MEETING OF THE ACT 47 MUNICIPAL FISCAL DISTRESS TASK FORCE-SUBCOMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT/TAX-EXEMPT PROPERTY

Monday, May 20, 2013

The meeting of the Act 47 Municipal Fiscal Distress Task Force Subcommittee on Community and Economic Development/Tax-Exempt Property was called to order by Representative Robert Freeman at 1:30 p.m. in the Local Government Commission Conference Room located at 555 Walnut Street, Harrisburg, with the following individuals present:

Members

Representative Robert Freeman, Chair
Christopher Cap, PA State Association of Boroughs
Gerald Cross, PA Economy League
Richard Hadley, Allegheny League of Municipalities
Bruce Kelly, PA Municipal League
John Brosious, PA Municipal Authorities Association
Ellen Horan, Coalition for Sustainable Communities
Fred Reddig, Department of Community and Economic Development

Staff

Jon Hopcraft, Senate Urban Affairs & Housing Committee (R)
Tyrone Powell, Senate Local Government Committee (D)
Brianna Medevich, House Local Government Committee (D)
Garth Shipman, House Commerce Committee (R)
Luc Miron, Office of Senator Blake
Kyle Mullins, Office of Senator Blake
Mike Gasbarre, Local Government Commission
David Greene, Local Government Commission
Duane Searle, Legislative Reference Bureau

As the first order of business, Chairman Freeman called the meeting to order and began with introductions of those in attendance. He then asked Gerald Cross, of the Pennsylvania Economy League (PEL), to discuss the contents of the handouts prepared by PEL. Turning to the handout entitled "Shared Services and Tax-Exempt Property Impact Fees," Mr. Cross summarized the conclusions related to the "Merger/Consolidation Case Studies-2009" provisions of the handout, which were prepared on behalf of the Pennsylvania State Planning Board. He described how the study suggested that current methods of merger and consolidation in Pennsylvania are cumbersome and that shared tax bases and shared services are alternatives to merger and consolidation that warrant additional examination by the General Assembly. Mr. Cross then turned to the portion of the handout that contained excerpts from a 2006 study on Tax-Exempt Property prepared for the Pennsylvania League of Cities and the Pennsylvania State System of Higher Education. He indicated that PEL surveyed the approach of different states to payments-in-lieu-of-taxes (PILOTs) by tax-exempt entities. He noted that the approach in Connecticut, and, to a lesser degree, Wisconsin, were popular approaches that used a "fixed budget item" method. PEL proposed several alternatives, including a straight formula that grew over time. Finally, Mr. Cross described the last portion of the handout, an op-ed prepared by PEL which described the Pennsylvania system of local government as "broken in the box," i.e., fundamentally flawed and unworkable regardless of whom may be in charge of governance. He emphasized that while a "tinkering around the edges" approach is beneficial, a wholesale reworking of local government is necessary to effect significant change.

Mr. Cross then described the "Structuring Healthy Communities" handout, which is Part 1 of a self-funded study conducted by PEL. He noted that a central goal of the study was to establish or discern a "stress index" for municipalities moving into fiscal distress, and also to describe the stages of municipal decline that have been observed over the past thirty to forty years. From this information, PEL established a 5-stage model for municipal decline, regardless of municipal classification. Mr. Cross indicated that many municipal officials have confirmed the soundness of the model. He noted that 2002 data were used in the study, and that he suspected conditions have only gotten worse since the recession of 2008.

Addressing Tax-Exempt Properties in Distressed Municipalities

Chairman Freeman directed Mr. Cross back to the first handout and asked him to expand on the different approaches that PEL set forth to address PILOTs. Mr. Cross described the "hold harmless" mechanism, which would require negotiated financial contributions by tax-exempt entities for the projected impact of the nonprofit on the tax base of the municipality. He also described a "straight compensation formula" that would reflect the ratio of student population to total municipal populations, and base a financial contribution on that factor. Mr. Cross noted that this approach has not been espoused by any universities, although he suggested that many nonprofits appear more willing to make capital contributions for specified projects, such as sidewalks, street lights, sewer, and water that are related to their facilities. The nonprofits, Mr. Cross suggested, are resistant to PILOTs, per se, because a recurring payment obligation may undermine their status as tax-exempt or, alternatively, leave the impression that the nonprofits are being exploited for matters that should be addressed with general fund revenues.

Chris Cap of PSAB noted that the subcommittee may wish to consider the county-wide sales tax initiative that was introduced during the 2010-2011 Legislative Session and endorsed by various municipal associations. Luc Miron noted that Senator Blake has introduced a similar measure for this legislative session. Mr. Cross also noted that PEL has written on a "drink tax" mechanism for alternative revenue allocation among municipalities. He noted that PSAB supports a drink tax approach.

