

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

<b>Matthew J. Brouillette, et al.,</b>	:	
	:	
<b>Petitioners,</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. 410 MD 2017</b>
	:	
<b>Thomas Wolf, et al.,</b>	:	
	:	
<b>Respondents.</b>	:	

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**MEMORANDUM OF LAW IN SUPPORT OF  
JOINT MOTION OF PENNSYLVANIA TREASURER  
JOSEPH M. TORSELLA AND AUDITOR GENERAL  
EUGENE DEPASQUALE TO DISMISS FOR MOOTNESS**

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Pursuant to Pa. R. App. P. 1972(a)(4) (or, alternatively, Pa. R. App. P. 1532(b) and 123(a)), Respondents, Pennsylvania Treasurer Joseph M. Torsella and Pennsylvania Auditor General Eugene DePasquale, by and through their undersigned counsel, on behalf of the Treasury Department (“Treasury”) and the Department of the Auditor General (“Auditor General”), request this Court to dismiss as moot the Amended Petition for Review filed by Matthew Brouillette, Benjamin Lewis and Representative James Christiana (collectively “state residents”). In support thereof, the Treasurer and Auditor General submit this Memorandum of Law.

## I. INTRODUCTION

The premise of the case initiated by the state residents is entirely based upon one specific factual circumstance: “[t]he General Fund Budget . . . for the now historic fiscal year 2016-2017 ("FY2016-2017") closed with a deficit of approximately \$1.55 billion. The Budget for the Commonwealth of Pennsylvania for current fiscal year 2017-2018 ("FY2017-2018") was allowed to become law with an immediate deficit of nearly \$600 million.” Pet. for Review ¶¶ 1-2.

On October 30, 2017, the General Assembly passed, and the Governor signed into law, several statutory changes that collectively render the state residents’ claim moot: Acts 40, 42, 43 and 44 of 2017. Providing for fund transfers, borrowing against future settlement payments, authorizing new forms of taxable gambling and other financial enhancements, the Legislature addressed the General Fund’s revenue deficiencies. The statutory enactments, combined with the Commonwealth’s existing revenue sources, are projected by the Secretary of Revenue and the Secretary of the Budget to provide in excess of \$34.7 billion to the General Fund during the current fiscal year. *See* Letter of Secretaries of Revenue and Budget (Nov. 6, 2017), attached hereto as Attachment 1. These recent statutory enactments provide sufficient revenue to ensure the Fiscal Year 2017-18 Operating General Fund Budget does not exceed estimated revenues for the current fiscal year. As a consequence, the state residents’ claims are moot and

the underlying state constitutional arguments are little more than a speculative discourse.

Though the state residents may argue that budgetary imbalances are capable of repetition, their constitutional arguments remain firmly based on a particular series of hypotheticals that may or may not occur. The state residents' claims are not only based on an imbalanced General Fund Operating Budget, but also on a prior fiscal year revenue shortfall, contemporaneous with the passage of a General Fund Budget. Even if there were a substantial imbalanced General Fund Operating Budget for fiscal year 2018-19, the state residents' claims assume that the Governor will not take immediate action to bring the budget into alignment or that the General Assembly will not enact remedial legislation.

Accordingly, it is far from clear that the facts that gave rise to the state residents' original claim are capable of repetition.

## **II. FACTUAL BACKGROUND**

The Fiscal Year 2017-18 Operating General Fund Budget does not exceed estimated revenues for the current fiscal year. The Commonwealth ended the prior fiscal year (2016-17) with General Fund revenue receipts below the certified estimate by \$1.1 billion. Actual General Fund revenue receipts for the fiscal year 2016-17 were \$31.7 billion. Accounting for a positive prior fiscal year beginning balance of \$5.1 million, the total revenue shortfall for fiscal year 2016-17 was

\$1.54 billion. *See* Official Statement, Commonwealth General Obligation Bonds, First Refunding Series of 2017 at 16 (Nov. 8, 2017).

The Fiscal Year 2017-18 Operating General Fund Budget became law on July 11, 2017, without the signature of the Governor. *See* Act of July 11, 2017 (P.L. \_\_, No. 1A) (“Act 1A”). The total amount of appropriation authorized pursuant to Act 1A for the current fiscal year is \$32 billion. *See* Official Statement, Commonwealth General Obligation Bonds, First Refunding Series of 2017 at 16 (Nov. 8, 2017).

On August 10, 2017, the Pennsylvania Independent Fiscal Office issued an official statement identifying the estimated total General Fund revenue for 2017-18 to be \$32.5 billion. *See* Pennsylvania Independent Fiscal Office, *Official Monthly & Quarterly Revenue Estimates, Fiscal Year 2017-18* at 2 (Aug. 10, 2017). In February 2017, the Governor’s Executive Budget estimated scheduled tax refunds for the current fiscal year at \$1.32 billion, and lapsed appropriations from the prior fiscal year at \$245 million, which results in the total available funds for the current fiscal year at an estimated \$29.9 billion. *See* 2017-2018 Governor’s Executive Budget at C1-5 (Feb. 7, 2017).

Based on this information, the current fiscal year General Fund Operating Budget was estimated to exceed available and estimated revenues by approximately \$2.1 billion (\$32 billion in authorized spending, less \$29.9 billion in

estimated available revenue). Acknowledging the \$2.1 billion structural imbalance, the General Assembly passed, and the Governor signed, the following statutory amendments intended to provide additional General Fund revenue to align the current fiscal year General Fund budget appropriations with currently estimated revenue receipts: Act of October 30, 2017 (P.L. \_\_, No. 40) (Amendments to the Administrative Code); Act of October 30, 2017 (P.L. \_\_, No. 42,) (Amendments to the Gaming Code); Act of October 30, 2017 (P.L. \_\_, No. 43) (Amendments to the Tax Code) and Act of October 30, 2017 (P.L. \_\_, No. 44) (Amendments to the Fiscal Code).

Act 40 of 2017 amends the Administrative Code to provide increases in various administrative agency fees and grants additional authority to ensure the transfer of \$200 million from the Pennsylvania Joint Underwriters Association to the Commonwealth General Fund. *See House Committee on Appropriations (R), Fiscal Note on House Bill 118 (Oct. 18, 2017), attached hereto as Attachment 2.*

Act 42 of 2017 amends the Gaming Code, authorizing several new forms of gambling in the Commonwealth and authorizing additional lottery games. Effective immediately, Act 42 is estimated to provide in excess of \$230 million to the General Fund in the current fiscal year. *See House Committee on Appropriations (R), Fiscal Note on House Bill 271 (Oct. 25, 2017), attached hereto as Attachment 3.*

Act 43 of 2017 amends the state Tax Code, authorizing the issuance of settlement payment revenue bonds. The transaction would pledge future tobacco settlement payments to the Commonwealth to support the issuance and sale of bonds sufficient to provide \$1.5 billion in proceeds to be deposited into the General Fund this fiscal year. *See House Committee on Appropriations (R), Fiscal Note on House Bill 542* (Oct. 17, 2017), attached hereto as Attachment 4.

Act 44 of 2017 amends the Fiscal Code to provide for additional sources of General Fund revenue in the current fiscal year, including, by way of example: directing the deposit of \$30.4 million in anticipated litigation settlement funds to the General Fund; transferring \$362 million from the Tobacco Settlement Fund for health-related programs within the General Fund; payment of \$50 million slot machine license fee into the General Fund and the authorization to the Secretary of the Budget to transfer up to \$300 million in Special and Restricted Accounts to the General Fund. *See House Committee on Appropriations (R), Fiscal Note on House Bill 674* (Oct. 24, 2017), attached hereto as Attachment 5.

Subsequent to the enactment of each of these statutory amendments, on November 6, 2017, the Secretary of the Department of Revenue and the Secretary of the Budget formally certified the “unrestricted State Revenue to be received and deposited in the General Fund of the State Treasury” for the current fiscal year at an estimated \$34.7 billion. *See Letter of Secretaries of Revenue and Budget* (Nov.

6, 2017), Attachment 1. The certification of the Revenue and Budget Secretaries explicitly notes the enactment of legislation authorizing revenue enhancements benefitting the Commonwealth's General Fund. *Id.* Accordingly, as a matter of state law, the General Fund Operating Budget for Fiscal Year 2017-18 does not exceed estimated revenues for the current fiscal year.

### **III. ARGUMENT**

As a consequence of the aforementioned legislative enactments and the subsequent recertification of the state revenue estimate in an amount that exceeds the enacted General Fund Operating Budget appropriations, the specific circumstances that are averred by the state residents no longer exist. Accordingly, no actual controversy exists. As a matter of state law, the current General Fund Operating Budget does not exceed estimated revenues for the fiscal year. The prior fiscal year revenue shortfall has been satisfied. Therefore, the state residents' constitutional claims are now premised upon a series of speculations. In fact, for the past budgetary circumstances to repeat, each of the following must occur in exact order:

(1) the Commonwealth encounters another revenue shortfall and ends the fiscal year with actual General Fund revenue receipts substantially less than estimated revenue; and

(2) the Legislature enacts a General Fund Operating Budget for the subsequent fiscal year without contemporaneously passing legislation providing sufficient additional revenue to satisfy the prior fiscal year revenue shortfall and the appropriated expenditures for the next fiscal year; and

(3) the Governor neither exercises his appropriations veto authority (Pa. Const. art IV, § 16) nor identifies budgetary appropriations that are to be accounted as reserved, in an amount to ensure the enacted budget does not exceed estimated revenues for the current fiscal year; and

(4) the certified revenue estimate for the fiscal year exceeds the General Fund Operating Budget total appropriated expenditures of the same year; and

(5) the General Assembly fails to pass subsequent legislation (within the same fiscal year) providing sufficient revenue to satisfy the prior fiscal year revenue shortfall and to ensure the current fiscal year General Fund Operating Budget does not exceed estimated revenues.

Though not exhaustive of the predicate conditions necessary for the state residents to maintain their cause of action, this list is illustrative of the highly speculative nature of their claims. The timing, modification or alternative outcome of any one of these events occurring as described would substantially alter the factual and legal premise of the state residents' cause of action, thereby subjecting any state constitutional judicial review to changing variables.



It is well established that Pennsylvania courts will not decide moot questions. *Pittsburgh Palisades Park, LLC v. Commonwealth*, 585 Pa. 196, 203, 888 A.2d 655, 659 (2005) (“The courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions . . . .”). A case will be dismissed if there is no longer a case or controversy. *Mistich v. Commonwealth* 863 A.2d 116, 119 (Pa. Cmwlth. 2004). A controversy must continue through all stages of a judicial proceeding. *Public Defender's Office v. Venango County Court of Common Pleas*, 586 Pa. 317, 324, 893 A.2d 1275, 1279 (2006).

As applied to matters of constitutional law, moot questions are particularly disfavored and are dismissed as an exercise of judicial restraint – avoiding unnecessary decisions of constitutional issues. *See Harris v. Rendell*, 982 A.2d 1030, 1035 (Pa. Cmwlth. 2009) (citations omitted) (“[T]he court should be even more reluctant to decide moot questions which raise constitutional issues.”); *see also In re Gross* 476 Pa. at 210, 382 A.2d at 120 (quoting *Wortex Mills, Inc. v. Textile Workers Union*, 369 Pa. 359, 370, 85 A.2d, 851, 857 (1952)) (“Constitutional questions are not to be dealt with abstractly.”). To avoid mootness, there must be a “real and not a hypothetical legal controversy and one that affects another in a concrete manner so as to provide a factual predicate for reasoned adjudication . . . .” *City of Philadelphia v. SEPTA*, 937 A.2d 1176, 1179 (Pa. Cmwlth. 2007).

