

MEETING OF THE LOCAL GOVERNMENT COMMISSION

Wednesday, May 8, 2013

The meeting of the Local Government Commission was called to order by Senator John Eichelberger, Jr., at 8:45 a.m. in Room 14 East Wing-Main Capitol Building, Harrisburg, Pennsylvania, with the following individuals present:

MEMBERS

**Senator John H. Eichelberger, Jr., Chairman
Senator Robert D. Robbins
Senator Edwin B. Erickson
Senator John P. Blake
Representative Chris Ross
Representative Kate Harper
Representative Robert L. Freeman**

STAFF

**Michael P. Gasbarre, Executive Director
Philip H. Klotz, Assistant Director
David A. Greene, Legal Counsel
Kristopher Gazsi, Associate Legal Counsel
Karen S. Bear, Secretary**

GUESTS

**Lee Derr, Senator Eichelberger's Office
Chris Yniguez, Senator Robbins' Office
Luc Miron, Senator Blake's Office
Kyle Mullins, Senator Blake's Office
John Fulton, Representative Freeman's Office
Wanda Snader, House Republican Research Office
Rob Gaertner, House Republican Research Office
Ron Grutza, PA State Association of Boroughs
Joe Regan, Fraternal Order of Police
Tom Armstrong, PA Chiefs of Police Association**

As the first order of business, the Members discussed the minutes of the April 10, 2013, business meeting, which were unanimously approved on a motion by Senator Erickson and a second by Representative Ross. The financial report for the month of April 2013 was presented, and a detailed explanation was given by the Executive Director. The financial report was unanimously approved on a motion by Representative Ross and a second by Senator Erickson.

The Members reviewed and unanimously approved on a motion by Representative Ross and a second by Representative Freeman, the minutes of the May 2, 2013, meeting of the Act 47 Municipal Fiscal Distress Task Force. At the May 2 meeting, four subcommittees were formed and directed to study identified proposed relevant issues as well as others that may come to light. The topics of study for each subcommittee were formulated as a result of joint public hearings on Act 47 conducted during the 2011-2012 legislative session by the Senate Local Government Committee, Senate Community, Economic and Recreational Development Committee, House Urban Affairs Committee, and the House Local Government Committee on Act 47. Subcommittee meetings have been scheduled from May 20 through June 6. The next full task force meeting is planned for July 2, 2013.

At this point in the meeting, the Commission resolved itself into executive session to discuss personnel matters. At the conclusion of the executive session, the Commission reconvened the public meeting. The tenure of the Executive Director was extended for an additional year on a motion by Representative Ross and a second by Senator Robbins.

A review of the Title 8 draft of the Borough Code was next on the agenda. The draft would incorporate the provisions of the Code, as amended and reenacted by Act 43 of 2012,

into Title 8 (Boroughs and Incorporated Towns) of the Pennsylvania Consolidated Statutes. Act 43 was a several year effort of the Pennsylvania State Association of Boroughs and the Local Government Commission to modernize the Code. Working with the Legislative Reference Bureau, the bill draft places the language of the Borough Code into Consolidated Statute format and adds technical and substantive changes as discussed at the meeting.

It was suggested that Commission staff take action in regard to the following substantive changes outlined for consideration by the Members. Page and line numbers are in reference to the draft legislation.

Page 11, lines 18-20, and page 12, lines 22-24. Add the definition of “freeholder” and remove language related to the residence of the freeholder in light of the added definition.

Page 45, lines 15-16. Requested by the Pennsylvania State Association of Boroughs (PSAB), provide that a trustee of a charter school, similar to that of a school director, would be ineligible for elected borough office.

Page 109, lines 23-24. Requested by PSAB, remove a prohibition on elected or appointed borough officials from being compensated for serving on a board, commission, or an agency created by the borough, consistent with the other municipal codes.

Page 110, lines 26-28 and Page 111, lines 1-2. In addition to current restrictions found in Section 1104 (f), add subsection (3) to prohibit a borough resident from seeking elected borough office when that resident is employed as a police officer or firefighter in a municipality that has a contract with the borough to provide police or fire services.

Page 120, lines 22-23. Restore pre-Act 43 language, which was inadvertently removed, that again would give council the right to determine employment hours for police officers.

Page 184, lines 18-19. Amend Section 1202 (60) by permitting boroughs to purchase, own, use, operate, and control natural gas works.

Page 270, lines 11-13. Add that assessments for public improvements are to be accomplished by ordinance. Accomplishing through the passage of an ordinance, versus passage of a resolution, gives more transparency to the process. (*See also* proposed related changes on page 274, line 10, and page 369, lines 18-20.)

