

Pennsylvania Affairs of State

A PUBLICATION OF KIRKPATRICK & LOCKHART LLP'S GOVERNMENT AFFAIRS PRACTICE

JANUARY 6, 2003

Legislative Alert - Wrap-Up of November Lame Duck Session and a Look Ahead

MESSAGE FROM THE EDITOR

As expected, the Pennsylvania General Assembly and Governor Mark Schweiker presided over one of the most active "Sine Die" (i.e., Lame Duck) Sessions in years. In all, over the course of ten days, the General Assembly sent more than 100 bills to the Governor's desk for signature. These initiatives, now law, affect nearly every sector of the economy. Listed below, in **Section I**, is the "2002 Legislative Wrap-Up." This section is divided into several subject areas and, under each, is a summary of the key pieces of legislation signed into law by the Governor.

On a prospective basis, expect a handful of issues to dominate a vast majority of the attention and time of the new Governor (and his team) and the General Assembly over the next six months:

- FY 2003-04 General Fund Budget (and corresponding state tax bill)
- Medical Malpractice Reform
- Local Tax Reform

While the legislature and Governor will certainly address other matters, including a host of widely anticipated initiatives to be announced in then-Governor Ed Rendell's Budget Address on March 4, 2003, those matters will pale in comparison to the above-mentioned and below-discussed issues in **Section II, "2003 Legislative Agenda (the next six months)."** The next issue of *Pennsylvania Affairs of State* will offer a prelude to then-Gov. Rendell's Budget Address in the context of rapidly changing economic and fiscal conditions.

Gov.-elect Rendell's Transition Team continues to evaluate and recommend thousands of candidates for appointment within the Governor's Office and throughout the Executive Branch. As of the date this Alert went to print, there have been very few announcements, but tons of speculation and rumors. What we do know is that the Rendell Transition Team is hard at work in an attempt to assemble a Governor's Office staff and Cabinet-level appointments in key agencies. Below, in **Section III**, is a list of Transition Team Appointees by subject area.

The 2003 Inauguration of Governor-elect Ed Rendell will occur on Tuesday, January 21, 2003. At 10:30 a.m., Lt. Governor-elect Catherine Baker Knoll will take the oath of office in the Pennsylvania Senate Chambers. At 11:45 a.m., Governor-elect Rendell will be sworn in on the Capitol steps outside of the East Wing of the Capitol. At 1:30 p.m., the Inaugural Parade will commence. At 5:30 p.m., then-Governor Rendell will host a private reception at the Governor's Residence. And, at 7:00 p.m., the Inaugural Ball and Gala will begin.

If you have any questions or would like any further information regarding the following matters, or any other government affairs matter, please do not hesitate to contact Peter A. Gleason, Esq. at (717) 231-2892 or pgleason@kl.com, or Gregg Taylor at (717) 231-5856 or gtaylor@kl.com, both in the Harrisburg office of Kirkpatrick and Lockhart LLP.

Section I: 2002 Legislative Wrap-Up

BANKING/FINANCE

Act 186 - HB 2599 (Allen) - Motor Vehicle Sales

Finance Act - Amends the Motor Vehicle Sales Finance Act, providing for a substantial rewrite of existing law, including added enforcement authority to the Department of Banking. Importantly, the bill allows for the financing of several “non-essential” items (e.g., service contracts, warranties) that, until this enactment, were not permitted to be financed.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2729P4723.HTM>

Act 197 - SB 14 (Holl) - Mortgage Satisfaction Act –

A freestanding act intended to update the permissible methods and alternatives to mortgage satisfaction. The Act allows either satisfaction piece or settlement officer satisfaction, along with methods for a mortgagee to object to a settlement officer satisfaction and validates all prior instruments of satisfaction.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0014P2379.HTM>

Act 200 - SB 460 (Mowery) - Check Casher Licensing

Act - Amends the Check Casher Licensing Act by exempting certain food or drinking establishments from current law.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0460P2321.HTM>

Act 207 - SB 1222 (Greenleaf) - Federal Credit Unions

- Amends Title 17 (Credit Unions) of the Pennsylvania Consolidated Statutes to provide for parity with Federal credit unions and for involuntary dissolution.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1222P2158.HTM>