The singular fact upon which Count III of the state residents' Petition for Review (the only count that lies against the Treasurer and Auditor General) is based is the imbalance of the General Fund Operating Budget – a circumstance that was conclusively resolved upon the enactment of Acts 40, 42, 43 and 44 of 2017. A challenge to the constitutionality of the General Fund appropriations Act, like the one brought by the state residents, necessitates current and existing facts and circumstances, not hypotheticals.

Particularly persuasive is this Court's decision in *Boone v. Tate*, 4 Pa. Cmwlth. 101, 286 A.2d 26 (1972). Philadelphia hospital patients in *Boone* brought an equity claim against the city, citing a legal and constitutional obligation to provide minimally adequate general-hospital care to city residents. *Id.* at 103, 286 A.2d at 27. The hospital patients' claim was a response to the city's failure to appropriate adequate funds in its operating budget to support necessary hospital staffing levels, and its announcement of an anticipated job freeze. *Id.* Significantly, during the pendency of the case, a new fiscal year budget was enacted by Philadelphia City Council, providing sufficient hospital assistance funding. *Id.* The new municipal budget eliminated the necessity of the hospital job freeze. In dismissing the case as moot, this Court noted,

“[A]ssuming the correctness of appellants' contention that indigent persons are legally and constitutionally entitled to minimally adequate general hospital care provided by the City, the extent of the City's duty would depend upon all the circumstances existing at a given time including

other similarly mandated public needs and the public means. Conceivably, there could be a judicial determination that the performance of the duty might be declared to have been inadequate, adequate, or properly temporarily suspended or contracted based upon circumstances then existent.”

*Id.* at 104, 286 A.2d at 27 (emphasis added). In conclusion, this Court acknowledged,

“[F]or us to make a conclusion of law susceptible to such varying results in application in the vacuum of this moot case would, in our judgment, produce no definable result. The decision sought . . . should await a case which is not moot.”

*Id.* at 104, 286 A.2d at 27-28 (emphasis added).

As in *Boone*, the various possible budgetary circumstances in this matter (none of which will be clear prior to July 1, 2017) render impossible a judicial determination that would be meaningful. Ignoring the precedent established in *Boone*, the state residents seek a judicial decision within a factual vacuum. The General Fund Budget does not exceed estimated revenues and the revenue shortfall from fiscal year 2016-17 has been satisfied. Without a controversy, the state residents’ claims are hypothetical concerns only. The possibility of a future unbalanced budget, as a consequence of a revenue shortfall or legislative inaction, is not the same as a reasonable likelihood or a similar occurrence. Yet, even if the same circumstances were to occur, it does not follow that the state residents’ claims would escape judicial review.

Dismissal of the state residents' Petition for Review does not leave them without recourse. The state residents would be permitted to refile their claim if the underlying factual predicate were to present itself again.<sup>1</sup> In so doing, this Court would be presented with an actual controversy and a well-established factual foundation upon which a determination of constitutional law may be rendered. This course not only saves judicial resources and Commonwealth expenses, but removes any speculative element with the state residents' cause of action.

#### **IV. CONCLUSION**

WHEREFORE, Treasurer Joseph M. Torsella and Auditor General Eugene DePasquale respectfully request this Honorable Court to dismiss the Amended Petition for Review as moot.

[signature page follows]

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<sup>1</sup> It is worth noting that the state residents' Petition for Review was filed almost 2 months into the current fiscal year and, with the exception of their withdrawn Application for Temporary Injunction, did not invoke any rule of court to expedite consideration of their claim prior to the recent legislative enactments.

Respectfully submitted,

**CHRISTOPHER B. CRAIG**  
Chief Counsel

/s/ Kathryn Cerulli Joyce  
**KATHRYN CERULLI JOYCE**  
Assistant Counsel  
Attorney ID No. 311308  
PA Treasury Department  
Office of Chief Counsel  
127 Finance Building  
Harrisburg, Pennsylvania 17120  
717.787.2740 Telephone  
e-mail: [ccraig@patreasury.gov](mailto:ccraig@patreasury.gov)  
[kjoyce@patreasury.gov](mailto:kjoyce@patreasury.gov)

*Counsel for Respondent Joseph M.  
Torsella, State Treasurer*

**VICTORIA S. MADDEN**  
Chief Counsel

/s/ F. Stephenson Matthes  
**F. STEPHENSON MATTHES**  
Deputy Chief Counsel  
Attorney ID No. 67408  
PA Department of the Auditor General  
Office of Chief Counsel  
224 Finance Building  
Harrisburg, Pennsylvania 17120  
717.787.4546 Telephone  
email: [vmadden@paauditor.gov](mailto:vmadden@paauditor.gov)  
[smatthes@paauditor.gov](mailto:smatthes@paauditor.gov)

*Counsel for Respondent Eugene  
DePasquale, State Auditor General*

Dated: November 14, 2017

# Attachment 1

COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA


November 6, 2017

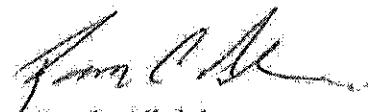
Honorable Tom Wolf  
Governor of Pennsylvania  
Room 225, Main Capitol  
Harrisburg, Pennsylvania 17120

Dear Governor Wolf:

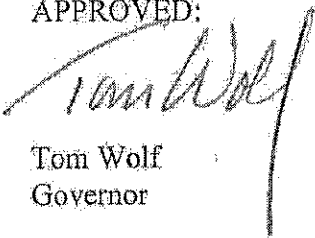
We hereby recertify that unrestricted State revenue to be received and deposited in the General Fund of the State Treasury during the fiscal year beginning July 1, 2017 is estimated to be \$34,704,100,000. Detailed estimates for revenue sources are shown in the accompanying table. This recertification is due to the passage of House Bill 118 Printer's No. 2256 (regular session 2017-2018), House Bill 271 Printer's No. 2652 (regular session 2017-2018), House Bill 542 Printer's No. 2598 (regular session 2017-2018), House Bill 674 Printer's No. 2624 (regular session 2017-2018). These bills were signed by Governor Wolf on October 30, 2017.

Respectfully,

  
C. Daniel Hassell  
Secretary of Revenue

  
Randy Albright  
Secretary of the Budget

APPROVED:

  
Tom Wolf  
Governor

Attachment

2017-2018  
OFFICIAL GENERAL FUND  
REVENUE ESTIMATE

TAX REVENUE

Corporation Taxes:

Corporate Net Income	\$ 3,118,700,000
Selective Business:	
Gross Receipts	1,236,600,000
Utility Property	40,500,000
Insurance Premiums	388,100,000
Financial Institutions	325,100,000
Total – Corporation Taxes	\$ 5,109,000,000

Consumption Taxes:

Sales and Use	\$ 10,340,900,000
Cigarette	1,250,600,000
Other Tobacco Products	121,600,000
Malt Beverage	24,500,000
Liquor	379,600,000
Total – Consumption Taxes	\$ 12,117,200,000

Other Taxes:

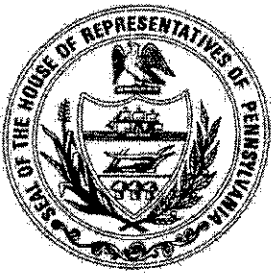
Personal Income	\$ 13,304,800,000
Realty Transfer	514,100,000
Inheritance	1,017,000,000
Gaming	123,100,000
Minor and Repealed	(51,900,000)
Total – Other Taxes	\$ 14,907,100,000
TOTAL TAX REVENUE	\$ 32,133,300,000

NON-TAX REVENUE

Liquor Store Profits	\$ 185,100,000
Licenses, Fees & Miscellaneous:	
Licenses and Fees	369,700,000
Miscellaneous	1,946,600,000
Fines, Penalties and Interest:	
On Taxes	69,400,000
TOTAL NON-TAX REVENUE	\$ 2,570,800,000
GENERAL FUND TOTAL	\$ 34,704,100,000



# Attachment 2



## HOUSE COMMITTEE ON APPROPRIATIONS

# FISCAL NOTE

HOUSE BILL NO. 118

PRINTERS NO. 2256

PRIME SPONSOR: Kaufer

### COST / (SAVINGS)

FUND	FY 2017/18	FY 2018/19
General Fund	See fiscal impact	See fiscal impact
State Lottery Fund	(\$10,000,000)	(\$15,000,000)

**SUMMARY:** This bill amends the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code.

**ANALYSIS and FISCAL IMPACT:** The bill makes a number of amendments and additions to The Administrative Code as outlined below.

#### Criminal History Background Checks

A new section is added to comply with Federal law to require employees or prospective employees whose duties and responsibilities require access to Federal tax information to submit Federal criminal history background information and Pennsylvania criminal history record information from the Pennsylvania State Police (PSP) to employers or prospective employers. Employees must submit validation of eligibility to legally work in the United States and provide fingerprints to the PSP, its agent or an agent approved by the Federal government. Fingerprints may be used by the PSP to conduct a criminal background check and shall be forwarded to the Federal Bureau of Investigation for a national criminal background check. Individuals who have been cleared to access Federal tax information shall reapply for clearance within ten years of issuance of the prior clearance.

The Department of Revenue shall publish guidelines to implement the new section.

*Fiscal Impact* - The Department of Revenue estimates approximately 1,630 employees will have to be fingerprinted to comply with the new Federal requirements. Assuming fingerprinting costs \$50 per person, the cost for Revenue to have current employees fingerprinted is \$81,500. Employees and prospective employees in other agencies with access to Federal tax information will also have to comply with the Federal fingerprinting requirements, but the current estimate of other employees that may be affected is unknown at this time. It is assumed that any fingerprinting costs that agencies will have to accommodate can be done so within amounts appropriated.

#### Pennsylvania Commission on Crime and Delinquency

A section is added to provide that notwithstanding section 2 of the Pennsylvania Commission on Crime and Delinquency Law, the attorney general, the chairpersons of the Appropriations

Committee of the Senate and the House of Representatives, and members of the General Assembly on the Commission may appoint designees.

*Fiscal Impact* - No fiscal impact.

### Fee Increases

- Department of Health - The fee for a Certified copy of a death record (Section 609-A) is increased from \$9 to \$20. Each fee received by a local Department of Health (DOH) shall be distributed as follows: eleven dollars (\$11) will be retained by DOH; eight dollars (\$8) will be deposited into the General Fund; and one dollar (\$1) will be retained by DOH for distribution to the county coroner or medical examiner.

*Fiscal Impact* - The Governor's Office of the Budget estimates the increased fee for certified death records will generate \$2,030,000 annually to augment DOH's Vital Statistics appropriation.

- Department of Labor & Industry - Fees authorized for the Bureau of Occupational and Industrial Safety to augment the General Fund appropriation are being updated to reflect current market rates for inspections, permitting, plan reviews and other services. The fees would increase annually based on the rate of inflation in the Consumer Price Index for all Urban Consumers in the Northeast Region. The Department of Labor and Industry shall publish fee increases in the Pennsylvania Bulletin.