Page 274, line 10. Clarify that resolutions may not be used to levy assessments against benefited property for public improvements.

Page 325, lines 24-28. At the request of PSAB, remove subsection (b) of Section 2708, added by Act 43, which restricts council from delegating the power to maintain accounts and expend funds to the recreation board.

Page 369, lines 18-20. In concert with the proposed amendment to page 274, line 10, and page 369, lines 18-20, clarify that imposing assessments on benefited property will be done by ordinance.

Page 370, lines 22-23, page 371, lines 4-6, and page 372, lines 8-9. Specify that proposed borough ordinances are to be maintained in the borough office or place where borough records are kept rather a vague reference to keeping such proposed ordinances in a “place in the borough.”

Page 371, lines 13-26. Add language that would permit boroughs, as an option, to electronically submit copies of adopted ordinances to the county law library or the office in the county where ordinances are retained providing the county has a method available for such storage. An ordinance stored electronically must be able to be accessed by the public during regular business hours. In addition, the borough would be required to retain a printed copy of the e-mail and ordinance transmitted to the county.

The Members requested that the following proposed substantive change be brought back to the Commission at its June 12, 2013, business meeting upon undertaking deliberations and reaching concurrence with relevant stakeholders:

Page 190, between lines 15 and 16. Add a new special 5 mill dedicated tax for police services to provide support for boroughs that offer police services through a borough police department, participation in a regional police department, or through contracted police services.

In addition, staff was requested to work with PSAB, the Fraternal Order of Police, and the Pennsylvania Police Chiefs Association on a separate bill to address the *Borough of Millersburg v. Braun*, 44 A.3d 1213 (2012), and clarify the implications of the

Commonwealth Court decision as they may pertain to not only police chiefs, but also part-time police officers and administrative staff in relation to Sections 1184 and 1190 of the Borough Code.

The fiscal impact of two resolutions adopted at the 2012 annual convention of the Pennsylvania State Association of Township Supervisors (PSATS) was explained by Assistant Director Phil Klotz. At last month's business meeting, the Commission staff was requested to examine the potential fiscal and administrative impacts of a state income tax deduction for active volunteer firefighters and fire police and for employers of active volunteer firefighters and fire police. The Local Government Commission was considering the introduction of legislation that would amend the Tax Reform Code of 1971 to address the two resolutions. Resolution 12-44 requests legislation that would provide a state income tax deduction for active volunteer firefighters and fire police, as defined by fire company bylaws and recognized by the supporting municipality. Resolution 12-46 seeks legislation to afford a state income tax deduction of employers who allow active volunteer firefighters and fire police, as defined by the fire company bylaws and recognized by the supporting municipality, to respond to emergencies during work hours. The Commission decided to table consideration of the two resolutions and forward the fiscal impact analysis to PSATS for its review.

Copies of House Bill 1226, Printer's Number 1558, were given to the Members for their perusal. House Bill 1226, which is a Commission-sponsored bill, would amend the Second Class County Code to adopt a vacancy board process for filling vacancies in the office of county commissioner. The bill would require that the two remaining commissioners request that the county committee of the same political party or political body of the commissioner whose office is vacant, select and submit a list of three names, which may be ranked by the committee's preference, to the two remaining commissioners within 30 days after the vacancy occurs. The two remaining commissioners would be required to appoint a successor within 45 days of the vacancy. Upon the failure of the remaining commissioners to fill the vacancy within the prescribed time, the vacancy would be filled within fifteen additional days by the vacancy board. The vacancy board would consist of the remaining county commissioners and one elector of the county, who would be appointed by the commissioners at the board's first meeting each calendar year or as soon thereafter as practical. The elector would serve as the chairperson of the vacancy board.

Concerns were expressed that the makeup of the three-member vacancy board could allow for an inequitable selection for the office of county commissioner. After some discussion, the Members unanimously decided to draft language to expand the vacancy board to five members. The vacancy board would be established as follows: two appointments from the majority party; two appointments from the minority party; and the appointment of the president judge or his designee who would be chair of the 5-member vacancy board. The language will be forwarded to the County Commissioners Association of Pennsylvania for its review prior to the June 12 business meeting.

As the last order of business, the Members unanimously agreed to change the date of the June meeting with the Pennsylvania State Association of Elected County Officials from Thursday, June 13, 2013, to Thursday, June 20, 2013. The meeting will remain at 11:00 a.m. in the Senate Majority Caucus Room.

The meeting adjourned at 9:50 a.m.

ATTESTED: _____

May 10, 2013