

**MEETING OF ACT 47 MUNICIPAL FISCAL DISTRESS TASK FORCE –  
SUBCOMMITTEE ON ACT 47 PROCEDURE**

**Wednesday, May 22, 2013**

The meeting of the Act 47 Municipal Fiscal Distress Task Force Subcommittee on Act 47 Procedure was called to order by Senator John H. Eichelberger, Jr., at 1:35 p.m. in Room 39 East Wing-Main Capitol Building with the following individuals present:

**Members**

**Senator John Eichelberger, Chair  
Christopher Cap, PA State Association of Boroughs  
Dean Kaplan, Public Financial Management Group  
Gerald Cross, PA Economy League  
Matthew Creme, PA Bar Association  
Joseph Regan, Fraternal Order of Police  
Fred Reddig, PA Department of Community & Economic Development  
Art Martynuska, PA Professional Fire Fighters Association  
George Wolfe, PA State Association of Township Supervisors**

**Staff**

**Lee Derr, Senate Local Government Committee (R)  
Kris Gazsi, Local Government Commission  
Luc Miron, Office of Senator Blake  
Kyle Mullins, Office of Senator Blake  
Garth Shipman, House Commerce Committee (R)  
Sarah Cassin, Senate Urban Affairs & Housing Committee (D)  
Mike Gasbarre, Local Government Commission  
Duane Searle, Legislative Reference Bureau  
Jason Brehouse, Senate Community, Economic & Recreational Development (R)  
Karen Bear, Local Government Commission**

As the first order of business, Senator Eichelberger welcomed all of the subcommittee members, staff and guests and then gave a brief overview of the meeting. The purpose of the subcommittee meeting was to discuss the commentary submitted by several task force members outlining the members' positions on issues before the subcommittee, and establish a list of issues for the subcommittee to focus its attention on in future meetings and, ultimately, result in recommendations to the entire task force for its consideration.

At today's meeting, all members and guests received copies of today's Act 47 procedure subcommittee meeting agenda, comment letter of the Pennsylvania Economy League, joint comment letter of AFSCME, Fraternal Order of Police and Pennsylvania Fire Fighters Association, the Proposed Subcommittee Issues, and the Municipalities Financial Recovery Act (Act 47).

Senator Eichelberger opened the discussion by asking the members to consider the letter submitted by AFSCME Council 13, the Fraternal Order of Police, the Pennsylvania State Lodge, and the Pennsylvania Fire Fighters Association (Union letter). The Union letter raises three main policy proposals for the subcommittee:

- 1. Limit time a municipality may be in Act 47;**
- 2. Amend section 252 of Act 47 to presume that after 5 years, a municipality is financially secure unless proved otherwise; and,**
- 3. Provide unions and municipal employees a substantive role in recovery.**

Senator Eichelberger expressed that he did not believe that it would be possible to have a hard cut-off to limit the time that a municipality is in Act 47. The members proceeded to have a discussion about time limits for Act 47. Senator Eichelberger offered that he is more inclined to limiting time for Act 47 protection by implementing a financial test, which is a concept that was suggested by the Pennsylvania Economy League (PEL) in the letter they submitted to the subcommittee. Dean Kaplan suggested that the subcommittee would need to be flexible while trying to establish what the criteria are that would determine that a municipality is ready to leave Act 47. The conversation also turned to the Union letter's proposal that, after a period of five years in Act 47, a municipality should be presumed to

be secure unless proven otherwise. Jason Brehouse suggested an alternative to the Union's proposal that would trigger an automatic review of the municipality's position in Act 47 after five years rather than a presumption of financial security.