Mr. Cap further indicated that "Act 111 costs" related to collective bargaining for uniformed employees are a significant driver of fiscal stress faced by municipalities. Mr. Cross mentioned that the "Structuring Healthy Communities" study discussed "Act 111" costs in the five stages of municipal fiscal distress and noted that the study suggested that where the demand for municipal services corresponded with the growth in population, Act 111 costs "kicked in" and were sometimes a feature in the inception of municipal fiscal decline. Mr. Cap stated that Act 111 could also be viewed as a deterrent to regionalization because municipalities are concerned about large, sophisticated bargaining units having significant leverage in contract negotiations. Chairman Freeman noted that although all these matters were related, Act 111 was the subject of discussions for the Labor Subcommittee.

Chairman Freeman then raised the agenda item of House Bill 2018 of 2007. Chairman Freeman circulated a table demonstrating that municipalities facing fiscal distress (Act 47 or early intervention participants) have a high percentage of total assessed value of real property that is owned by nonprofit entities. He noted that that some communities evolve first as commercial or industrial centers, which makes them then attractive for non-profit entities such as hospitals and universities. The entities then acquire a significant portion of the real property in the municipality, which erodes the tax base. The Chairman discussed the crucial role of the property tax in municipal finance and queried whether the Subcommittee should be considering changes to the tax law that would permit a greater retention of income tax revenue by the municipality providing the employment. He conceded that this proposal would be met with some resistance. He noted that the burden is shifted to taxpayers in high tax-exempt entity municipalities, which results in not only a reduction of the tax base, but also an increase in tax rates for the remaining taxpayers.

He then discussed the operation of House Bill 2018. It would apply to any municipality that has 15% or more of its property in tax-exempt status. It would sequester revenue from the "Johnstown Flood Tax," levied on net sales of liquor in accordance with Act 4 of 1936 (Sp. Sess.), into a special fund to be allocated to qualified municipalities with the following stipulations: No single municipality may receive any more than 10% of the funds available for distribution, and no municipality may receive funds in excess of $100 per person in the municipality based on the last decennial census. Without of this latter cap, the Chairman noted, an inordinate amount of money would be allocated to more sparsely populated municipalities. He felt that the final version of the bill was a credible, balanced approach. This model is based on the premise that the Commonwealth as whole

should "step up to plate," given that the communities in question are regional assets and major employers. Another advantage to the model is that it avoids the whole PILOT issue. Finally, because the fund is statewide, it avoids issues of regional disparity. The Chairman then asked the subcommittee to comment on the 15% threshold currently contained within the bill. Tyrone Powell, Senator Teplitz's office, suggested that there was support for the concept behind the bill, and there were some who would advocate for a higher percentage, perhaps 17%. Mr. Powell suggested that perhaps a "back-up" bill, focused on those municipalities with the greatest need could be entertained, but only as a back-up to HB 2018. The Chairman responded that a measure focused on the communities with the most need represented a "rock and a hard place" problem in terms of gaining broad support for the bill. Representative Freeman indicated that he will be reintroducing the bill this session.

Bolstering the Early Intervention Program

The Chairman then asked Fred Reddig of DCED for comment on the early intervention program. Mr. Reddig suggested that arguably one of the disadvantages of the program is that it is voluntary, and thus requires a community to acknowledge that it is facing fiscal stress. He noted that between 60 and 70 communities, including 6 counties, have been assisted through the early intervention program. The Chairman questioned whether the Subcommittee should consider, in its report back to the full Task Force, a modification to the early intervention program that would provide additional or earlier warnings of distress to the Department and the community. Mr. Cap asked Mr. Reddig if the current staffing levels at DCED were sufficient to adequately administer the early intervention program. Mr. Reddig noted that there are challenges in lining up responses to municipal surveys and to conducting more rigorous analysis of the data submitted by municipalities. Mr. Cap questioned whether staffing issues at the Department should be an issue addressed in the report of the Committee. The Director answered that both Department staffing levels and codification of the early intervention process will be addressed by the Task Force.

Structural Issues-Merger/Consolidation-Shared Services/Tax Base-"Nonviable" Municipalities

Mr. Cross noted that PEL's research has revealed that citizens view local government as the most personal level of government and that, even in the Act 47 process, any state-level involvement is seen as a threat to their representation. He noted that this information is relevant to "dispelling" the notion that merger/consolidation and regionalization are "desirable" solutions to municipal fiscal distress.

