Fiscal Code (House Bill 1327, PN2969) Veto Implications - Summary

On March 25, 2016, Gov. Wolf vetoed the Fiscal Code "trailer" bill (House Bill 1327, PN2969) that accompanied the 2015/16 General Fund spending plan enacted without his signature – Act 1A (House Bill 1801, PN2968).

In the governor's veto announcement, he indicated that he vetoed the Fiscal Code bill because it contained unconstitutional provisions, gutted important environmental regulations and tried to establish legislative authority over issues under executive jurisdiction. The administration indicated it would work to distribute the funding provided in the General Appropriations bill in the most appropriate manner possible.

In addition to the items outlined in this document, the Fiscal Code bill contained a number of earmarks across multiple appropriations and agencies. While some of these earmarks are new for 2015/16, many of them appeared in prior Fiscal Code budget implementation bills. Consequently, absent legislation, there is no guarantee that appropriated funds will be reserved for the specific purposes outlined in the Fiscal Code.

This summary document provides a preliminary overview of the possible implications of not enacting aspects of the Fiscal Code bill. Please note: We will revise this document as new information becomes available.

The bill analysis for the Fiscal Code bill (House Bill 1327, PN2969) is available on our website at www.hacd.net.

Education

PlanCon

- The enacted 2015/16 budget (Act 1A) relied upon a $2.5 billion bond authorization instead of the traditional General Fund appropriation for PlanCon (Authority Rentals and Sinking Fund Requirements). The language accomplishing this policy change was contained in the Fiscal Code bill (House Bill 1327), which the governor vetoed. The administration believes it would be fiscally irresponsible to go to market with a new bond issue before addressing the commonwealth's structural budget challenges. In 2014/15, PlanCon received a $306 million appropriation. Currently, there is no mechanism (direct appropriation or bond proceeds) for school districts to receive PlanCon reimbursements from the state in 2015/16.

Distribution Formulas

- The Fiscal Code bill contained non-agreed-to formulas for distributing the basic education and Ready to Learn Block Grant funding.
- By vetoing the bill, the administration has no guiding school district distribution formula. However, the General Appropriations Act (House Bill 1801, now Act 1A of 2016) contained substantive language surrounding the basic education funding appropriation. In the absence of a distribution formula, the language attempts to prevent the administration from using its own formula to distribute the education funds. In fact, the substantive language goes so far as to say that the governor cannot distribute the additional $150 million in basic education funding compared to 2014/15 without a formula approved by the legislature. In the past, the courts have taken a negative view of including substantive language in the General Appropriations bill; rather, such language to implement the budget should be contained in a "trailer" bill such as the Fiscal Code.
    - Formula used in Act 10A of 2015: In December 2015, when the General Fund budget (House Bill 1460) was sent to the governor's desk, there was no Fiscal Code or School Code bill accompanying it directing how the basic education or Ready to Learn Block Grant funding would be distributed among the 500 school districts. Therefore, the administration distributed the partial funding to school districts using a formula that focused on restoring the funding cuts of the previous administration before implementing the Basic Education Funding Commission's new formula.

Social Security Payments

- The enacted 2015/16 budget creates a two-month lag in the state reimbursements to school districts for the required School Employees' Social Security payments. This gimmick leaves school districts on the colloquial hook for $87.4 million in 2015/16. This underfunding was enabled by language contained in the Fiscal Code bill that required new reporting criteria. Absent the Fiscal Code bill language, it is unclear how the Department of Education will handle the social security payments. Additionally, the Fiscal Code bill continued the prohibition from previous years that prevented any school employee's social security payments being made to charter schools in 2015/16.

Pensions

Pension "Double-Dip"

- The Fiscal Code bill (House Bill 1327) would have eliminated the state's duplicative retirement contribution to charter and cyber-charter schools, saving the state General Fund about $64 million in 2015/16. The pension "double-dip" was only temporarily eliminated last fiscal year (2014/15).

  Without the provision in the Fiscal Code bill, charter and cyber-charter schools will continue to receive the duplicative reimbursement from the state for the annual employer pension payment and the state will not realize the savings. Under current law, school districts calculate charter and cyber-charter tuition by including pension payments. Charter and cyber-charter schools also receive a direct reimbursement from the state for its employer contribution payment to the Public School Employees Retirement System (PSERS).

Health & Human Services

Human Services

- The Fiscal Code bill (House Bill 1327) modified the Tobacco Settlement Fund provisions so that additional tobacco funds could be used in 2015/16 to help pay for Medical Assistance Long-Term Care in the Department of Human Services. Consequently, the veto means tobacco funding available for MA Long-Term Care is approximately $24 million less than what is appropriated in the final 2015/16 budget (Act 1A of 2016)
- In response to the Child Welfare funding changes implemented in the 2015/16 budget, the Fiscal Code bill included language that would have provided appropriation authority for the Department of Human Services to make final payments to counties if a budget was not enacted by September 1 in any given year. Consequently, the veto means that in the event of another prolonged budget impasse, there is no assurance the counties will be paid their fourth quarter payments and reconciliation payments.

Drug & Alcohol Programs

- The Fiscal Code bill provided for $2.5 million to be transferred from the State Stores Fund to the Department of Drug and Alcohol Program (DDAP). This transfer was formerly made to the Office of Drug and Alcohol Programs in the Department of Health prior to establishment of the new agency. This transfer provision is already being implemented. The Fiscal Code language would have codified the change.

Environment

Transfers

- The Fiscal Code bill would have reduced the transfer amount from the Oil and Gas Lease Fund to the Marcellus Legacy Fund for distribution to the Environmental Stewardship Fund. This reduction was made necessary by the steady decline in revenue for the OGLF because of low natural gas prices on royalty payments, and pressure on the fund to keep pace with expenditures and commitments.

