

# ROCK CAPITAL

## Testimony Before the Legislative Audit Advisory Commission

December 27, 2018

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 needs, and creates an artificial surplus which it refunds to itself. The Legislature then shimmies through a loophole that allows unspent funds from the “non-lapsing” accounts to roll over.

We are the largest full time legislature in the nation. Pennsylvania law makers are the second highest paid legislators in the country. The “minimum wage” for legislators rose by 1.6% on December 1. With a \$1,400 pay raise, back benchers and newly elected legislators will make \$88,610. This “minimum wage” does not factor in health care, per diems, perks or pension multipliers.

The median household income in Pennsylvania in 2017 was \$59,195.

On December 27, 2018, assuming the Legislature Audit Advisory Commission's ("the Commission" or "the LAAC") math is correct, you will announce that the legislature grew its "slush funds" for the Year Ended June 30, 2017. This is a twisted victory for bipartisanship, a nasty-gram to tax payers, and the first bite of a rotten apple for freshmen legislators.

### **Bad Math, Climbing Costs and Pay Raises**

In 2016, the Audit report was marred by confusion, and a reporting error of \$18 million dollars. The Legislative Audit Advisory Commission initially reported a surplus of \$90 million. However, Rock the Capital asserted correctly that the festering slush fund increased from \$100.4 million to \$118.4 million during a budget impasse.

The surplus stash two years ago was in addition to a legislative budget of \$321 million. Pennsylvania taxpayers spent \$1,268,774 million per legislator. Once again, legislators refused to cut into their fat and slice off a piece of the "slush fund" to plug the budget gap.

Meanwhile the total cost to fund the legislature and its subsidiary agencies climbed 5.2% last year to \$362 million. Last year there was over \$141 in "reserves", and at least of one-third of that amount is earmarked for Asset Retirement Obligations.

**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 the past, these funds have been used to pay for alcohol, “floral purchases,” “continuing education,” law degrees, meals, and in 2005, lawmakers underwrote an illegal midterm pay raise using “surplus funds.”

### **Transfer Non-Lapsing Account Funds to the Tax Forgiveness Program for Working Poor**

Nearly one-in-five Pennsylvania households qualifies for Tax Forgiveness. Through Tax Forgiveness, eligible working families who paid income tax throughout the year may be refunded some or all of that tax paid. Retired persons and low-income individuals who did not have Pennsylvania income tax withheld from earnings may have income tax liabilities forgiven.

Depending on your income and family size, you may qualify for a refund or reduction of your Pennsylvania income tax liability with the state’s Tax Forgiveness program.

I am asking the Governor and Legislature to treat low-income Pennsylvania taxpayers the same way you treat yourselves. If a COLA is on the plate every year for an elite class of state bureaucrats, then a COLA should be in the budget annually for working class tax payers.

**Legislators have received a raise 21 times over the last 23 years.** In recent years the tax forgiveness program has been defunded through inaction. Here are the numbers from 2014-2018.

\$281.9 million (2014-2015)

\$273.4 million (2015-2016)

\$265.2 million (2016-2017)

\$257.3 million (2017-2018)

**During this period legislative salaries increased by 11%.**

**The LAAC should transfer approximately \$24.2 million per year from the legislative surplus - and suspend the automatic COLA's for the Executive, Judicial and Legislative branches -until the Tax Forgiveness threshold is reconciled.**

Accordingly, assuming a 2% inflation rate, we propose phasing in the correction over eight years. By that time, the Tax Forgiveness threshold would be "current." Thereafter, it should be adjusted annually and automatically by the same COLA percentage enjoyed by top rung officials

### **Policy Changes**

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 legal rulings that clearly demonstrate legislators - and the largest staff in the nation - will be compensated during “budget impasses.”**

**The alternative would be for the legislature to transfer approximately \$24.2 million per year from the legislative surplus - and suspend the automatic COLA's for the Executive, Judicial and Legislative branches -until the Tax Forgiveness threshold is reconciled.**

### **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 Commission's certified public accountants - Ernst & Young and Mitchell & Titus - and now Boyer and Ritter, LLC of Camp Hill.

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 Commission’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 Commission 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 Commission 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. We look forward to your favorable reply regarding Rock the Capital's suggestions and recommendations for improving the Legislative Audit.

Sincerely,

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