



Alternative Energy Report

July 1, 2010
Volume 4, Issue
14

Governor Expects to Sign Budget Tuesday, But Threatens Veto if Action is Not Swift

The General Assembly passed a \$28.05 billion budget Wednesday, meeting the constitutional deadline for passage, if not signing of the budget for the first time in eight years. Legislative leaders are still meeting, however, to finalize the bills that provide revenues to fund the budget, and other portions of the deal negotiated to reach budget accord.

Governor Rendell said the budget could be signed into law on Tuesday; believing that the remaining budget-deal bills will pass in the next day or two. However, he has also said that if the House and Senate cannot agree on a fiscal code bill by July 10 he will veto the general appropriations legislation both chambers passed earlier this week.

The Governor said he will have no choice, because the fiscal code bill contains the revenues to balance the budget, including \$899 million in new revenues. Another bill expected to pass at the same time as the fiscal code would bring federal funding to hospitals and \$120 million to the state. Until that bill and the fiscal code is passed, Rendell said, "it's not a balanced budget."

Regardless, at this stage in the game, the budget agreement currently in place leaves many issues on the table for negotiations and discussions expected into the fall.

The budget passed Wednesday was done without expanding taxes on cigarettes, cigars or smokeless tobacco, expansion of the sales tax, or a severance tax on natural gas with funding included in this year's General Fund budget. It assumes that \$850 million will be available to the state from the Federal Medical Assistance Percentage program (FMAP). And it includes a \$250 million increase in basic education spending, along with a 22% increase in funding to the Department of Community and Economic Development. Non-preferred appropriations – state funds for institutions and charitable organizations not entirely under state control, were eliminated, and many funds including the Rail Freight Assistance Program, were zeroed out.

Negotiations for the remaining pieces necessary to complete the state's budget deal are in the final stages, but wary Harrisburg watchers are still taking bets on which of the "minor" issues might derail the process.

Creation of an independent budget office has already put House Appropriations Chairman Dwight Evans and Senate Republican leadership at odds. According to the Senate and the Governor, that office was part of last year's final budget agreement, but Evans is insisting that's not the case. The Senate has threatened to withhold support for \$600 million in funding for the Redevelopment Assistance Capital Program until the House agrees to the independent office.

The budget deal postponed decisions on how to tax the state's natural gas industry until October. Republicans have long sought to make this a tax-hike free budget, while many Democrats believe that the fledgling industry should be taxed, primarily based off of regulations in place by other extraction-taxing states and to ensure environmental remediation.

That agreement includes a separate piece of legislation by October 1 to include a severance tax along with legislation to provide regulatory consistency across jurisdictions and "pooling" of land holdings before a tax would take effect January 1.

Within the past week, Senate Republican leadership agreed to support a tax, but substantial disagreement remains between Republicans and Democrats on subjects including an appropriate tax rate and how to distribute the revenues among state and local governments and funds. A special task force is being established to review the information to make those decisions.

Rendell has joined with governors from states hit hard by the recession to push for an extra \$24 billion in aid (Pa.'s portion would be \$850 million), but the potential funding is not a sure bet – that legislation failed to pass the US Senate for the third time last week.

The bill the legislature approved relies on upwards of \$3 billion in federal aid, but with no guarantees that it is coming. This makes many legislators question if the budget is truly "balanced" despite contingency plans for if the funding doesn't come through.

Under the state's contingency funding plan, Rendell would cut the \$250 million increase he won for public school instruction and operations, plus another \$350 million from social services. The Governor said that failing a guarantee on the federal funds within the next two weeks, he will begin withholding money and forcing service cuts and layoffs.

The Governor called the budget a "conservative" one that is not without "pain." There are always winners and losers, especially when economic times are tough. Many state agencies will see funding cuts in general government operations budgets. Among the worst hit are the Departments of Agriculture (11.7%), DCNR (11%), Labor and Industry (10%) and DEP (9.2%).

