

Special Report on
Pittsburgh Intergovernmental Cooperation Authority (ICA)

November 2015



From the
Department of the Auditor General

Executive Summary

Pittsburgh’s Intergovernmental Cooperation Authority (ICA) was created in 2004 by the General Assembly in Harrisburg as a temporary state agency to help bring Pennsylvania’s second-largest city back from the brink of bankruptcy.

At the time, the City of Pittsburgh (City) laid off 446 full- and part-time employees, including nearly 100 police officers and 24 EMS personnel. Municipal services were significantly impacted, including the closing of senior centers, recreation centers, and 26 swimming pools; rodent patrols and mounted police were also reduced. The City’s credit ratings were downgraded repeatedly, leaving Pittsburgh as the nation’s only major city to hold below-investment-grade “junk bond” ratings.¹

For help addressing the City’s financial issues, then-Mayor Tom Murphy petitioned the Commonwealth to designate the City as “distressed” and to subject Pittsburgh to financial oversight.

Two separate legislative acts from Harrisburg in 2004, gave the ICA two primary functions:

- to review and approve the City’s balanced budgets and financial plans, and
- to control the distribution of the local share of revenue from the Rivers Casino.

After more than a decade of financial oversight provided by the ICA, Pittsburgh is experiencing financial progress by growing revenue, controlling expenditures, and turning projected deficits into operating surpluses. The city posted general fund operating surpluses in eight of the past 10 years and received ICA approval of its last three consecutive budgets.

However, as the City’s financial recovery continues, cracks and flaws in the legislation that gave the ICA responsibility for distributing Gaming funds to the City are beginning to show and resulting in recent disputes between the City and the ICA that threaten to derail the progress.

Table of Contents

Origin of the Pittsburgh ICA.....	2
ICA Oversight Made Positive Difference in City Recovery	3
Department of the Auditor General’s Review of ICA.....	5
Conclusion Regarding the ICA Contracts and Operations	6
Conclusion Regarding Gaming Monies.....	11
Overall Conclusion	11
Recommendations.....	12
Appendix.....	13
ICA Structure	13
ICA oversight role	14

¹ City of Pittsburgh, Allegheny County, *Municipalities Financial Recovery Program – Act 47, Recession Report*, submitted to the Pennsylvania Department of Community and Economic Development (DCED) on November 8, 2012, p. 3.

The Department of the Auditor General conducted a 6-week review of ICA operations for the years 2013, 2014, and 2015. This report is the result of that review of the ICA, which included conversations with both ICA and City officials. The report provides details about:

- The powers and authority of the ICA,
- The ICA's contracts, operating expenses and budget,
- The ICA's release of Gaming monies to the City, and
- Recommendations for action by both the ICA and the City to move forward.

It is clear from this review that current conflicts between the City and the ICA are rooted in the ambiguity and flaws of the authorizing legislation, which:

- Does not define a quorum (currently the ICA Board has three vacancies, leaving two of five members making decisions),
- Allows ambiguity in how the ICA awards contracts,
- Does not clearly define a balanced budget,
- Fails to provide a formal process for how to determine the use of the Gaming monies for the City's "best interest," and
- Does not specify when the Gaming money is to be distributed to the City.

Despite the shortcomings in the legislation, leaders of the City and the ICA have a responsibility to the residents of Pittsburgh to find a way to work together to keep the financial recovery on track and ensure that residents receive the municipal services and public safety protection they should expect.

City leaders should discuss with the General Assembly and the Governor, their commitment regarding future Gaming money. The Auditor General recommends an agreement where the City commits to use Gaming revenue to reduce Pittsburgh's sizable municipal pension liability and in exchange, the Commonwealth agrees to dissolve the ICA. In the future, the Department of the Auditor General will audit the City's use of Gaming funds to ensure the parameters of the agreement are kept.

Origin of the Pittsburgh ICA

In August 2003, Pennsylvania's second-largest city teetered on the brink of bankruptcy forcing the City of Pittsburgh (City) to lay-off hundreds of employees and reduce municipal services. As a result, the City's credit ratings were downgraded to "junk bond" status.²

In response, then-Mayor Tom Murphy petitioned the Commonwealth to designate the City as "distressed" according to the criteria in Act 47 of 2004, the Municipalities Financial Recovery Act³ and to subject Pittsburgh to financial oversight. The elements of the initial Act 47 plan were approved by the City in June 2004.⁴

Certain members of the Pennsylvania General Assembly wanted Pittsburgh and the Commonwealth to have the benefit of an independent authority composed of members experienced in finance and management which could advise the City, the General Assembly, and the Governor concerning solutions to Pittsburgh's entrenched fiscal problems. As such, the Pennsylvania General Assembly crafted and

² City of Pittsburgh, Allegheny County, *Municipalities Financial Recovery Program – Act 47, Recession Report*, submitted to the Pennsylvania Department of Community and Economic Development (DCED) on November 8, 2012, p. 3.