*Fiscal Impact* - Based on documents provided by Governor's Office of the Budget and the Department of Labor & Industry, the enhanced fees would generate between \$15,700,000 and \$18,800,000 in total revenue for the first full year. The General Fund portion would remain the same as the \$8,165,276 collected in 2016-17 and the remainder would be deposited into the augmentation account. Therefore, the augmentation account would receive between \$7,600,000 and \$10,700,000 in the first full year of the new fee schedule. The augmentation account supplements funds appropriated to the Bureau of Occupational and Industrial Safety.

- Criminal History Background Checks by the PSP - the bill provides that the PSP may increase the current \$8/\$10 fee for criminal history record information by publishing a notice in the Pennsylvania Bulletin.

*Fiscal Impact* - No adverse fiscal impact, any increased fee revenue will augment PSP's operating budget.

### Collections by Attorney General

A new section is added to create a restricted account to be known as the Collection Administration Account for the deposit of no more than 25% of debts, taxes, and accounts collected by the Attorney General by suit or otherwise. No more than \$2,500,000 may be deposited in the restricted account per fiscal year. Money in the account is appropriated to the Attorney General. The Attorney General shall submit to the Governor an estimate of the amount of money to be expended from the account during the next fiscal year as part of the Attorney General's annual budget request to the Governor.

*Fiscal Impact* - No adverse fiscal impact, any increased collections revenue will augment the Attorney General's operating budget.

**State Correctional Institution Closings**

Language is included to require the Department of Corrections to provide advance notice and a public hearing prior to the closure of a state correctional institution in 2017-18. Notice of the public hearing must be provided in the Pennsylvania Bulletin and two local newspapers at least 30 days prior to the public hearing.

*Fiscal Impact* -No adverse fiscal impact. It is assumed that the Department of Corrections will be able to accommodate the cost for newspaper advertising with general government operations funding.

**Higher Education Regulatory Restricted Account**

A section is added to establish the Higher Education Regulatory Restricted Account as a restricted account within the General Fund for the deposit of fees for services provided to degree-granting institutions. Revenue in the account may be expended for the purpose of administering and implementing 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries) and all other costs associated with regulation of degree-granting institutions.

<u>Service</u>	<u>Fee</u>
Application for approval of specialized associate degree program.....	\$1,000
Application for approval of new degree or program.....	\$1,400
Application for new degree-granting institution or change from private licensed school to college or university.....	\$5,000
Application to change status from college or seminary to university.....	\$1,000
Application for education enterprise status.....	\$10,000
Renew status as an education enterprise.....	\$2,000
Registration of out-of-State distance education provider that is not a participant in the State Authorization Reciprocity Agreement.....	\$5,000
Application for approval to use words college/university/seminary in a business name.....	\$100

The State Board of Education shall increase the fees by regulation if the revenues raised by the fees are not sufficient to meet or exceed expenses projected for a two-year period.

*Fiscal Impact* -There should be no adverse impact on Commonwealth funds as the State Board of Education is required to establish fees adequate to carry out the provisions relating to the regulation of degree-granting institutions. The Governor’s Office of the Budget estimates that \$290,000 will be collected to augment the Department of Education’s General Government Operations appropriation.

**Joint Underwriting Association**

A new article is added to clarify the status of the Joint Underwriting Association as a Commonwealth entity, and provide the necessary framework for the transfer of \$200,000,000 in Commonwealth funds by November 1, 2017. The Supreme Court shall have exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of the article.

In the event the \$200,000,000 payment from the Joint Underwriting Association is not made by November 1, 2017, the provisions of Subchapter C of Chapter 7 of the Medical Care Availability and Reduction of Error (MCARE) Act shall expire on December 1, 2017.

*Fiscal Impact* - Provides \$200,000,000 to the General Fund in 2017-18.

### Environmental Quality Board

Section 1920-A is amended to provide that within 90 days, the Environmental Quality Board (EQB) must promulgate proposed regulations to apply water quality criterion for manganese to the point of all existing or planned surface potable water supply withdrawals. an upstream area within five miles or less of a known potable water supply or water intake.

*Fiscal Impact* - No adverse fiscal impact. The promulgation of water quality regulations will be covered under existing operations by the board and department.

### Municipal Recycling Grants

The recycling fee is extended and shall continue to be imposed on and after January 1, 2020 and no transfer of funds from the Recycling Fund to the Solid Waste Abatement Fund shall be made.

*Fiscal Impact* - Extending the recycling fee for municipal waste landfills and resource recovery facilities ensures funds will be available in the Recycling Fund for expenditure. The \$2 per ton recycling fee generates approximately \$38,000,000 in annual revenue for the Recycling Fund.

### Water Treatment Facilities

The Department of Environmental Protection must provide for an extension of permits until December 31, 2019 for water treatment facilities that provide water disposal services exclusively to conventional oil and gas wells.

*Fiscal Impact* - No adverse fiscal impact.

### State Park Feasibility Study

The Department of Conservation and Natural Resources is directed to conduct a feasibility study for the establishment of a state park in Wyoming County. The study shall include an appraisal of the fair market value of the real property proposed for the state park. The results of the study are to be reported to the General Assembly within one year.

*Fiscal Impact* - No adverse fiscal impact.

### Emergency Drug and Alcohol Detoxification Program

A new section establishes the Emergency Drug and Alcohol Detoxification program in the Department of Health (DOH) that will allow facilities already licensed by DOH as health care facilities to provide detoxification under the existing health care facility license. The program shall, to the greatest extent possible, utilize existing beds in health care facilities and DOH must provide a special priority review for applications for licensure under this section.

*Fiscal Impact* - There should be no adverse fiscal impact related to allowing existing licensed facilities to provide detoxification services, as these facilities are already licensed by DOH. However, depending on the number of new facilities requesting licensure through the special priority review process, there may be a need for additional Health Care Facility Examiner positions which would cost approximately \$93,000 annually for each position.

### PACE and PACENET Programs

This legislation changes the dispensing fee for the PACE and PACENET programs from \$13.00 per prescription to \$10.49 per prescription.

***Fiscal Impact*** - The reduction in the dispensing fee is estimated to save the Lottery Fund \$10,000,000 in 2017-18 and \$15,000,000 in 2018-19 by reducing the amount transferred from the Lottery Fund to the Pharmaceutical Assistance Fund to cover program costs.

### **Older Adult Daily Living Centers**

This legislation eliminates duplicative licensing requirements for providers of all-inclusive care for the elderly.

***Fiscal Impact*** -No adverse fiscal impact.

### **Child Protective Services Fees**

A new section is added to increase the fee charged by the Department of Human Services for a child abuse clearance check from \$8 to \$13. No fee shall be charged to individuals requesting child abuse clearance checks for purposes of applying to become a volunteer with Big Brothers/Big Sisters of America, a rape crisis center or a domestic violence shelter.

***Fiscal Impact*** -The Governor's Office of the Budget estimates the increased fee for a child abuse clearance check will generate an additional \$2,881,000 annually to augment the Department of Human Services General Government Operations appropriation.

### **Jail Facilities**

Article XXIV-B is added to provide the board of commissioners in a county of the third class with a population between 280,000 and 298,000 as of the 2010 census with the discretion to elect to use an alternative contracting procedure to achieve the adaptive reuse of former jail facilities or construction of new jail facilities. Alternative contracting procedures are defined as a procedure under which a proposer would be responsible for all aspects or phases necessary to achieve the development of a parcel of property, including but not limited to planning, design, financing, construction and management of property. If the board of commissioners elects to use an alternative contracting procedure a resolution must be adopted and written proposals from proposers shall be requested.

***Fiscal Impact*** - No adverse fiscal impact.

### **Alternative Energy Portfolio Standards**

Establishes criteria for a solar photovoltaic system to qualify as a solar renewable alternative energy source. In order to qualify as an alternative energy source the system must meet the photovoltaic share of this Commonwealth's compliance requirements under the "Alternative Energy Portfolio Standards Act."

***Fiscal Impact*** - No adverse fiscal impact.

### **Judiciary and Judicial Administration Fees**

- A section is included to provide for the continuation of the Senior Judge Operational Support grant program at existing reimbursement rates.

***Fiscal Impact*** - Funds for Senior Judge Operational Support grants were appropriated in the General Appropriations Act of 2017 in the amount of \$1,375,000.

- The \$11.25 surcharge currently imposed under 42 Pa.C.S. § 3733.1(a)(1) is continued until December 31, 2020. The revenue from the surcharge is deposited in a separate reserve account within the Judicial Computer System Augmentation Account.

*Fiscal Impact* - The continuation of the surcharge will provide approximately \$25,000,000 for the operation of the Judicial Department.

- The \$2.25 fee on criminal and civil filings currently imposed under 42 Pa.C.S. § 3733.1(a) (2) and deposited in the Criminal Justice Enhancement Account is increased by \$0.25 to \$2.50.

*Fiscal Impact* - The increased fee is projected to provide approximately \$550,000 to \$600,000 in additional funding to the Criminal Justice Enhancement Account for an estimated total of \$5,450,000 to \$5,500,000. Funds in the Criminal Justice Enhancement Account are used for reimbursements to counties for 65% of full-time district attorneys salaries.

- An additional new fee of \$2.50 is imposed and will be deposited in a restricted account in the General Fund for allocation to the Office of Attorney General to augment general government operations funding.

*Fiscal Impact* - The new fee is projected to provide approximately \$5,500,000 for the operations of the Office of Attorney General.

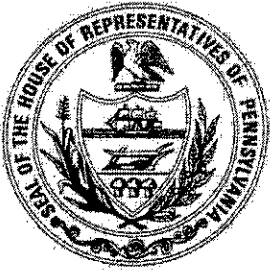
**PREPARED BY:** Ann Bertolino  
Jeffrey Clukey  
Jeffrey Miller  
Tim Rodrigo  
Jenny P. Stratton  
Lisa Taglang  
House Appropriations Committee (R)

**DATE:** October 18, 2017

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*

# Attachment 3





## HOUSE COMMITTEE ON APPROPRIATIONS

# FISCAL NOTE

HOUSE BILL NO. 271

PRINTERS NO. 2652

PRIME SPONSOR: Ortitay

### REVENUE INCREASE / (DECREASE)

FUND	FY 2017/18	FY 2018/19
General Fund	See Fiscal Impact	See Fiscal Impact
State Lottery Fund	See Fiscal Impact	See Fiscal Impact
Other Special Funds of the Commonwealth	See Fiscal Impact	See Fiscal Impact
Local Share Accounts	See Fiscal Impact	See Fiscal Impact

**SUMMARY:** House Bill 271, Printer's Number 2652, amends Title 3 (Agriculture) providing for race horse industry reform and amends Title 4 (Amusements) extensively revising gaming provisions providing for fantasy contests; for lottery; for iLottery; for interactive gaming; for multi-use devices at qualified airports; for sports wagering; for casino simulcasting; and for video gaming; further providing for general provisions of gaming and the Pennsylvania Gaming Control Board; for licensees; for revenues; table games; administration, enforcement and miscellaneous provisions; and making related repeals.

**ANALYSIS:** This legislation makes various changes to Title 3 and Title 4 of the Pennsylvania Consolidated Statutes by expanding, enhancing and providing for the oversight and regulation of the gaming industry in the Commonwealth as well as providing for local share assessments, distributions and transfers of gaming revenues. More specific details on the changes included in the legislation and the fiscal impact of each provision are provided below:

#### Title 3 (Agriculture)

Repeals language providing that a licensed racing entity or secondary pari-mutuel organization may not accept a wager or establish electronic wagering or advanced deposit account wagering for any person located in the primary market area of a racetrack, other than the racetrack at which the licensed racing entity is conducting a horse race meeting.