In addition, state parks, health care centers and libraries will see state funding cuts ranging from around seven to nearly ten percent. Layoffs will also be forthcoming, though the governor would not yet specify exact numbers. He advised Secretary of Administration Naomi Wyatt is currently working on a breakdown of what will be necessary.

As of press time for AER, the House and Senate leadership were still negotiating. ERG will provide additional details on the budget at www.pa-erg.com once it has been finalized.

Budget Raises Environmental Concerns

Despite near amazing progress, legislators aren't out of the woods yet, as many oppose the types and amount of transfers from various state funds to balance the budget. One major area of concerns for many across the state is a proposed transfer for more than \$4 million that the Key '93 Fund currently sends to land trusts around the state to preserve farmland or buy land in

concert with local governments or charitable groups.

"This is a land preservation issue, this is an environmental issue, and in a budget where the Department of Community and Economic Development is getting a 22 percent increase, completely eliminating Land Trust funding is a bad idea," Rep. Kate Harper (R-Montgomery) told ERG Thursday morning. Harper sits on the Land Trust board in Montgomery County.

"Right now, with real estate prices down, is the wrong time to be taking money from a fund which buys land and preserves it, or buys development rights. This is when we should be increasing these grants, not eliminating them," she said.

House Democrats were also investigating whether this or the other proposed transfers would take additional money from environmental programs, in a year where environmental protection, regulation and conservation have received nearly double-digit state funding reductions. Several House Democrats have said they would not support transfers from environmental funds.

Beyond the Budget

The House and Senate are also working toward agreement on dozens of other bills as part of the negotiations, several of which are energy-related. Among them are:

Biodiesel Mandates: [Senate Bill 901](#) (Scarnati, R-Jefferson), which would provide for enforcement of the state's B2 biodiesel blend mandate by the Department of Agriculture. The original legislation that established the mandate was agreed to during a similar budget negotiation period in 2008, and in the haste to pass the bill, no provisions were made for actually enforcing biodiesel blends' quality and quantities. While the bill has been in the Appropriations Committee, stakeholders have asked for additional language to add BioHeat and Ultra Low Sulfur Diesel requirements for home heating oil.

Green Buildings: [Senate Bill 728](#) (Rafferty-R-Montgomery) would set state standards for high performance green buildings. This bill was amended and reported from the Senate Environmental Resources and Energy Committee and is now on the Senate Calendar for action.

Green Buildings: [House Bill 444](#) (M.Smith-D-Chester) also sets standards for high performance green buildings. This too was amended and reported from the Senate Environmental Resources and Energy Committee and is now on the Senate Calendar for action.

Energy Office: [House Bill 786](#) (George-D-Clearfield) establishes a State Energy Office in the Department of Environmental Protection separate from the current Deputate for Energy and Technology. The bill was amended and reported from the Senate Environmental Resources and Energy Committee and is now on the Senate Calendar for action.

Offshore Wind: [House Bill 2342](#) (Hornaman-D-Erie), authorizing DGS with concurrence of DEP to lease submerged lands in Lake Erie for wind, solar, kinetic energy generation projects was referred to the State Government Committee.

Solar Energy: [House Bill 2234](#) (Houghton-D-Chester) prohibiting deed

restrictions related to solar energy systems on residential property was amended on the House Floor and passed the House. It now goes to the Senate for consideration.

Severance Tax: [House Bill 1489](#) (George-D-Clearfield) which includes another version of a severance tax on natural gas production. This bill was amended to include a new distribution of revenue and a tax credit to help drilling companies hire Pennsylvania workers and reported from the House Environmental Resources and Energy Committee, then referred into and out of the House Rules Committee and referred to the House Appropriations Committee.

Alternative Energy: [House Bill 2405](#) (DePasquale-D-York) would increase the solar mandate provisions of the Alternative Energy Portfolio Standards, expand the Tier structure and provide for carbon sequestration facilities. The bill was reported from the House Appropriations Committee and is now on the House Calendar for action.

