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December 4, 2014

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Budget, Transition in Focus

Governor-elect Wolf has named the leaders of his Transition Team, with former DEP Secretary Katie McGinty heading things as his chief of staff. Other members of the Wolf transition leadership include leaders from business, labor, academia, finance and government. This team has to not only assess the jobs being done by state agencies, but identify key cabinet appointments, and help outline plans for Wolf's first budget proposal. Wolf's first priority was announcement of a [Budget Deficit and Fiscal Stabilization Task Force](#).

All face an immediate problem. The Independent Fiscal Office has identified a \$1.85 billion structural budget deficit for the new Governor's first year in office, which puts even more pressure on both Wolf and legislative leaders to solve this problem without reducing services. House and Senate Republicans have already said that keeping government spending and taxes in check are priorities for the new legislative session.

This clashes with Wolf's stated goals that include significant increases in state education funding, replacing the state's HealthyPA Medicaid program with a more extensive federal program, along with strengthening state environmental and jobs programs. He plans to fund these increases with a severance tax on natural gas, modernization of the state liquor system, closing the Delaware loophole, expansion of some sales taxes, and making changes to the state's personal income tax laws.

Governor-elect Wolf has focused on what Pennsylvanians can do "together," and Democratic leaders are saying his victory means the public will DEMAND the General Assembly help him achieve his goals. But most governors have learned that's not the

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case during their first year in office. And that's not even been the case in the last four years, when Republicans controlled the House, Senate AND Governor's office.

The fiscal mess has many "experts" predicting that besides reversing the state's Medicaid programs and accepting federal funding, Wolf's first move will be the call for passage of a 5 percent severance tax to help fill the budget hole. Polls show public and bipartisan support - which is not surprising, given the fact that people would always rather have someone else put up the tax dollars if at all possible. But opposition to a severance tax is also bipartisan, and more based on geography and ideology. The leadership of both chambers has opposed severance taxes and could forestall action or votes for months.

Mid-Year Fiscal Update - "Groundhog Day"

Budget Secretary Charles Zogby delivered the state's mid-year budget briefing Wednesday, comparing the state's budget woes to the movie Groundhog Day. "Same old story," he said.

And while mid-year revenue collections are above estimates, an estimated structural deficit of \$1.85 billion heading into the 2015-16 budget season may signal the need for even more severe cuts, increased taxes, or both.

Zogby said that in the first five months of the fiscal year 2014-15, revenue collections are \$109 million, or 1 percent, above estimates and when including the planned profit transfer from the Pennsylvania Liquor Control board, revenues are \$189 million above estimate.

State revenues remain ahead of year-to-date estimates, largely due to \$251.6 million of one-time, non-tax revenues used to balance the budget earlier this year.

Add in growing mandated spending areas, a list of adjustments to be made to the budget post-enactment, and a changing economic forecast that now indicates a decrease in Real GDP and an increase in U.S. Consumer Expenditures and U.S. Wages and Salaries for 2014-15, and the financial picture becomes slightly more dire with the Independent Fiscal Office estimating a deficit of \$1.85 billion going into the 2015-16 FY budget.

"There's been a lot of chatter in the media about a deficit that the incoming governor is facing," Zogby said. "I talk all the time about the fact that our mandated cost growth is outstripping our revenue growth and each and every budget that we've done in this administration we've had to reconcile those two and bring them into balance."

Going into the gubernatorial election, Corbett would not agree to a "no tax pledge". Wolf campaigned on additional taxation of natural gas, closing loopholes and tax credits, increasing sales taxable items, and changes in the personal income tax. But his team has declined to say whether he would propose raising broad-based taxes at this time.

Josh Shapiro, co-chair of the Wolf Budget Deficit and Fiscal Stabilization Task Force said yesterday, "Give the governor-elect the opportunity to understand the scope of the problem and put his solutions forth. That's what this transition period is all about and what the early days of his administration will be about."

Wolf has made big promises in regards to funding education, and many Democrats feel that prior cuts to other service areas were already too severe. Ultimately the Republicans, who control both the House and Senate, will have a large hand in crafting the budget. This crisis may force the legislature to finally pull the trigger on pension reform and liquor privatization, but the Governor-elect has not supported major efforts on these two issues.