Act 209 - SB 1258 (Holl) – Banking Code – Omnibus and long overdue rewrite of the state Banking Code, Act 111 of 1933, allowing the Department to share regulatory information with other state/federal agencies that reflect changes in federal law emanating from Gramm-Leach-Bliley, increasing the Department’s enforcement powers, clarifying the Department’s receivership authority and clarifies that the Department does not take possession of FDIC-insured banks.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1258P2421.HTM>

CAPITOL BUDGET/ REDEVELOPMENT ASSISTANCE

Act 223 - HB 2741 (Pippy) - Local and State Bridge Projects - A supplement to the Highway-Railroad and Highway Bridge Capital Budget Act for 1982-83, itemizing additional local and state bridge projects.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2741P4624.HTM>

CONSTRUCTION/REAL ESTATE/LAND USE

Act 235 - HB 1945 (Petroni) – Improvement of Deteriorated Real Property or Areas Tax Exemption

Act - Amends the Improvement of Deteriorated Real Property or Areas Tax Exemption Act to permit local taxing authorities to provide up to ten years of tax exemption for the construction of dwelling units.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB1945P4709.HTM>

Act 233 - SB 1528 (Waugh) - Agricultural

Conservation Easement Purchase Fund - Provides for a deposit into the Agricultural Conservation Easement Purchase Fund to account for monies lost as a result of changes to the Growing Greener program in conjunction with the current fiscal year’s budget.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1528P2244.HTM>

ECONOMIC DEVELOPMENT/JOB CREATION

Act 189 - HB 2729 (Godshall) - Tourism Promotion -

Provides for the establishment of the Pennsylvania Travel and Tourism Partnership, currently established under an Executive Order, and imposing powers and duties on the Department of Community and Economic Development related to tourism promotion.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2729P4723.HTM>

Act 224 - HB 2778 (Tulli) - Workforce Development

Act - Amends the act of December 18, 2001, known as the Workforce Development Act, to provide for a substantial rewrite of existing law, including the elimination of the sunset date for the Critical Job Training Grants and the creation of TAP workforce development scholarship accounts.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2778P4741.HTM>

Act 230 - SB 1100 (Thompson) - Municipal Authorities, Philadelphia Convention Center Changes - Amends Title 53 to restructure the make-up of the Philadelphia Convention Center Authority, transfer current PUC oversight of taxicabs in Philadelphia to the Parking Authority, increases the Parking Authority's enforcement powers relating to vehicle impoundment, clarify the bonding requirements under the Housing Authorities Law, the Urban Redevelopment Law and the Economic Development Financing Law.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1100P2436.HTM>

Act 213 - SB 1370 (Punt) - Job Enhancement Act - Amends the act of June 29, 1996, known as the Job Enhancement Act, by expanding eligibility and terms and conditions of loans for several programs under the Act, including the Pennsylvania Economic Development Financing Authority; increases maximum loan under the Pollution Prevention Assistance Program from \$50,000 to \$100,000 and increases the loan duration for up to ten years (from seven), and expands the pool of eligible applicants for Customized Job Training Grants.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1370P2428.HTM>

Act 217 - SB 1478 (White, D.) - Keystone Opportunity Zones - Amends the act of October 6, 1988, known as the Keystone Opportunity Zone and Keystone Expansion Zone Act, expanding the number of authorized subzones under both the KOZ and KOEZ programs, creates a Keystone Opportunity Improvement Zone, allowing the Governor to designate tax-free zones for application.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1478P2438.HTM>

EMPLOYMENT/LABOR

Act 156 - HB 591 (Egolf) - Unemployment Compensation Law - Amends the act of December 5, 1936, known as the Unemployment Compensation Law, providing for ineligibility for compensation of incarcerated employees.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0591P4715.HTM>

Act 158 - HB 731 (Maitland) - Unemployment Compensation Law - Amends the act of December 5, 1936, known as the Unemployment Compensation Law, providing for false statements and representations, violation of the act, rules and regulations, penalties, and recovery of UC funds.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0731P4716.HTM>

Act 161 - HB 974 (Williams) - Child Labor Law - Amends the Child Labor Law by conforming to federal law and prohibiting "youth peddling" by minors under 16 years of age, with limited exceptions. Youth peddling is defined as the selling of goods and services by minors to customers at their residences, place of business or public places.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0974P2937.HTM>

