

**MEETING OF THE LOCAL GOVERNMENT COMMISSION ACT 47 MUNICIPAL
FISCAL DISTRESS TASK FORCE**

Tuesday, July 2, 2013

The meeting of the Act 47 Municipal Fiscal Distress Task Force was called to order by Senator John H. Eichelberger, Jr., at 10:05 a.m. in Room 60 East Wing-Main Capitol Building with the following individuals present:

MEMBERS

**Senator John H. Eichelberger, Jr., Co-Chair
Representative Chris Ross, Co-Chair
Senator John P. Blake
Representative Robert Freeman
Bill Dando, AFSCME-Council 13
Ellen Horan, Coalition for Sustainable Communities
Fred Reddig, Department of Community & Economic Development
Joseph Regan, Fraternal Order of Police
Gerald Cross, PA Economy League
John Brosious, PA Municipal Authorities Association
Amy Sturges for Bruce Kelley, PA Municipal League
Art Martynuska, PA Professional Fire Fighters Association
Christopher Cap, PA State Association of Boroughs
John Kuntzleman, PA State Association of Township Commissioners
George Wolfe, PA State Association of Township Supervisors
Dean Kaplan, Public Financial Management Group**

GUEST

Joanne Throwe, Environmental Finance Center, University of Maryland

COMMISSION STAFF

**Michael P. Gasbarre, Executive Director
Philip H. Klotz, Assistant Director
David A. Greene, Legal Counsel
Kristopher J. Gazsi, Associate Legal Counsel
Karen S. Bear, Secretary**

COMMITTEE STAFF

**Lee Derr, Senate Local Government Committee (R)
Tyrone Powell, Senate Local Government Committee (D)
Robert Gaertner, House Local Government Committee (R)
John Fulton, House Local Government Committee (D)
Brianna Medevich, House Local Government Committee (D)
Jon Hopcraft, Senate Urban Affairs & Housing Committee (R)
Christine Goldbeck, House Urban Affairs Committee (R)
Anna Malcein, House Research Office (R)
Jon Castelli, House Urban Affairs Committee (D)
Jason Brehouse, Senate Community, Economic & Recreational Dvlpmt. Committee (R)
Garth Shipman, House Commerce Committee (R)
Luc Miron, Office of Senator Blake**

As the first order of business, Senator Eichelberger and Representative Ross welcomed all of the Task Force Members to the meeting and then gave opening remarks regarding the progress that has been achieved thus far by the four subcommittees. Representative Ross stated that the objective of the Task Force is to have legislation introduced this year that would enhance Act 47 of 1987, also known as the Municipalities Financial Recovery Act, by providing more options and procedures to address financially distressed municipalities. Senator Blake and Representative Freeman thanked all of the subcommittee participants and commended Commission staff for coordinating the meetings and work of the four subcommittees.

Representative Ross introduced Joanne Throwe, Director of Environmental Finance Center (EFC), at the University of Maryland. Ms. Throwe gave a presentation explaining

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the services provided by the EFC. Ms. Throwe explained that her work focuses on providing technical assistance on financial issues related to environmental protection activities that help communities better manage their limited resources. Ms. Throwe's particular areas of expertise are related to sustainable water infrastructure, agriculture and transportation issues. EFC endeavors to employ sound strategies in the most cost efficient manner.

Ms. Throwe stated that the lack of communication among departments has existed with all communities in which she has done business. Often the departments replicate services that waste valuable monies. The EFC emphasizes that it is there to help and requests absolute participation of all involved parties, including citizens. Recommendations are made to the community which has the option of adopting the suggestions. Ms. Throwe further explained that her office deals with communities with varying populations and issues. It was emphasized that solid infrastructure attracts prospective businesses and provides for a great marketing approach. For example, the Stormwater Alternatives through Green Enhancement (SAGE) program has met with great success in many municipalities. The SAGE program is a donation-funded, municipality-managed program that represents a unique connected network of green spaces and ecological features that work together to create an attractive, highly effective clean water solution. SAGE gardens promote economic development, tourism, and litter control. Municipalities embrace the program because the garden design and installation with low-impact design reduces Department of Transportation maintenance, puts small contractors back to work, and instills community pride.

Ms. Throwe described how the EFC partners with other institutions of higher learning that are able to provide expertise in areas where the EFC has limited knowledge. She cited the examples of Cleveland State University and the University of Louisville as two institutions that have aided her agency in various ways.

Representative Freeman applauded the EFC's use of low economic impact, stressing that often goals can be achieved by utilizing practical methods at a minimal cost to a municipality. Ms. Throwe responded that the EFC regularly encourages communities to be proactive and to engage the assistance of the private sector, since resources are limited on the county, state, and federal levels. Representative Ross then thanked Ms. Throwe for her participation at the meeting.