The electronic wagering license fee is reduced from \$500,000 to \$50,000 and the renewal fee for an electronic wagering license is reduced from \$100,000 to \$10,000. These fees are deposited into the State Racing Fund.

Fantasy Contests - (Chapter 3)

Fantasy contest license applications shall be submitted to the board for providing online fantasy or simulated games or contests with an entry fee and a prize or award offered to winning participants. No winning or outcome shall be based on the score, point spread or performance of a single actual team or combination of teams or solely on a single performance of an individual athlete or player in a single actual event. A nonrefundable application fee shall be paid which may not exceed the amount necessary to reimburse the board for all costs incurred in the application process.

The fee for a fantasy contest license issued by the board is \$50,000 which shall be deposited into the General Fund. Such license shall be valid for 5 years. The renewal fee is \$10,000 and shall be deposited into the General Fund.

Each fantasy contest licensee shall file a monthly report with the department and pay a tax equal to 15% of its fantasy contest adjusted revenue for the previous month. All taxes owed shall be held in trust for the Commonwealth until paid to the department. Taxes paid to the department shall be deposited into the General Fund. Each year from the tax imposed, the amount of 0.002 multiplied by the total fantasy contest adjusted revenue shall be transferred to the Department of Drug and Alcohol Programs for treatment for drug and alcohol addiction and compulsive and problem gambling.

The department shall assess each licensed operator a percentage of its fantasy operator's contest adjusted revenues which shall be used to recover costs or expenses incurred by the board and the department in carrying out the duties and responsibilities under this chapter as well as repay the loans made by the General Fund to begin implementing the chapter.

The Fantasy Sports Report published by the board in May 2016 indicated that the arena of fantasy sports is rapidly expanding and estimates that more than \$3 billion in entry fees from approximately 4.5 million players were paid in 2015 alone which generated revenue of \$300 million for the industry after the payout of winnings. Historically, Pennsylvania's population represents 4% of the United States population. Using this as a proxy, it is estimated that a fantasy contest tax of 15% would generate \$2,100,000 annually for the General Fund. For purposes of this analysis it is assumed that 5 entities will operate fantasy contests in PA. In 2017-18, it is estimated that \$250,000 in license fees will be deposited in the General Fund as well as \$525,000 in tax revenues assuming that licensees begin operating by March 1, 2018, resulting in 3 months of tax revenue collections. These monies are to be deposited into the General Fund and a total of \$7,000 shall be transferred to Drug and Alcohol Programs. In 2018-19 it is estimated that \$2.1 million in tax revenues will be collected and a total of \$28,000 will be transferred to Drug and Alcohol Programs.

### Lottery (Chapter 5)

Establishes the Lottery Sales Advisory Council comprised of the Secretary of Revenue, Director of the Division of the State Lottery, a representative from the Department of Aging, a representative from the Statewide Food Merchants Association, licensed lottery sales agents and any other individual at the discretion of the department. The Council shall operate in an advisory, nonbinding capacity with the purpose of increasing the partnership between the State Lottery and licensed lottery sales agents and develop policy recommendations for increased lottery sales.

The department shall establish a Retail Incentive Program to reward lottery sales agents that engage in department-recommended best practices resulting in increased lottery sales at the agent's location. This program shall be funded with 0.5% of the sale of traditional lottery products at lottery sales agents' physical lottery sales locations within the prior fiscal year. Participation in the program shall be voluntary for lottery sales agents. These funds shall not be counted toward the profit margin limitations.

### iLottery

This legislation authorizes the Department of Revenue to operate iLottery and Internet instant games. iLottery and Internet instant games are lottery games of chance in which, by the use of a computer, tablet computer, other mobile device or other web or mobile applications a player purchases a lottery play that reveals numbers, letters or symbols indicating whether a lottery prize has been won. All revenues from the sales of iLottery will be deposited into the State Lottery Fund. The Department of Revenue estimated iLottery sales to be \$86.3 million which would generate \$19 million in profits for the Lottery Fund based on an October 1, 2017, launch date. It is anticipated that \$10,000,000 will be generated for the Lottery Fund in 2017-18.

### Category 3 Licenses

This legislation removes the amenity requirement on Category 3 licensees for a one-time nonrefundable fee of \$1 million. A one-time fee of \$2.5 million is required for a Category 3 licensee to add up to 250 slot machines and a one-time fee of \$1.0 million is required to add up to 15 gaming tables. Finally, the legislation provides that the board may issue no more than two Category 3 licenses, eliminating the ability of the board to issue a third license.

This provision will generate an additional \$9 million in 2017-18 assuming the two currently operating Category 3 facilities apply for additional slot machines and gaming tables. These license fees are deposited into the General Fund

### Category 4 Licenses

The board is required to establish a system to auction 10 Category 4 licenses. Only Category 1 and Category 2 licensees may participate in the initial auction with the highest bidder getting exclusive rights to place a Category 4 casino in a location of its choice which cannot be located within 25 linear miles of another Category 1, 2 or 3 casino and cannot be located in Pike, Wayne, Fayette or Montgomery counties. The minimum bid is \$7.5 million.

Once a Category 1 or 2 licensee is a successful bidder, it cannot bid in the remaining auctions. If all category 4 licenses are not auctioned to Category 1 or 2 licensees, the remaining Category 4 licenses will be first opened to auctions from current Category 3 licensees. Any remaining Category 4 licenses will then be open auctions to any person that meets the board's requirements for casino ownership.

Category 4 casinos may have no less than 300 slot machines and no more than 750 slot machines. Such machines are counted toward the total complement of slot machines permitted by the category 1 or 2 casino. If a category 3 casino successfully bids on a Category 4 license, it must pay an additional fee equal to \$10,000 per machine at the Category 4 location.

Category 4 casinos may operate up to 30 tables upon payment of an additional \$2.5 million fee. After operating for a year, a Category 4 may petition for 10 additional tables.

The tax rate on slot machines shall be 50% with 34% going to the Property Tax Relief Fund; 5% to CFA for grants in any county; 5% to host counties that have a decrease in local share due to category 4 licensees; and 6% to the Gaming Economic Development Tourism Fund. A local share assessment shall be 4% with 2% to the CFA for grants to the host county and 2% to the host municipality.

The tax rate on Table games shall be 14% and deposited into the General Fund. A local share assessment shall be 2% with 1% to the CFA for grants to the host county and 1% to the host municipality.

Assuming all 10 Category 4 casinos are auctioned for the minimum fee of \$7.5 million and all 10 operate up to 30 table games for the fee of \$2.5 million this will generate \$100 million in license fee revenue for the General Fund in 2017-18.

#### Slot Machine License Operation Fee

This legislation imposes an annual slot machine license operation fee on all Category 1 and 2 licensed gaming entities in the amount of 20% of the entity's slot machine license fee paid at issuance (\$50 million). The fee will generate \$10 million annually from each licensed entity. Fees collected are deposited into the State Gaming Fund to be used for purposes of local share distributions. Changes are made to various local share assessment distributions to counties and municipalities. These changes will have no impact on Commonwealth funds.

#### Interactive Gaming (Chapter 13B) and Multi-Use Computing Devices (Subchapter B.1)

Slot machine licensees are authorized to conduct interactive gaming consisting of peer-to-peer games (poker), non-peer-to-peer games simulating table games and non-peer-to-peer games simulating slot machines. There is a one-time nonrefundable fee of \$10 million for conducting interactive gaming if paid within 90 days. If after 90 days and up to 120 days, the fee is \$4 million per category of game. If more than 120 days, the fee is \$4 million per category of game for qualified gaming entities. Licensees may contract with an interactive gaming operator. There is a one-time nonrefundable fee of \$1 million for each operator.

An operator may also conduct interactive gaming at a qualified airport. The one-time nonrefundable fee is \$2.5 million for Philadelphia; \$1.25 million for Pittsburgh; \$500,000 for all other international airports; and \$125,000 for all other airports that are not designated an international airport.

The tax rate on interactive gaming is 52% of the daily gross interactive gaming revenue for simulating slot machines and 14% of the daily gross interactive gaming revenue for simulating table games and poker. Additionally, a 2% local share assessment is applied to the daily gross interactive gaming revenue with 1% to the host county (Philadelphia goes to school district) and 1% to CFA for grants to any county. The tax rate for airport gaming is the same as the interactive gaming. Airport local share assessment is 2% with 1% to the CFA for grants within the airport host county or counties (Philadelphia 0.5% to the school district and 0.5% to the CFA for grants within Delaware County) and 1% to CFA for grants available to every county.

The authorization of interactive gaming will result in \$100 million in license fees in 2017-18 assuming all current slots licensees conduct interactive gaming. Furthermore, assuming each licensee contracts with one operator, this will result in \$10 million in operator license fees in 2017-18. Finally, it is estimated that a total of \$5.75 million will be generated in license fees for authorized airport gaming.

#### Sports Wagering (Chapter 13C)

The board is given the authority to establish standards and procedures to govern sports wagering in the Commonwealth in the event that sports wagering is authorized under Federal law. The Secretary of the Commonwealth shall publish notice in the Pennsylvania Bulletin certifying the enactment or filing of a court decision that affirms the authority of a state to regulate sports wagering. A licensed casino would be able to apply for a sports wagering license to conduct sports wagering at the casino, a nonprimary location or online. A sports wagering license fee is \$10 million with a renewal fee of \$250,000. The tax rate is 34% with a local share of 2%, 1% to the host county and 1% to the host municipality. All fees and taxes would be deposited into the General Fund.

#### Casino Simulcasting (Chapter 13F)

This legislation authorizes Category 2, Category 3 and Category 4 licensed facilities to conduct casino simulcasting or enter into an agreement or agreements with a licensed racing entity or other person for the conduct of casino simulcasting. Casino simulcasting permits shall not be subject to the payment of an authorization fee, renewal fee or an additional permit fee.

#### Casino Loan Repayments

The board shall establish a schedule for repayment of the \$36.1 million in loans which were provided as start-up costs with the enactment of Act 71 of 2004. The loan shall be repaid by June 30, 2019. All loan repayments shall be deposited into the General Fund. It is estimated that the General Fund will receive repayments totaling \$12 million in 2017-18.

Video Gaming (VGT's)

This legislation permits up to 5 VGT's on the premises of truck stops. Counties hosting a category 1, 2 or 3 casino have 60 days to opt out and therefore no VGT's would be allowed to be placed in that county. Manufacturer license application fees are \$50,000. Terminal Operator license application fees are \$10,000. Establishment application fees are \$1,000. There is an application fee of \$500 per key employee or principal. Initial license fees and renewal fees are \$10,000 for a manufacturer or supplier; \$5,000 for a terminal operator; \$250 per VGT per establishment; and \$500 per key employee, procurement agent or principal.

The tax rate on VGT's is 42% of gross revenue which will be deposited into the Video Gaming Fund. On June 30, 2018, 0.002 of the total gross terminal revenue shall be transferred from the Video Gaming Fund to the Compulsive and Problem Gambling Treatment Fund and the remainder in the Video Gaming Fund shall be transferred to the General Fund.

A 10% local share assessment is imposed and shall be available through the CFA for grants to any county. The establishment shall receive 15% of the gross revenue.

It is anticipated that \$1 million in application fees and license fees shall be deposited into the General Fund in 2017-18.

**FISCAL IMPACT:** It is estimated that \$238,518,000 of application fees and license fees will be deposited into the General Fund in 2017-18. The amount of tax revenues to be generated in 2018-19 will depend on the length of time for the licensees to commence operations.