Mr. Brosious discussed his thoughts about the Task Force. He indicated that historically trying to address Act 47 piecemeal has not yielded significant improvements. He wondered whether a more significant, radical change in municipal government in Pennsylvania has been entertained, particularly when merger/consolidation is seen as undesirable. Particularly, having municipal areas under county control, which is still an elected government. The Director suggested that such a model would be an alien concept in Pennsylvania. He discussed legislation in prior sessions that would permit municipalities in Allegheny County to disincorporate, after a court proceeding, with a resultant delegation of municipal functions to the county. In such a case, the county would levy the taxes of the municipality in that area. This model lent itself to Allegheny County because of its current functions. Other than county control, there would likely have to be privatization. Both Mr. Gasbarre and Mr. Brosious acknowledged that the County Commissioners Association of Pennsylvania has not been consulted on this issue specifically. Mr. Brosious clarified that what he envisioned was not so much a "voluntary" mechanism, but something that would be activated automatically if a municipality were unable to remain self-sustaining.

Mr. Reddig discussed recent efforts of the State Planning Board to address nonviable municipalities: One, a successful measure, would have amended the merger and consolidation law to remove impediments to merger and consolidation. The other would have delegated the analysis of nonviability to a state boundary change commission, which

would then make a recommendation to the General Assembly for legislation to disincorporate the nonviable municipality. Mr. Reddig suggested that this approach would avoid constitutional questions because the General Assembly, an elected body, would ultimately be making the decision regarding the continuation of the municipality. Mr. Kelly asked how the debt of the disincorporated municipality would be handled.

Mr. Cross mentioned that currently under the laws governing home rule, a county can assume municipal functions and utilize focused tax revenue for the municipality to pay for those services. He suggested that this could be an approach that should be examined for statewide application. Public works could be something that would lend itself to this model. Mr. Cross noted that if citizens desire their boundaries, let them have them. In a model involving county administration of municipal functions, such a municipality would essentially have a limited vote of paying for outsourced municipal functions.

Mr. Cap noted that from a larger viewpoint, Act 47 communities represent a small percentage of the total communities in Pennsylvania. The Task Force work will certainly raise awareness of the issues, but ultimately structural issues have to be remedied because certain communities are "set up" for failure by external factors. Mr. Cap noted that there are probably a very small percentage of municipalities that are interested in disincorporation.

Mr. Cross indicated that the county assumption model yielded some municipalities that would result in slightly higher costs, but that many more small municipalities would enjoy savings. Mr. Brosious noted that this model is similar to what occurs now with school districts. Mr. Cross emphasized that we already have shared tax bases with counties and school districts, and the same should occur with municipalities. When you look at the allocation of real estate revenue, only 10-15% is provided to the municipality, the political subdivision providing the bulk of the services. Mr. Cross suggested that "breaking through the tax barrier" is a central element in improving the efficiency of Pennsylvania local government.

The Chair noted that in other states, a metropolitan approach is used whereby commercial/industrial property tax revenue is used on a regional basis because they are more appropriately considered regional assets, while residential property tax revenue is retained locally.

Mr. Kelly stated that intergovernmental cooperation via COGs or other instrumentalities can work. He emphasized that it can get difficult to bring everyone to the table. On the issue of tax exempt property, Mr. Kelly noted that a large portion is actually owned and used by the municipality itself.

Mr. Cap emphasized that intergovernmental cooperation can be very effective, but he wishes there were greater incentives for intergovernmental cooperation.

The Chair then asked Mr. Cap to discuss the submission of the Pennsylvania State Association of Boroughs. He discussed functional consolidation and intergovernmental cooperation and impact fees for nonprofits. The Chair noted that "not all nonprofits are created equal." Mr. Powell raised the issue of distressed municipalities going from a mercantile to a "payroll preparation tax," including an exemption for nonprofits having a small payroll. The Chair said the whole tax base issue is something that the Task Force is going to have to address, and that the Subcommittee on Finance will address specifically.

Priority Funding for Act 47 Communities-Agency Communication/Education

The Director discussed Section of 282 of Act 47, which directs that Act 47 municipalities enjoy priority funding for Commonwealth funding assistance. The Director asked Mr. Reddig for guidance on how this section is being implemented. Mr. Reddig noted that there are "learning curve" issues with every new administration. He mentioned that consideration was given to notifying all state agencies when there is a designation of distress. He discussed a recent situation with Altoona and a DEP recycling grant, in which

the DCED was able to get priority funding for the City. Furthermore, DEP was willing to revisit their program guidelines and more clearly specify the priority mechanism. DCED has to work almost on-on-one with other agencies to revisit program guidelines to add language reflecting the priority status. Mr. Cap asked about any time limitation that may exist for priority funding. Mr. Reddig noted that the question relates to an overall view of the modifying the Act, and specifically those external conditions that are keeping certain municipalities in the Act. The Director noted that the Act 47 Procedures Subcommittee would likely be visiting this question. Alternatives may include municipalities providing justification for continued participation or the creation of a "board of control" mechanism. He noted that some of these alternatives may have varying degrees of support or may carry with them specific problems.