In advance of - and following - Zogby's mid-year briefing, Wolf's Budget Deficit and Fiscal Stabilization Task Force and transition leaders charged the Corbett Administration with putting the state in this position.

In their "Four Things to Remember Ahead of Mid-Year Budget Briefing" statement, Wolf's Task Force framed the situation they're inheriting by noting that the budget was built on one-time revenue sources, the state is projected to be cash-flow negative during the first quarter of 2015, the state has maxed out its line of credit, and has slipped to last place in job creation.

Corbett made similar complaints about the situation he was inheriting from Gov. Ed Rendell; Rendell complained about his predecessor Gov. Mark Schweiker. And Zogby drily noted that the campaign is over. It's now time to begin a new round of attempts to solve the budget problems.

Click [here](#) to view a copy of the mid-year budget briefing.

Court Cases, New Study Make Long-Term Natural Gas Revenues Uncertain

During Budget Secretary Charles Zogby's mid-year budget briefing, he noted that certain on-time stopgaps in the 2014-15 budget will not come to fruition, including Gov. Tom Corbett's plan to collect nearly \$95 million by expanding natural gas leasing in state parks and forests which is caught up in two court battles.

"With that matter tied up in the courts, it's very much unlikely that we will see that resolved in time for this fiscal year to be accounted in our spending plans," Zogby said.

The Delaware Riverkeeper Network and the Pennsylvania Environmental Defense Fund have filed challenges. After a series of hearings, the cases are being decided by the Commonwealth Court.

Corbett lifted the moratorium on new leasing in May with the promise that new drilling would not create surface disturbances. Wolf supports maintaining a moratorium, but also wants to increase natural gas revenues.

Court cases aren't the only issue.

According to new research by a team of petroleum engineers at the University of Texas, Marcellus Shale production could peak by 2020, plateau, and then tail off quickly. This [outlook](#) is less optimistic than recent reports issued by the Energy Information Administration that estimated a plateau in 2040.

This study differs from past bust predictions because it compares government analysis of data with academic results.

With companies trying to extract shale gas as fast as possible and export significant quantities, "we're setting ourselves up for a major fiasco", said Tad Patzek, head of the University of Texas at Austin's department of petroleum and geosystems engineering.

"It's crazy to export natural gas. Someone will make more money for a short period of time. But the U.S. will suffer as a country and we will have to import the same expensive natural gas from the Middle East," he said.

Pennsylvania Gov. - Elect Wolf's View on EPA Proposal Uncertain

Pittsburgh Tribune-Review - Federal environmental regulators won't hear from Pennsylvania's governor as they finalize rules to limit carbon dioxide emissions from power plants, though two state agencies made their opposition clear.

While surrounding states joined lawsuits over the Environmental Protection Agency's Clean Power Plan, outgoing Gov. Tom Corbett relied on his Department of Environmental Protection and appointees at the Public Utility Commission to speak for the state.

"As proposed, the Clean Power Plan could leave

residential, commercial, and industrial U.S. consumers exposed to less reliable, more expensive, and more volatile electric markets in the future," the DEP wrote in a 12-page response to the proposal, signed Nov. 26 by Acting Secretary Dana Aunkst.

The plan's targets for renewable energy use and efficiency programs "are not credible and will be unattainable," the PUC wrote in a 63-page comment dated Monday.

Gov.-elect Tom Wolf, who takes office next month and will implement the rules, did not file comments before the federal deadline at midnight Monday. It's not clear whether he supports the proposal as written. [More...](#)

Marcellus Pipeline from PA to NY Gets Federal Approval

The Federal Regulatory Commission has OK'd a 124-mile natural gas pipeline project that will deliver gas from Susquehanna County, Pa to an existing line serving New York and New England.

The \$638 million Constitution Pipeline project was proposed in 2012. With federal approval, the company hopes to start construction early next year, with product online by late 2015 or early 2016.

Companies involved in the project include Tulsa-based Williams Co., which operates 15,000 miles of interstate natural gas pipelines, and Houston-based Cabot Oil & Gas Corp., Pennsylvania's second-largest shale gas producer.

