

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

Wednesday, May 29, 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 10:00 a.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
George Wolfe, PA State Association of Township Supervisors**

Staff

**Lee Derr, Senate Local Government Committee (R)
Anna Malcien, House Republican Research Office
Kris Gazsi, Local Government Commission
Garth Shipman, House Commerce Committee (R)
Jason Brehouse, Senate Community, Economic & Recreational Development (R)
Mike Gasbarre, Local Government Commission
Philip Klotz, Local Government Commission
David Greene, Local Government Commission
Karen Bear, Local Government Commission**

At today's meeting, all members and guests received copies of Subcommittee meeting agenda, minutes from the May 22, 2013, meeting of the Subcommittee on Act 47 Procedure, the 2012 Survey of Financial Condition form filed by municipalities with the Department of Community and Economic Development, and House Bill 1321 of 2001.

As the first order of business, the minutes of the May 22, 2013, Subcommittee on Act 47 Procedure were unanimously approved on a motion by Dean Kaplan, which was seconded by Christopher Cap.

Senator Eichelberger reviewed the proposed completion timeline for the Act 47 Task Force, which had been given to all Task Force members at the May 2, 2013, meeting. All Subcommittees are to develop recommendations for legislation and present those proposals at the next full Task Force meeting, tentatively scheduled for July 2, 2013. After the July Task Force meeting, Subcommittees are to prepare draft legislation, which in turn will be presented sometime in early September to the full Act 47 Task Force. After the draft legislation presentations, the Members of the Task Force are charged with reviewing the legislation and submitting any comments or suggestions prior the November Act 47 Task Force meeting. Ultimately, introduction of legislation is to occur in November or December 2013.

It was determined by the Subcommittee Members that reviews by the organizations, which they represent, are needed prior to submission of any formal recommendations at the next meeting of the full Task Force. Senator Eichelberger questioned if one month would be sufficient time for review by the various organizations. Everyone agreed that the deadline was manageable for appropriate analysis.

Mike Gasbarre explained that the May 22 minutes of the Subcommittee on Act 47 Procedure show nine highlighted points, for which the Subcommittee had some consensus, that are the basis for further discussion at today's meeting:

- 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;**

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4. Codify early intervention and look into public participation and more recovery options including mergers and reassessments;
5. Consider nonviable 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.

Item #1 - Time limits for Act 47 protection. After a lengthy discussion, the Subcommittee agreed that a five-year limit should be placed on municipalities that have been declared fiscally distressed. At the beginning of year five, a financial test would be implemented by the Coordinator. If it is determined that the municipality is unable to accomplish the goal of exiting Act 47 status, a three-year exit strategy would be implemented by the Coordinator. If a municipality refuses to adhere to the Coordinator's recommendations, the municipality would automatically enter into Chapters 6 and 7 of Act 47. An amendment would be needed to Chapters 6 and 7 of Act 47 that would include all classes of municipalities. Currently, the aforementioned Chapters only apply to third class cities. If upon the completion of a financial test the municipality is deemed nonviable, the municipality would be subject to applicable procedures for dissolution. During the Coordinator's review of a municipality's Act 47 status, all stakeholders should be encouraged to offer ideas to the Coordinator on ways to aid the municipality to exit Act 47 status. Dialogue ensued as to whether the appointed Coordinator needs to be a local individual or someone outside of the municipality. Mike Gasbarre replied that it was always the intent of Act 47 to have an independent Coordinator. Fred Redding explained that DCED does not encourage who is chosen as the Coordinator. A Coordinator, preferably, is a team of individuals with varying skill sets to better match the needs of the municipality. Mr. Redding also suggested language be included that would add "teeth" to the process thereby encouraging compliance by the distressed municipality.

Item #2 - More options or sanctions provided coordinators or receivers to obtain better compliance from local governments. It was determined by the Subcommittee that the Early Intervention Program (EIP) should be a mandatory precursor to entering Act 47 status. The Secretary of DCED would have the discretion to waive the EIP for municipalities in extenuating circumstances. The municipality must adhere to the recommendations of DCED and any consultants to be permitted future entry into the Program. The participatory contribution of the municipality to enter into EIP would be reduced from the current 50 percent to 25 percent, with DCED given the option to lower the cost even further to 10 percent if the municipality is deemed eligible. DCED would absorb the remaining cost of the EIP. Once admitted into the EIP, all municipal officials would be required to adhere to proper training courses offered by DCED and the various municipal associations. Refusal to attend proper training would result in the municipality's loss of money for participating in the Program. During the EIP, a representative would be available to meet with all interested parties to discuss possible options that would alleviate the financial constraints of the municipality.

Item #3 - More participation by all interested parties in the recovery process. The Subcommittee Members agreed that all elected and appointed officials, as well as citizens of the municipality, should be allotted appropriate time to offer suggestions that would aid in the financial recovery of the municipality. Access to the assigned recovery coordinator would enable all stakeholders the opportunity to take an active role in the recovery process.