Act 180 - HB 2411 (Herman) - Agents for Athletes - Amends Title 5 (Athletics and Sports) of the Pennsylvania Consolidated Statutes, creating the Uniform Athlete Agents Act, providing for the registration of agents.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2411P4509.HTM>

Act 182 - HB 2444 (Miller, R.) - Workers' Compensation Act - Amends the Workers' Compensation Act to provide for the definition of "employee" to include local coordinators of emergency management as employees of municipalities.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2444P3545.HTM>

Act 202 - SB 813 (Armstrong) - Workers' Compensation Insurance Policies - Amends the Workers' Compensation Act to extend the 5% discount rate on workers' compensation insurance policies to employers who maintain a certified safety committee through the Department of Labor & Industry.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0813P2358.HTM>

ENERGY/REGULATED AND UNREGULATED UTILITIES

Act 231 - HB 1331 (DeWeese) - The Administrative Code of 1929 - Amends the act of April 9, 1929, known as The Administrative Code of 1929, to provide for a prohibition on furnishing state

employees' voting addresses, and to prohibit more than three Commissioners for the PUC to be from one political party (after the current terms expire).

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB1331P4731.HTM>

Act 203 – SB 879 (Earll) – PURTA Surcharge

Recovery – Amends Title 66 to allow Gross Receipts Taxpayers subject to the Act 89 of 2002 surcharge to recover costs as approved by the PUC.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0879P2426.HTM>

ENVIRONMENT

Act 155 - HB 401 (Solobay) - Coal and Clay Mine

Subsidence Insurance - Establishes a loan and grant program that would be funded by the Coal and Clay Mine Subsidence Insurance Fund to provide compensation to those that do not carry mine subsidence insurance. Specifically, this bill does not allow the amount of insurance coverage to exceed the replacement cost of the insured structure or the maximum amount of coverage established by the fund, whichever is less. The bill also provides for an application for an increase in insurance and editorial changes.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0401P4746.HTM>

Act 175 - HB 2190 (Rubley) - Municipal Waste

Planning - Amends the Act of July 28, 1988, providing for an extension of the sunset date from 2004 to 2009; requires DEP to develop a recycling plan to assist municipalities in making recycling programs self-sufficient.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2190P4681.HTM>

Act 220 - HB 2302 (Bunt) – Water Resources –

Amends Title 27 (Environmental Resources) to provide for water resources planning generally and the development of a State Water Plan, water use registration and reporting requirements, water conservation incentives, the identification of Critical Water Planning Areas, 6 Regional Water Planning Committees, and a Statewide Water Resources Committee.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2302P4697.HTM>

HEALTH CARE/INSURANCE

Act 135 – HB 286 (Blaum) – Dental Anesthesia –

Amends the Dental Law to require dentists administering anesthesia to undergo clinical evaluations and office inspections once every 6 years as a condition of obtaining or renewing a permit.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0286P4567.HTM>

Act 160 - HB 967 (Civera) - Physician Assistant

Licenses - Amends the act of December 20, 1985, known as the Medical Practice Act of 1985, to further provide for minimum qualifications for physician assistant licenses.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0967P1108.HTM>

Act 171 - HB 2055 (Smith, B.) - Elder Care

Facilities - Requires certain elder care facilities to provide refunds and payments to consumers for care not rendered. Provides for inventory of personal property and authorizes the storage of personal property by elder care facilities.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2055P4694.HTM>

Act 149 – HB 2860 (Kenney) – Tobacco Settlement

Act and PACE/PACENET eligibility extension –

Amends Act 77 of 2001, the Tobacco Settlement Act, to provide for extended eligibility for PACE and PACENET, a \$150 million hit to the Tobacco Settlement Fund over 5 years, removes the State Treasurer from the Tobacco Settlement Investment Board (reducing the Board to nine members (from 11) and amending the definition of “Infrastructure.”