The subcommittee's discussion then turned to the letter submitted by the Pennsylvania Economy League (PEL). Gerald Cross offered that the PEL comments were intended to address all of the procedure topics set out in the proposed subcommittee issues document provided to all members of the Act 47 task force and with the letter PEL included a copy of a 1999 report prepared by the Pennsylvania Economy League entitled *Municipalities Financial Recovery Act Review*. Mike Gasbarre noted, while referencing numbered paragraph one of the PEL letter, that the Labor subcommittee favored a codification of the Early Intervention Program (EIP) and opening up a stakeholder process and review during the EIP. Senator Eichelberger noted that Pennsylvania's municipal recovery process waits until the municipality is nearly insolvent before intervening, while other states intervene earlier. Christopher Capp asked Gerald Cross how he would define a stakeholder process in a recovery plan. Mr. Cross responded that the need for one is implied by the plan's goals that no stakeholder be unduly burdened by the recovery plan. George Wolfe offered that despite being implied, the unions seem to have an interest in having more of a role in the process. Art Martynuska shared that his experience during the creation of the Johnstown recovery plan in 1992 was that the firefighters were allotted only 15 minutes to present their position. Dean Kaplan responded that Mr. Martynuska's experience is not necessarily the norm, and that his experience has included cases where he has tried to bring in the unions as much as possible. As one example, Mr. Kaplan pointed to Reading, where AFSCME had provided regional support to its local members to help them participate in the process. Mr. Kaplan also noted, however, that it is sometimes challenging for the unions to participate. During one recovery plan process he recalled that the police and firefighters were interested in participating and providing alternative proposals, but appeared to lack the expertise to fully flush out an alternative within a reasonable period of time. In such a case, Mr. Kaplan suggested that the state may be able to provide assistance to stakeholders attempting to hash out alternatives.

Next, the subcommittee addressed situations where local political dysfunction is hampering recovery efforts. One suggestion was to institute some form of mandatory control board that would implement some or all of the recovery plan where the local government refuses to cooperate. Mike Gasbarre noted that this was originally discussed in 1985, and there were constitutional questions about the control board usurping local government legislative authority. In contrast, in Articles 6 and 7 of Act 47, which covers third class cities, the required acts of council are still considered legislative acts, if the council refuses to act, relief from the court system can be sought by filing for an action in mandamus that would force the local government to take the required action. In its letter, PEL expressed an interest in expanding articles 6 and 7 to be available to other distressed municipalities where political dysfunction hampers recovery efforts. In that context, Fred Reddig suggested that putting a receiver in place could serve as a sanction to encourage compliance. Mr. Reddig noted that, in general, sanctions are difficult to impose in the context of municipal recovery because of constitutional limitations discussed above. The main sanction available now is simply withholding funds, which could backfire and make recovery more difficult. Whereas in Articles 6 and 7, the receiver process has been carefully crafted to alleviate constitutional concerns, this could be helpful in the context of other municipalities.

Senator Eichelberger then guided the subcommittee to consider municipalities that, dysfunction and noncompliance notwithstanding, are unable to achieve municipal recovery because they are simply non-viable. Senator Eichelberger asked the subcommittee whether one possible solution would be merger. The subcommittee generally agreed that this is a significant problem. One proposal that was suggested about seven years ago was to pursue a process of disincorporation that would allow a non-viable community to become a ward of the county. Dean Kaplan asked what the situation is with unincorporated areas now, if any, noting that some other states had areas not incorporated into particular cities automatically under the administration and services of the county. Mike Gasbarre answered Mr. Kaplan that under our current system no such areas exist in the Commonwealth. Fred Reddig, responding to Senator Eichelberger's question about

merger, suggested that it would be possible to form a state consolidation board. Dave Greene explained that although disincorporation is not a concept that is provided for under the state constitution, the constitution and subsequent case law allows for municipal classifications other than population. One such class could be a class of municipalities that appear and act as unincorporated entities, without leaving the constitution's structure, which relies on county or regional shared services. Mike Gasbarre noted that there is also case law that suggests that being distressed itself is a classification. During this conversation, the subcommittee members noted that disincorporation or merger would not necessarily simply solve all of the issues for non-viable municipalities. Remaining issues would include concerns about what to do with existing municipal debt, whether it could be assumed by a county in the case of disincorporation or by a merged municipality which may include healthy municipalities included in a merger.

The subcommittee next briefly touched on oversight issues, the PEL letter suggested expanding a coordinator's power to examine the financial records of municipal authorities, and providing DCED with more resources to provide its oversight. There was a general sentiment of support favoring greater coordinator examination of municipal authorities, but Senator Eichelberger cautioned that the subcommittee should not attempt to tackle increases of funding to DCED. Gerald Cross offered that authority finance issues can be a major issue for recovery. When the municipality/authority relationship breaks down, it can create financial time bomb issues because the municipality has very little power to do anything about authority financial issues. Fred Reddig suggested that the oversight power that was created by Act 11 of 2004 to examine the finances of authorities incorporated in Pittsburgh might serve as a suitable model for authorities in distressed municipalities around the state. Dean Kaplan noted that municipal authorities frequently have to engage in many of the same functions as the municipalities themselves, such as payroll processing, and sharing services between municipalities and authorities could be a cost savings strategy.

