



Facts and Evidence Against the Pennsylvania Government's Illegal Payraise *HB-1521 -- Act 44 of 2005*

1.) Constitutional/Process Issues:

Article II, Section 1, Legislative Power: In effect, this bill cedes the legislative power of the General Assembly over payraises to the U.S. Dept. of Labor and the U.S. Congress, by tying legislative salaries to their decisions. This is an unconstitutional delegation of authority.

Article II, Section 8, Compensation: Act 44 violates all four of the key mandates of this section:

- Prohibiting legislators from accepting a salary increase during the same session in which the increase was approved. *Unvouchered expenses* are a ruse to circumvent this ban, and take the increase immediately. The IRS, PA Dept. of Revenue, and State Employees Retirement System all treat the unvouchered expense payments as salary.
- Restricting lawmakers to receiving "salary and milage ...and no other compensation whatever". This means no unvouchered expenses, no free cars, no healthcare, no per-diems.
- Requiring that salaries be "fixed". Salaries that have annual cost of living adjustments, or adjustments based on increases in Congressional salaries, as provided by Act 44, are NOT fixed.
- Banning additional pay for service on committees or other functions. Act 44 specifies additional pay for committee chairs and caucus leaders.

Article III, Section 1, Prohibits Hijacking of Bills: This section states that a bill can not be altered during the legislative process in a manner that changes its original purpose. HB-1521 started out as a bill to *restrict* salaries of Executive Branch employees so that no official could be paid more than the Governor. When passed as, Act 44, it had been converted to *increase* salaries of all legislators, senior executive branch officials, and all judges. Plus all of the original wording on restricting executive branch salaries vanished.

Article III, Section 2, Requires Committee Review: HB-1521 emerged from Conference Committee with entirely new provisions (banned by Section 1) shortly before it was voted as an unamendable bill. The new pay increase elements for all three branches of government never received review or a vote by a standing committee. Nor did lawmakers ever have an opportunity to amend the substance of the final proposal.

Only six the lawmakers on the Conference Committee ever had any direct input on the contents of the final bill.

Article III, Section 3, Single Subject Rule: HB-1521 started as a 24-line bill restricting compensation for Executive Branch officials (governed by Article IV). Even by the Court's generous interpretations, this bill goes much too far by adding components regarding two other branches of government whose powers and duties are authorized by different articles of the constitution (Judicial Branch, governed by Article V, and Legislative Branch, governed by Article III). Thus by definition it deals with more than one subject.

Article III, Section 4, Three Days Consideration: The bill emerged minutes after its massive amendment by the Conference Committee for a House vote, and then was voted minutes later in the Senate. While technically the initial version of HB-1521, restricting Executive Branch salaries, complied with this requirement, the massively amended version, raising salaries for all three branches of government never did.

Separation of Powers Violations: Two key concepts of our governing system are separation of powers, and balance of powers. These fundamental principles are essential to ensure that one branch of government can help prevent abuses by another. Thus, HB-1521's "non-severability clause" violates these basic principles, and must be considered unconstitutional. This clause clearly is intended to intimidate the Court, and thus violates the Article V principle of an independent judiciary. Forcing the Court to void its own raises if it nullifies any other element of the law violates these basic constitutional safeguards. Furthermore, the non-severability clause immediately creates a conflict-of-interests for every Supreme Court Justice (and every other state judge). A law certainly can not be constitutional if it forces every judge required to hear the case regarding its constitutionality to be required to recuse himself due to conflicts-of-interests. Clearly Chief Justice Cappy is now tainted, due to his advocacy for the raises and public comments supporting their validity, thus forcing him to recuse himself from any litigation on the matter.

No Fiscal Notes: Chamber rules require legislation that will incur an expenditure of state funds to have a fiscal note explaining the fiscal impacts on state resources. While this was done for the original version of HB-1521 that restricted expenditures, it was never done for the final bill that substantially increases expenditures for all three branches of government. Nor was an actuarial study done on the impact the pay raises will have on tax dollar contributions to the legislative pension system, despite the fact this was secretly under discussion for a year. Conceivably, each legislative district could have one sitting representative and several retired representatives, all drawing tax-funded compensation.

