” following a categorization of state employees in the event of an impasse. The Supreme Court reversed the Commonwealth Court’s decision on the issue.

The first *Brief* was written in October of 2015, four months into the impasse, which was then after the start of the school year for the state’s school districts. The districts that were most reliant on state subsidies (rather than local revenue) began to borrow money. The only other groups hurt by the stalemate were the universities and other schools that receive state funds. Their employees are not considered to be state employees and thus are not protected by the Supreme Court ruling.

And that brings us to the Treasurer’s office, which on June 23rd (prior to the start of FY 17-18) published a legal memorandum on “budgetary impasse payment authority” (memo). The Pennsylvania Constitution in Article III, Section 24 states that unless there is an appropriation money cannot be paid out of the Treasury. If an expenditure request (termed a payment requisition) is submitted to the Treasury from department or agency that deals with a prior fiscal year appropriation, or for a function that is mandated and not controlled by the general fund budget process (state or Federal directed spending that is not part of the general fund), or it is an expenditure “necessary to maintain public health, safety, and welfare pursuant to the police powers of the Commonwealth” then the Treasurer has the ability to “...permit the expenditure of public funds in the absence of an appropriation” according to the memo.

Obviously, since state government departments are all still operating at full strength, either they have proved they are all necessary to public health, safety or welfare pursuant to police powers or the Treasurer’s memorandum is being ignored. Bear in mind that, the Pennsylvania Supreme Court decision mentioned earlier has subordinated the Constitution to the FLSA when the question pertains to employee pay. The real question is not whether spending is continuing unabated for state departments. Instead, the questions are: (1) has there been either a hiring freeze or an order not to increase payrolls? And (2) are the wage increases contained in collective bargaining agreements being paid? If so, are monthly departmental expenditures running ahead of last fiscal year’s levels?

The Office of the Budget’s document titled “budget impasse questions and answers” is essentially the same as was produced during the FY 15-16 impasse. No risks to the general public will be present, the public won’t be denied access to facilities operated by the state, highway construction funded from prior year appropriations continue on, and

new contracts for FY 17-18 can be entered into by state agencies. That's not to say there won't be effects of a prolonged impasse: it could be felt in education funding, and for vendors and contractors in current arrangements.

One would expect that no budget would mean a shutdown of most of the government but that does not happen—indeed all state government employees are still showing up for work each day and getting paid while accruing all benefits. Thus, the all-important question; what pressure is there on the Governor and the Legislature to get a budget done on time? Except for school and some agency funding that is not being disbursed in a timely manner, the state government just goes blithely on its way for weeks and months with no budget.

Is that a way to run a state? Apparently it is. Where there is no pain being felt from government inaction, there is no incentive to get moving.

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