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July 7, 2005

## THE PAY RAISE

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On the night of July 6<sup>th</sup> and into the wee hours of July 7<sup>th</sup>, I sat at my computer in one room while the PCN coverage of the House of Representatives played in the next. The House was poised to sign off on a budget, but it was getting late and I had been reading all night. After shutting down the computer, I sat down to watch a few minutes of the coverage before turning in. As usual, once I started watching I kept watching. Tuning in to these proceedings - for me at least - is like passing a car wreck on the highway. You don't really want to be morbid and stare, but you just can't help yourself.

After about 30 minutes, House Bill 1521 came up for a vote. PCN's on-screen caption for the bill was Executive Branch Compensation - or something to that effect. The bill was passed by the House without debate by a vote of 119-79. As it stood, the bill already passed the Senate by a vote of 27-23, so the formalities of getting it up to the Governor's office for a signature were all that stood in the way of HB1521 becoming an actual law.

In Pennsylvania, the Governor has ten days to decide whether to sign or veto any legislation approved by both chambers of the General Assembly. Ed Rendell signed HB1521 into law almost immediately on July 7<sup>th</sup> and Act 44 of 2005 - the soon-to-be infamous pay raise bill - became the law of the land. Between the 50 members of the Pennsylvania Senate, the 203 members of the House of Representatives and the Governor himself, I'm fairly sure not one of them had a clue exactly how much excrement was about to hit the proverbial fan.

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In order to fully understand the ensuing tsunami of public backlash over Act 44, we must first examine the road the bill traveled on its way to the Governor's desk and how that road differed from Joe Sixpack's

understanding of what is spelled out in Pennsylvania's Constitution.

According to Article III, Section 4 of the document, all legislation must be considered on three different days in one chamber of the General Assembly before its members can cast a vote. Then it needs to move to the other chamber for a similar three-day process. Only when both chambers have voted to adopt the exact same language can a bill go to the Governor to be signed into law or vetoed.

Additionally, while each chamber has the authority and duty under Article III, Section 2 to refer any bill to various appropriate committees for review and amendment, "no bill shall be so altered or amended, on its passage through either House, as to change its original purpose" (Article III, Section 1). Other requirements include limiting most bills to a single subject (Article III, Section 3) and a directive to print the bills in full to allow review by the members of the respective chamber (Article III, Section 2 - again).

These provisions were added to Pennsylvania's Constitution at a constitutional convention in 1874 in response to a General Assembly run amok with special legislation. A lot of it was created specifically to benefit corporate interests in the railroad, coal and steel industries in Pennsylvania's heyday during the early Industrial Revolution. Outright corruption and greed were rampant in the Commonwealth at that time.

I'll add here that the original Pennsylvania Constitution of 1776 went much further in protecting the people's interests from governmental misdeeds. It required that every piece of legislation first be published and not voted on until the *next* legislature was seated after an ensuing election, allowing up to a full year of public review before any law could be enacted.

Needless to say, that protection flew out the window rather quickly in the Commonwealth and was wiped off the books during another constitutional convention in 1790. That convention was dominated by the Political Class and was called and conducted by the General Assembly, which had no authority to do so. The resultant Constitution was adopted without consulting the people at the voting booth.

The 1776 provision certainly indicates that throughout Pennsylvania's history there were high-minded people quite cognizant of the ability of the Political Class to subvert openness to run roughshod over Joe Sixpack (who was known as "Joe Cidermug" in those days).

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HB1521 was introduced in the House of Representatives on May 3, 2005 and was immediately referred to the House State Government Committee for review. It was a simple bill comprised of approximately one-

half page of text seeking to establish that no official in the executive branch of government could receive a higher salary than the Governor.

The bill followed its constitutionally mandated path through the House and following another stop in the Appropriations Committee, was finally passed and sent over to the Senate on June 8<sup>th</sup> by a vote of 157-40. The bill was not amended at all during its journey through the House.

Once it arrived in the Senate, the bill was sent to that chamber's State Government Committee on June 13<sup>th</sup>, reported out and received its constitutionally mandated first and second considerations. Then it was sent to the Senate Appropriations Committee, which amended the bill to add a provision that prevented the law from being applied retroactively. With the amendment, only people hired or elected after November 1, 2006 would be subject to the law.

This was not a substantial change to the subject matter of the bill, so it was not required that the entire legislative process be started all over again; however, it would need to appear before the House for concurrence on the amended language. After being reported out of the Appropriations Committee, the Senate sent the amended bill back to the House for concurrence on a vote of 28-22.

So far, so good as far as the constitutionally prescribed process dictates.