2.) **Transparency:**

Cynical and Manipulative Timing: First, this bill was timed to occur during a holiday period when the public would be paying less attention. Second, by holding the vote late at night, and entangled with a state budget that was past the legal deadline for enactment, legislators would be tired and compliant. Third, the

vote on the raise, as usual, was scheduled far ahead of the next election so the public would forget the abuse, or lose its ire (they hope).

No Public Participation: First, there were no public hearings on this matter. Second, according to Chief Justice Cappy, this compensation system was under development by all three branches of government for a year -- with no public input, and apparently no rank-and-file input. Third, under what other circumstances do the employers (taxpayers) have no input over the salaries they will pay their employees (public officials).

3.) **Accountability:**

No Debate: Apparently there was no floor debate in either the House or Senate. Thus no lawmaker can claim she/he was really against the payraise, because they made no effort to win a NO vote; made no effort to table the bill; made no effort to recommit the bill to a standing committee for evaluation; and, made no effort to send the bill back to Appropriations Committee for a fiscal note.

Intimidation: Legislators supposedly did not know the contents of the proposal until minutes before the vote. Thus they could not make informed judgements, much less have deliberative consideration.

Some representatives were coerced to vote "Yes" or lose their committee chairmanships or other leadership positions. Others who were new, or were perceived to face serious opposition in 2006 were given "permission" to vote "No".

Thus integrity of the process collapsed. The vast majority of lawmakers were rendered meaningless in the process. While all lawmakers represent the same number of constituents, most are irrelevant, and often by their own choice.

4.) **Substantiative Issues:**

On the substance of the raise itself, the legislature's actions are difficult to justify.

Tight budget year: The 2005-06 state budget presented enormous fiscal challenges. It is difficult to justify the raise when critical healthcare, education and other programs had to be cut or under-funded.

Misleading Formulas: This bill ties legislative pay to congressional pay contending there is a meaningful correlation. Henceforth, base legislative salaries are to be 50% of congressional salaries. In reality, on a per-capita basis, legislators will be paid FIVE times as much as congressman. Per capita cost of a congressman is approximately 24 cents per constituent per year. Per-capita costs for a legislator will be approximately \$1.26.

Minimum wage comparisons: While the legislature refused to deal with efforts to increase the minimum wage, the \$11,000 *minimum increase* in legislative salaries alone is more than a full-time minimum wage worker will earn in a year.

Triple average family income: A legislator's total compensation package (including a very generous and constitutionally suspect benefits package) now will approach triple that of the average PA household, many of which have two adults working outside the home. At this point, many lawmakers are desensitized when it come to voting key family issues (like healthcare, utilities, insurance, automobiles, etc.)

The gift that keeps on giving: For the past decade, lawmakers gave themselves COLAs (cost-of-living-adjustments) based on the relatively high Philadelphia inflation rates. Thus, despite their contention of no "raises" for a decade, they actually received very generous raises every year. Furthermore, these COLAs will continue unless Congress gives itself a raise larger than the COLA. Lawmakers will get the equivalent Congressional raise or a COLA based on the Pennsylvania, New Jersey, Maryland and Delaware region inflation index, whichever is larger.

Donating raises to charity: Another ruse to make the lawmaker look good at election time. Instead of returning their raises to the state General Fund, some plan to give their raises to local charities. Once again, we have another incumbent-only public financing of elections scheme. Lawmakers, using their illegally obtained salary increase, will ingratiate themselves with important local charities, gain renown as their benefactor, tout that information at re-election time, thus diminishing political challengers' viability, with all the benefits coming out of the taxpayers' pockets. Of course, they will take a tax-deduction for their generosity -- and by the way, none have promised to make such donations beyond 2006.

Lobby reform: Having given themselves an extremely generous raise (plus retention of generous per-diems, expense accounts, and other benefits) there certainly can be no excuse for continuing the practice of taking gifts, meals, travel and vacations from lobbyists, who are trying to curry favor for their votes. Lawmakers must pass a ban on lobbyists gifts and hospitality, as many states (who pay their lawmakers far less) already have done.