At the meeting, all members and guests received copies of the recommendations submitted by the four Subcommittees, as well as a handout delineating all recommendations by subject matter. All Members and Support Staff of the Task Force were divided into four different Subcommittees, which are as follows: Act 47 Committee chaired by Senator Eichelberger; Labor Committee chaired by Representative Ross; Community and Economic Development/Tax-Exempt Property Committee chaired by Representative Freeman; and Finance/Indebtedness Committee chaired by Senator John Blake. Each subcommittee was to study identified proposed relevant issues as well as others that may come to light.

The recommendations of the four subcommittees were grouped into seven different subject areas, which are as follows: (1) codification of early intervention program (EIP); (2) taxation; (3) Act 47 procedure; (4) structure/dissolution/area government; (5) state and local cooperation; (6) tax exempt property; and (7) miscellaneous. Each Subcommittee Chair shared his Subcommittee's recommendations, if any, on each of the abovementioned categories and then discussion ensued as to the effectiveness of those recommendations.

1. Codification of Early Intervention Program (EIP).

The Act 47 Procedure Subcommittee suggested that the EIP should be codified into Act 47. Although admittance to the EIP will continue to be voluntary for municipalities seeking financial assistance, municipalities must adopt the recommendations provided by the Department and EIP consultant to be eligible for subsequent admittance into Act 47. However, the Secretary of DCED would be given the authority to waive participation in the EIP as a condition precedent for admittance into Act 47 for good cause. During the EIP

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process, the public and stakeholders should be given an opportunity to participate and make recommendations to assist the financially troubled municipality. The maximum matching amount for a municipality to pay for participation in the EIP should be reduced from 50% to 25% with Department being granted the latitude to reduce the matching participation amount to 10% in accordance with the municipality's ability to pay. Financial training for locally elected and appointed officials when participating in the EIP should be mandatory with the possibility that training participation could reduce the matching amount paid by municipality. Failure by officials to participate in training would result in the loss of state monies for the municipality's participation in the EIP. Although not discussed at the 5-29-13 Subcommittee meeting, a recommendation was made by a DCED employee involved with the EIP to provide, as part of the consultant report, that an audit of the municipality be completed by a certified public accountant paid for by the Department.

The Labor Subcommittee offered that Act 47 should contain a codification of the EIP program as well, with a stipulation that such codification permit qualified municipalities to participate without a financial contribution, particularly where municipalities were willing to dedicate employee resources in lieu of financial contributions.

The Community and Economic Development/Tax-Exempt Property Subcommittee recommended modifying the Early Intervention Program to provide additional and/or earlier warnings to DCED and the affected community of signs of distress, allowing such early intervention targeted communities to take advantage of other Subcommittee recommendations. DCED should be authorized to take direct actions upon assessment of data that shows a municipality may be experiencing distress. Current law gives the municipality the option of accepting recommendations. Administratively, DCED should consider shared services, intergovernmental cooperation agreements, and state funding resources opportunities at the EIP stage.

The Finance/Indebtedness Subcommittee proffered that any codification of the EIP program contain reference to intergovernmental cooperation and promote study of the prospects of formal and informal intergovernmental cooperation. Training opportunities involving DCED and municipal associations should be promoted to educate local officials on intergovernmental cooperation and areawide or regional solutions.

Fred Reddig of DCED remarked that the four recommendations need to be more specific in regard to the definition of financial training, such as who is to be trained and what particular training is required. Mr. Reddig also stated that there should be an established standard in the reporting processes of municipal governments, which would aid DCED in determining those municipalities that would benefit from the EIP.

Representative Ross agreed with Mr. Reddig's assessments and directed the Commission staff to include Mr. Reddig's suggestions in the recommendations and start drafting appropriate legislation.

2. Taxation.

The Act 47 Procedure Subcommittee suggested that continued authority to levy extraordinary taxes should be used as an incentive to achieve compliance with coordinator plans. This was discussed but no conclusions were drawn on whether this should be a recommendation to the Task Force.

The Community and Economic Development/Tax-Exempt Property Subcommittee offered that a change to Act 511 and perhaps Act 47 to permit municipalities with a high percentage of tax exempt property to receive half of the amount that currently goes to the municipality of the individual employed in the community who lives outside of that community. The percentage must be set at a defined level so that only those municipalities with significant tax-exempt property adversely affecting its tax base would be eligible for the EIT tax-sharing.