³ 53 P.S. §11701.101 *et seq.*, Act 47 of 1987, as amended.

⁴ *Municipalities Financial Recovery Act, Amended Recovery Plan*, City of Pittsburgh, Allegheny County, prepared on behalf of, among others, DCED on June 24, 2014, pp. 3, 10.

enacted Act 11 of 2004 (the ICA Act) for an additional oversight board to be known as the Intergovernmental Cooperation Authority for Cities of the Second Class⁵ (ICA) to serve Pittsburgh. Later that year, the enactment of Act 71 (the Gaming Act), the Pennsylvania Race Horse Development and Gaming Act,⁶ provided a mechanism for the ICA to give funding for the City's recovery efforts.

It is apparent that the General Assembly created the ICA to "operate concurrently and equally" with the Act 47 Coordinator.⁷ Act 11 of 2004 states that:

*The creation of such an authority will allow cities to continue to provide the necessary municipal services for the residents and to contribute to the economy of the Commonwealth.*⁸

An Intergovernmental Cooperation Agreement was entered into between the City and the ICA and became effective September 7, 2004.⁹

The ICA Act provides a term of seven years for the ICA to assist the City, but that the Secretary of the Department of Community and Economic Development would determine whether the authority is no longer necessary once the City had earned ICA board approval of three consecutive years of approved operating budgets and five-year financial plans.¹⁰

The ICA Act made it clear that the ICA was created as a temporary state agency by the General Assembly with the sole purpose of assisting Pittsburgh's recovery from emergency financial conditions, while at the same time ensuring that residents receive municipal services and public safety protection.

ICA Oversight Made Positive Difference in City Recovery

The ICA Act created the ICA — with a term of at least seven years, through 2011 — to assist Pittsburgh's recovery from emergency financial conditions, while at the same time ensuring that residents receive municipal services and public safety protection. Because sufficient financial stability had not been achieved at the end of the original seven-year period, ICA's involvement continued. During the more than 10 years of financial oversight provided by the ICA, Pittsburgh experienced financial progress by growing revenue, controlling expenditures, and turning projected deficits into operating surpluses.

The City posted general fund operating surpluses each year since 2005, with the exceptions of two years. In 2008 and 2010, the City transferred a total of \$55 million to its pension fund, \$45.4 million to debt service, and \$27 million to the capital fund, causing expenses to exceed revenues.¹¹

As of August 31, 2015, the City's combined pensions are funded at 58.5 percent of the long-term liability¹² which is still qualified as a distressed position, but a major improvement from 44.4 percent in

⁵ Intergovernmental Cooperation Authority Act for Cities of the Second Class, 53 P.S. § 28101 *et seq.*, Act 11 of 2004, enacted February 12, 2004. Pittsburgh is the only city of the second class in Pennsylvania and operates under a home rule charter. For more information about the City's status, please see *Citizen's Guide to Pennsylvania Local Government* issued by the Governor's Center for Local Government Services, Tenth Edition, November 2010, pp. 19-20.

⁶ 4 Pa.C.S. § 1101 *et seq.*, Act 71 of 2004, enacted July 5, 2004.

⁷ 53 P.S. § 28102(b)(3) and *Municipalities Financial Recovery Act, Amended Recovery Plan*, June 24, 2014, p. 8.

⁸ 53 P.S. § 28103(12).

⁹ See http://www.briem.com/ica_olddocs/ica_agreement.pdf, accessed October 30, 2015.

¹⁰ 53 P.S. § 28204.

¹¹ Act 47, Rescission Report, November 8, 2012, p. 8.

¹² City of Pittsburgh, Director of the Office of Management and Budget email October 21, 2015.

2005. The City has irrevocably dedicated parking revenues of \$13.4 million annually and committed to voluntarily exceeding its annual minimum pension contribution to help address the long-term liability.

The City's Other Post-employment Benefits (OPEBs), which are chiefly health care benefits for retirees, were unrecognized on its books in 2004 and funded only on a pay-as-you-go-basis. The ICA pushed the City to create an OPEB Trust Fund in 2013 as a condition of the City's annual budget approval. In 2015, the City has placed \$1.875 million in its OPEB trust fund and another \$625,000 deposit is budgeted. The OPEB trust fund assets were \$9,864,665 as of September 30, 2015, and the current unfunded liability is more than \$560 million.¹³ Though the liability is daunting, the balance will diminish over coming decades because employees hired after 2005 will not receive health insurance benefits in retirement.

The City has also made substantial progress on its workers compensation liabilities. In 2005, the City had 1,037 legacy claims and an indemnity of almost \$14.3 million, as well as almost \$2.7 million in medical expenses. By 2014, it had trimmed the legacy claims to 449, with an indemnity of \$6.7 million and medical expenses of \$1.2 million.

