

**MEETING OF THE ACT 47 MUNICIPAL FISCAL DISTRESS TASK FORCE-
SUBCOMMITTEE ON LABOR**

Thursday, June 6, 2013

The meeting of the Act 47 Municipal Fiscal Distress Task Force Subcommittee on Labor was called to order by Representative Chris Ross at 10:05 a.m. in Room 39 East Wing-Main Capitol Building with the following individuals present:

Members

**Representative Chris Ross, Chair
Ellen Horan, Coalition for Sustainable Communities
Bruce Kelley, PA Municipal League
John Kuntzelman, PA State Association of Township Commissioners
David Schmidt, PA Professional Fire Fighters Association
Joseph Regan, Fraternal Order of Police**

Staff

**David Greene, Local Government Commission
Wanda Snader, House Local Government Committee (R)
Jon Castelli, House Urban Affairs Committee (D)
Christine Goldbeck, House Urban Affairs Committee (R)
Robert Gaertner, House Local Government Committee (R)
Mike Gasbarre, Local Government Commission**

Other Attendees

**John Hendrickson, Department of Community and Economic Development
Amy Sturgis, Pennsylvania Municipal League
Les Neri, Fraternal Order of Police
Christian Munez, Duane Morris, LLC**

As the first order of business Representative Ross welcomed all of the Subcommittee members, staff and guests to the meeting and asked the attendants to briefly introduce themselves to the group.

All members and guests received copies of the Act 47 Labor Subcommittee meeting agenda, minutes of the May 22, 2013 Labor Subcommittee meeting, and two documents submitted by the Coalition for Sustainable Communities on the issue of municipal pensions: background on a municipal pension reform proposal of Representative Seth Grove and a table documenting the average annual wage increase in police wages since 2007 for 53 municipal police forces and the State Police.

Representative Ross began by opening the floor to recommended changes to the minutes of the May 22, 2013 subcommittee meeting. After review, the subcommittee recommended no changes to the minutes as drafted. Representative Ross then asked if there were any additional topics of discussion the subcommittee members wished to address at the outset, given that the purpose of today's meeting was to formulate recommendations to the full task force. He noted that the Director had listed the potential action items established at the last subcommittee meeting, and that if there were no additions, he would proceed to consideration of recommendations based on the list as established. No additional comments or items for discussion were offered, so Representative Ross proceeded to address the agenda items.

(a) Fact Finding

Representative Ross noted that the subcommittee had previously agreed that additional fact finding at the initial stages of the Act 47 process after the appointment of the coordinator was a desirable improvement, particularly in the context of participation by labor representatives. Representative Ross asked the Director if DCED had commented on this issue. The Director indicated that he had not received feedback from the Department on this specific issue. He recounted how the process currently works during the initial 90-period prior to hearings on the plan, and how the plan is not subject to unilateral modification by either the municipality or the Department in order to ensure the independence of the coordinator. He noted that this suggestion was intended to promote

more significant and expeditious input after a coordinator has been appointed. Representative Ross then asked the subcommittee if they believed this idea could be endorsed by the subcommittee. Joe Regan noted a specific instance during which representatives of professional firefighters were given only 15 minutes to provide input into the establishment of a recovery plan. Mr. Kuntzleman noted that when there is more information shared earlier, the public and other stakeholders are better able to participate meaningfully in the process. Representative Ross emphasized that this recommendation is related only to fact-finding on the financial condition of the municipality, not specific recovery recommendations. Mr. Hendrickson indicated that DCED would, in all likelihood, need to see specifics on how the proposal would be codified. Representative Ross emphasized that this is early in the process, and that approval by the task force and the drafting of approved proposals would involve more input. He suggested that an initial 30-day fact-finding period, during which stakeholders could inform the coordinator of what they believed were problem areas is a reasonable start, although he admitted the time-frame is arbitrary and subject to modification. Ms. Horan suggested that the fact-finding should not delay the process, and that a more compressed time frame was probably advantageous. Mr. Wolfe asked Mr. Gasbarre if the current Act 47 time frames impacted labor negotiations. Mr. Gasbarre suggested that the time-frames run in tandem, and Act 47 does not affect the timing of labor negotiations. **After all input was received, Representative Ross announced that the subcommittee would be recommending the codification of a 30-day coordinator fact finding period during which stakeholder input would be received prior to the establishment of a recovery plan.**