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2860P4712.HTM>

Act 201 - SB 654 (Helfrick) - Newborn Protection -

Amends Title 42 of the Pennsylvania Consolidated Statutes and provides for newborn protection.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0654P2386.HTM>

Act 225 - SB 831 (Piccola) - Practice of Optometry -

Amends the act of June 6, 1980, to regulate the licensure and practice of optometry and further defines “examination and diagnosis” and “practice of optometry.” Adds to the powers and duties of the State Board of Optometry.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0831P2289.HTM>

Act 206 - SB 1208 (Earll) - The Professional Nursing Law - Amends the act of May 22, 1951, known as The Professional Nursing Law, further defining “practice of professional nursing” and providing for the duties of the State Board of Nursing.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1208P2388.HTM>

Act 147 - SB 1416 (Mowery) - Insurance - Amends the act of May 17, 1921, establishing an insurance department and further provides licensing and regulation of insurance producers, managers and exclusive general agents; confers power and imposes duties on the Insurance Commissioner and Insurance Department.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1416P2353.HTM>

Act 227 - SB 1569 (Tomlinson) – Homeland Security/Bio-Terrorism-Counterterrorism Planning – A freestanding act providing for counterterrorism planning, preparedness and response; imposing powers and duties on the Pennsylvania Emergency Management Agency, the Department of Health, counties and municipalities and providing for the organization of various response teams. Importantly, authorizes the Governor, in consultation with the Secretary of Health and via a written order, to temporarily isolate or quarantine groups or individuals to prevent the transmission of a contagious or possibly contagious disease. Within 24 hours of issuing an isolation order, the Department of Health, or the local health department, shall file a petition for a court order authorizing the continued isolation or quarantine.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1569P2393.HTM>

LEGAL LIABILITY/ MISCELLANEOUS LEGAL MATTERS

Act 154 - HB 235 (Stairs) - Unauthorized Publication of Name – Providing a cause of action for the unauthorized publication or use of the name, portrait, voice, photograph or other likeness of a natural person for commercial or advertising purposes without express written consent.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0235P4677.HTM>

Act 141 - HB 851 (Clymer) - The Notary Public Law - Amends the act of August 21, 1953, known as The Notary Public Law, providing a substantial rewrite of existing law, eliminates current legal prohibition on bank employees from performing notary work within a bank and allowing for electronic notarization.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0851P4679.HTM>

NON-PROFITS

Act 168 - HB 1804 (Reinard) - Pooled Trust Act - This act provides for pooled trusts for persons with severe chronic disabilities, using funds from those persons’ families. Amounts remaining at death shall be maintained by trust for the disabled persons’ beneficiaries..

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB1804P4006.HTM>

Act 214 - SB 1421 (Jubelirer) - Free Exercise of Religion - Protects the free exercise of religion and prescribes the conditions under which government may substantially burden a person’s free exercise of religion. State and local governments may not “substantially burden” a person’s exercise of religion without compelling justification. With certain specific exceptions, the government may only substantially burden a person’s exercise of religion if the government demonstrates that the burden on the person furthers a compelling interest of the government and is the least restrictive means of furthering that compelling interest.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1421P2382.HTM>

STATE/LOCAL GOVERNMENT GENERALLY/ PROCUREMENT

Act 159 - HB 878 (Fairchild) – Commonwealth Procurement Code, Supplies Manufactured by Persons with Disabilities – Amending provisions in Title 62 which relate to supplies manufactured and services performed by persons with disabilities. Under current law, DGS is required to contract with the Pennsylvania Institute for the Blind and Handicapped when that organization is capable of manufacturing a certain supply or performing a certain service, as long as it demonstrates that it makes an “appreciable contribution” in manufacturing and service.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0878P4708.HTM>

Act 170 – HB 1947 (Habay) – Second Class County Code, Separations Act Exclusion – Amends the Second Class County Code to permit Allegheny County to use “alternative contracting procedures” to avoid the application of the Separations Act on certain projects.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB1947P4750.HTM>

Act 221 - HB 2574 (Donatucci) - Liquor Code - Amends the act of April 12, 1951, known as the Liquor Code, further provides for unlawful acts, rights of municipalities, unlawful advertising and for limited wineries; deletes provisions relating to distilleries. Also provides for business hours.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2574P4740.HTM>

Act 142 - HB 2674 (Steil) – Commonwealth Procurement Code, Omnibus - Amends Title 62 (Procurement) of the Pennsylvania Consolidated Statutes to provide for a substantial “update” of the otherwise new Commonwealth Procurement Code, including: limitations on public access to certain procurement information; limiting the jurisdiction of the Board of Public Grounds and Buildings; permitting the use of electronic, online auctions; amending the definition of design professional services; authorizing binding letters of intent; reversing the Direnzo decision requiring 2 PACS hearing for bid protests; and substantial rewrite of the Board of Claims Act, including a limitation of its jurisdiction.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2674P4710.HTM>

