

**MEETING OF ACT 47 MUNICIPAL FISCAL DISTRESS TASK FORCE –  
SUBCOMMITTEE ON FINANCE AND INDEBTEDNESS**

**Thursday, June 6, 2013**

The meeting of the Act 47 Municipal Fiscal Distress Task Force Subcommittee on Finance and Indebtedness was called to order by Senator John P. Blake at 10:00 a.m. in the Local Government Commission Conference Room, Forum Place Building, Harrisburg, with the following individuals present:

**Members**

**Senator John Blake, Chair  
Dean Kaplan, Public Financial Management Group  
John Kelly, U.S. Bankruptcy Court – Middle District of Pennsylvania  
John Brosious, PA Municipal Authorities Association**

**Staff**

**Jason Brehouse, Senate Community, Economic & Recreational Dvlpmt. Committee (R)  
Anna Malcein, House Republican Research Office  
Kris Gazsi, Local Government Commission  
Luc Miron, Office of Senator Blake  
Kyle Mullins, Office of Senator Blake  
Mike Gasbarre, Local Government Commission  
Phil Klotz, Local Government Commission  
Duane Searle, Legislative Reference Bureau  
Karen Bear, Local Government Commission**

**Other Attendees**

**Gerald Cross, Pennsylvania Economy League  
Joe Boyle, Pennsylvania Economy League  
Dave Davare, Pennsylvania Economy League  
Fred Reddig, Department of Community & Economic Development  
Dave Britton, Department of Community & Economic Development  
Art Martynuska, Pennsylvania Professional Fire Fighters Association  
Ron Jumper, Office of Senator Costa**

As the first order of business, Senator Blake 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 proposed Subcommittee Issues as directed by the Act 47 of 1987 Municipalities Financial Recovery Act Task Force. The issues to be addressed at the meeting were as follows:

- 1. Implement tax-base sharing for distressed municipalities and neighboring communities.**
- 2. Institute payroll tax for distressed municipalities.**
- 3. Enact an optional 1% county sales tax.**
- 4. Waive state mandates placed on distressed municipalities.**
- 5. Permit the coordinator to petition the court of common pleas under Section 123 of Act 47 to increase the rate of Local Services Tax above \$52.**
- 6. Create overlay districts to provide municipal services pursuant to Section 7 of Article IX of the Pennsylvania Constitution.**
- 7. Consider review of exemptions listed in the assessment laws.**

All members and guests received copies of the Finance and Indebtedness Subcommittee meeting agenda, Chapter 25 of Title 53 (Municipalities Generally), a comment letter of the Pennsylvania Economy League (PEL) regarding implementing tax-base sharing for distressed municipalities and neighboring communities, a PEL report prepared for the Lehigh Valley Partnership for a potential optional 1 percent county sales tax, materials from Wisconsin and Minnesota on waiving state mandates placed on distressed municipalities, and an analysis by PEL on the permitting of the coordinator to petition the court of common pleas to increase the rate of Local Services Tax (LST) above \$52.

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Art Martynuska, Pennsylvania Professional Fire Fighters Association, offered the assistance of the Municipal Financial Assistance Committee to the Subcommittee on Finance and Indebtedness, as well as to the other three subcommittees established by the Act 47 Task Force. The Municipal Financial Assistance Committee was designed to help municipalities formulate ideas on how to generate more revenue. Senator Blake thanked Mr. Martynuska for his suggestion and his willingness to aid the Act 47 Task Force.

Senator Blake opened discussions by addressing each item listed above. Dean Kaplan noted that Act 47 communities typically face great budget pressure from growing expenditures for employee salary and benefit costs, and suggested that the Subcommittee ensure that its recommendations recognized the need for matching growth in revenues.

**Item #1 – Implement tax-base sharing for distressed municipalities and neighboring communities.** Gerald Cross and Joe Boyle of the Pennsylvania Economy League (PEL) outlined the memorandum they had submitted to the Subcommittee regarding tax-base sharing. Mr. Cross and Mr. Boyle stated that most Act 47 municipalities offer a full range of services; however, the municipalities (usually cities and boroughs) are getting older, smaller, and poorer. In contrast, townships generally have fewer services available to residents, such as police protection, water, and sewer services. Both gentlemen maintained that the creation of a special service delivery area funded through tax base sharing would permit neighboring municipalities to provide residents with efficient service delivery that is supported by dedicated revenue. While municipalities can and do share services on various levels now, such arrangements currently lack a mandatory taxing mechanism.