Borough Energy Contracts: [Senate Bill 168](#) (Brubaker-R-Lancaster) authorizing energy contracts by boroughs. The bill was reported from the House Local Government Committee with a recommendation the bill be re-referred to the House Consumer Affairs Committee.

Pa. Senate Committee OKs New Waste Water Discharge Rules

The state Senate Environmental Resources and Energy Committee said it won't block new rules requiring Marcellus Shale gas operators to adhere to strict wastewater discharge standards.

Sen. Mary Jo White (R-Venango), the committee chairwoman, said the state's Environmental Quality Board can impose the new rules. In a letter to DEP Secretary John Hanger, she said the committee would address its objections in future legislation, but said that "there is no disagreement over our shared responsibility and commitment to protect our natural resources."

The new rules require gas operators to treat wastewater heavily to remove salty total dissolved solids – chlorides and sulfides – so streams do not exceed the safe drinking water standard of 500 milligrams per liter. The gas industry says it is increasingly recycling water used in hydraulic fracturing operations and reducing its discharges. DEP argued that total dissolved solids (TDS) have exceeded the EPA's secondary drinking water standards of 500 mg/l several times over the past two years in western Pennsylvania's Monongahela River. Drillers use high pressure water to fracture the rock to release the natural gas. A 2004 EPA study showed the process in a shallower mining process released no TDS to ground or surface level water.

DEP's proposed regulation restricts the level of TDS discharged in water. The rule changes the allowable levels for gas drillers to 500 mg/l, while most sources are limited to no greater than 2,000 mg/l. IRRRC approved the regulation earlier in June, and the House Environmental Resources and Energy Committee must still consider the rules. Additionally, the rule makes changes to erosion and sedimentation control and stormwater drainage.

The new rule brings PA into compliance with federal requirements for Erosion and sedimentation controls and post-construction stormwater runoff; Protection of existing streamside and riverside buffers in high quality/exceptional value watersheds; and enhanced agricultural stormwater

management provisions to include animal-heavy use areas.

The regulations also contain \$5 million in permit fees increases designed to help offset, in part, the General Fund appropriations cuts at DEP.

House Committee Moves Biofuels, Energy, Consumer Bills

This week, the House Environmental Resources & Energy Committee had a full agenda, including the review of two pieces of renewable energy development legislation.

[House Bill 2578](#), sponsored by the committee's chairman Bud George (D-Clearfield), moved from the committee on a 17-9 vote. This bill would amend the Biofuel Development and In-State Production Incentive Act to allow enforcement of mandates, and extend mandates to off-road, oil heat fuel and regulate sulfur content in diesel fuel.

Rep. Martin Causer (R-McKean) said that the legislation was overly aggressive, and that as written it would have a serious negative effect on small refiners who contract for Pennsylvania grade crude oil and support jobs across the northern tier. Other members argued that the additional mandates would have the effect of passing costs on to consumers.

Chairman George noted that the regulations would require that fuel burn better, less be used and the fuel contain less refuse, which would result in less expense by the consumer in the long run.

The committee also approved [House Bill 2601](#), sponsored by Rep. John Siptroth (D-Monroe) which would provide for the testing of new, environmentally beneficial and energy efficient technologies within various state agencies. The bill is now in House Appropriations.

Much discussion centered on [HB 1909](#), which was previously the subject of a public hearing. The bill, sponsored by Chairman George, creates a Commonwealth Energy Advocate, and establishes a Commonwealth Energy Procurement and Development Agency, which could develop electricity procurement plans, conduct competitive procurement processes, acquire or develop electric generation and cogeneration facilities, and supply electricity to customers.

Opponents of the legislation argued that the state should not be in the energy business, and that inserting this new agency into to the financing, generation and procurement processes would be poor public policy, interfering in the marketplace. Others argued that until rate caps expire, it can't be argued that re-regulation has failed. The bill was reported as committed by a 15-11 vote with Chairman George promising hearings in the fall.