Federal News

Tax Extenders Legislation on the Brink

Remember those ads depicting Congress kicking a can down the street? It's looking a lot like we'll be playing kick the can again on tax extenders legislation this fall, following a veto threat from President Obama last week.

The President said he would veto a \$450 billion package of tax provisions that had been negotiated with Senator Harry Reid (D, NV), legislation that would have made many tax provisions permanent, but the House is continuing to work toward a one-time one-year extension of about 50 tax incentives and subsidies.

Congress and presidents since the 1980's have been reauthorizing many of these tax breaks, and the latest House vote would have an almost \$45 billion price tag

over the next ten years if carried forward.

The House voted overwhelmingly (378-46) on Wednesday on a one-year tax extenders package, which includes credits for energy efficiency and alternative fuels along with a variety of business and individual tax breaks as well as a one year extension of the Production Tax Credit sought by the wind energy industry. The extensions, however will expire on December 31, 2014, thus setting the stage for another round of either comprehensive reform or slow approvals in the 114th Congress.

The bill was delayed by a battle between the Congress and the White House which said it would veto a multiyear tax package. House conservatives rebelled against the deal, but House Democrats joined the majority of the Republicans in voting for the plan. Both parties' leaders continue to talk about a more inclusive, multiyear reform plan for the next session.

Wind energy advocates, including AWEA said the extension of the PTC through December 31 does not provide either certainty or stability to keep factories open. When the PTC was allowed to expire in 2012, AWEA says, 30,000 workers were lost and \$23 billion in private investment.

The Rules Committee put a closed rule on the package, H.R. 5771, which meant only one amendment was considered - that amendment would add a one-year extension for a credit for alternative fuel vehicle refueling property.

In the Senate, Reid didn't offer hope for that chamber to act on the House legislation. "Let's see what they send us, what's in it, and we'll make that decision then," he said "We'll see what else they have in it other than the one year extension."

The intense lobbying over the wind PTC has jeopardized the dozens of other tax breaks in the legislation, as often happens when a key issue is included with many others on a Congressional bill. Governors from "wind" states, and a coalition of energy and environmental groups are pushing for the PTC and multi-year extensions, while other groups like the Americans for Prosperity are hotly opposed to extension of the wind credit.

2015 Congressional Schedules Announced

Just before the Thanksgiving break, U.S. Senate Majority Leader-elect, U.S. Senator Mitch McConnell (R-KY) and the U.S. House of Representatives Majority Leader, U.S. Rep. Kevin McCarthy (R-CA) released the 2015 Legislative Congressional Schedule for their respective chambers.

2015 is expected to be a very active legislative and regulatory year in Washington. With the 114th Congress beginning in January, and with both chambers controlled by the Republicans, ERG expects action on tax, trade, regulatory reform, and a host of issues from energy and renewables to healthcare, technology, manufacturing, transportation and more of interest to our readers. The question remains whether the President will sharpen his veto pen, or whether the House and Senate will work with the Obama Administration to find compromises and solutions to key issues.

McConnell said that the chamber's calendar will be expanded from recent years to include more and longer work weeks, including having Senators in Washington and voting on Fridays.

[U.S. Senate 2015 Legislative Schedule](#)

[U.S. House 2015 Legislative Schedule](#)

Deadline to Comment on EPA Plan Closes

The public comment period for the Environmental Protection Agency's Clean Power Plan closed Monday, but not before receiving more than 1.6 million comments.

The plan is intended to reduce the power sector's carbon emissions 30 percent by 2030 from 2005 levels. The plan has raised intense support and opposition from a variety of organizations that either fear catastrophic climate and health impacts if no action is taken to those who fear catastrophic economic impacts if action is taken.

Several states and businesses have filed suit, which will be heard by the Supreme Court next year (see below).

Biomass Power Association Comments

Biomass Power Association (BPA) was one of many renewable energy focused organizations that submitted comments on the plan highlighting the significant environmental benefits provided by clean energy, including biomass.