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The Finance/Indebtedness Subcommittee offered two recommendations in this category. First, the Subcommittee recommended that the Task Force explore additional taxing options for municipalities, including a possible payroll tax and an increased Local Services Tax, as alternatives to existing taxes. The Task Force should consider offsets, studies, or conditions that must be satisfied in order to implement additional tax options, as well as the prospect of a permanent authorization for certain taxes to ensure the post-Act 47 fiscal health of the municipality. The Task Force should also consider a review mechanism, either judicial or administrative, for the justification to continue any enhanced revenue stream. Any draft legislation implementing this recommendation should be refined in coordination with DCED.

Second, no specific recommendation is offered on the issue of a countywide sales tax, although the subcommittee recommends that the Task Force discuss the utility of the tax generally, perhaps in limited scenarios such as implementation only by distressed counties or implementation only to reduce property taxes.

Representative Freeman and Senator Blake commented that taxation is a complex issue especially when dealing with municipalities that have high amounts of tax-exempt properties. A mechanism is needed that would fairly distribute taxes to distressed municipalities. George Wolfe expressed concern with the recommendation put forth by the Community and Economic Development/Tax-Exempt Property Subcommittee, which in his view, would penalize neighboring municipalities by forcing an increase in local taxes to makeup for that loss of revenue to the employee's home municipality.

Representative Ross offered that the this subject area needs more scrutiny and directed the Subcommittees and Commission staff to explore further options during the summer and offer more defined recommendations at the next full Task Force meeting.

3. Act 47 Procedure.

The Act 47 Procedure Subcommittee offered three recommendations. First, Act 47 should contain a 5 year initial time limit for municipalities declared distressed. During that period of time, a financial test shall be developed by the coordinator to determine whether: (a) the municipality should have its distressed status rescinded by the Secretary of the Department of Community and Economic Development (Department); (b) the distressed status should be extended for a period of no longer than 3 years with the coordinator developing an exit strategy from Act 47 for the municipality; or (c) the municipality is determined to be nonviable and should be subject to procedures developed for nonviable communities. The coordinator's examination during year 5 should include a public hearing in which citizens, municipal officials, employees, and other stakeholders should be able to testify and offer suggestions to alleviate or end the fiscal distress of the municipality. A municipality that fails to adopt or subsequently implement the provisions of the amended plan extending the distress status beyond 5 years shall be immediately subject to Chapters 6 and 7 of Act 47.

Second, Chapters 6 and 7 of Act 47 should be amended to include all municipalities and not just cities of the third class.

Third, coordinators should have access to all records, financial data, and other pertinent information of authorities incorporated by a distressed municipality. Language should be added to Act 47 that is similar to that found in Act 11 of 2004 that created the Intergovernmental Cooperation Authority for the City of Pittsburgh.

The Labor Subcommittee offered two recommendations. First, Act 47 should be amended to require the coordinator to engage in fact finding within 30 days of an executed contract with the Department of Community and Economic Development. Under current law, fact finding is not required during the 90 period in which the coordinator is required to draft the initial solvency plan for a distressed municipality. Requiring fact finding would ensure that stakeholder input would be received prior to the establishment of a recovery plan.

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Second, Act 47 should contain a 5-year exit strategy with an extension in accordance with the recommendations being formulated by the Subcommittee on Act 47 Procedure.

The Community and Economic Development/Tax-Exempt Property Subcommittee decided to make it a requirement of the Act 47 plan to examine not only the fiscal aspects of an Act 47 community but also other policies that impact and/or can foster economic development potential in the community (e.g. changes in zoning to make the local zoning ordinance more urban oriented, establishment of farmers markets and other community venues to draw people into the urban core, incentives for the startup of new businesses, tourism opportunities, and restaurants, entertainment and the arts).

Dean Kaplan suggested that the recommendation offered by the Labor Subcommittee should be altered to require the coordinator to engage in fact finding within 45 days as opposed to the suggested 30 days. Mr. Kaplan thought the 30 day requirement would be too restrictive. Fred Reddig offered to consult with Mike Gasbarre to determine a more suitable time frame to allow for fact finding. Representative Ross concluded that after the appropriate amount of time is determined, Commission staff should prepare recommendations for legislation.

4. Structure/Dissolution/Area Government.

The Act 47 Procedure Subcommittee offered that the issue of nonviability of Act 47 municipalities must be addressed. The Subcommittee recognized that mandatory consolidation or merger is not an option, but consideration should be given to other options such as disincorporation. House Bill 1321, Printer's Number 1550, of 2001 could be utilized as a template for such legislation. However, counties may not be in a position to manage disincorporated areas, but possibly can facilitate the administration of municipal services with neighboring municipalities or perhaps private entities.