The City's five-year financial forecast continues its march toward reducing long-term debts. In fiscal year 2013 expenditures related to debt service reached \$87.4 million, which represented 18.6 percent of total budgeted expenditures for the fiscal year. The percentage of expenditures dedicated to debt service falls significantly through the current five-year financial forecast, from 17.6 percent in the proposed 2016 budget to 8.6 percent in fiscal year 2020. The City anticipates lower long-term borrowing rates that will allow it to invest more aggressively in rebuilding streets, bridges, and other infrastructure projects.

The ICA has worked with the City to improve business practices and modernize its paper-based payroll system to increase efficiency. The new, electronic payroll system is scheduled to go into operation in January 2016.

In August 2014, bond ratings agency Moody's Investor Services upgraded its outlook on the City to positive and assigned an A1 rating; Standard & Poor's Ratings Services gave Pittsburgh an A+ rating. The City's legacy obligations however – long-term debt, underfunded pensions, Other Post-employment Benefits (or OPEB) and workers' compensation – remain formidable challenges.

¹³ City of Pittsburgh, Director of the Office of Management and Budget email October 26, 2015.

Department of the Auditor General's Review of ICA

Review Requested

On August 26, 2015, the Auditor General (AG), and his department, received a written request from Pittsburgh Mayor William Peduto to conduct a comprehensive audit of the Pittsburgh ICA. The ICA responded in a press release that it was already working with the AG and willing to provide any and all information to support his review of the ICA.¹⁴ Upon evaluation of the issues regarding this matter, the AG agreed to review the operations of the Pittsburgh ICA for the review period of calendar year 2013 through the present. Following is the review, conclusions and recommendations reached by the AG and his review team.

Review of the ICA's Contracts, Operating Expenses, and Budget

The ICA Act does not require the ICA to follow the Commonwealth's procurement procedures. Rather, the Act allows the ICA to decide on what procurement process to use, thereby alleviating the need for a bid or Request for Proposal (RFP)-type process.¹⁵ In the "Powers and Duties" provision of the Act¹⁶, despite being an agency of the Commonwealth¹⁷, the ICA's contracting authority appears to be so broad that it does not need to comply with the Commonwealth Procurement Code and/or the Department of General Services' *Procurement Handbook*.¹⁸

In response to our request for copies of all the contracts executed by the ICA, the ICA Executive Director only provided a listing of contractors and a schedule of payments to each. We were unable to ascertain if the contractor list was actually a complete listing of all contracts. As provided, the listing of contract payments from June 16, 2011 to August 17, 2015, totaled over \$700,000. The list of contractors also indicated whether an RFP or bid process was utilized; in a few instances an RFP or bid process was used. However, the ICA Executive Director reinforced that the ICA board determines whether to use bidding or sole-source procurement in each matter that is contracted.¹⁹

Based on our review team's analysis of the ICA's payments to vendors supplied by the ICA Executive Director, approximately 31 percent of ICA's expenditures for consultants and professional services since 2011 have been for studies provided by Gleason and Associates, a forensic accounting firm. Gleason and Associates had five contracts with the ICA, with payments to the firm totaling \$220,636 since 2011. The contracts covered consulting services including²⁰:

- implementation of the City's comprehensive financial management system, June 2011;
- analyzing pension obligations, May 2012;
- investigation of the City's cash management activities and internal controls, May 2013;

¹⁴ September 15, 2015, ICA news release.

¹⁵ 53 P.S. § 28203(c)(11). The exact wording of the provision in the ICA Act is as follows: "(c) **Specific powers.**--In addition to the powers and duties set forth elsewhere in this act, the authority shall have the specific powers:*(11) To make and enter into contracts and other instruments **necessary or convenient** for the conduct of its business and the exercise of the powers of the authority." [Emphasis added.]

¹⁶ Ibid.

¹⁷ 53 P.S. § 28201 (relating to Authority established) provides: "A body corporate and politic to be known as the Intergovernmental Cooperation Authority for Cities of the Second Class is established as a public authority and instrumentality of the Commonwealth, exercising public powers of the **Commonwealth as an agency** and instrumentality thereof. The exercise by the authority of the powers conferred by this act is hereby declared to be and shall for all purposes be deemed and held to be the performance of an essential public function." [Emphasis added.]

¹⁸ See 62 Pa. C.S. § 101 *et seq.* (Act 57 of 1998, as amended) and www.dgs.pa.gov/State%20Government/Materials-and-Services-Procurement/Procurement-Handbook/Pages/default.aspx#.VjeqGWeFOUk, last accessed on November 2, 2015.

¹⁹ Email, dated September 21, 2015, from the ICA Executive Director.

²⁰ ICA email response, dated November 4, 2014, to the *Pittsburgh Post-Gazette's* Right-to-Know request.