Act 150 - SB 824 (Lemmond) – Election Code - Amends the Act of November 1, 1971, providing for compensation of county officers to further provide compensation of district election officers. Further provides for the manner of applying to vote, assistance in voting by certain absentee electors, canvassing of official absentee ballots and for enforcement. Also provides for regulatory procedure.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0824P2435.HTM>

Act 212 - SB 1365 (Conti) - Liquor Code - Amends the act of April 12, 1951, known as the Liquor Code, and defines arts council, confectionery, eligible entity and pecuniary interest. Further provides for renewal of amusement permit, unlawful acts relative to liquor,

alcohol and liquor licensees, for unlawful acts relative to malt or brewed beverages and licensees, unlawful advertising, limited wineries, distilleries and business hours.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1365P2412.HTM>

Act 148 - SB 1554 (Wenger) - Regulatory Review Act - Amends the act of June 25, 1982, known as the Regulatory Review Act, to further provide for procedures for disapproval of final-form and final-omitted regulations and emergency-certified regulations, procedures for subsequent review of disapproved final-form or final-omitted regulations and existing regulations.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB1554P2394.HTM>

TAXATION - LOCAL

Act 166 - HB 1700 (Maher) - The Local Tax

Enabling Act – Authorizes local taxing jurisdictions to increase the low-income exemption from \$5,000 to \$10,000; redefines “earned income” and “net profits.”

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB1700P4023.HTM>

Act 237 - HB 2892 (Kenney) - First Class City

Business Tax Reform Act - Amends the act of May 30, 1984, known as the First Class City Business Tax Reform Act, to define “tax measurement year”; further provides for the period used in computation of tax and tax payment.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2892P4742.HTM>

TAXATION - STATE

Act 232 - SB 958 (Scarnati) – State Tax Reform Code,

RIC’s and REIT’s – Amends the State Tax Reform Code by clarifying the intent of Act 89 of 2002 as it related to the effect of that Act on RIC’s and REIT’s.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/SB0958P2437.HTM>

TECHNOLOGY/COMMUNICATIONS

Act 222 - HB 2614 (Raymond) - Blocking of

Commercial Electronic Mail - Prohibits certain commercial electronic transmissions and the use of text, graphic or image messaging systems of wireless telephone systems to transmit unsolicited commercial messages; imposes penalties, provides for an

individual action for damages; authorizing the blocking of commercial electronic mail by interactive computer service.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2614P4364.HTM>

Act 181 – HB 2424 (Phillips) – Dual Party Relay Service and Telecommunications Device Distribution

Program Act – Amends Act 34 of 1995 by expanding the scope of eligible persons with disabilities.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2424P3440.HTM>

TRANSPORTATION

Act 152 - HB 152 (Geist) – Salvage Vehicles, Messenger and Agent Advisory Committee – Omnibus amendments to Title 75 (Vehicles) of the

Pennsylvania Consolidated Statutes providing for titling of salvage vehicles and vehicle abandonment, inspection requirements, and permits for moving of wooden structures. Further provides for the Messenger and Agent Advisory Committee.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB0152P4693.HTM>

Act 229 - HB 2410 (Geist) - Traffic Control Devices - Amends Title 75 (Vehicles) to further provide for erection of traffic-control devices while working and requires a study by the Legislative Budget and Finance Committee.

<http://www.legis.state.pa.us/WU01/LI/BI/BT/2001/0/HB2410P4453.HTM>

Section II: 2003 Legislative Agenda (the next 6 months)

THE 2003-04 GENERAL FUND BUDGET:

Each year, no task is more important to the General Assembly and Governor than fulfilling their state constitutional responsibility of enacting a General Fund Budget before the end of the fiscal year – June 30. This task will be immensely daunting this year, considering the challenging fiscal and economic climate in Pennsylvania, not to mention the transition of a Republican Administration to a Democratic Administration (faced with an overwhelming Republican majority in both the state House and Senate).

The Governor’s Budget Office recently projected a \$433 million revenue shortfall (or 2.1 percent) for the current fiscal year (**NOTE** — this estimate came prior to the receipt of December revenues, which were **5.1 percent**, or \$88 million, **less** than anticipated). In anticipation of the pending Budget crisis, Governor Schweiker froze \$270 million in General Fund appropriations for the current fiscal year (largely in the form of a 2% across-the-board cut for all Executive Agencies) and proposed a series of measures intended to protect against a deficit at the end of the current fiscal year. Some of these additional measures will require concurrence by Governor-elect Rendell and/or the General Assembly.

