



Pennsylvania Budget Enters Bizarro World

“The state budget process can be divided into four phases: gubernatorial preparation and submission to the General Assembly, approval (involving the executive and legislative branches), execution, and program performance evaluation and financial audit”—*Pennsylvania State Budget for 2016-17, Readers Guide*

The seemingly tidy four step budget process in 2015-16 has been something else entirely. After the General Assembly passed a budget in June and it was vetoed, the state went six months without a budget. The General Assembly passed a general fund budget in December with \$29.6 billion in appropriations. This was subjected to \$6.3 billion in gubernatorial line-item vetoes, leaving an approved budget of \$23.3 billion. In addition, the other three executive branch offices—Treasurer, Attorney General, and Auditor General—have been forced into the current budget drama.

Two of the largest line-item vetoes, in total dollar terms, were for the Department of Corrections and the Department of Education. The Governor’s message on the budget and the line-item vetoes from December 29th, 2015 notes:

- For the state correctional institutions, state appropriation...\$1,895,427,000
This item is approved in the sum of \$956,026,000
- For payment of basic education funding to school districts,
state appropriation...\$5,630,079,000
This item is approved in the sum of \$2,532,539,000

In other words, line-item vetoes reduced prison spending by \$939 million (50%) and to school districts by \$3.1 billion (55%). Those two reductions account for \$4 billion of the total line-item veto amount.

As a result of the Governor’s veto, the prison system is running short of money to pay for operations. Per request from the Executive branch the Treasurer’s office has approved the transfer of \$200 million to fund prison operations. Clearly, the large line-item veto of over 50 percent in Legislature budgeted funding has created a crisis. Bear in mind that in Fiscal Year 2014-15, expenditures for prisons was \$1.757 billion, about the same as the Legislature had included for the 2015-16 budget. The \$956 million allowed by the Governor after the veto would have been used up in six to seven months of operations. And since the prisons were being fully funded from July through December, the Governor’s allowed appropriation for 2015-16 would have been largely exhausted by February.

The Pennsylvania Constitution, Article III, Section 24 states that “no money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers”. However, the Treasurer justified approving the request, noting in a March 3rd press release that “...failure to make these payments in a timely manner would jeopardize the safe operations of the state prisons and risk public safety”. The Treasurer also cited the U.S. Constitution as requiring adequate prison funding.

So, the Legislature appropriates \$1.9 billion, then the Governor halves it with the stroke of a pen, and yet more money is being spent above the approved amount—and no doubt more will be needed before the fiscal year ends on June 30. What was the point of the line-item veto if it was inevitable the prisons would require far more than \$956 million set by the Governor through his own veto? And why should the Governor not be challenged as to his reasons for the veto of one of the state functions that must always be adequately funded as critical and necessary? In another example of the media failing to tell the real story, in a news account of the Treasury’s decision the opening language stated that “...the limit set in a December spending bill that didn’t resolve an eight-month budget dispute...” The truth is, the far short of needed funding limit was set by the Governor via his veto action.

The Treasurer is obviously in a precarious position because of the impasse and having to approve spending above reduced appropriations. In testimony delivered to a joint hearing of the Senate Committees on Appropriations and Finance in February, it was noted:

“Treasury has been forced into the difficult position of determining, in the face of conflicting legal and statutory guidance, whether the legislature’s right to appropriate public funds or the executive’s role of protecting the public should take precedence.”

This too is ironic and borders on dishonest since the Executive cut the Legislature’s budgeted amount and created the crisis.

The Attorney General’s office offered a “non-binding” opinion to the Treasurer’s office that “...the state constitutional provision against spending in excess of appropriations is trumped by federal law.”

This is not the first time that the plain language of Article III, Section 24, has been superseded. A 2009 decision by the Pennsylvania Supreme Court ruled that in a budget impasse year workers classified as non-critical covered by the Federal Fair Labor Standards Act must be kept on the payroll. Thus, the Commonwealth cannot furlough anyone during a budget impasse. This ruling is unique to Pennsylvania and will undoubtedly create long periods of budget impasses in the future.

Now let’s turn to the second large line-item veto: namely, for basic education funding. In a March 1st article the Brentwood Borough School District in Allegheny County announced that it would be preparing to borrow money, much like other school districts across the state (three other Allegheny County districts borrowed during the impasse according to the Auditor General’s office).

In a strange and horribly misinformed twist, the superintendent of the District placed all of the blame squarely on the General Assembly. “School districts are required to meet deadlines or else we face penalties. Yet the Legislature was supposed to pass their budget in June. That never happened...It’s so frustrating that school districts always find a way to make it work, because it’s for the kids...I say the Legislature doesn’t have the same interest in mind”.

Let's see; General Assembly passes a budget in June, it is vetoed in its entirety, General Assembly passes a budget in December, and the basic education funding is line-itemed vetoed to the tune of \$3 billion, more than half the General Assembly's appropriation. Yet the superintendent amazingly blames the General Assembly. A poor example of education management in Pennsylvania. The superintendent is not alone, as the Pennsylvania School Boards Association has named the Legislature in a lawsuit for failing to provide adequate school funding (the 2015-16 Fiscal Year appropriation contained in the latest General Assembly budget was \$5.6 billion for basic education funding). So much disdain for truth.

Lastly, in order to get to the bottom of spending over the six months from the start of the fiscal year until the approval of the December 29th budget, the Auditor General's office has been asked by the chairs of both the House and Senate Appropriations Committees to audit the funds transferred by the Treasurer as requested by the Executive branch. The letter from the Committees to the Auditor General stated:

“We would appreciate your review and assessment of the administration's application of the ‘health, safety, and protection’ standard, as well as any other standards they relied on—such as federal law or state court decisions—to make payments from the state treasury during the time we operated without an enacted state budget.”

Why is the lack of a budget no impediment to spending? In this current case we may learn a lot about the relative powers of the three branches of government in producing and enforcing a budget. As of now, it looks as though judicial rulings and Treasurer reading of the Constitution have more sway than the Legislature.

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