- investigate City payroll system, June 2014; and
- assisting the City in the implementation of electronic payments for City services, June 2014.

The next three highest-paid vendors were:

- Jones Day (legal services) for \$99,988;
- Veritas Communications (communications services) for \$93,359; and
- ParenteBeard, LLC (accounting and auditing services) for \$60,000.

To satisfy any concerns that individual vendors may have a conflict of interest, our review team tested a vendor’s status by making an inquiry of Gleason and Associates. Gleason’s managing director wrote as follows:

On behalf of the shareholders and employees of Gleason, I confirm that there are no relationships between the key executives and employees of Gleason and either ICA board members or ICA staff that may constitute a conflict of interest – either in appearance or in fact – as that term is defined by the AICPA²¹ Code of Conduct.

In addition to our review of the ICA’s contractors and contracts, we also attempted to review prior expenditures by the authority. We were unable to do a complete review of the ICA’s expenses since prior paid invoices and cancelled checks were not retained after the invoices were paid and the independent audit for the fiscal years were complete.²²

We also attempted to review the independent audit reports of the ICA, but could only review those through the fiscal year ending June 30, 2013, as we were told that the audit for fiscal year ended June 30, 2014, was still not complete, and that the fiscal year ending June 30, 2015, audit was not started.

Finally, the average state appropriations over the last three years to operate the ICA was approximately \$235,000. Over approximately 80 percent of the budget was for the salary of the Executive Director and ICA administrative expenses, while the other 20 percent was for professional services (accounting, legal, and other).

Conclusion Regarding the ICA Contracts and Operations

Based on the limited information we were provided for review, our review team concluded that the ICA must be more thorough and diligent in its administrative responsibilities as a state agency, as well as being more meticulous in its record-keeping and retention of government documents that should remain available throughout the life of the statute-of-limitations pertinent to those documents. The ICA must also establish and implement good business practices and policies to support its work.

We further concluded that the lack of an ICA administrative staff person to retain detailed records and provide administrative support to the ICA Executive Director, as well as to the ICA’s board is a hindrance to the operations of the ICA. The lack of administrative staff precluded us from conducting a more thorough review of requested contracts and expenditure information.

²¹ American Institute of Certified Public Accountants.

²² Email from the ICA Executive Director, dated September 21, 2015, in which he indicated that the invoices were “outstanding”, based on the DAG request for this information, for periods not previously audited. When discussed via telephone on this date, the Executive Director relayed that invoices are not retained following an audit. However, taking that statement on face value, vendor invoices for FYE 2014 and 2015 should be available since the audits have not been completed and were not provided.

Finally, although the Act does not explicitly require the ICA to abide by the Commonwealth’s procurement protocols, the ICA, as an agency of the Commonwealth, should on its own accord follow the same protocols as a best business practice. Given that more than 10 years have elapsed from the creation of the temporary ICA in 2004, the ICA and its board should recognize and acknowledge that the more current best business practice is to encourage public agencies to use enhanced competitive bidding and/or RFP processes as a more transparent and effective governance model. In addition, the ICA should adhere to best practices to avoid the appearance of any possible conflicts of interests or favoritism, whether actual or perceived, towards any of its vendors, even though it is not explicitly required by the Act.²³

Review of the ICA’s Release of Gaming Monies to the City

In July 2015, the City of Pittsburgh filed suit against the ICA for withholding \$12,825,814, of undistributed Gaming money, plus interest that the City believes it is entitled to receive.

The Gaming monies in dispute are as follows:²⁴

Fourth Quarter 2014	\$5,807,126
First Quarter 2015	\$1,383,976
Second Quarter 2015	\$1,417,205
Prior Year’s Gaming Money Undistributed	\$4,125,000
Interest Earned Since 2009	\$92,507
Total Undistributed Gaming Monies	\$12,825,814

These undistributed Gaming funds are securely held in an investment program maintained by the Pennsylvania Treasury Department (Treasury) referred to as the INVEST program.²⁵

While the City’s contention is that the ICA does not have the authority to withhold the Gaming monies from the City, it is our position that the Gaming Act as currently composed makes clear that the ICA has sole authority over the release of the Gaming monies and that such release is under the exclusive control of the ICA. The Gaming Act however, states that the monies can only be used to:

- (A) reduce the debt of the second class city;
- (B) increase the level of funding the municipal pension funds of the second class city; or
- (C) for any other purpose as determined to be in the best interest of the second class city by such intergovernmental cooperation authority.

The Gaming Act and the ICA Act are silent on establishing parameters for the ICA’s oversight regarding timing of the distribution of the Gaming money by the ICA to the City.

The ICA contends that while the ICA board has encumbered and approved release of the Gaming monies, the City has failed to meet the conditions set by the ICA board for release of the funds. The following table shows when the ICA board approved Gaming monies to be released, the conditions the City must meet for the release of funds to occur, and the date the ICA communicated to the City condition and amount of Gaming money to be released.

