

ROCK CAPITAL

Testimony Before the Legislative Audit Advisory Commission

February 8, 2016

Representative Mark Keller
Chairman, Legislative Audit Advisory Commission
Ryan Office Building, Room 108
Harrisburg, PA 17120-2086

Dear Chairman Keller:

Every year the Legislature budgets more taxpayer money than it actually needs, and creates an artificial surplus which it refunds to itself. The Legislature then creates a loophole that allows unspent funds from the “non-lapsing” accounts” to roll-over.

State law requires unspent program moneys to “lapse” or return to the Commonwealth of Pennsylvania at the end of the fiscal year. The only exception is if a waiver is granted by the Governor's Budget Secretary.

The Legislative Audit Advisory Commission is chaired by you and members of the House and Senate who have the ability to fix broken legislation. It is time that the legislation that created the Legislative Audit Advisory Commission, Act of June 30, 1970, P.L. 442, No 151., be amended and modified. Specifically, Section 1 (a) and Section (c) (2) should be rewritten to authorize an independent forensic audit by the Auditor General.

In addition, the Committee should recommend the permanent closure of “non-lapsing” surplus accounts, and codify this recommendation under Section 2 (b).

To date, these funds funds have been used to pay for alcohol, “floral purchases,” “continuing education,” meals, Starbucks; and in 2005, lawmakers underwrote an illegal midterm pay raise using “surplus funds.”

No caucus has created an internal policy that caps the size of the surplus or says how large it should be, even though the Legislature’s own auditor makes the same recommendation on an annual basis.

The surplus' stated purpose - as expounded by yourself and your predecessors - is to maintain the Legislature's financial independence during a budget standoff. Frankly, this argument has not been justifiable since 2009. At that time, lawmakers had used surplus money to pay staff during a 101-day budget impasse with then-Gov. Ed Rendell.

However, the Treasury Department interpreted a December 2009 Supreme Court decision to allow on-time and uninterrupted payroll payments to lawmakers and legislative employees in a budget impasse.

Clearly all four caucuses were able to make payroll in 2015, and the House Democrats were awarded an advance by the Department of Treasury.

The Department’s legal opinion stated:

“Without the ability to pay its employees, the General Assembly would be unable to enact laws related to the promotion and preservation of the general welfare — including the enactment of a budget. Therefore, just as it is necessary to pay executive and judicial branch employees who perform essential functions, it is necessary to pay legislative employees who perform the essential functions of the General Assembly.

Additionally, it is the position of the Treasurer that all state employees, including those in the legislative branch, have an absolute right to be paid for [work] performed. As a result, Treasury plans to continue to make payments when presented with a properly executed payroll request as it has since the beginning of the budget impasse.

Rock the Capital supports the elimination of the surplus in lieu of recent developments that clearly demonstrate legislators - and the largest staff in the nation - will be compensated during “budget impasses.”

Recommendations to Avoid Future Budget Impasses:

Rock the Capital is recommending a six step plan to avert future budget impasses:

- Hold legislators’ pay in escrow until the budget is signed into law.
- Hold the Governor’s and cabinet members’ pay in escrow until the budget is signed into law.
- Compel legislators to pay 100% of their health care until the budget is completed; at which time, they will be reimbursed in kind.
- Compel the Governor and cabinet members to pay 100% of their health care until the budget is completed; at which time, they will be reimbursed in kind.
- All days in which the budget is not signed into law after July 1 will not be counted, credited or factored for pension calculation purposes.

- Prohibit legislators and members of the executive branch - including the Governor - from being reimbursed for travel and lodging until the budget is signed into law.

Irregularities and Non Compliance:

Historically, the legislature has ignored most of the observations and recommendations made by the Committee's certified public accountants - Ernst & Young and Mitchell & Titus.

Rock the Capital has collected recommendations made by auditors, legislators, regulators and concerned citizens since 2006. We hope that you will strive to implement the following recommendations:

- 1) Since at least 2008, the auditor hired to report on the surplus has recommended that the Legislature consider adopting a policy that establishes and monitors the appropriate amount of surplus.

In the past, House and Senate Republican and Democratic caucuses, both agreed the legislative surplus should be capped, but they have not reached an agreement on where it should be set.

It is time to implement a protocol for capping the legislative surplus.