BPA's letter also encouraged EPA to carefully consider the sustainability questions left unanswered in its framework to ensure the maximum possible contributions by biomass to the Clean Power Plan:

"Biomass power represents 22% percent of the Nation's renewable energy supply, according to the U.S. Energy Information Administration (EIA). Biomass qualifies as 'renewable' in virtually every state renewable portfolio standard currently in force," wrote BPA

President Bob Cleaves in the letter. "The McCabe Memorandum and the accompanying Revised Framework for Assessing Biogenic Carbon Dioxide Emissions from Stationary Sources, issued earlier this month, provide important clarity on a number of issues and represent a significant step forward in providing states an important renewable, baseload energy resource long recognized by countries worldwide for inclusion in their carbon reduction strategies."

Click [here](#) to read additional comments from BPA.

Supreme Court to Hear Challenge to EPA Clean Power Rules

Last week the Supreme Court agreed to hear a challenge brought by 21 states and other opponents of the Environmental Protection Agency plan to cut toxic chemicals from point source emitters such as large power plants. The court will decide if the EPA improperly adopted regulations requiring power plants to reduce emissions without first determining how much it would cost.

Laying the groundwork for these regulations began under Clinton, was stalled by Bush, and resumed by Obama. In short, the concept of and political desire to reduce greenhouse gas emissions is not new, but with each passing decade, the cost to do so increases exponentially.

The EPA rules were finalized in 2012. Power plants were given until April 2015 to begin compliance with the new standards, and could receive extensions as long as two years.

The argument is not about the timeline, but rather the cost. Opponents claim that the costs, estimated at \$9.6 billion, far exceed the benefits attributable to the reductions in emissions.

Pennsylvania did not sign onto the lawsuit, as the Corbett administration opted to express its concerns about the plan through EPA's public comment period rather than through litigation. Pennsylvania ranks fourth in coal production and third in overall energy production.

The federal appeals court in Washington sided with the EPA in April. Two of the three judges on the appellate panel said that the EPA properly looked only at health risks, not compliance costs. But the agency did factor in costs and benefits at the next step, when it wrote the standards that the plants must meet, the court said.

The Supreme Court wants to know if the EPA

unreasonably refused to consider costs up front and will hear arguments in late March with a decision expected by the end of June.

EPA Releases Updated Biogenic Emissions Framework

Biomass Magazine - On Nov. 19, the U.S. EPA released a revised framework for assessing biogenic carbon dioxide (CO₂) emissions from stationary sources. According to a notice published by the EPA, the second draft of the framework will undergo further review. The agency has also issued a memo providing regulatory guidance on how the updated framework will impact the Clean Power Plan and Prevention of Significant Deterioration Program.

A notice published by EPA explains that in order to continue advancing technical understanding of the role biomass can play in reducing overall greenhouse gas (GHG) emissions, the EPA has developed a second draft of its "Framework for Assessing Biogenic Carbon Dioxide for Stationary Sources" report, which will subject to additional review. "The revised report takes into account the latest information from the scientific community and other stakeholders. As a next step forward, EPA will continue to refine its technical assessment by initiating a second round of targeted peer review with the Science Advisory Board," said the agency in a notice posted to its Climate Change website. The notice also indicates Acting Administrator Janet McCabe has issued a memorandum to the EPA's Regional Air Division Directors describing the EPA's current thinking pertaining to biogenic CO₂ emissions in the context of the CPP and PSD program. [More...](#)

Fuel Manufacturer May Sue EPA Over 2015 Fuel Mandate

The American Fuel and Petrochemical Manufacturers (AFPM) on Monday filed a notice of intent to sue the EPA for failing to meet deadlines on its 2015 proposal for the Renewable Fuel Standard (RFS), which requires refiners to mix a certain amount of ethanol and biofuels into national fuel supplies.

ARPM contends that the EPA should have finalized the 2015 standards by Nov. 30. In late November, the EPA announced it would be delaying its final rule on the 2014 fuel mandate, rattling the oil and biofuel industry.

"At this point we have no choice but to take the matter to court," said ARPM president Charles Drevna. "Today, obligated parties are left to sit and wait for EPA to not only propose the 2015 standard, but to actually issue a final rule for 2014, which we now know that EPA has no intention of doing until sometime in 2015."

The EPA says it plans to "get back on" an annual schedule for 2014, 2015, and 2016 standards in the next year.

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