²³ See U.S. DOT Federal Transit Administration’s online *Best Practices Procurement Manual: Written procurement selection procedures* which recommends clear, accurate, and complete specifications; adequate competition - two or more competitors http://www.fta.dot.gov/grants/13054_6037.html.

²⁴ Source: ICA spreadsheet, Pennsylvania Treasurer’s INVEST account statements.

²⁵ We did verify that the monies are included in INVEST and that none of the monies have been disbursed to any other party for any other reason.

\$12.8 Million in Gaming Monies Being Withheld by the ICA

Dollar Amount	ICA Board Stipulated Use of Gaming Monies	Date of ICA Board Authorization	Date of Notification by ICA to City of Pittsburgh of Condition for Release of Gaming Monies	ICA Conditions of Release
\$1,625,000	Debt Service	December 19, 2014	1/14/15 email between ICA Executive Director and City Finance Director stating language that must be included in a letter by the City to the ICA	Provision of letter by City of Pittsburgh pledging full funding of current years' Pension obligations and agreement by the City to delay the rental registration program.
\$2,000,000	Public Safety Facilities Repairs	June 25, 2015	No formal documentation available to support conditions relayed to the City of Pittsburgh.	Written documentation of completed work for repairs on Public Safety Facilities.
\$500,000	Cyber security: The board motion is for "funding computer security, networking, website and software and hardware..."	June 25, 2015	No formal documentation available to support conditions relayed to the City of Pittsburgh.	Written documentation of completed work for Cybersecurity implementation project.
\$2,900,000	Pension	October 15, 2015	No formal documentation available to support conditions relayed to the City of Pittsburgh.	A letter from the City of Pittsburgh committing to a January 2016 implementation date of the Computerized Payroll System.
\$2,900,000	Pension	October 15, 2015	No formal documentation available to support conditions relayed to the City of Pittsburgh.	Implementation of Computerized Payroll System meeting ICA standards.
\$2,900,814	None	N/A	N/A	N/A
\$12,825,814	Grand Total			

December 2014 — ICA Board Approval of Gaming Funds to the City

The ICA contends that at the December 19, 2014, board meeting it directed \$1.625 million in Gaming money for debt service payments by the City, on the condition that the City delivered a final version of the signed letter from the Mayor with the promise to pay the \$86.4 million to the pension fund. However, we found no evidence in the board minutes that such a conditional authorization was created during the meeting and no written agreement exists documenting such an understanding between the ICA and the City. There is no further discussion during ICA board meetings regarding Gaming monies until six months later in June 2015.

The City was aware of the need to present the letter to the ICA, and it did provide the ICA chairman with its final version of the letter requested by the City, at which time the funds should have been released. On January 14, 2015 however, the ICA Executive Director sent an email to the City's director of finance indicating that the City's final letter did not contain language the ICA now wanted to be included. The language was as follows: *"The City agrees to delay the rental registration program. The ICA agrees to transfer \$1.625.000 of gaming funds to be used for debt service payments thus allowing for an overall balanced budget."* We saw no evidence or discussion of this new ICA request in the board minutes.

Therefore, based on the material presented to the Department by the ICA for review, the additional language did not appear to be an item discussed, nor was it voted on or approved by board action. We could therefore not confirm the authority behind the additional request, which delayed the release of the money.

June 2015 — ICA Board Approval of Gaming Funds to the City

At the June 25, 2015, ICA meeting, the board addressed the possibility of additional distributions of Gaming monies. At that meeting, the board voted to release additional Gaming money for two purposes: \$500,000 for a cyber security project and \$2 million for repairs to public safety facilities.

At the June meeting, the ICA board motion "directs the board chairperson and the Executive Director of the ICA to reimburse the city for expenditures upon the receipt of a satisfactory, written documentation from the city controller that certifies the work in the matter has been completed." The ICA Executive Director stated that the City has provided no documentation of any work performed on either the cyber security project or the repairs to the public safety facilities. Accordingly, no money has been released.

Therefore, until October 14, 2015, only \$4,125,000 of the \$12,825,814 had been approved by the board for release, subject to the City satisfying the additional conditions created by the ICA. Until the release of these funds, the ICA considers the monies encumbered. The remaining \$8,700,814 of Gaming monies still had not been discussed by the ICA board despite the City's 2015 budget already anticipating the use of those funds based on the ICA's prior approval of the budget.