Robbing Peter

John Nikoloff, ERG Partner

A British tradition is that the saying, "robbing Peter to pay Paul," comes from the mid-16th Century when funds from the abbey church of St Peter (Westminster Abbey) were taken to repair St. Paul's Cathedral. While this story is apocryphal, and while both magnificent structures remain today, it remains instructive, and should provide a warning for budget negotiators.

Pennsylvania has become a leader in the development of alternative and

renewable energy, largely through the efforts of hundreds of small businesses which have devoted themselves to research, development, and commercialization of processes, manufacturing facilities and local initiatives.

These businesses have been supported by programs such as the Small Business First and Pennsylvania Energy Development Authority grant and loan programs. PEDA's mission is to expand the market for Pennsylvania's clean, indigenous energy resources, to enhance Pennsylvania's energy independence and energy security through greater energy diversity, and to stimulate economic development and job creation in Pennsylvania, all in an environmentally beneficial manner.

[More...](#)

FEDERAL NEWS

No Movement Seen After White House Energy Session

Because of the Gulf oil spill, the situation with national energy or climate legislation has suddenly become much more dynamic, and the death this week of Senator Robert Byrd (D-WV) only adds more uncertainty to the legislative process. The fate of any legislation is now unpredictable.

There is broad support in both parties for new regulations on offshore operations, for measures to aid the Gulf Coast and for some form of energy legislation that tries to reduce dependence on imported oil. But consensus ends there. Besides increasing liability requirements for drillers and reform of the Minerals Management Service (MMS) that oversees the drilling, it's difficult to project what else may be in a final energy bill. It's certain that the Senate will not muster the votes to pass a massive energy/climate change package like the House of Representatives.

President Obama had summoned 23 ranking members to the White House on Tuesday to discuss possible legislative scenarios, but participants said they made no progress in resolving differences in how to address energy/climate change legislation. Large differences remain among various Senate plans for energy legislation.

After the meeting, the president did not offer specific ideas of his own nor did he endorse any of the proposals offered, but said all parties shared an urgency about enacting some form of energy legislation this year, the White House account said. Senator Sherrod Brown, Democrat, Ohio, said Mr. Obama was attentive but noncommittal, and said the president should take a greater leadership role in the legislative effort. Perhaps what is most missing here is leadership.

President Obama again told the group he wants a cap and trade system or some other sort of emissions tax, but acknowledged the adamant opposition to the idea from most Republicans as well as some Democrats. Democrats continued to insist on lowering GHGs through a price mechanism like cap and trade, while Republicans and some coal state Democrats said a national energy tax must be taken off the table in order to get legislation done.

If some consensus is not reached on this issue, the Senate will almost certainly be unable to get legislation passed that addresses problems from the Gulf oil leak, energy issues, and climate change.

In the political branding war, Cap and Trade has successfully been labeled "cap-and-tax" which has made it a politically difficult sell. Bingaman's ACELA, which does not have Cap and Trade, but includes an RES, is getting more traction as the summer progresses. Senator John Kerry (D, MA) said he might consider starting a cap and trade program with electric utilities only, similar to a plan offered by Senator Jeff Bingaman of New Mexico.

House and Senate committees will begin debate on Wednesday on bills that will change the way offshore drillers operate and the government oversees them. There are several proposals to lift the current \$75 million limit on liability for drilling accidents; the strongest, by Senator Robert Menendez, Democrat of New Jersey, would eliminate the cap entirely. There are also bills pending in both House and Senate to split the MMS into three separate offices.

The House Energy and Commerce Committee will take up the Blowout Prevention Act that will require oil companies digging high-risk wells in deep water to use more sophisticated emergency equipment with backup systems to ensure they work in the case of a blowout. The bill also sets strict new rules for how wells are designed, cemented and encased and requires that a relief well be started within 15 days of an accident.