Other Issues—"Exit Strategies"-Inconsistencies in Commonwealth Efforts

The Chair noted that because Act 47 could be characterized as a "holding pattern" process rather than a solution, there is sometimes a misconception/prejudice that there is "mismanagement" in governance. He noted that sometimes this is an issue, but often it is not. The lack of a tax base and employers, other than nonprofits, leads one to consider that the form of governance will not make a significant difference. On the issue of emerging from Act 47, the Chair asked Mr. Reddig about the composition of plans and whether they provide a "road map" out of fiscal distress. Mr. Reddig noted that the initial plans are predominantly stabilizing in nature, but as the process moves forward, exit strategies are emphasized. He noted that the biggest issues in terms of exiting the program are labor and the fact that some communities are simply nonviable. Some communities have embraced the fact that they are nonviable, but there is no way for them to cease existence. Another issue related to exit is the tax base issue, as well as externalities. On this note, the Chair questioned whether the Task Force should be examining how the Commonwealth directs funds. When the Commonwealth allocates economic development money, it causes a "ripple effect" that benefits surrounding municipalities. If the Commonwealth decides to develop "green fields," the effect could be to undermine the viability of urban cores.

Mr. Kelly noted that Altoona would be out of Act 47 if the county would reassess. He noted that there are political reasons why county commissioners resist a reassessment. He acknowledged that the city could do it on its own, but the expense would be prohibitive. He acknowledged that what the Task Force is doing now is good, but that, at some point, we are going to have to take a step back even further and view a bigger picture. There are simply too many layers of problems, and municipalities are "trying to play a game with bad rules."

The Chair noted that the Subcommittee should take a look at Commonwealth funding efforts and activities by state agencies and make sure that they are not working at "cross purposes." As an example, the Chair noted that DCED is trying to stabilize an urban corridor and fighting for funding to do that, while at the same time PennDOT is working on an interchange that will create a greenfield which undermines the DCED efforts. It is an example of an unwise use of resources.

The Director reported that he spoke with Joanne Throwe at the University of Maryland, who is involved in creative funding efforts, including some work with the City of Scranton. The Director noted that she is willing to come to the next Task Force meeting.

Revitalizing Act 47 Communities-Subcommittee Priorities-Redevelopment Authorities-Land Banks

The Chair mentioned that the Subcommittee should also focus on what can be done to make Act 47 communities more desirable for economic development. In many respects these communities have many excellent features: architectural, cultural, and demographic advantages. There is often decent housing stock. Older urban core communities have advantages that, if safe, clean, and attractive, will bring younger people. He recounted the recent beneficial changes that have occurred in Easton. He suggested that there are demographic changes that, if facilitated properly, can breathe life back into the older

urban core communities. The Director noted that schools and safety are the major factors in the attractiveness of urban communities. The Chair noted that he believes that the concept of the "neighborhood school" is something that should be reexamined and could be a factor in any revitalization effort for urban center: as a civil anchor, "walkable," and another stabilizing factor.

Mr. Reddig mentioned the "Growing Smarter" initiative from the late 1990s as a representation of the intersection between transportation, land use, and economic development. Looking at policy and investment decisions, while examining those factors together, is an approach that could perhaps be promoted or reexamined currently. Ms. Horan mentioned that the Chamber concentrated on the economic development component and the Main Street and Elm Street programs, but that funding is, of course an issue.

Mr. Miron mentioned that land banks may be something that can be considered. Mr. Reddig mentioned that DCED may have someone that could speak to that feature, as well as Christine Goldbeck from House Urban Affairs Committee.

The Chair emphasized that a main focus of the Subcommittee should be making Act 47 communities more attractive. Ms. Horan mentioned land value taxation as another concept being considered by the City of Reading.

Mr. Powell mentioned his experience in Michigan, and the use of economic development corporations. The Subcommittee concluded that redevelopment authorities are similar to economic development corporations. The Chair noted that a recurring issue has been to eliminate the restrictions or arbitrary population thresholds on the formulation of redevelopment authorities.

The subcommittee resolved to meet again on June 13, 2013, at 10:30 a.m. in the Commission offices.

The subcommittee resolved to invite Joanne Throwe to attend the next meeting via conference call.

The meeting adjourned at 3:00 p.m.

Attested:____________________________
May 30, 2013