October 2015 — ICA Board Approval of Gaming Funds to the City

It was not until the October 21, 2015, ICA board meeting that the board addressed the distribution of the balance of the Gaming monies. According to an email received on October 22, 2015, from the ICA Executive Director, at the October 21 board meeting (the minutes of that meeting, as of the date of this report, have not been publicly released); the board took the following actions:

- Clarified its prior directions of the release of \$1.625 million of Gaming funds was for the sole and exclusive use for 2015 debt service payments, as per the December 19, 2014, ICA public vote to conditionally approve the City’s 2015 capital and operating budgets and corresponding five-year plan.
- Voted to certify to the Secretary of the Budget that the City has failed to remedy the deficiencies previously articulated by the board to the Mayor for the 2015 budgets.
- Voted to disapprove the proposed 2016 capital and operating budgets and corresponding five-year plan based on, among other things, the failure of the City to remedy the conditional approval of the 2015 budgets.

The ICA Executive Director did not provide details of what other conditions led to its disapproval of the 2016 budget.

Because of three vacancies on the five-member board, only two board members attended this meeting and voted. After this meeting, the ICA left an unencumbered balance of \$2,900,814 (including interest earned) of Gaming monies from the original \$12,825,814.

City officials say they no longer have any faith that the ICA board would reimburse any costs incurred for the above projects. The City feels it has done enough to earn the release of \$2.9 million conditioned on getting a commitment from the City that it will implement the requested payroll system in January 2016. The City will not comply with the conditions set by the ICA, though the administration intends to have the payroll system operational in January 2016, the deputy chief of staff stated.²⁶

ICA is Subject to Sunshine Act

It is important to note that the ICA is explicitly required to adhere to the Pennsylvania Sunshine Act.²⁷ The Sunshine Act requires that all “[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public” unless a closed meeting is otherwise permitted.²⁸ The ICA board must take more care to ensure that any “agency business,”²⁹ including any of its decisions by a quorum of its members are properly placed on the record in the board minutes. Under no circumstances should the City and taxpayers be left to guess what the ICA’s intentions were in making its decisions.

²⁶ Interview with City Deputy Chief of Staff, October 20, 2015.

²⁷ See Section 28202 (relating to Governing board) of the ICA Act, 53 P.S. § 28202(h)(i), provides that the ICA is subject to “(h)...(i) 65 Pa.C.S. Ch. 7 (relating to open meetings [Sunshine Act]).”

²⁸ 65 Pa.C.S. § 704. Under the preamble of the act, it is evident that it is the General Assembly’s intent that the public have the right to have notice and to be present at “all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies.” The preamble states further that this right of the general public “is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” 65 Pa.C.S. § 702.

²⁹ The definition of “Agency business” in the act includes “The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” See 65 Pa.C.S. § 703.

Conclusion Regarding Gaming Monies

Our review of the information provided by the ICA reveals that there is no consistent, or formal, communication from the ICA to the City as to the amount of Gaming money approved for release by the ICA board and any conditions to be met regarding the release of the Gaming money to the City.

The board approval of the Gaming monies to be released, and any conditions placed thereupon, are sometimes found in the board meeting minutes, and other times there is no discussion nor approval. The City's Director of Finance attends the ICA board meetings, as an ex officio member of the board, and therefore would know the full details and discussions surrounding each approval for release of Gaming money and conditions for release.

However, as provided in the recommendations on page 12, a formal process of providing written communication of the board's approval, together with any conditions, should be provided to the City following each board approval of Gaming money to be released. Even though no formally written communication was provided to the City, it is reasonable to presume that the City was fully aware of any requirement or condition discussed at the board meetings and chose to not meet such conditions.

Overall Conclusion

The ICA Act provided the ICA with a term of at least seven years, or through 2011 to assist the City. The Act further provided that if, after the seven years, the City had annual operating budgets and five-year financial plans approved by the ICA board for at least the three immediately preceding years, the Secretary of the Department of Community and Economic Development (DCED) must certify that the authority is no longer needed, and the provisions of the law would no longer be in effect 90 days following that certification.

Our review concludes that the City had balanced annual operating budgets and five-year financial plans approved by the ICA board for calendar years 2013, 2014, and 2015. The ICA's approval of three consecutive balanced budgets appears to meet the standard set in the ICA Act that would allow the DCED secretary to proceed with dissolving the ICA.

The Act contains no language about conditions the ICA has attached to its budget approvals, and it does not contemplate the annual approval as an on-going procedure where approval could be rescinded at a later date. The Act only provides for approval or disapproval, and the ICA did approve budgets for 2013, 2014, and 2015. Absent any provisions in the Act defining a conditional approval, the budgets should be considered approved.

The City's 2016 budget, which forecasts a surplus at the end of the year, was submitted for ICA review. The ICA board should consider the 2016 financial plans on their merits and without the hangover of its prior conditions.

To move this process forward, leaders of the City and the ICA must find a way to work together to keep the financial recovery on track and ensure that residents receive the municipal services and public safety protection they should expect.