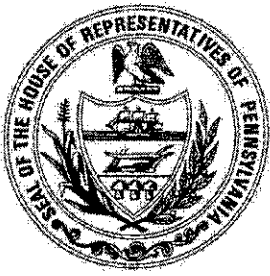
The department estimates the iLottery will generate \$25,000,000 annually for the Lottery Fund. It is anticipated that \$10,000,000 will be generated for the Lottery Fund in 2017-18.

**PREPARED BY:** Ritchie LaFaver  
House Appropriations Committee (R)

**DATE:** October 25, 2017

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*

# Attachment 4



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 542

PRINTERS NO. 2598

PRIME SPONSOR: Thomas

### REVENUE INCREASE / (DECREASE)

FUND	FY 2017/18	FY 2018/19
General Fund	\$1,584,600,000	\$159,000,000

**SUMMARY:** House Bill 542, Printer's Number 2598, amends the Tax Reform Code of 1971 further providing in sales and use tax for definitions, imposition of tax, exclusions from tax, marketplace providers and sellers, and remote sales reports; in personal income tax for definitions and operational provisions, exemptions for ABLE savings programs, tax return check-offs, withholding of tax and providing of information; in corporate net income tax for net operating loss provisions and qualified manufacturing innovation and reinvestment deduction; in realty transfer tax for definitions and exempt parties; in tax credits for eligibility; in entertainment production tax credits for definitions, film production tax credit districts and entertainment economic enhancement program; in city revitalization and improvement zones for restrictions and transfer of property; in neighborhood improvement zones for transfer of property; in keystone opportunity zones for application and approval of zones; in inheritance tax for timely filing and payment; in public transportation assistance fund for carsharing; providing for fireworks; providing for administration, reassessment, review and timely filing; providing for tobacco master settlement payment revenue bonds and sale of revenue; and making repeals.

**ANALYSIS:** This legislation makes various changes and additions to the Tax Reform Code of 1971. More specific details on each provision are as follows as well as the corresponding fiscal impact for each provision:

#### Sales and Use Tax (SUT)

- **Support Services** – Act 84 of 2016 imposed the sales and use tax on digital downloads including maintenance, updates and support. This legislation removes the taxation on separately invoiced support services.

*Fiscal Impact:* This provision clarifies the provisions of Act 84 and has no adverse fiscal impact.

- **Kegs Exclusion** – Wrapping and packing supplies which are incidental to the delivery of personal property are currently exempt from taxation. This legislation adds kegs used to contain malt or brewed beverages to the current exemption.

*Fiscal Impact:* The exclusion of kegs is estimated to have a minimal revenue loss to the General Fund.



- **Marketplace Sales Tax Collections and Reporting** – On or before March 1, 2018, remote sellers, marketplace facilitators or referrers with aggregate sales of \$10,000 or more in the previous calendar year shall file an election to (1) collect and remit the sales tax or (2) comply with notice and reporting requirements.

Notice and reporting requirements include (1) posting notice on its platform informing purchasers with a delivery location in PA that sales tax may be due on the purchase and PA requires the purchaser to file a use tax return; (2) providing a written notice to each purchaser at the time of sale stating that sales tax is not being collected and the purchaser may be required to remit use tax to PA; (3) providing instructions for obtaining information from the department on how to remit the use tax; (4) prominently displaying this information on each invoice, order form, sales receipt or similar document; (5) filing a report with the department no later than February 28 of each year providing the names of purchasers including mailing address, address to which the product was delivered, aggregate dollar amount of purchases, name and address of the remote seller, marketplace facilitator or marketplace seller.

*Fiscal Impact:* This provision is estimated to generate additional revenues of \$10.0 million in 2017-18 and \$50.5 million in 2018-19.

- **Remote Sales Report** – If Federal legislation has not been enacted addressing remote sellers by December 31, 2018, the IFO in conjunction with Department of Revenue shall conduct a study assessing the legal and fiscal implications of mandating notice requirements for remote sellers. Results of the study shall be provided to the General Assembly by April 1, 2019.

*Fiscal Impact:* This provision will have no adverse fiscal impact to the Commonwealth.

### **Personal Income Tax**

- **ABLE Savings Accounts** – Act 17 of 2016 established the Pennsylvania ABLE (Achieving a Better Life Experience) Act. This provision allows a deduction for contributions to an ABLE account and exempts undistributed earnings in the ABLE account as well as distributions from the ABLE account.

*Fiscal Impact:* This provision is estimated to reduce revenues by \$0.5 million in 2017-18 and \$1.1 million in 2018-19.

- **Income Tax Return Check-offs** – Makes the following checkoffs permanent on the PIT return: Wild Resource Conservation Fund; Organ and Tissue Donation Awareness Fund; Military and Family Relief Assistance Fund; Children's Trust Fund; and American Red Cross. Repeals the checkoff for the Korea / Vietnam Memorial National Education as this has been expired since December 31, 2005.

*Fiscal Impact:* This provision will have no adverse fiscal impact to the Commonwealth.

- **Nonresident Withholding** – Requires entities making rent and royalty payments on PA property to nonresidents in excess of \$5,000 to withhold personal income tax on those payments. Requires companies that bring out-of-state independent contractors into PA for work in excess of \$5,000 to withhold personal income tax from the compensation. Businesses are required to electronically file 1099-MISC forms for all employees and all classes of PA source income.

*Fiscal Impact:* This provision is part of the Revenue Maximization proposal which is estimated to generate additional revenues of \$20 million annually for the General Fund.

### **Corporate Net Income**

- **Net Operating Losses** – Removes the \$5 million cap on NOL deductions and increases the cap of 30% of taxable income as follows: 35% of taxable income for tax year 2018 and 40% of taxable income for tax year 2019 and thereafter. This provision shall take effect if all or part of the operation of the NOL deduction has been deemed unconstitutional by a decision by the PA Supreme Court.

*Fiscal Impact:* This provision is estimated to generate additional revenues of \$52.6 million in 2017-18 and \$80.3 million in 2018-19 in the event that the PA Supreme Court rules against the current NOL provisions.

- **Manufacturing Innovation and Reinvestment Deduction** – A taxpayer must make a capital investment in excess of \$100 million for the creation of new or refurbished manufacturing capacity within 3 years of a designated start date. Within 5 years of the start date the taxpayer must attest to DCED that the project is completed. Upon approval of completion, DCED shall determine the maximum allowable deduction from taxable income for the taxpayer which shall be equal to 5% of the private capital investment utilized and may be utilized each year for the 5 tax years immediately following the DCED satisfaction determination. The deduction is nontransferable, the taxpayer cannot reduce its liability by more than 50% and any unused portion shall expire at the end of the corresponding tax year.

*Fiscal Impact:* This provision will have no adverse fiscal impact to the Commonwealth in 2017-18 or 2018-19 as the taxpayer has 3 years to make the qualified capital investment and 5 years to attest to DCED for determination of the allowable deduction for the taxpayer.

### **Realty Transfer Tax**

- **Veterans' Service Organizations** – Act 84 of 2016 provided that "veterans' organizations" were exempt parties from paying the RTT. This legislation renames the term "veterans' service organization" and adds language in the definition clarifying that it is an organization that has been chartered by Congress to service veterans or is a member of the PA State Veterans' Commission under Title 51, Chapter 17.

*Fiscal Impact:* This provision will have no adverse fiscal impact to the Commonwealth.

### **Tax Credit Eligibility**

- Provides that before a tax credit can be awarded, the department may make a finding that the taxpayer has filed all required State tax reports and returns for all taxable years and paid any balance of State tax due, unless the tax due is currently under appeal.

*Fiscal Impact:* This provision will have no adverse fiscal impact to the Commonwealth.

**Film Production Tax Credit Districts**

- Allows the department to designate no more than 2 tax credit districts for the purpose of enhancing, promoting and expanding film production opportunities and establishing a film production industry within the Commonwealth. Tax credit districts must be located on deteriorated property and contain at least one qualified production facility and six soundstages. The property must be occupied by two or more qualified businesses that make a total capital investment of at least \$400 million within five years after the designation of the district. Tax credits may be authorized in fiscal year 2019-20 and thereafter. Tax credits under this section are in addition to the current Film Production Tax Credit program and are available exclusively for activities occurring within the designated district.

*Fiscal Impact: This provision will have no adverse fiscal impact in 2017-18 and 2018-19 as tax credits may first be authorized in 2019-20 and thereafter by subsequent legislation.*

**Entertainment Economic Enhancement Program**

- The Entertainment Economic Enhancement Program currently exists as Chapter 33 of Title 12. This provision adds Subarticle E to the Tax Reform Code codifying the exact language of the program into the Tax Reform Code and repeals the language in Title 12.

*Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.*

**City Revitalization and Improvement Zones (CRIZ)**

- Provides that excess money transferred to a CRIZ fund for utilization in a pilot zone is not required to be returned to the State by the contracting authority of the pilot zone and must be used in accordance with the current utilization provisions in the article.
- Provides that the department shall request documentation regarding State eligible taxes paid or refunds received from the agency required to collect the tax or issue the refund before requiring such documentation from the qualified business.
- Current law allows parcels to be transferred out of a zone where a facility has not been constructed, reconstructed or renovated and additional acreage, not to exceed the acreage transferred out of the zone, may be simultaneously added to the zone. This legislation removes the word "simultaneously" allowing acreage to be added to the zone at a later date.

*Fiscal Impact: These provisions will have no adverse fiscal impact to the Commonwealth.*

**Neighborhood Improvement Zones (NIZ)**

- Adds a new section providing for parcels in a zone to be transferred out of the zone and replaced with parcels not to exceed the acreage transferred out of the zone at any given time.

*Fiscal Impact: This provision will have no adverse fiscal impact to the Commonwealth.*

### **Keystone Opportunity Zones (KOZ)**

- Extends the application date for additional Keystone Opportunity Zones that are currently allowed in law from October 2016 to October 2018.
- Extends the date for DCED action on applications for additional KOZs that are currently allowed in law from December 2016 to December 2018.

*Fiscal Impact: These provisions will have no adverse fiscal impact to the Commonwealth.*

### **Inheritance Tax**

- Provides that any inheritance tax return filed between July 1, 2012, and January 1, 2017, under section 2136 that reports transfers of property that are exempt from the inheritance tax under section 2111 shall be considered timely filed if filed within one year of the tax return due date.

*Fiscal Impact: This provision is estimated to reduce revenue by \$100,000 in 2017-18.*

### **Public Transportation Assistance Fund (PTAF)**

- Provides for a new carsharing fee schedule as follows: (1) \$0.25 for less than 2 hours; (2) \$0.50 for 2 hours to 3 hours; (3) \$1.25 for more than 3 hours and less than 4 hours; and (4) \$2.00 for 4 hours or more.
- "Carsharing" shall mean a membership based on service that provides an alternative to personal car ownership and which meets the following conditions: (1) does not require a trip-specific written agreement each time a member rents a vehicle; (2) does not require an attendant to be present at the beginning or end of a rental; (3) offers members access to a dispersed network of shared vehicles 24-hours per day, 7 days per week, 365 days per year; and (4) allows a vehicle to be rented on a per minute, per hour, per day, or per trip basis, and at per mile or per kilometer rates, which typically includes fuel, insurance and maintenance.