Gerald Cross also brought up the question of what to do when recovery is hampered by incompetence of local officials and staff. Mr. Cross suggested that perhaps increased opportunities for training would serve as a good step. George Wolfe cautioned that, while training can be useful, it is often the case that the most incompetent officials are not going to go to the training. Mr. Wolfe suggested that training could be made mandatory. Dave Greene questioned what would make the training mandatory because a threat of removal of office would raise constitutional concerns.

Next, Senator Eichelberger brought up the reports of the coordinator's recommendations which are prepared near the beginning of the recovery process. Senator Eichelberger expressed his surprise that these reports do not contain more detail about potential recovery strategies. Senator Eichelberger shared his experience with the report that was produced for the City of Altoona, noting that Altoona was at its millage limit for property taxes, but the report made no mention that one strategy could be conducting a property reassessment. He shared that he sought comment from the report writers to explain why they did not discuss reassessment as an option for Altoona in the report. The writers responded to Senator Eichelberger that it was their preference not to suggest too much up front, but work in suggestions later in the process. Senator Eichelberger explained his preference that he would rather see these alternatives as early as possible to allow officials, stakeholders and the public to respond. Fred Reddig explained that the report is intended to incorporate the requirements of the act, and the plan that follows from the report is supposed to look at a balance between the measures needed and the feasibility of executing the plan. Gerald Cross noted, that in the case of Altoona, some of these issues, including reassessment had been explored during the city's participation in the early intervention program, and if early intervention had been a mandatory pre-requisite to Act 47 protection, Altoona may have been required to explore why the early intervention options were not appropriate before taking another course. The subcommittee reached a general agreement that the reports should explore more options as part of the codified early intervention process.

Senator Eichelberger also raised similar questions about the sufficiency of the information collected by DCED through its Survey of Financial Condition form.

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Mike Gasbarre pointed out that this form is limited to two pages by statute. Fred Reddig explained that the current form incorporated the criteria for financial condition through the first 11 questions in a straight-forward manner. Mr. Reddig noted that DCED struggles to dedicate sufficient staff resources to analyzing the data that is collected by the form since the DCED merger. He did note, however, that this process has become more streamlined by offering electronic submission of these forms, which will soon become mandatory. Mr. Reddig also cautioned that one problem with the data collected by the survey is that there are no accounting standards for how to report; some communities rely on an elected auditor, while others employ a CPA auditor. Most local governments use cash based accounting reporting; this raises concerns that DCED does not see outstanding bills that have yet to be paid. Mr. Reddig also pointed out that since Act 103 of 2002 counties have been required to engage in fiscal and accounting practices that are compliant with Generally Accepted Accounting Principles. Senator Eichelberger, Christopher Cap, and George Wolfe proposed that the subcommittee review the form.

As the meeting began to conclude, Senator Eichelberger announced the following list of issues that appeared to have some consensus to pursue by the subcommittee in future meetings:

1. Time limits for Act 47 protection;
2. More options or sanctions provided coordinators or receivers to obtain better compliance from local governments;
3. More participation by all interested parties in recovery process;
4. Codify early intervention and look into public participation and more recovery options including mergers and reassessments;
5. Consider non-viable community solutions;
6. Explore the role of DCED;
7. Training for municipal management;
8. Coordinator intervention into authorities following examination of authority finances; and
9. Examine financial reporting of municipalities.

Senator Eichelberger shared his belief that crafting legislation for some of these issues may be challenging. Mike Gasbarre suggested that the subcommittee look at Senator Wozniak's bill from the previous session providing for disincorporation of boroughs. Senator Eichelberger suggested that some issues, particularly non-viable communities and examination of the recovery report, may benefit from the attention of an even smaller group (super-sub-committee) meeting and making proposals to the subcommittee. At George Wolfe's suggestion and Senator Eichelberger's agreement, Fred Reddig offered to reach out to the Government Finance Officers Association for their input on the survey of financial condition form.

Prior to adjournment, Senator Eichelberger gave his closing remarks and reaffirmed that the next Act 47 procedure subcommittee meeting would occur on Wednesday, May 29, 2013, at 10:00 a.m. in Room 39 East Wing-Main Capitol Building.

The meeting adjourned at 2:55 p.m.

Attested: \_\_\_\_\_  
May 23, 2013