Recommendations

Based on the information reviewed and the conclusions determined as provided in this report, the Department of the Auditor General recommends the following actions:

The ICA should:

1. Improve transparency of organization processes and recordkeeping by:
 - a. Hiring an administrative assistant to support the executive director.
 - b. Immediately begin to retain all agency documents in safe storage, including but not limited to invoices, cancelled checks, contracts, etc., in accordance with the Commonwealth record retention schedule and any other statutory requirements.
2. Provide formal written correspondence to the City on all board actions requiring an action to be taken by the City; and obtain documented acknowledgement from the City of the ICA's communications.
3. Ensure that any and all disagreements/concerns or conditions for budget approval by the ICA board are formally and clearly communicated to the City in a timely matter.
4. Immediately begin to follow the requirements of the Sunshine Act to promote transparency and ensure that all board decisions are enacted during public meetings.
5. Immediately begin to follow the Commonwealth's Procurement Code as a best practice and to match other Commonwealth agency practices.
6. Move toward a collaborative working relationship with the City and the Mayor to help facilitate the timely release of Gaming funds.
7. Work with the City to negotiate with the General Assembly and the Governor to develop an appropriate timeline for the elimination of the ICA in a way that will ensure Gaming revenue is used to reduce Pittsburgh's sizable pension liability and set the path for continued financial progress.

The City should:

1. Establish an effective communication protocol between the Mayor's office and the ICA for the exchange of information regarding any and all outstanding issues relating to ICA board conditions, Gaming monies, etc., to ensure that they are communicated clearly and in a timely manner.
2. Continue, and strengthen, its commitment to the annual funding of both the Pension Fund and Other Post-Employment Benefits (OPEB) Trust Fund at levels necessary to reduce the underfunding of both as soon as practical.
3. Continue its aggressive implementation plan of the comprehensive financial management system: in particular, the final implementation of the payroll system by January 1, 2016.
4. Continue its effort to reduce the percentage of outstanding debt service to a level of not greater than 12 percent of annual revenue, and refrain from using additional long-term debt to address resolving short-term problems.
5. Avoid issuing any additional debt that would raise the percentage of debt service to a level that would violate any City Ordinance.

Appendix

ICA Structure

The powers and duties of the ICA are to be exercised through a governing board of five members appointed one each by:

- the Senate President Pro Tempore,
- the Speaker of the House,
- the leader of the Senate minority caucus,
- the leader of the House minority caucus, and
- the Governor.³⁰

Each ICA board member is required to have substantial experience in finance or management³¹ and serve a term coterminous with that of the appointing authority.³²

In addition, there are two ex officio non-voting members on the board:

- the Pennsylvania Secretary of the Budget, and
- the City's Director of Finance.³³

The ICA board is to meet as necessary but at least quarterly throughout the fiscal year.³⁴ A chairman is selected by the board members to serve a two-year term or for the duration of his term on the board, whichever is less, but for no more than four years.³⁵ Since the creation of the ICA in 2004, there have been six Chairpersons of the ICA.

In December 2014, all five board positions were filled. Three members have since left the board without reappointments being made, leaving three vacancies on the board as of October 2015. The ICA employs one staff person, an Executive Director, to handle all administrative functions of the board.

In addition, the board has the ability to hire counsel and engage consultants and contract for professional services.³⁶ The Act provides that contracts can be made to conduct the business of and exercise the power of the ICA as "necessary or convenient" and therefore, the ICA is not required to follow the Commonwealth Procurement Code.³⁷

³⁰ 53 P.S. § 28202(a)(1)(i-v).

³¹ 53 P.S. § 28202(a)(2).

³² A Board member's term shall be coterminous with that of the appointing authority and serve at the pleasure of the member's appointing authority. Whenever a vacancy occurs among the appointed members on the board, whether prior to or on the expiration of a term, the appointing authority who originally appointed the board member whose seat has become vacant shall appoint a successor member within 30 days of the vacancy. A board member appointed by an appointing authority to fill a vacancy occurring prior to the expiration of a term shall serve the unexpired term. 53 P.S. § 28202(b).

³³ 53 P.S. § 28202(a)(1)(iv).

³⁴ 53 P.S. § 28202(d).

³⁵ 53 P.S. § 28202(b).

³⁶ 53 P.S. § 28202(f).

³⁷ 53 P.S. § 28203(c)(11).

ICA oversight provided through two distinct legislatively created tools

The General Assembly created two important tools for the ICA to use in meeting its oversight duties.

First, the ICA Act requires the ICA to review the budgetary and fiscal affairs of the City.³⁸ This includes the annual approval of its financial plans that contain the proposed operating budget for the next fiscal year and projections for the following four fiscal years, as well as a capital projects budget.