*Fiscal Impact: These provisions will have no adverse fiscal impact to the Commonwealth.*

### **Fireworks**

- Incorporates the current fireworks law into the Tax Reform Code modernizing and expanding the legalization of consumer fireworks.
- Imposes a new tax at the rate of 12% of the sale price on consumer fireworks that are suitable for use by the public. The tax would be in addition to the sales and use tax already imposed on such sales. The new tax does not apply to display fireworks used by professional pyro technicians.
- One-sixth (2%) of the consumer fireworks taxes collected, not to exceed \$2 million annually, shall be transferred from the General Fund as follows: (1) 75% to the Emergency Medical Services Grant Program and (2) 25% to a special account for volunteer firefighter training.
- There is a nonrefundable license application fee of \$2,500 for a facility and \$1,000 for a temporary structure.

- Annual license fees for a permanent facility or temporary structure to sell fireworks are: (1) \$7,500 for a facility up to 10,000 square feet; (2) \$10,000 for a facility greater than 10,000 square feet and up to 15,000 square feet; (3) \$20,000 for a facility greater than 15,000 square feet; and (4) \$3,000 for a temporary structure licensed to sell a limited selection of consumer fireworks.
- A temporary structure licensed to sell consumer fireworks must be located at least 5 miles from a permanent facility prior to January 1, 2023, and at least 2 miles thereafter. Temporary structures are limited to selling fireworks during the following periods: (1) June 15 through July 8 and (2) December 21 through January 2.

*Fiscal Impact:* These provisions are estimated to generate additional revenues in 2017-18 of \$2.6 million and \$9.3 million in 2018-19.

### **Revenue Maximization**

- Reduces the period of time a taxpayer has to file a petition for reassessment, review or adjustment with the Board of Appeals (BOA) from 90 days after the mailing date of the notice of assessment to 60 days after the mailing date of the notice of assessment.
- Reduces the period of time a taxpayer has to appeal a BOA decision to the Board of Finance Revenue (BFR) from 90 days after the mailing date of the notice of decision to 60 days after the mailing date of the notice of decision.

*Fiscal Impact:* These provisions are part of the Revenue Maximization proposal which is estimated to generate additional revenues of \$20 million annually for the General Fund.

### **Tobacco Master Settlement Payment Revenue Bonds and Sale of Revenue**

- Authorizes the Commonwealth Financing Authority (CFA) to enter into a sales agreement or issue bonds utilizing a portion of the annual payments from the Tobacco Master Settlement Agreement. Such sales agreement or bond issuance shall be in the best interest of the Commonwealth, provide the greatest value to taxpayers and raise net proceeds of \$1,500,000,000 which shall be deposited into the General Fund.
- The term of the sales agreement shall not exceed 10 years.
- The term of the bonds shall not exceed 30 years.

*Fiscal Impact:* This provision will generate \$1.5 billion for the general fund in 2017-18.

PREPARED BY: Ritchie LaFaver  
House Appropriations Committee (R)

DATE: October 17, 2017

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*

# Attachment 5



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 674

PRINTERS NO. 2624

PRIME SPONSOR: Bernstine

COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
General Fund	\$0	See fiscal impact
Tobacco Settlement Fund	\$0	\$359,822,000
Race Horse Development Fund	\$0	\$29,725,000
Other Special Funds	\$0	See Fiscal Impact

SUMMARY: House Bill 674, printer's number 2624, amends The Fiscal Code to provide for FY 2017-2018 budget implementation; for FY 2017-2018 restrictions on appropriations for funds and accounts; and providing for other changes.

ANALYSIS and FISCAL IMPACT:

Article III. Treasury Department
Lottery Winnings Intercept

Requires the Department of Revenue (DOR) to determine whether an individual winning a single prize of more than \$2,500 from the Pennsylvania Lottery is delinquent and owes state taxes. If the prizewinner is found delinquent, the amount of state taxes owed will be deducted from the lottery winnings and paid to the Commonwealth after any amounts deducted pursuant to 23 Pa.C.S. § 4308 for child support. DOR, in conjunction with the Administrative Office of PA Courts, shall furthermore make reasonable efforts to determine if the prizewinner owes court-ordered obligations and also deduct such amounts from the lottery prize paid. DOR will notify the prize winner within 30 days that the winnings will be used to satisfy or partially satisfy a delinquent state tax obligation or court-ordered obligation. A taxpayer may appeal the intercept within 30 days of notification. DOR shall determine and set a fee to reflect the actual cost incurred to administer the program and deduct the calculated amount from the lottery winnings. DOR shall annually report to the House and Senate Finance Committees the amount of delinquent taxes and court-ordered obligations collected under the intercept program.

In addition, the DOR must request the Department of Human Services (DHS) to make a reasonable effort to determine if the prizewinner is currently a recipient of public assistance benefits in the Commonwealth and if so, the DHS must determine the prizewinner's eligibility to continue to receive public assistance benefits.

Fiscal Impact: No adverse fiscal impact on Commonwealth funds.

Article II-C. Ambulatory Surgical Center Data

Requires the submission of annual financial data reports for ambulatory surgical centers that are in operation or begin operation on or after July 1, 2017, to the Health Care Cost Containment Council.

Fiscal Impact: No adverse fiscal impact on Commonwealth funds.

Article II- D. Joint Underwriting Association

A new article is added to clarify the status of the Joint Underwriting Association as a Commonwealth entity, and provide the necessary framework for the transfer of \$200,000,000 in Commonwealth funds by December 1, 2017.

The Supreme Court shall have exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of the article.

In the event the \$200,000,000 payment from the Joint Underwriting Association is not made by December 1, 2017, the provisions of Subchapter C of Chapter 7 of the Medical Care Availability and Reduction of Error (MCARE) Act shall expire on December 1, 2017.

*Fiscal Impact – Provides \$200,000,000 to the General Fund in 2017-18.*

**Section 311 (Provisions for General Assembly)**

Specifies that funds available to the Senate or House of Representatives through a short-term agreement or other instrument executed with a lending institution shall be considered augmenting revenues and are hereby appropriated for the payment of salaries, wages and all other expenses incurred in the operation of the Senate or the House of Representatives.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds.*

**Article IV. Auditor General**

**Section 403 (Audit Response)**

Adds language to Section 403 to require any person, association, corporation, or public agency that receives State aid to respond to recommendations made by the Department of the Auditor General as part of an audit authorized under Section 403. The person, association, corporation, or public agency must submit a response detailing adoption of the audit recommendations, or the reason why recommendations have not been adopted within 120 business days of the publication of the audit. If no response is made 60 days after the date of the audit's publication the Auditor General's Office must provide notice to the subject of the audit that future appropriations could be denied if a response is not made within the 120-day timeline. Failure to respond to audit recommendations within 120 business days may be considered by the Governor and the chairperson and minority chairperson of the Appropriations Committee of the Senate and the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives when determining future appropriations to the person, association, corporation, or public agency.

The Auditor General's Office shall regularly notify the Governor and the chairmen and minority chairmen of the Appropriations Committees of responses received, accompanied by any comments the Auditor General's Office may wish to submit. Responses shall be posted to the Auditor General's publicly accessible website. The Auditor General's Office shall work with the Governor and the majority and minority chairmen of the Appropriations Committees to determine the most effective method to communicate information concerning responses to audit recommendations based on the type of audit and significance of the recommendations.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds.*

**Section 410 (Audits of Interstate Commissions)**

Authorizes the Auditor General to have exclusive examining and auditing rights to all of the books, documents, records, files and accounts of the Susquehanna River Basin Commission and Delaware River Basin Commission.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds.*

**Article XV: Disbursements of money from the State Treasury**

**Section 1507.1 (Settlement, Agreements; Enforcement)**

Provides for the deposit in the General Fund of the amount received from a settlement in the 2017-18 fiscal year of \$30,409,055 notwithstanding the act of January 8, 1960 (1959 P.L. 2119, No. 787), known as the Air Pollution Control Act.

*Fiscal Impact: Provides a deposit of \$30,409,055 to the General Fund for Fiscal Year 2017-2018.*

**Section 1603-D.1 (Payroll tax)**

Authorizes that in the event that the payroll tax imposed by the city of the second class A produces less than the revenues projected in the first full year after the imposition of the tax, the city may for a second year adjust the rate to one that is sufficient to generate revenue equal to the revenue collected from the mercantile or business privilege tax in the final year it was levied.

*Fiscal Impact: No adverse fiscal impact.*



## **Article XVI-E. Oil and Gas Wells**

### **Section 1601.2-E (Oil and Gas Lease Fund)**

The Oil and Gas Lease Fund is continued as a special fund in the State Treasury. Money in the fund may only be used as specifically provided or as annually appropriated by the General Assembly. For fiscal year 2017-2018 the following annual transfers are made: \$20,000,000 from the fund to the Marcellus Legacy Fund for distribution to the Environmental Stewardship Fund and \$15,000,000 from the fund to the Marcellus Legacy Fund for distribution to the Hazardous Sites Cleanup Fund.

*Fiscal Impact: The enactment of these provisions will have no adverse impact on Commonwealth funds. The transfer amounts to the Hazardous Sites Cleanup Fund is increased by \$10,000,000 from the prior year.*

### **Section 1607-E (Oil and gas operations in the South Newark Basin)**

Removes the expiration date for the provisions relating to drilling activity in the Newark River Basin.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds.*

### **Section 1610-E (Temporary cessation of oil and gas wells)**

Provides that a period of non-production under an oil and gas lease is a temporary cessation and is insufficient grounds to terminate the lease.

## **Article XVI-A. Transportation Network Companies, Motor Carrier Companies and Parking Authority of a City of the First Class**

### **Section 1603-M (Regulation of taxicabs and limousines by the parking authority of a city of the first class)**

Specifies for purposes of the temporary and final-form regulations required under 53 Pa.C.S. 57B02(c)(1) (relating to regulation of taxicabs and limousines) and notwithstanding 53 Pa.C.S. § 5707 (relating to budget and assessments), the owner of a taxicab authorized by the parking authority to provide taxicab in a city of the first class shall pay to the parking authority an assessment equal to 1% of the gross receipts from the fares charged to passengers for taxicab service in the city of the first class.

The authority may suspend or revoke the license of a transportation network company which fails to comply with operating regulations with regard to fees for personal vehicles to access international airport property to pick-up or drop off passengers.

### **Section 1603-M, 1604-M & 1605-M (Provision of transportation network service)**

Provides that a vehicle up to 15 model years old may be used to provide transportation network service.

*Fiscal Impact: Enactment of the new provisions regarding taxicab service in a city of the first class and transportation network service will have no adverse impact on Commonwealth funds.*

Section 1774.1-A. (Other grants) of the Fiscal Code is amended to make available \$15,000,000 in 2017-18 for the distribution for water and sewer projects with a cost of not less than \$30,000 and not more than \$500,000. Additional funding for water and sewer grants totaling \$10,000,000 in FY 2017-18 will be transferred from the Commonwealth Financing Authority (CFA) Building Pennsylvania Program trust account for the distribution for water and sewer projects with a cost of not less than \$30,000 and not more than \$500,000.

Water and sewer projects under the section shall not be deemed ineligible if the project detailed in the application is for a portion of a larger project the total cost of which exceeds \$500,000.