- 2) The Audit should disclose the nature and amount of any findings of irregularities and improprieties.
- 3) The Audit should also provide descriptions of large, unusual and/or inappropriate sums disbursed by use of the "advance appropriation method." This disbursement vehicle method does not document to any external authority the justification for these expenditures.
- 4) The Legislature has failed to implement recommendations made by the Committee's contracted CPA firms to consolidate House checking accounts.

The House of Representatives in recent years has maintained up to 36 separate checkbooks. Auditors have recommended reducing the number of accounts to defeat the "...opportunity for errors to be committed..."

There is no reason to postpone consolidation and standardization of the accounts.

5) Moreover, the House also lacks a standard leave policy to match the consistent policy throughout state Senate offices.

A standard leave policy needs to be adopted by the House of Representatives.

6) Throughout the Legislature, employees aren't required to itemize expenses they paid for with a credit card when they get reimbursed.

A standard and uniform policy of itemized expenses accounting needs to be implemented.

7) In light of the matters disclosed and discussed in the Footnotes of previous Audited Financial Statements, it is obvious that the information presented is not useful from the standpoint of informing either the Legislative Audit Advisory Commission, members of the General Assembly, or the public as to the nature, appropriateness or efficacy of significant expenditures of tax dollars.

Please implement a protocol that utilizes meaningful descriptions as to the nature of many of the amounts disbursed.

8) Additionally, please incorporate meaningful classifications of expenditures by easily understandable expense classifications. The audited financial statements and related information should provide sufficient detail and clarity about expenditures for citizens to learn with reasonable certainty what activities are being conducted by the General Assembly and the appropriateness of such activities.

9) We respectfully request that the Committee authorize an independent forensic audit of all leadership accounts, including but not limited to “advance appropriation disbursement accounts” under the direct or indirect control of the legislative leaders of the General Assembly, the Chief Clerk of the House and Senate and/or their respective staff or other representatives.

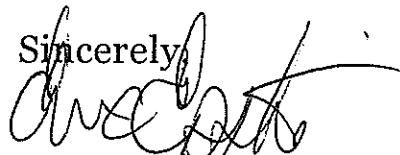
We ask that this audit comply with the highest professional standards. We further ask that the audit cover the entire 2014-2015 legislative session, and be concluded and released publicly by January 31, 2016.

10) The Committee should adopt and implement an opportunity period for public comment and public testimony at its next public meeting.

Clearly, the annual expenditures of the General Assembly are of vital interest to the public. Citizens have the right to know the nature and amount of all expenditures of their taxes and that such expenditures advance legitimate public interests.

Thank you for your attention to this request. We look forward to your favorable reply.

Sincerely,



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CREATING THE LEGISLATIVE AUDIT ADVISORY COMMISSION
ACT OF JUN. 30, 1970, P.L. 442, No. 151

AN ACT

Implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. Audits of Affairs of the General Assembly, Legislative Agencies.--The financial affairs of the General Assembly and its legislative service agencies shall be audited by a certified public accountant to be retained by the Legislative Audit Advisory Commission. At least one such audit shall be made each year; however, special audits may be made when they appear necessary in the judgment of the Legislative Audit Advisory Commission.

SECTION 2. Legislative Audit Advisory Commission.--

(a) There shall be an independent advisory commission, to be known as the Legislative Audit Advisory Commission, which shall consist of eight members, a majority and a minority member of the House of Representatives and two public members appointed by the Speaker of the House of Representatives, and a majority and a minority member of the Senate and two public members appointed by the President Pro Tempore of the Senate. The commission shall organize annually by electing from among themselves a chairman and a secretary.

(b) Except for the public members of the commission who shall receive a compensation of \$100 for each day the Commission shall meet, no other member of the commission shall receive any compensation but all members shall receive traveling and actual expenses incurred as members of the commission. ((b) amended Apr. 6, 1980, P.L.85, No.29)

(c) The powers and duties of the commission shall be to:

(1) Examine the standards of audits performed under the provisions of section 10 of Article VIII, of the Constitution of Pennsylvania, and recommend measures for the improvement of pre-auditing and post-auditing of the financial affairs of the Commonwealth.

(2) Report annually recommendations and suggested legislation, if any, for the improvement of auditing in the Commonwealth, and particularly as it pertains to the Legislature.

SECTION 3. Audits of Affairs of the Several Courts of the Commonwealth.--(3 repealed Apr. 28, 1978, P.L.202, No.53)

SECTION 4. Effective Date.--This act shall take effect immediately.