(b) Exit Strategy

Representative Ross then addressed the next agenda item, potential subcommittee recommendations related to an exit strategy. Mr. Gasbarre updated the subcommittee on the recent work of the Subcommittee on Act 47 Procedure. He indicated that the subcommittee addressed an exit strategy by fashioning a recommendation that the law contain a 5-year limitation on participation, subject to a 3-year extension plan after review by the coordinator. If the municipality failed to implement the 3-year plan, a mechanism would be established to initiate the appointment of a receiver in accordance with Chapters 6 and 7 of the Act. In the case of non-viable municipalities, dissolution with county administration or a possible area-wide government model would be implemented. Mr. Regan noted that the Procedure Subcommittee also discussed including language which would require addressing an exit strategy in the initial recovery plan. Ms. Horan asked about the application of the 5-year exit plan to municipalities currently in Act 47. Mr. Gasbarre answered that the issue would be addressed in the legislation. Representative Ross suggested that it would be a good idea to subject those municipalities to the exit plan time frame. Mr. Gasbarre discussed how a facet of the exit strategy that would have to be implemented would involve the phasing out of any enhanced revenue stream and related cuts in expenditures. Mr. Hendrickson suggested that DCED would endorse imposing the 5-year exit plan on municipalities currently in Act 47. Representative Ross noted that the 5-year plan with additional restrictions may facilitate a municipal governing body taking politically unpopular steps that, in many instances, are avoided. Mr. Kelly suggested that five years may not be enough time and some municipalities may only implement the “desirable” portions of an exit plan. Mr. Gasbarre suggested that the legislation could be drafted that in such a scenario the appointment of a receiver could occur. **After discussion concluded, Representative Ross asked whether there were any objections to a subcommittee recommendation for a 5-year exit strategy with an extension in accordance with the recommendations being formulated by the Subcommittee on Act 47 Procedure. There were no objections to the recommendation.**

(c) Enforcement

Representative Ross then turned to the next agenda item, enforcement. He noted that the current enforcement mechanism in the act, withholding of Commonwealth funds, only serves to further weaken the municipality. In terms of receivership as contained in Chapters 6 and 7 of the act, the remedy must be fashioned very narrowly and involves a time-consuming process. He also discussed nonviability. Ms. Horan voiced concern over a definition of “non-viable.” Mr. Gasbarre set forth the City of Farrell as an example of a

municipality that could no longer provide basic services. He noted that the task force will likely be discussing county administration as provided in past legislative proposals or area-wide government. Representative Ross noted that these approaches might work for smaller municipalities, but that, generally, most municipalities want to retain identities. Mr. Wolfe noted that the “village” of Hershey is governed by Derry Township. Mr. Regan mentioned that FOP supports regional police forces, but that steps should be taken to ensure an orderly exit from such an arrangement. Representative Ross pointed out that some cooperative or regional arrangements lead to discord because there may be the perception that one participant is enjoying the service at the expense of others. Mr. Greene mentioned that municipalities are known to be nonviable upon entry into Act 47, and that if an “endgame” of disincorporation involve county administration, it may be advantageous to have county officials involved in any discussions of disincorporation. After discussion was closed, Representative Ross asked the subcommittee if there were any objections to a recommendation that disincorporation/county administration legislation and area government concepts be explored by the task force. No objections were voiced.

(d) Assistance to Municipalities to Avoid Act 147

Representative Ross then turned to the next agenda item, concepts for assistance to municipalities. Mr. Regan noted that codification of the early intervention program (EIP) was widely discussed by the Subcommittee on Procedure. Mr. Gasbarre noted that one of the recommended modifications was to reduce the cost-sharing formula and establish a codified sliding scale. He also noted that mandatory municipal training was being recommended as a condition of EIP participation, subject to a loss of EIP funding. He also mentioned that the subcommittee may be recommending that a forensic audit be done during EIP to get a better view of the financial condition of the municipality. He emphasized that if a municipality chooses to enter the EIP program, failure to adopt recommendations of the EIP plan would make a municipality ineligible to enter Act 47. Representative Ross noted that the sliding scale based on ability to pay seemed like a good idea, and that he was aware of municipalities that used EIP despite the fact that they were not close to financial distress, specifically in an instance in which they were considering establishing a police force and wanted assistance examining how it would affect their finances. Ms. Goldbeck asked Mr. Gasbarre whether the discussions included criteria by which a municipality would be qualified to use EIP in order to avoid exploitation of the program by municipalities that may not need it. Mr. Gasbarre answered that the issue was not discussed. Mr. Hendrickson noted that the EIP currently is intended to be very open, because often municipalities using the program may be adjacent to others that are fiscally challenged, and the benefits are mutual. Mr. Kelly asked if the program is beneficial. Mr. Hendrickson answered that it has been, and even for municipalities that are in Act 47, participation in EIP may have reduced the severity of their distress. Mr. Hendrickson suggested that the sliding scale be set at “zero” on the low end because he is aware of an instance in which a municipality has refused to participate if any municipal money is involved. Mr. Gasbarre noted that there is nothing currently prohibiting the Department from reducing the municipal contribution. Representative Ross suggested that care must be taken during the codification process to avoid restricting flexibility to the detriment of the Department or municipalities. After discussion was closed, Representative Ross asked the subcommittee if there were any objections to a recommendation that codification of the EIP program, with a stipulation that such codification permit qualified municipalities to participate without a financial contribution, be considered by the Task Force. No objections were voiced.

