



Testimony of State Treasurer Timothy Reese Before a Joint Hearing of the Senate Appropriations & Senate Finance Committees on issues related to the Governor's partial veto of House Bill 1460, the 2015 General Appropriations Act

Monday, February 8, 2016

Chairman Browne, Chairman Eichelberger and Committee members, thank you for the opportunity to participate in this hearing today.

I commend this joint Committee for reviewing the legal issues related to the budgetary impasse and the current implementation of the FY 2015-16 budget. I share your concerns about how, in the current budget environment, we can act responsibly to ensure the functioning of state government while respecting the legal and budgetary prerogatives of each branch of government. Throughout the impasse, Treasury has attempted to fulfill its constitutional duties and responsibilities by relying on the law and precedent. However, we are in uncharted territory and have had to make difficult decisions with little or no prior precedent to guide us.

Treasury has made it a priority to work closely with both the legislature and administration to anticipate issues and communicate possible actions. In that spirit, I have directed members of my

senior staff who are most familiar with these matters to appear before this Committee and to provide such information and assistance as you may require.

Before becoming Treasurer, I was a businessman and entrepreneur. In these roles, I regularly assessed the value and worth of businesses and had to evaluate the tangible value of their assets like equipment, capital and inventory. However, a thorough assessment of any business also involves its intangible value or “goodwill,” which generally includes items such as management effectiveness, history, financial stability and brand.

In my view, both as a businessman and Treasurer, the budget impasse has severely damaged the Commonwealth’s “goodwill.” Late budgets, unclear spending directives and the legal uncertainties of paying ordinary expenses like debt service create confusion and turmoil. There is increasing doubt about Pennsylvania’s financial management, credit worthiness and political leadership. This uncertainty has financial consequences not just for the state, but also for local governments, public school districts, businesses and residents.

I am not casting blame, but rather sharing the perspective of those I meet and speak with across the state and in the financial community.

Treasury’s Role

During the impasse there has been a great deal of confusion about the role and authority of Treasury. Treasury is an independent state agency constitutionally set apart from both the

Governor and the Legislature. For example, I was nominated -- NOT appointed -- by the Governor, and the Senate subsequently voted to confirm my nomination. This properly guaranteed my independence and ensured I am accountable only to the taxpayers.

As Treasurer, my role is to act as a custodian for nearly all the state's public funds. I am responsible for their safekeeping and proper management – including their expenditure. Under the Fiscal Code, the Treasurer, and only the Treasurer, may approve the expenditure of public funds “if they appear to be lawful and correct.”

Importantly, as Treasurer I can only approve expenditure requests. I cannot originate payments for expenditures (unless they are for Treasury's operations). What the funds are authorized for and when they are spent is within the sole discretion of the Governor and the legislature. It is only after that has been determined and an expenditure request is submitted, that Treasury reviews the request to ensure it is legal and correct and, assuming it is, makes payment.

The Treasurer's independence, sole authority to approve expenditures, and lack of involvement in determining how funds are appropriated create a system of financial checks and balances – ensuring that no single entity has domain over public funds.

Treasury's Challenges

In ordinary times, few constitutional questions or issues arise during the course of exercising Treasury's duties and responsibilities. But these are not ordinary times. The historic budget

impasse, a lack of clear statutory spending authority, and post-budget enactment issues all create uncertainties and challenges for Treasury.

For example, both the state constitution and fiscal code prohibit expenditures without statutory spending authorizations. However, there also exist state and federal requirements that our state government provide for the health, safety and welfare of the citizens of the Commonwealth.

When there is insufficient or no spending authority, these competing mandates create tension between equal branches of government and raise questions for Treasury regarding what expenditures are legal or even obligated. As a result, Treasury has been forced into the difficult position of determining, in the face of conflicting legal and statutory guidance, whether the legislature's right to appropriate public funds or the executive's role of protecting the public should take precedence.

These are issues that as a fiduciary, I take very seriously. As the custodian of public funds, I have an obligation to act in the public interest without regard to political considerations. I have sought a path that avoids or at least mitigates damaging the Commonwealth's financial stability.

Treasury will continue to cautiously consider these questions and diligently work with the administration and legislature to identify concerns and present solutions that, whenever possible, avoid establishing adverse precedents.

A Path Forward

In the meantime, I would like to raise several proposals for your consideration that are intended to prevent or lessen constitutional conflicts should similar circumstances arise in the future.

First, the Fiscal Code could be amended so that in the absence of a budget, Treasury has the authority to make, from any available funds, any debt service payment that is due for any Commonwealth agency. This would be similar to Treasury's existing authority to make payments for the General Obligation debt. Payment of these funds could be reconciled against the agency's appropriation once a budget is enacted.

Second, the legislature could consider adopting a "default budget" if a General Fund budget is not adopted by a specified date. This contingency budget could provide spending authority that equals the most recently enacted budget (or perhaps a predetermined percentage of that budget) and require each Department to submit monthly expenditure reports to the legislature. It would prohibit new hires and exclude any one-time expenditures unique to the prior budget. Legislation has already been introduced in the Senate that captures some of these concepts, and both Minnesota and Rhode Island have already adopted similar provisions.

Third, the Judiciary and General Assembly could consider operating under continuing appropriations at the same level as the most recent budget without requiring a newly enacted budget unless amended by the legislature. Illinois has adopted this concept as part of their fiscal code.

Finally, when an agency's appropriations encounter an unauthorized expense, there should be a transparent process for approving additional expenditure outlays. Connecticut law provides an example of how this could be implemented in Pennsylvania.

I offer these proposals to lessen future uncertainty created by delayed budgetary enactments.

Treasury stands ready to discuss them in further detail and to continue to work with you and your staff to address the budget issues currently before us.

Thank you.