Mr. Cross further expounded that often municipalities are entrenched by the established boundaries and are unwilling to overlap or share services with a neighboring municipality. Currently, municipalities in home rule counties are empowered to share services. Dean Kaplan offered that many municipalities are open to the idea of shared services, but are very hesitant to form regionalized services due to varying reasons, such as pension issues and legacy costs. John Brosious pointed out that townships will experience the same issues as many boroughs and third class cities, such as trying to provide services with declining revenue. The Subcommittee members agreed many municipalities will not consider shared services voluntarily. Perhaps the need exists for mandatory inclusion in a shared services program. Fred Reddig offered an example of a municipal tax-base sharing plan through an intergovernmental cooperation agreement that has had positive results. Phil Klotz also mentioned that there are revenue sharing authorizations included in the Pennsylvania Municipalities Planning Code that have, to his knowledge, never been used.

**Item #2 – Institute a payroll tax for distressed municipalities.** Senator Blake opined that it is very difficult to obtain current payroll data to determine what the effect would be in a payroll tax change. For example, in Pittsburgh there was a tradeoff between levying a gross receipts tax and a payroll tax. Mr. Reddig explained that there were some advantages to applying a payroll tax. A payroll tax is found to be more equitable than a gross receipts tax, which is more of a burden on “mom and pop” stores than on big box stores. Mr. Kaplan stated that a tax should create a level playing field for all and also be revenue generating. Senator Blake questioned Mr. Reddig as to how many Act 47 municipalities levy the commuter tax. Mr. Reddig replied that about one-half have done so. Early in the history of Act 47, DCED reviewed the language of Act 511, which authorized a nonresident tax, and also looked at Act 47, which provided that a distressed community may on an annual basis petition the court to increase real estate and/or earned income tax. DCED consistently has said that residents must bear a higher tax than nonresidents and has recognized a tax increase as transitional revenue.

Mr. Kaplan noted that when looking at the resident earned income tax, the issue is often about communities with stable or declining populations. In contrast, the payroll tax or the local services tax (LST) is about increasing revenue bases. The LST, most notably, is considered a regressive tax and harms lower wage earners. Mr. Kaplan suggested that it may be more advantageous to allow municipalities the option of levying the tax that proves to be more equitable to its situation.

Mr. Brosious questioned the difference between a tax and a fee since you can apply a stormwater fee to all residents and nonprofits, rather than imposing a tax from which nonprofits are exempt. Anna Malcien suggested examining enabling legislation that underlies some existing taxes to look at whether some taxes could be recast as fees to cover a broader base. Mr. Kaplan offered that if you tie all revenue to expenditures, you could possibly run into future funding problems when it comes to updating aging infrastructure and funding nonrevenue producing activities like central finance and administration.

The issue of impact fees for services rendered was also considered by the Subcommittee. Under the Pennsylvania Constitution, there is no circumstance of an assessed levy on nonprofits. The only option available is to impose a utility fee on a nonprofit. Senator Blake noted that the challenge is the difference between very small nonprofits and very large nonprofits, such as hospitals and universities. It was noted that Representative Freeman has been working on a method for the Commonwealth to steer resources to core communities that provide significant services to municipalities that have considerably large amounts of tax-exempt properties. Mr. Kaplan shared that in Connecticut and Boston, Massachusetts, there have been investigations to determine what services are used by hospitals and other nonprofits and what services they provide to citizens of the host municipality. This information was used as a way to leverage larger payments in lieu of taxes (PILOTS). Mr. Kaplan further detailed that similar situations have occurred with utilities that provide services, but occupy considerable land that has significant tax potential. Mr. Brosious stated that the Pennsylvania Municipal Authorities Association opposes taxing property of utilities simply because consumers would be subject to increased utility fees.

**Item #3 – Enact an optional 1 percent county sales tax.** Senator Blake proffered that in the past Representative Mike Sturla was a proponent of enacting an optional 1 percent county sales tax. The idea was heavily debated in the House of Representatives with the thought that it would cause less reliance on property taxes. It was determined that the tax would create friction among the county, municipalities, and school districts as to the appropriate disbursement of the extra revenue. Concerns about residents traveling to neighboring counties to purchase goods for lesser amounts were expressed, as well as the regressive nature of the tax. There was also considerable discussion about a goods-based sales tax becoming antiquated due to a more service-based economy. As America ages, there will be an issue of more spending continuing to shift from goods to services.