*Fiscal Impact: The enactment of these provisions will have no adverse fiscal impact on Commonwealth funds or CFA programs.*

## **Article XVII-A.1 Additional Special Funds**

### **Sub article B. Tobacco Settlement Fund**

The legislation also provides for the distribution of Tobacco Settlement Fund payments for FY 2017-2018 as follows:

- 13% to home and community-based services (\$45,236,000);
- 4.5% for tobacco use prevention and cessation (\$15,659,000);
- 12.6% for health related research pursuant to Section 906 of Tobacco Settlement Act (\$43,845,000);
- 1% for health related research for section 909 of the Tobacco Settlement Act (\$3,480,000);

- 8.18% for uncompensated care (\$28,464,000);
  - 30% for the purchase of Medicaid benefits for workers with disabilities (\$104,392,000); and
  - 30.72% shall remain in the fund and be separately appropriated for health-related purposes (\$106,898,000).
- Fiscal Impact: The percentage allocations together with prior year funds of \$11,849,000 results in appropriations from the Tobacco Settlement Fund for health related programs in FY 2017-2018 of \$359,822,000.*

**Sub article C: Distributions from PA Race Horse Development Fund**

The bill updates statutory citations and establishes a formula to provide 22 equal weekly transfers to be deposited in the PA Race Horse Development Restricted Receipt Account. Transfers would begin on the effective date of the section and would be set at an amount necessary to provide \$19,659,000 by June 30, 2018. In addition, amended provisions require the department to transfer \$10,066,000 from the fund to the State Racing Fund for costs associated with the enforcement of medication rules in horse racing.

*Fiscal Impact: The enactment of these provisions will provide \$19,659,000 for agricultural-related programs and \$10,066,000 for enforcement of medication rules in horse racing for FY 2017-2018.*

**Sub article D Miscellaneous Limitations and Transfers**

*Section 1733-A.1 (Drug and Alcohol Programs)* is amended to direct the transfer of \$2,500,000 from the sale of liquor and alcohol to the Department of Drug and Alcohol Programs for FY 2017-2018.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds.*

**NEW Section 1734-A.1. (Workers' Compensation Security Fund)**

Requires that any amount transferred from the Worker's Compensation Security Fund be repaid by July 1, 2019.

*Fiscal Impact: The enactment of this provision will require the transfer of \$165,000,000 from the General Fund to the Workers' Compensation Security Fund by July 1, 2019 to repay funds transferred to the General Fund in 2016-2017.*

**Sub article E. Natural Gas Infrastructure Development Fund**

*Natural Gas Infrastructure Fund - Section 1743-A.1* is amended to provide for a transfer of \$6,000,000 in 2017-2018 from available funding in the CFA Building Pennsylvania Program to the Natural Gas Infrastructure Development Fund to provide grants from the CFA for projects which expand access to natural gas infrastructure, including costs associated with limiting environmental impacts and protecting public lands.

*Fiscal Impact: The enactment of these provisions will have no adverse fiscal impact on Commonwealth funds or CFA programs.*

**Sub Article F (First Chance Trust Fund)**

Establishes the First Chance Trust Fund to provide money for scholarships to students in areas with higher drop-out rates, incarceration rates and crime rates and provides grants to programs that benefit children in areas with higher drop-out rates, incarceration rates and crime rates. Eligible programs would include evidence-based or outcome-based programs for children aimed at reducing risk factors and producing positive outcomes, including mentoring, individual counseling and therapeutic service and family-strengthening activities. Contributions to the First Chance Trust Fund will be derived from payments from contractors equivalent to one percent of annual contract amounts in excess of \$5,000,000. The Auditor General will conduct an audit of the fund's revenue and expenditures no later than three years after the effective date and will conduct subsequent audits no more than once every three years from the date of the preceding audit.

*Fiscal Impact: The Department of Corrections anticipates that the trust fund will generate \$500,000 to \$1,000,000 on an annual basis.*

**Article XVII-C. 2016-2017 Restrictions on Appropriations for Funds and Accounts**

*Section 1726-C (Fund Transfers)* is amended to repeal subsection (6) relating to the transfer and repayment of \$200,000,000 from the Pennsylvania Professional Liability Joint Underwriting Association (MCare).

**Article XVII-E: General Budget Implementation**

*Sub Article B: Executive Departments*

Section 1718-E (Department of Agriculture) is amended to provide that the members of the Pennsylvania Malt and Brewed Beverage Industry Promotion Board will be entitled to reimbursement for reasonable and necessary expenses in connection with their performance of their duties as a member of the board.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds. The Department of Agriculture will accommodate the reimbursements of Board member expenses with currently appropriated funds.*

Section 1719-E. (Department of Community and Economic Development (DCED)) is amended by adding a new subsection to provide that the Taxpayer-Funded Transparency Act will not apply to expenditures for media advertising authorized by DCED.

A second new subsection is added to provide municipal authorities with the authority to perform replacement or remediation of private water laterals and private sewer laterals for customers of the authority, if the municipal authority has determined that replacement or remediation will benefit the public health. The municipal authority may use public funds and utilize authority employees for the replacement or remediation of private water laterals and private sewer laterals; and construct and maintain water or sanitary sewer public stations, public water distribution systems, and public sewer collection systems within the service area of the authority or by contract or agreement with the authority.

*Fiscal Impact: No adverse impact on Commonwealth funds.*

Section 1722-E. (Department of Education)

Provides for educational access program funding received in FY 2017-2018 by a school district identified for financial watch status during the 2016-2017 school year shall be considered part of the district's base allocation for basic education funding.

*Fiscal Impact-This provision will have a fiscal impact of \$14,000,000 in the 2018-2019 fiscal year and each fiscal year thereafter.*

Beginning July 1, 2017, for the purpose of the aid ratio and market value/income aid ratio, a school district's market value shall not exceed \$47,000,000,000 and shall increase each year by no more than the percentage increase in market value for all school districts.

*Fiscal Impact-For a school district whose market value is capped at \$47,000,000,000 beginning July 1, 2017, this provision may over time increase the school district's subsidy payments for school employees' retirement, social security, and any other subsidy calculations that use the market value/income aid ratio.*

Section 1724.1-E. (Pennsylvania Gaming Control Board)

Adds requirement that for Fiscal Year 2017-2018 any slot machine license issued in the fiscal year by the board will require the slot machine license fee to be paid in full no later than June 30, 2018.

*Fiscal Impact: To the extent that a slot machine license is issued in 2017-2018, this amendment would result in \$50,000,000 being deposited in the General Fund by the end of the fiscal year.*

Section 1729-E. (Department of Human Services – Federal and State Medical Assistance Payments)

Amended to revise the nursing facility assessment to ensure payments align with the Community HealthChoices (CHC) calendar year rate-setting process. A nursing facility shall remit assessments electronically in periodic submissions, not to exceed five times per year. A nursing facility shall report the total assessment amount owed on forms and in accordance with instructions prescribed by DHS.

*Fiscal Impact: According to DHS, the change to the nursing facility assessment will have no adverse fiscal impact.*

A new subsection is added to require that a nursing facility satisfying certain criteria be deemed a public agency and eligible to participate in the intergovernmental transfer program.

*Fiscal Impact: According to DHS, there is no adverse fiscal impact as this nursing facility already participates in the intergovernmental transfer program.*

Section 1753.1-E (Commonwealth Financing Authority Restricted Revenue Account)

Adds a subsection to require the Secretary of the Budget to provide a quarterly report to the chairpersons and minority chairpersons of the Appropriations Committees of the Senate and the House of Representatives on the actual and

projected transfers of sales tax revenues to the CFA Restricted Revenue for the purpose of paying CFA-related debt service. The reports shall also include a list of projected and actual debt service payments made and the total amount of outstanding CFA debt to be paid from the restricted revenue account.

*Fiscal Impact: No adverse impact on Commonwealth funds.*

Sub Article D (Judicial Department)

*Section 1795.1-E. (Surcharges)* is amended to extend the \$10 surcharge on certain court documents to December 31, 2020, and extends the surcharge to summary traffic citations.

*Fiscal Impact: The continuation of this surcharge will provide approximately \$22,000,000 for the operation of the Judicial Department. Also, applying this surcharge to summary traffic citations is projected to provide approximately an additional \$10 million for the operation of the Judicial Department.*

An additional amendment provides for a \$2 increase in all court filing fees in the Commonwealth to be deposited into the Access to Justice Account. The \$2 increase expires December 31, 2020.

*Fiscal Impact: The enactment of this provision would increase court filing fees, resulting in an increase of approximately \$7,000,000 annually deposited in the Access to Justice Account.*

The bill repeals section 4907 of Title 42, which addresses the expiration date for the Access to Justice Account, making the chapter permanent. The expiration date is currently November 1, 2017.

Sub Article E (Restrictions on Appropriations for Funds and Accounts)

*Section 1798.3-E. (Multimodal Transportation Fund)* is amended to allow the Secretary of Transportation to waive the local match requirement for good cause if the applicant is a municipality. In addition, a municipality may not be required to provide a local match for financial assistance from the CFA Multimodal Transportation Program. This section will expire December 31, 2018.

*Fiscal Impact: The enactment of these provisions will have no adverse fiscal impact on Commonwealth funds or CFA programs.*

*Section 1799.1-E. (Pennsylvania Liquor Control Board (PLCB))* is amended to specify that any unallocated grant money provided to the Malt and Brewed Beverages Industry Promotion Board in a fiscal year may be made available for grants in subsequent fiscal years.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds.*

*Section 1799.5-E (Sales by distilleries)* – a section is added to provide that notwithstanding any provisions of the Liquor Code, the holder of a distillery or limited distillery license may sell liquor to the PLCB and to persons not licensed by the board. A distillery or limited distillery licensee may also directly sell liquor to any license or permit holder that is otherwise authorized to sell liquor. Aggregate sales to the license and permit holders may not exceed 50,000 gallons during a calendar year.

*Fiscal Impact: According to the PLCB, the enactment of this section will have no adverse impact on Commonwealth funds.*

*Section 1799.6-E (Liquor Code suspension for deficiency)* – a section is added to provide a mechanism for the PLCB to immediately impose an administrative suspension of the operating privileges of a licensee if the licensee does not meet a requirement that would render the licensee ineligible for the license, including the licensee no longer meeting the seating, square footage, food, health license or room requirements.

*Fiscal Impact: No adverse fiscal impact on Commonwealth funds. It is projected that the PLCB will be able to accommodate licensee inspections and hearings related to suspensions with currently allocated funds.*

*Section 1799.5-E. (State Employees Retirement System Restricted Account)* – provides as part of amounts transferred to the State Employees' Retirement Board \$5,269,000 shall be placed in a restricted account for costs associated with the implementation of the State Employees Defined Contribution Plan.

*Section 1799.6-E (Public School Employees' Retirement System Restricted Account)* – transfers \$6,801,000 in prior year unexpended appropriations for school employees' retirement to the PSERS board for costs associated with the implementation of the Public School Employees Defined Contribution Plan.

**Article XVII-E.2 (School District Debt Refinancing Bonds (Plan Con))**

*Section 1706 E.2 (Sinking fund charges for school building projects)* is amended to provide that school districts, which submitted completed applications prior to April 25, 2016, must vote to proceed with construction and award bids for construction no later than July 1, 2021.

*Fiscal Impact: No adverse fiscal impact to Commonwealth funds.*

*Section 1708-E.2 (Public School Building Construction and Reconstruction Advisory Committee)* is amended to extend the date by which the Public School Building Construction and Reconstruction Advisory Committee must issue their report to January 31, 2018.