Bingaman is also the lead author of a bipartisan energy bill that cleared the Energy and Natural Resources Committee last summer. At the time, it was thought that bill would be combined on the floor with cap and trade, but now the measure may go to the floor on its own. That bill, which was voted out of the Energy Committee by a 15-8 vote, includes a renewable electricity standard and offshore drilling provisions but no cap on carbon dioxide emissions. Bingaman has a track record of working both sides of the aisle to get other energy bills passed in the Senate.

Sorting out the US Senate Energy Proposals:

The Kerry-Lieberman "[American Power Act](#)" (APA) includes a cap on greenhouse gas emissions along with fees and emphasizes funding and implementing Energy Efficiency. Kerry-Lieberman has no Renewable Electricity Portfolio Standard that would require US utilities to obtain a specific portion of power from new energy sources in a specific time frame.

The Bingaman "[American Clean Energy Leadership Act](#)" (ACELA) has a Renewable Electricity Portfolio Standard, and focuses on GHGs from existing utilities.

The Cantwell-Collins "[Carbon Limits and Energy for America's Renewal](#)" Act (CLEAR), is an interesting concept piece. It would directly rebate most of the revenues from its proposed cap to the public, and allots the balance of the funds to building renewable energy and energy efficiency infrastructure. The bill would require a gradual reduction of carbon, and gradually increase the level of reduction every year, without relying on trading platforms, allowances and other schemes. It sets a process of getting off of carbon by meeting these goals and provides consumers with a pot sweetener - a rebate check from the auctions.

Senator Richard Lugar's "[Practical Energy and Climate Plan](#)," responds to the Gulf Oil spill includes measures related to that accident, and calls for stronger vehicle fuel efficiency standards.

US Senate Again Fails to Pass Tax Extender Bill

Three strikes, and the tax extenders bill appears to be out. The Senate failed last week night for the third (and final?) time in its efforts to pass the [American Jobs and Closing Tax Loopholes Act](#) (HR 4213), which includes FMAP funding, the subject of state budget discussions, and the biodiesel blenders' tax credit, along with other tax credits for business and energy.

Senate Majority Leader Harry Reid has said he will try to float a stripped down tax hike bill in the future, but Democrat Sen. Ben Nelson (D-NE.) has joined the Republican opposition against any tax hike, and are insisting on funding the provisions of HR 4213 with unused stimulus funds.

Sen. Nelson specifically said he does not want the carried interest repeal included in any bill. Repealing carried interest is losing appeal as it's seen as a growth killer in this weak economy. Taxing small businesses with ordinary income after all their work to build up a business and hire employees with risk capital is not smart politics (at best). Often times carried interest is ordinary income too.

Congressional Leaders are also considering moving a separate bill to address the Federal Medical Assistance Percentages as dozens of state Governor's and the National Governor's Association are now actively lobbying for immediate action to protect state budgets.

USDA Issues Roadmap for 36 Billion Gallons of US Biofuels by 2022

The USDA released its highly-anticipated "[Regional Roadmap to Meeting the Biofuels Goals of the Renewable Fuels Standard by 2022](#)." In the 21-page document, which can be downloaded at biofuelsdigest.com, the USDA identified dedicated energy crops, primarily switchgrass, as the practical platform for achieving a 20 billion gallons of advanced biofuels production, and discussed the regions in which it believed biofuels feedstock production would be most viable, driving the location of bioenergy facilities.

In the report, Pennsylvania was included in the Central East region, which runs from the Dakotas to Delaware. USDA projected \$72 billion in investments would build 226 refineries with an estimated average capacity of 40 million gallons per year, using 10.8 million acres of dedicated bioenergy crops plus 2.0 million acres of harvested logging residue. Incremental advanced biofuel production would take up 4.5% of the available cropland and cropland pasture acreage base.

The USDA report did not include projections on feedstock capacity from municipal solid waste, animal fats and yellow grease, or algae; the overall plan called for 500 biorefineries costing \$160 billion.

www.pa-erg.com

Energy Resources Group

E-Mail: info@pa-erg.com