Many predict that the revenue shortfall, when combined with the expected “structural deficit” (which takes into account the one-time revenue enhancements enacted with the current fiscal year budget), will require the General Assembly and the Governor-elect to close a revenue “gap” that could exceed \$1 billion (and could be as high as \$2 billion). In light of the size of this gap, along with a host of developing fiscal demands, it is widely anticipated that the Governor and General Assembly will have to make some extraordinarily difficult decisions between now and June 30th, including potential cuts to popular programs and, quite possibly, enactment of significant tax increases (or “revenue enhancements”), in order to balance the FY 2003-04 General Fund Budget.

As for the revenue enhancements, the state is running out of politically palatable measures in light of the laundry list of initiatives enacted with the current FY 2002-03 General Fund Budget: \$750 m from the Rainy Day Fund (leaving less than \$250 m remaining); \$585 m cigarette tax increase; \$350 m from “decoupling” from federal depreciation rules; \$200 m from shortening the escheats period; \$136 m from delaying the Capital Stock and Franchise Tax phase-out; \$100 m transferred from the Underground Storage Tank Fund; and \$92 million from increasing the Municipal Waste Disposal Fee from \$2 to \$6 per ton.

Consider also that \$16.1 billion out of a total General Fund budget of \$20.7 billion is dedicated (as an actual or practical entitlement) to education (\$8.1 billion), welfare (\$6.7 billion) and corrections (\$1.3 billion), all of which will expand in the next budget. That leaves only a small portion of the budget as potential targets for cuts. Due to the anticipated size of the 2003-04-budget shortfall, there will most definitely be cuts. However, while the cuts are likely to be significant from a program-by-program “special interest” analysis, they will have little impact in terms of balancing a budget in excess of \$20 billion, where the gap between anticipated revenues and proposed spending could range between 5 and 10 percent of that amount. That’s where the revenue enhancements will come into play.

Let us not forget the enormous and increasing demands on Commonwealth revenues that the General Assembly and the Governor will have to confront in the months ahead:

- **Lottery Fund Crisis** – Notwithstanding a record year for Lottery Fund revenues (thanks in large part to a \$280 million Powerball purse on Christmas Day), Lottery officials predict that the Lottery Fund will be nearly \$200 million in the “red” by the middle of 2003. This deficit will grow at a significant pace, requiring the Governor and General Assembly to enact a combination of revenue enhancements (that phrase again) and cost containment measures in the face of increasing pressure from advocates for the elderly to expand eligibility. The Lottery Fund provides for several programs for the elderly, including PACE and PACENET, reduced transportation rates and property tax and rent rebates.
- **School Funding** – Not lost within the debate over “local tax reform” is the ever-increasing call for the state to pick up a larger share of the school funding pie. The state currently provides \$6.7 billion to 501 local school districts (including \$4.1 billion in basic education funding). In spite of the fiscal predicament faced by Gov. Schweiker and the General Assembly in 2002, basic education funding increased by an additional \$127 m, or 3.2 percent). The lesson – even in the most dire fiscal climates, and notwithstanding that basic education funding is nearly 20 percent of the budget, don’t expect the

elected officials to target school funding for cuts; especially in light of Gov.-elect Rendell’s campaign promise to increase the state’s share of school funding ...

- **Medicaid cost increases** – When the economy struggles, state health care costs skyrocket. Pennsylvania is not an exception to this rule. In the current budget, medical assistance capitation spending increased by nearly \$173 m. While it is difficult to anticipate medical assistance demands for the 2003-04 budget, one has to assume another dramatic increase, requiring additional revenues or another round of welfare reform.
- **Medical Malpractice Short-Term Financial Relief** (see below for more details on medical malpractice reform, generally) – Before Gov.-elect Rendell delivers his budget address in March, we know already of one item at the top of his agenda — “short-term” financial relief for medical providers faced with skyrocketing medical malpractice insurance premiums. Gov.-elect Rendell and Gov. Schweiker proposed a financial package worth nearly \$240 million (\$220 m for MCARE Fund relief and \$20 m for trauma center relief) to lower costs for Pennsylvania’s doctors and hospitals. While the Rendell-Schweiker plan calls for a vast majority of these funds to come from health insurance company reserves, such a move will require legislative enactment in the face of a very able health insurance lobby.