*Fiscal Impact: No adverse fiscal impact to Commonwealth funds.*

**Article XVII-F**

**2017-2018 Budget Implementation**

The legislation provides for funds to the following agencies/offices as follows:

**Sub Article A: Preliminary Provisions**

**Section 1703-F (Department of Criminal Justice)**

Adds language to specify that for purposes of the General Appropriation Act of 2017, a reference to the Department of Criminal Justice shall be deemed to be a reference to the Department of Corrections, the Board of Probation or Parole, or both, as applicable.

**Sub Article B: Executive Departments**

**Section 1711-F Governor**

Authorizes the Governor to transfer appropriated but unused funds for disasters under the multi-state Emergency Management Assistance Compact in the amount of \$30,000,000 for fiscal year 2017-2018.

*Fiscal Impact: The potential amount of unused funds that may be transferred for disasters under this section is increased by \$15,000,000 from the prior year.*

**Executive Offices**

Pennsylvania Commission on Crime and Delinquency (PCCD) for the following:

- Funds for intermediate punishment treatment programs shall be awarded as competitive grants to counties. The portion dedicated to drug and alcohol and mental health treatment programs shall be based on the proportion of incarcerated individuals in a county and shall be no less than 80% of the funds appropriated;
- Clarifies that funding PCCD receives shall be used in part for the Statewide Automated Victim Information and Notification System (SAVIN) and a residential treatment program for at-risk youth;
- Provides no less than the amount allocated in 2014-2015 for a residential treatment community facility for at-risk youth in a county of the fifth class;
- Provides funds for an innovative police data sharing pointer index system;
- Provides funds for a diversion program for first time nonviolent offenders facing prison sentences; and
- Places restrictions on funds appropriated for violence prevention programs.

**Attorney General**

From funds available, \$100,000 will be allocated to dedicated emergency response organizations or municipal police departments for the training and the purchase of personalized radio transmitting devices or other technology that enables caregivers to search for and locate missing persons with special needs.

**Auditor General**

Authorizes the Auditor General to conduct audits on the Susquehanna River Basin Commission and Delaware River Basin Commission and identifies that certain data be included in the audits.

#### Department of Agriculture

- From funds appropriated for general government operations, a portion will be transferred to the Dog Law Restricted Account.
- At least \$250,000 will be used for the creation of the Commission of Agricultural Education Excellence to assist with the development and implementation of agricultural education programs.
- Money appropriated for agricultural research shall include funds for an agricultural resource center and agricultural law research programs, including those addressing energy development, in conjunction with a land-grant university.
- No less than 80% of funds appropriated for hardwood research and promotion shall be equally distributed among hardwood utilization groups that were in existence prior to the effective date of the section.
- The department may use up to \$165,000 of the Agricultural Conservation Easement Purchase Fund to issue grants not to exceed \$3,000 for succession planning to ensure that agricultural operations continue on land subject to agricultural conservation easements.

#### Department of Community and Economic Development (DCED)

- Funds appropriated for general government operations shall be used in part to support an engineering study related to infrastructure investment and marketing for an industrial development area.
- Allocates funding appropriated for marketing to attract tourists.
- Funds appropriated for Keystone Communities to be distributed to the following:
  - Main Street, Elm Street and Enterprise Zone programs;
  - an anti-violence task force, in consultation with the Office of the Attorney General, in a county of a second class A that is also a home rule county;
  - a community development and remediation project in a city of the third class; and
  - projects supporting economic growth, community development and municipal assistance.
- Funds appropriated for local municipal emergency relief will be used to provide State assistance to individuals and political subdivisions directly impacted by a natural and man-made disasters or public safety emergencies.

#### Department of Conservation and Natural Resources (DCNR)

- Allocates funding for the operation and maintenance of the Washington Crossing Historical Park.

#### Department of Criminal Justice

- Allocates funding for the establishment of a nonnarcotic medication assisted substance abuse treatment grant pilot program.

#### Department of Education

- From the appropriation for adult and family literacy programs, summer reading programs and the adult high school diplomas program, funds will be allocated for an after-school learning program for low-income students.
- Allocates a portion of the funds appropriated for the Pennsylvania Charter Schools for the Deaf and Blind to public school employees' retirement payments.
- Inserts language concerning funds and payments for approved private schools.
- Provides for the use of funding for regional community college services.
- Allocates specific amounts to various community education councils.
- Maintains the Commonwealth's elimination of payments for Social Security and required contributions for public school employees' retirement to charter and cyber charter schools.

#### Department of Environmental Protection

- Provides for the use of the appropriations to the Susquehanna River Basin Commission and the Delaware River Basin Commission.

### Department of General Services

- Requires the city of Harrisburg to use funds appropriated for Capitol fire protection to support fire services to the Capitol complex.

### Department of Health

- Ensures that the department continues to coordinate donated dental care services and provides for funds for outreach for Charcot-Marie-Tooth Syndrome.
- Requires that funds for adult cystic fibrosis and other chronic respiratory illnesses include funds to be used for research.
- Provides that funds appropriated for lupus will be distributed in the same proportion as 2014-2015.
- Provides for the use of funds for biotechnology research.

### Department of Labor and Industry

- The appropriation for payment to the Vocational Rehabilitation Fund includes funding for services under the Work Experience for High School Students with Disabilities Act.
- A portion of the funds appropriated for industry partnerships will be allocated for workforce development for veterans.

### Department of Military and Veterans Affairs

- Provides for the use of funds for behavioral health support for veterans suffering from post-traumatic stress disorder.

### Department of Human Services (DHS)

#### Statewide 2-1-1 system

- Of funds appropriated to DHS, \$750,000 will be allocated to establish statewide 2-1-1 system services 24 hours a day.

#### Child care

- TANFBG Child Care Assistance may be transferred to CCDFBG Child Care Services for additional low-income families if no deficit results.
- CCDFBG Child Care Assistance may be transferred to CCDFG Child Care Services for additional low-income families if no deficit results.
- Child Care Services includes an allocation to an early education center with both a 4-STAR rating from Keystone STARS and accreditation by the National Association for the Education of Young Children.

#### Mental health services

- Funds appropriated will be used for the continuation and maintenance of the existing network of web portals that provide comprehensive services and support for those with mental illness, and expansion to include resources for military veterans and their families.

#### Medical assistance

- For FY 2017-2018, payments to Community Access shall be distributed under same formulas as FY 2014-2015, or if insufficient funds are available, on a pro rata basis.
- Amounts allocated from funds for fee-for services for the Select Plan for Women Preventative Health Services shall be used for women's medical services, including noninvasive contraceptives.
- Separate MA payments shall be made for general hospital stays for healthy newborns and mother's obstetrical care.
- Provides for distributions from fee-for-service care for treatment of cleft palates and other craniofacial abnormalities, clinical ophthalmologic services, improvements at an intensive care facility in an acute care hospital and to a university to expand research and treatment protocols for combating opioid addiction.
- MA Capitation includes funding for the treatment of depression in older Pennsylvanians.
- Provides for funds in long-term care for a county nursing home with more than 725 beds and a Medicaid acuity at .79 and allocations for two nonpublic nursing homes.
- Provides funds in long-term care to be allocated to a special rehabilitation facility in Peer Group Number 13 and to nursing facilities with a percentage of medical assistance recipient residents who require medically necessary ventilator care or tracheostomy care greater than 90%.

- Includes funds in long-term care to provide disbursements to nonpublic nursing facilities for Medical Assistance Day-One Incentive payments.
- Funds appropriated, but not used by level III trauma centers shall, be used to make payments to level I and II trauma centers.
- Provides for the allocation of funds to qualifying university-affiliated physician practice plans and qualifying academic medical centers.
- Funds for medical assistance transportation shall only be utilized as payments of last resort for transportation for eligible medical assistance recipients.

#### Breast cancer screening

- Permits funds for breast cancer screening to be used for women's medical service including noninvasive contraception supplies.

#### Women's service programs

- Agencies whose primary function is to promote childbirth and to provide alternatives to abortion may expend funds to provide services to women until childbirth and for up to 12 months thereafter.
  - Allows agencies to subcontract with nonprofits.
  - Prohibits referral for abortion.
- Federal funds for alternatives to abortion shall be utilized solely for women whose gross family income is below 185% of Federal poverty guidelines.

#### Autism

- Provides for the distribution of funds to providers that participate in the State's Autism Program.

#### Community Based Family Centers

- No funds appropriated for community-based family centers may be part of the base for calculation of county child welfare needs-based budget for a fiscal year.
- Provides for no less than \$235,000 for a program for early literacy and school readiness which is labeled as a promising approach under the Maternal, Infant and Early Childhood Home Visiting Program.

#### Services for the Visually Impaired

- The appropriation includes an allocation for a statewide professional service provider association for the blind to provide training and supportive services for individuals who are blind and preschool vision screenings and eye safety education.

#### Medical Assistance for Workers with Disabilities (MAWD)

- Permits the department to adjust premiums with federal approval.

#### Illegal aliens

- References certain provisions of Federal law relating to who can receive services and reporting duties of providers in dealing with illegal aliens.

#### County Child Welfare

- Requires providers to submit documentation to DHS of their costs of providing out-of-home placement services to support the department's claim for federal funding and for state reimbursement of allowable direct and indirect costs for placement services.

#### Department of Revenue

The Enhanced Revenue Collection Account (ERCA) will continue through FY 2019-2020. Revenues collected will be deposited into the account.

- Of the funds in the account, for each of the fiscal years from FY 2017-2018 through FY 2019-2020, up to \$30,000,000 is appropriated to the department to fund the costs associated with the increased tax collection enforcement and reduction of tax refund errors.
- By June 1, 2018, and each June 1 thereafter, the department will generate a report to the governor and General Assembly including a detailed breakdown of administrative costs, the amount of revenue collected and the amount of refunds avoided.

#### Department of Transportation (PENNDOT)

- Prohibits the department from inserting direct mail pieces in mailings sent from the department.



Pennsylvania Emergency Management Agency (PEMA)

Money appropriated for search and rescue programs will be used to support programs related to training working service dogs focusing on rescue and public safety.

Pennsylvania Higher Education Assistance Agency (PHEAA)

- PHEAA will enter into an agreement with the Department of Health to transfer up to \$4,550,000 from the Higher Education Assistance Fund to the Department of Health for the Primary Health Care Practitioners Program in medically underserved areas.
- PHEAA will allocate \$500,000 from the Higher Education Assistance Fund for the Cheyney University Keystone Academy.
- From funds appropriated for payment of education assistance grants, \$500,000 will be allocated to a state-owned university located in Tioga County for merit scholarships.

**Article XVII-G 2017-2018 Restrictions on Appropriations for Funds and Accounts**

*Section 1702-G (State Lottery Fund)*

Money appropriated for PENNCARE shall not be utilized for administrative costs by the Department of Aging.

*Section 1726-G (Fund Transfers)*

The bill provides that during fiscal year 2017-2018, \$300,000,000 will be transferred from amounts unexpended, unencumbered and uncommitted in special funds and restricted accounts to the General Fund. The Governor will send a list of amounts to be transferred from special funds and restricted accounts to the State Treasurer, upon receipt the State Treasurer will transfer funds

*Fiscal Impact: The enactment of this portion of the amendment provides an estimated \$300,000,000 to the General Fund in the 2017-2018 fiscal year.*

**PREPARED BY:** Ann Bertolino  
Jeffery Clukey  
Thomas Gwinn  
Ritchie LaFaver  
Jeff Miller  
Tim Rodrigo  
Jenny P. Stratton  
Lisa Taglang  
House Appropriations Committee (R)

**DATE:** October 24, 2017

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*