PEL offered its study that was prepared for the Lehigh Valley Partnership where the county commissioners and officials of the third class cities were opposed to the optional 1 percent county sales tax on the basis that without Act 111 reform, the revenue increases would be consumed. Subcommittee members ultimately agreed that reassessment is also a factor that must be addressed as part of the solution. Dean Kaplan offered that the state of Maryland reassesses one-third of all properties every year. Mr. Kaplan conceded that Maryland is much smaller and has a different local government structure than that of Pennsylvania. However, the consistent revaluing of properties aids in the steady flow of revenue and perceptions of fairness.

**Item #4 – Waive state mandates placed on distressed municipalities.** Phil Klotz explained that some states—Wisconsin and Minnesota—have provisions for waivers under certain circumstances for limited periods of time. These waivers are not approved for mandates dealing with health and safety protections. Waivers are typically at the discretion of an agency which evaluates the need, danger, and advantage of granting a particular waiver. Mr. Brosious questioned what advantages might be garnered if waivers are approved. Mr. Klotz admitted that it is unclear and more research is needed. Senator Blake agreed that this is an area worth exploring and thanked Mr. Klotz for his willingness to report his findings at the June 13 Finance and Indebtedness Subcommittee meeting.

**Item #5 – Permit the coordinator to petition the court of common pleas under Section 123 of Act 47 to increase the rate of the LST above \$52.** Mr. Cross and Mr. Boyle stated that increasing the LST is more beneficial since it is based on a particular service as opposed to a nonresident tax based on income. Mr. Kaplan noted that in the City of Pittsburgh, people had more interest in paying a tax for a particular service, such as an

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LST, as opposed to a nonresident tax that goes into the general fund. Senator Blake questioned an increase in the nonresident tax versus the LST and indicated that one should be in lieu of or mutually exclusive of the other. Fred Reddig offered that the court in the City of Clairton set some standards and that the Act 47 Coordinator has to support an increase. Mr. Reddig further asserted that this should be similar to Section 123 in that the municipality must petition the court and that the Coordinator would have it as part of the municipality's recovery plan. There was a consensus among the Subcommittee Members that this was an area to be pursued.

Item #6 – Create overlay districts to provide municipal services pursuant to Section 7 of Article IX of the Pennsylvania Constitution. Mr. Klotz presented a 1970 study that investigated the creation of overlay districts. The study recommended the structure for an area government. The purpose or function for establishing a service area would center on police, public health, utilities, parks and recreation, etc. Funding for the district would be established by increasing the sales and use tax or the earned income tax. It was discovered that the Environmental Improvement Compact Act could prove to be a vehicle by which to accomplish overlay districts. Senator Blake asked how different the Compact is from an intergovernmental cooperation agreement. Mr. Klotz responded that the taxing power is the main difference. Mr. Gasbarre also offered that this would be an area government as opposed to an agreement between governments. It would establish a regional government to provide for specific or multiple services. The Compact Act could be amended to provide for area governments. This also could be a means by which to address nonviable communities as an alternative to disincorporation as proposed by other Act 47 Task Force subcommittees. Senator Blake expressed concern that this may not be valuable only within the confines of Act 47. Mr. Reddig explained that this is not necessarily an issue since the statute is available for use by all municipalities. Mr. Gasbarre agreed that it should not be under Act 47, but rather an option pursued under Act 47 as suggested by the Coordinator.

Item #7 – Consider review of exemptions listed in the assessment laws. Mr. Klotz suggested that this could be beyond the scope of this particular Subcommittee due to a need for a constitutional amendment. Senator Blake concurred with Mr. Klotz' assessment and agreed that no further discussion was needed on this issue.

Prior to adjournment, Senator Blake gave his closing remarks and reaffirmed that the next Finance and Indebtedness Subcommittee meeting would occur on Thursday, June 13, 2013, at 10:00 a.m. in Room 14 East Wing-Main Capitol Building. At that meeting the Subcommittee will refine the recommendations to be presented to the Act 47 Task Force on July 2, 2013. Phil Klotz also stated that he would research the waiver of mandate provisions and submit his findings to the Subcommittee prior to the June 13 Subcommittee meeting.

The meeting adjourned at 12:45 p.m.

Attested: \_\_\_\_\_  
June 13, 2013