The House, however, did not concur with the amendment. The members voted unanimously (198-0) to non-concur. (As soon as lawyer-lingo like "non-concur" is inserted into a situation, you just know it's time to start paying attention!) This is not a rare occurrence in the General Assembly. When it does happen, the Constitution allows such a bill to go to a conference committee comprised of a handful of appointed members of each chamber - usually legislative leaders - who are tasked with hammering out the differences between the two sides.

We're still good as far as the Constitution goes.

Within the span of 24 hours, HB1521 was reported as amended and passed by the Senate, unanimously non-concurred to in the House (after which the Senate officially "insisted" on its amendment and the House officially "insisted" on its non-concurrence), sent to a conference committee where the differences were hammered out and reported to both chambers. The Senate voted 27-23 and the House voted 119-79 to adopt it and the Governor signed it into law. HB1521 then became officially known as Act 44 of 2005.

Sounds like a constitutionally acceptable and fairly efficient process for settling differences and creating law, doesn't it?

No. Absolutely not. There was a hitch. One *huge* hitch.

Instead of merely hammering out the differences between the amended and unamended versions of HB1521 - with each version only

comprised of one-half page of text - the conference committee's report was a 22-page amendment that gave pay raises to members of the executive branch, the legislative branch and the judicial branch. The original language of the bill dealing with the pay scale of subordinate members of the executive branch was nowhere to be found.

So much for the 'original purpose rule' contained within Article III Section 1 of the Constitution.

Additionally, the revised bill included a non-severability clause. Including such a clause means that if any portion of the bill is subsequently challenged and overturned in court, the *entire bill* would be overturned by design. In other words, if any judge in the Commonwealth ruled against any part of the pay raise bill, that judge and *every other judge and elected official* covered by HB1521 would lose their pay raises. It was a clever way for the legislature to insulate their cash grab from a legal challenge.

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This clear abuse of the legislative process was not out of the ordinary, although it certainly should have been. As stated previously, just weeks before Act 44 became law, the Pennsylvania Supreme Court delivered an opinion that claimed this bastardized process was constitutional.

When the General Assembly passed the legislation to allow slot machines in the Commonwealth (Act 71 of 2004), it was accomplished through a similar process where a two-page bill - initially aimed at governing the background checks of people involved in the horse and harness racing industry - was hastily amended into a 146-page bill creating the slots industry. That bill's original language was also nowhere to be found.

There was a slight difference between the slots bill and the pay raise bill, in that the slots bill's gut-and-run was committed in a standing Senate committee while the pay raise bill's gut-and-run was done through a conference committee. Nevertheless, the end results were similar enough - a simple bill magically amended at the end of the legislative process and forced upon the people of the Commonwealth without any prior notice.

Some have inferred the Court's decision on the slots bill emboldened the legislature to act in the same fashion on the pay raise bill. Others have wondered aloud if there was a tit-for-tat between the judicial branch and the legislative branch. According to this theory, the Supreme Court allowed the slots bill to stand as constitutional. In exchange, the judicial branch would receive a pay raise and a salary link to federal judicial pay - which was also included in Act 44.

The way it all eventually played out certainly lends credence to the

latter theory.

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A legislative body voting itself a pay raise is nothing new. Documentation of Pennsylvania government as far back as 1784 shows there were always those who would try to game the system for their own personal benefit. Somehow, they always get away with it without suffering too much ire from the electorate. They usually accomplished the feat by scheduling such votes as far in advance of the next election as possible.

That way, any anger is likely to wither away and be superseded by other issues by the time the people get to go to the polls again. Human beings, on the whole, have fairly short attention spans. They can easily forget what happened yesterday if today's "crisis" can be made to look more threatening. Governments throughout history have learned this lesson well.

In 1995, the Pennsylvania legislature gave itself a pay raise and people were rightfully ticked off. It included an annual automatic COLA linked to the Philadelphia index (not coincidentally, the highest such index in the state), despite a constitutional prohibition against raising legislative salaries mid-term (Article II Section 8).

Representative John Perzel - who would later become Speaker of the House (and hence, Cap'n of the S.S. Pay Raise in 2005) - declared the COLA meant that legislators would never need to vote on a pay raise again. Thousands showed up for a rally at the Capitol to protest, but in the end not a single lawmaker lost his or her job over it.

I'm quite sure that finding an elected official on July 7, 2005 who thought this pay raise would come back to bite them would have been an difficult task in Harrisburg. They might have actually gotten away with it, but for one provision of the bill - "unvouchered expenses."

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Aaah, unvouchered expenses. Try explaining this concept to an accountant in the private sector or someone from a state other than Pennsylvania. At no other time in your life will you see stares so blank or jaws dropped wider.

We're all familiar with expense accounts by which an employee is entitled to get reimbursed for out-of-pocket expenses incurred during the regular course of business - and necessary to conducting that business. Generally, you have to turn in some sort of receipt or voucher for those expenses before you get reimbursed.

If you happened to be serving in the Pennsylvania legislature under Act