Consequently, without this reduction, the OGLF would be expected to provide the full transfer amount authorized by Act 13 of 2012; therefore, raising the issue of the fund's ability to meet its spending demands. The Fiscal Code bill would have changed the mandated distribution percentages from the Environmental Stewardship Fund. With the veto, distribution percentages will remain at levels under current law.

Natural Gas Infrastructure Development Fund

- The veto of the Fiscal Code bill also nullifies the creation of the Natural Gas Infrastructure Development Fund. The bill would have transferred $12 million from funds made available to the CFA under the Alternative Energy Investment Act of 2008 to this newly created fund for purposes of awarding grants to expand access to natural gas infrastructure. With the veto of the Fiscal Code bill these funds will remain directed toward their intended purpose.

Clean Power Plan Timeline

- The governor's veto of the Fiscal Code bill erases changes to the timeline for submitting a state implementation plan to comply with the federal Clean Power Plan (CPP). The timeline now reverts to the language under current law, Act 175 of 2014. The Supreme Court recently issued a hold on the implementation of the CPP, but DEP has continued to work on building the plan for Pennsylvania should the legal challenges be cleared up in favor of the CPP. Under federal Environmental Protection Agency (EPA) regulations, Pennsylvania can still request a two-year extension for submitting its plan, if needed.

Natural Gas Regulations

- The Fiscal Code bill would have repealed and restarted the process for Chapter 78 natural gas regulations, specifically related to conventional drillers. The regulations now under consideration by the Independent Regulatory Review Commission (IRRC) have been in the process for several years, and it is DEP's belief that this language would have been a serious setback to enhancing environmental safeguards for natural gas development. Under the current process, IRRC will hold a final public meeting on the regulations on April 21, 2016, before final publication.

Other Areas

Agriculture

- The Fiscal Code bill would have authorized the transfer of $25.76 million from the Race Horse Development Fund (RHDF) for the appropriations it traditionally supports: Animal Health Commission, the Pennsylvania Veterinary Laboratory System, Pennsylvania Fairs and the transfers for the State Farm Show Products Show Fund and the state Racing Fund. Absent the authorization contained in the bill, it is unclear if the Department of Agriculture will have the spending authority for these appropriations.

Community & Economic Development

- The Fiscal Code bill, if enacted, would have codified agency policy for the Educational Improvement Tax Credit (EITC) program in 2015/16. This policy allows for EITC awards to be used in either the taxable year in which the application was submitted or that in which they were awarded; however, this policy has already been implemented by the Department of Community and Economic Development (DCED).
- The bill would have added a provision prohibiting the Secretary of DCED from certifying that the Intergovernmental Cooperation Authority (ICA) is no longer necessary for cities of the second class so long as they are under Act 47 (of 1987) oversight.
- The bill included changes to the local share provisions for Mohegan Sun Casino, as well as expanded eligibility for grant funding administers by the Commonwealth Financing Authority (CFA) under the State Gaming Fund local share assessment to county redevelopment authorities.

General Services

- The Fiscal Code bill would have authorized the General Assembly to provide, through the Department of General Services, annual appropriations to ensure fire protection services for the state Capitol Complex in the City of Harrisburg. Although there was an attempt to consolidate and fund fire protection services exclusively through the Department of General Services (DGS), the final 2015/16 budget is expected to allocate a total of $5 million to the City of Harrisburg through two appropriations: Capitol Fire Protection ($496,000) in the Department of General Services (DGS) and Center for Local Government Services ($4.504 million) in the Department of Community and Economic Development (DCED).

Labor & Industry

- The Fiscal Code bill contains investment authority provisions for State Workers' Insurance Board, which manages the State Workers' Insurance Fund (SWIF). Established by law, SWIF provides workers' compensation coverage for any Pennsylvania business that chooses to purchase coverage from the fund. These provisions build upon the language found in the Workers' Compensation Act. The board's expanded investment authority in the Fiscal Code expired June 30, 2015. House Bill 1327 proposed to extend this authority to June 30, 2018. Without that extension, the board's investment authority reverts to older, less expansive language from Workers' Compensation Act and the Banking Code.
- The Uninsured Employers Guarantee Fund (UEGF) provides workers' compensation benefits for injured workers whose employer failed to maintain required WC insurance. The fund continues to face structural imbalance, so in the past, the General Assembly transferred money from the WC Administration Fund to the UEGF to keep the fund solvent. House Bill 1327 would have transferred $3.1 million to the UEGF. Without this transfer, the Department of Labor and Industry will need to use short-term loans to keep the UEGF afloat. The General Assembly will need to revisit the need for a transfer with the 2016/17 budget, as well as consider more permanent fixes.

Transportation

- The Fiscal Code bill, if enacted, would have prohibited PennDOT from including direct mail inserts (e.g. coupons for commercial services and advertising materials for private commercial entities) in mailings from the agency.

Local Government Capital Project Loan Fund

- House Bill 1327 would have allowed Scranton to increase its local services tax up to $156 per year without court approval (upon termination of distressed status), as opposed to the current cap of $52 per year. Absent the Fiscal Code bill, Scranton will not be permitted to increase its local services tax without court approval.

Rainy Day Fund Transfer

- House Bill 1327 would have suspended the required transfer of 25 percent of the 2014/15 ending balance to the Budget Stabilization Reserve Fund (commonly known as the Rainy Day Fund). Absent the Fiscal Code bill, the transfer of $68.6 million to the Rainy Day Fund is required. Consequently, this transfer reduces revenue available in the 2015/16 General Fund budget.