These are but a few of the big-ticket items that the General Assembly and Gov.-elect Rendell will be forced to confront in the months ahead in the wake of a potential budget crisis. Suffice it to say, the most popular folks in Harrisburg over the next six months will be those lucky few with “painless” suggestions to raise revenue or cut spending.

MEDICAL MALPRACTICE REFORM:

The affordability and availability of medical malpractice insurance will remain high on the agenda for the new legislature and the Governor-elect. Just recently, in an effort to provide short-term relief to medical providers in the Commonwealth, Gov.-elect Rendell and Gov. Schweiker announced the following proposals:

- **MCARE Premium Elimination/Reduction** – At a cost of \$220 million, to be borne by health insurers writing in the Commonwealth, particularly the four Blues plans, the 2003 MCARE surcharge for the highest risk specialties will be eliminated and, for the remaining specialties, the surcharge will be halved.
- **Trauma Center Subsidies** – At a cost of \$18-22 million, to be borne by the state General Fund (or, if possible, by the federal government), the state would subsidize trauma centers.
- **Certificates of Merit** – The Supreme Court would be requested to adopt a rule that requires independent physicians to review every medical malpractice case and issue a certificate of merit in order for those cases to move forward.
- **Health Insurance Reimbursements to Providers** – Health insurers would be “encouraged” to increase reimbursements to medical providers to account for increasing medical malpractice premiums.

Most health care providers have welcomed these proposals as a “solid first step” and, as expected, health insurers are less than enthusiastic about the role envisioned for them, on both the reimbursement and surcharge fronts. Expect a big fight in the months ahead over the sources of revenue for these health care subsidy proposals. It will be particularly interesting to see how Pennsylvania’s business community views this proposal if the health insurers threaten to pass this cost onto them.

Gov. Schweiker recently announced a delay in the collection of the MCARE surcharge from Jan. 1st to April 1st, which should provide an opportunity for Gov.-elect Rendell and the General Assembly to address the short-term relief as proposed above. Also, as an emergency measure, Gov. Schweiker has also been considering the possibility of suspending the law that requires all health care providers to carry medical malpractice insurance. This is an idea that has been long debated within the Schweiker Administration and the General Assembly, and one that demonstrates the extent of Gov. Schweiker’s resolve to ameliorate this medical malpractice insurance crisis before leaving office. Gov. Schweiker recently requested all medical providers to fill out a questionnaire in an effort to gauge the extent of

this crisis on Pennsylvania health care providers; perhaps as further justification to take such an extreme step as suspending the mandatory medical malpractice coverage law.

Governor-elect Rendell, demonstrating his own commitment to addressing this crisis, formed a Medical Malpractice Task Force following the election, comprised of a wide range of interests, to review a wide range of potential solutions and make preliminary recommendations in advance of his swearing in on January 21, 2003 and final recommendations by April 1, 2003.

Also, expect continued calls emanating from Republican legislators (primarily from the Southeast) for a special session on medical malpractice reform and the possibility of a “special session petition” as was successfully circulated and presented to Governor Schweiker on local tax reform. There will be a strong push for caps on non-economic damages, but it remains to be seen whether the new Governor will embrace that level of tort reforms or whether he will suggest that existing reforms (i.e., Acts 13, Med Mal Reform, and 57, Joint & Several Reform) be given an opportunity to work in return for the short-term relief.

LOCAL TAX REFORM:

While little or no action on local tax reform matters occurred in the 2001-02 Legislative Session, folks can expect a flurry of activity on this issue during the 2002-03 Legislative Session. As distasteful as this issue is for elected officials – largely because a “resolution” of this issue will produce almost as many “losers” as it will “winners” – the General Assembly and then-Gov. Rendell will find it impossible to avoid this issue; especially in the late spring when school districts prepare their budgets and announce proposed tax increases.

Gov.-elect Rendell, on the campaign trail, proposed to increase the share of state funding for schools to a minimum of 50 percent and promised to reduce school property taxes by 30 percent, or \$1.4 billion. His proposal called for a combination of spending cuts and legalizing slot machines at the racetracks. Schools are not the only special interest looking to get their hands on the revenues generated from slots at the tracks, so enactment of this proposal, or anything similar, is certainly not guaranteed.

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