Item #4 - Codify early intervention and look into public participation and more recovery options including mergers and reassessments. Amending Chapters 6 and 7 of Act 47 would accomplish the goal of Item #4. Currently, Chapters 6 and 7 only are applicable to cities of the third class. By amending the aforementioned Chapters to include all classes of municipalities, it could aid other distressed municipalities where political strife precludes financial recovery. A receiver would be appointed to oversee and administer necessary operations of the municipality, thereby, encouraging compliance by

the local officials. The Subcommittee Members unanimously agreed that including all class of municipalities would promote the end goal of financial recovery for all distressed municipalities.

Item #5 - Consider nonviable community solutions. The Subcommittee Members discussed the possibility of mandatory consolidation or merger of a fiscally distressed municipality with a contiguous municipality. However, during the deliberations many concerns were revealed that it was deemed by the Members too problematical to promote mandatory consolidation or merger. Many Members did suggest that disincorporation could prove to be a likely alternative that should be considered. House Bill 1321 of 2011, which was prime sponsored by Representative Stevenson, provided language for the creation of unincorporated districts, which are essentially municipalities created to serve the same areas as municipalities that had voted to dissolve their prior form of municipal government and be governed by the county. Counties would be responsible for overseeing the disincorporated district's municipal services, which could be provided, for example, by neighboring municipalities or a contractor. An unincorporated district may be formed by: (1) ordinance of the governing body of the eligible municipality; (2) initiative of the electors by filing a petition with the county board of elections, signed by electors comprising at least 15 percent of the number of electors voting for the office of Governor in the last gubernatorial general election; or (3) the court of common pleas upon the filing with the prothonotary of a petition signed by 67 percent of the electors, provided that the petition stipulates creation of an unincorporated district without a referendum.

Item #6 - Explore the role of DCED. Senator Eichelberger acknowledged that a major increase in the annual appropriation would certainly increase the efficiency of the Department. Moreover, the Senator confessed that a recommendation to increase the Department's appropriation was beyond the scope of the Subcommittee and, in all likelihood, would prove fruitless with the current state of the Commonwealth's budget. Fred Reddig acknowledged that staffing has decreased in recent years and that it has put a strain on existing personnel. However, DCED is in the process of finalizing its electronic form filing system, which will assist employees with a more timely and thorough review of municipal form submissions. Mr. Reddig stated that the use of the electronic system would alleviate some problems experienced by municipalities and DCED personnel that currently exist by utilizing paper forms.

Item #7 - Training for municipal management. As previously mentioned in Item #2, training for municipal management should be mandatory. Mr. Reddig emphasized that DCED partners with the six municipal associations to provide affordable training to all municipal officials. Training is performed by DCED personnel or by qualified individuals who are peers of the local government officials for whom they are instructing. Representatives of the municipal associations concurred with Mr. Reddig's assessment of the classes made available to local government officials.

Item #8 - Coordinator intervention into authorities following examination of authority finances. It was established by all Subcommittee Members that Act 47 should be amended to include municipal authorities so that intervention by the Coordinator is possible after examination of authority finances. Mr. Cross, Mr. Kaplan, and Mr. Reddig advised the Subcommittee that often the municipal authorities contribute to the financial pain of the municipality. Mr. Gasbarre suggested that the Subcommittee look at the language found in Act 11 of 2004 that created the Intergovernmental Cooperation Authority for the city of Pittsburgh, which included the Authority with the distressed municipality by definition. Mr. Gasbarre also reported that Senator Pileggi introduced legislation during the 2011-2012 legislative session that became Act 73 of 2012, amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes by prohibiting monies of an authority, with specific exceptions, from being used for any grant, loan, or other expenditure not related to the mission or purpose of the authority as set forth in the authority's articles of incorporation.

Item #9 - Examine financial reporting of municipalities. A copy DCED's annual Survey of Financial Condition completed by municipalities was given to the Members for their perusal. It was decided that the two-page form could be modernized to reflect a

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more accurate fiscal status of a municipality. Mr. Reddig replied that the last changes to the form were in 2006 and that questions 1 through 11 are in statute. All municipalities must submit the annual questionnaire if the municipality seeks liquid fuels funds. Senator Eichelberger stressed that requesting more information may help DCED in determining which municipalities are in need of early intervention. Senator Eichelberger asked Mr. Reddig if the information that is received from the municipalities is erroneous. Mr. Cross replied that in his experience municipalities usually do not answer incorrectly, but it is more of a case of answering the questions inadequately. Mr. Reddig agreed with Mr. Cross' observation and added that there are no municipal accounting standards. Although more modern accounting standards should be implemented for municipalities similar to that enacted for counties, the Subcommittee recognized the divergent capabilities of local governments in this regard and recommended that municipalities work with their statewide municipal associations to develop better financial standards or adopt generally accepted accounting principles. Senator Eichelberger also suggested seeking the input of DCED's Form Committee to ascertain whether the form could be restructured so that a municipality's fiscal status is more readily ascertained by Department staff.

Senator Eichelberger requested that the Subcommittee Members review House Bill 1321 and the Survey of Financial Conditions form and provide comments to the Commission by the week of June 24, 2013. Those remarks will be included in the Subcommittee's report to the full Act 47 Task Force, on July 2, 2013.

The meeting adjourned at 11:55 a.m.

Attested: _____
June 17, 2013