(e) Open Arbitration hearings and labor contract negotiations to the public

Upon the raising of this agenda item by Representative Ross, Les Neri, President of the FOP, Pennsylvania State Lodge, addressed the subcommittee in order to clarify what he believed were common misconceptions about public participation in Act 111 proceedings. He noted that the police encourage the public to attend the hearings, and that the FOP would not object to statutory law providing that they were open to the public. He suggested that rather than opening up Act 111, such an amendment, if endorsed, should go in existing legislative vehicles which would amend the Right-to-Know Law or the Open

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Meeting provisions of Title 65 (Public Officers) of the Pennsylvania Consolidated Statutes. He circulated a memorandum setting out the features of Act 133 of 2012, an act amending Act 47 to address the Pennsylvania Supreme Court decision of *City of Scranton v. Firefighters Local Union No. 60*. He noted that the definition alone could have been amended as a simple solution, but all stakeholders including municipal associations and legislative staff agreed upon a more detailed approach. The final product, he mentioned, represented significant restrictions on collective bargaining for the unions. Consequently, Act 111 issues should better be left for a separate, individual discussion. Representative Ross informed Mr. Neri that the Subcommittee has been making an effort to avoid recommendations that are not related to Act 47 specifically, and what he may have seen initially has been pared down by the subcommittee. **Representative Ross suggested that because the openness of Act 111 proceedings is applicable to all police collective bargaining hearings, the subcommittee should not make a recommendation on this issue. No objections were voiced.**

(f) Codify the EIP

Representative Ross noted that this issue has been discussed by the subcommittee and recommendations have been suggested.

(g) Pension Consolidation

The Subcommittee reviewed the documents submitted by the Coalition for Sustainable Communities. Representative Ross was curious as to how much of the unfunded actuarial liability of municipalities outside of Philadelphia and Pittsburgh (\$1.4 Billion, according to the document) existed in Act 47 municipalities. He noted that there is not necessarily a correlation between pension distress and distressed municipal status. To this point, Mr. Neri noted that the City of Harrisburg, a fiscally distressed city, has relatively well-funded municipal pensions. Mr. Wolfe noted that arbitration involves pension issues, and that, perhaps, Act 47 could be amended to require all new hires in Act 47 municipalities to receive the statutory minimum of pension benefits. Mr. Neri said this idea had limited utility because as soon as distressed status was rescinded, the parties would be negotiating about raising those benefits. Representative Ross asked if the subcommittee had a recommendation on this issue. Mr. Regan suggested that the bill being drafted by Representative Grell would address consolidation. Representative Ross suggested that consolidation of pensions was not a specific Act 47 issue. In terms of a recommendation, Mr. Gasbarre noted that Act 47 does not expressly require the coordinator to examine pensions, although, in practice, it is discussed. Mr. Hendrickson confirmed that pension issues are routinely discussed in the process, that recent government accounting standards include pension liabilities, and that DCED is working on procedures related to the data they collect to include pension liability data. Representative Ross suggested that perhaps, other than acknowledging the Grell/Grove legislative proposals, the subcommittee should avoid a recommendation on this issue. Ms. Horan strongly suggested that pensions are central to the fiscal health of municipalities. Mr. Kelly seconded this point, by indicating that 82 cents of every dollar in his municipality go to employment costs, and that the Task Force cannot simply concentrate on the other 18 cents. Mr. Ross pointed out that the coordinator researches and makes recommendations related to employment costs, and that he is not advocating that the issue be discounted, only that the subcommittee may not have a remedial recommendation. Ms. Goldbeck suggested that the archaic word “fringe” be taken out of Section 241 of the act and thus more accurately reflect the current terminology and remove any potential restrictions on a coordinator or plans topics. **After discussion was closed, Representative Ross asked the subcommittee if there were any objections to a recommendation that Section 241 be amended to remove reference to “fringe” and that Section be possibly further amended to make express reference to pension funding. No objections were voiced.**

No additional business was raised or discussed. At the conclusion of the meeting, Representative Ross announced that the next meeting would be that of the full Task Force Tuesday, July 2, 2013, at 10 a.m. in Room 60 East Wing-Main Capitol Building. Although legislative budget proceedings had the possibility of causing a postponement, he noted that

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there should be sufficient notice of a cancellation. Mr. Gasbarre informed the subcommittee that the recommendations would be publicly posted, along with the minutes as soon as possible.

The meeting adjourned at 11:30 a.m.

Attested: _____
June 18, 2013