Second, the Gaming Act gives the ICA control to release Pittsburgh's local share of assessments³⁹ on the Rivers Casino Gaming money, which amounts to at least \$10 million per year.⁴⁰

1. Review of the City's Financial Plans

The elements and standards of a financial plan are outlined in the ICA Act. The plan is to include the projected revenues and expenditures of the City's main operating funds and is to provide how this plan will eliminate the projected deficit going forward for an undetermined amount of time, restore funds to special fund accounts, and balance the current year budget.⁴¹ A balanced budget is not clearly defined in the statute.

The ICA is to promptly review each financial plan, proposed budget, and capital budget as submitted by the City and obtain an opinion or certification from the city controller as "to the reasonableness of the assumptions and estimates in the financial plan."⁴² If the ICA does not take action within 30 days of the City's financial plan submission, the plan is deemed approved.⁴³ If the ICA disapproves the City's financial plan, the ICA shall provide reasonable detail in writing of any disagreements or concerns and include the amount of any estimated budget imbalance.⁴⁴

A revised financial plan can be submitted by the City within 15 days and the ICA determines whether the plan satisfies the required criteria.⁴⁵ If not approved, the ICA must certify noncompliance with one of the non-voting board ex officio members, the Secretary of the Budget, as well as to two voting board members, the Senate President Pro Tempore and the House Speaker.⁴⁶ The Secretary of the Budget may then suspend all state grants, loans, entitlements, and other payments to the City due to noncompliance.⁴⁷

2. Release of Gaming Funds

The Gaming Act provided a completely separate oversight tool to the ICA. The Gaming Act⁴⁸ included a distinct and detailed subsection for the conditions regarding the distribution of Pittsburgh's Gaming money so long as the City is under ICA oversight:

³⁸ See in particular, 53 P.S. §§ 28206 (Annual budget), 28207 (Annual report, annual audits), 28209 (Financial plan), and 28210 (Financial plan powers and duties).

³⁹ This amounts to 2% of the Local Share of Slots Revenue or \$10 million annually. 4 Pa.C.S. § 1403(c)(3)(i).

⁴⁰ 4 Pa.C.S. § 1403(c)(3)(xv).

⁴¹ 53 P.S. § 28209(b)-(c).

⁴² 53 P.S. § 28209(g)(1). The ICA is not bound by the City Controller's certification or opinion.

⁴³ 53 P.S. § 28209(g)(3).

⁴⁴ 53 P.S. § 28209(h)(1).

⁴⁵ 53 P.S. § 28209(h)(2). In addition, the financial plan is to be revised annually to include an operating budget for the following two years. Within 90 day of office, a new mayor or the city's CEO can propose revisions to the financial plan or adopt the existing plan. 53 P.S. § 28209(i)(1).

⁴⁶ 53 P.S. § 28209(h)(2).

⁴⁷ 53 P.S. § 28210(e)(3).

⁴⁸ 4 Pa.C.S. § 1101 *et seq.*

(c) Transfers and distributions — The [state] department [of Revenue] shall: ***(i) To a city of the second class hosting a licensed facility, other than a Category 3 licensed facility, 2% of the gross terminal revenue or \$10,000,000 annually, whichever is greater, shall be paid by each licensed gaming entity operating a facility located in that city. In the event that the revenues generated by the 2% do not meet the \$10,000,000 minimum specified in this subparagraph, the department shall collect the remainder of the minimum amount of \$10,000,000 from each licensed gaming entity operating a facility in the city and deposit that amount in the city treasury. *** (3) From the local share assessment established in subsection (b), make quarterly distributions among the municipalities, including home rule municipalities, hosting a licensed facility in accordance with the following schedule: ***

(xv) Notwithstanding any other law, agreement or provision in this part to the contrary, all revenues provided, directed or earmarked under this section to or for the benefit of a city of the second class in which an intergovernmental cooperation authority has been established and is in existence pursuant to the act of February 12, 2004 (P.L. 73, No. 11), known as the Intergovernmental Cooperation Authority Act for Cities of the Second Class, shall be directed to and under the exclusive control of such intergovernmental cooperation authority to be used:

- (A) to reduce the debt of the second class city;
- (B) to increase the level of funding the municipal pension funds of the second class city; or
- (C) for any other purposes as determined to be in the best interest of the second class city by such intergovernmental cooperation authority.

Such revenues shall not be directed to or under the control of such city of the second class or any coordinator appointed pursuant to the act of July 10, 1987 (P.L. 246, No. 47), known as the Municipalities Financial Recovery Act, for such city of the second class.⁴⁹

While the Gaming Act addresses the timing of the distribution of Gaming monies from the Commonwealth’s Department of Revenue, there is no legislative guidance provided in either the ICA Act or the Gaming Act regarding the timing of the ICA’s distribution of the Gaming monies to the City. Neither Act provides a formal process for how to determine the use of the Gaming monies for the City’s “best interest.” Therefore, the release of Gaming money for such matters remains the sole decision of the ICA.

⁴⁹ 4 Pa.C.S. § 1403(c)(3)(1)and (xv).