The Labor Subcommittee recommended that the Task Force should proceed with considering companion legislative measures addressing nonviable municipalities, including disincorporation, areawide government, or other methods of continuing municipal services in nonviable municipalities.

The Finance/Indebtedness Subcommittee suggested that the Environmental Improvement Compact Law should be reviewed by the Task Force for possible updating amendments that more accurately reflect modern realities and acknowledge Act 47 communities. Any amendments, if advocated, should result in a law that could be used by a coordinator as an alternative means for areawide solutions for distressed municipalities. The subcommittee also recommends that DCED be consulted on the success of regional efforts to share municipal services.

It was agreed by all Task Force participants that more research is needed on disincorporation and nonviability. Representative Ross instructed that the category of Structure/Dissolution/Area Government be revisited during the summer to gather more specific ideas on how to better address this issue.

5. State and Local Cooperation.

The Community and Economic Development/Tax-Exempt Property Subcommittee proposed three recommendations. First, provide incentives at the state level for greater intergovernmental cooperation and shared services between Act 47 communities and their municipal neighbors.

Second, under State Funding and Programs, establish a system to better direct how Commonwealth funds are expended to prevent the funding efforts and activities of state agencies from working at "cross purposes" in terms of economic impacts and community stability impacts on Act 47 communities. The Keystone Progress program should be further explored.

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Third, also under State Funding Programs, amend Section 282 of Act 47 to ensure state departments are aware and required to give priority to distressed municipalities to receive community and economic development money (e.g. Main Street, Elm Street, housing funds, use of RCAP money, etc.). The Co-Chairs of the Act 47 Task Force should directly correspond with the Governor to ascertain the method by which each State Department ensures that the provisions of Section 282 are satisfied.

The Subcommittee on Finance/Indebtedness offered that the Task Force consider an amendment to Act 47 specifying that the coordinator, in conjunction with DCED, may petition an agency to waive an administrative or regulatory mandate on an Act 47 municipality, which may be granted except in those cases in which the waiver would endanger the public health, safety, and welfare.

Representative Ross charged the Commission staff with reducing to language the proposed recommendations and presenting the language to the Task Force at its next meeting. Also, Senator Eichelberger and Representative Ross agreed to send a letter under their signatures to the Governor as suggested by the third recommendation posed by the Community and Economic Development/Tax-Exempt Property Subcommittee.

6. Tax-Exempt Property.

The Community and Economic Development/Tax-Exempt Property Subcommittee proposed enacting legislation that would provide a dedicated state funding source to municipalities that have a high percentage of tax-exempt property within their municipal borders (e.g. Representative Freeman's House Bill 2018 of 2007). Representative Freeman stated that he will reintroduce House Bill 2018 this legislative session, which would address this issue. The bill would establish the Tax-exempt Property Municipal Assistance Act to provide financial assistance to eligible municipalities for the tax-exempt property located within the municipality. It creates a Tax-exempt Property Municipal Assistance Fund within the State Treasury by using tax revenue generated by the liquor tax imposed by Act 4 of 1936, Special Session, commonly referred to as the "Johnstown Flood Tax." A municipality will be eligible for assistance if the municipality's total assessed value of tax-exempt property equals or exceeds 15% of the total value of assessed property within the municipality. The legislation also provides that no municipality shall be allowed to receive more than 10% of the funds available for distribution. Representative Ross indicated that the Commonwealth will be facing challenging financial issues during FY 2014-2015 and that finding a dedicated source of State funding may prove to be very difficult.

7. Miscellaneous.

The Act 47 Procedure Subcommittee submitted that the annual Survey of Financial Condition submitted by municipalities to DCED should be administratively revised and enhanced to reflect more timely financial information more indicative of the municipality's current fiscal state. Although more modern accounting standards should be implemented for municipalities similar to that enacted for counties, the Subcommittee recognizes the divergent capabilities of local governments in this regard and recommends that municipalities work with their statewide municipal associations to develop better financial standards or adopt generally accepted accounting principles.

The Labor Subcommittee moved that Section 241 should be amended to remove reference to "fringe" in the context of benefits, and provide an express reference to pension funding.

The Community and Economic Development/Tax-Exempt Property Subcommittee posed to eliminate the population threshold for municipalities authorized to operate redevelopment authorities. Currently, every county, city, or borough over 10,000 in population may incorporate a redevelopment authority. If the population threshold is eliminated, municipalities forming such authorities must examine their land development ordinances in concert with contemplated redevelopment of areas of the municipality.

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Senator Eichelberger raised an issue with SB 492 which had just passed the legislature. SB 492 will amend the distribution date for liquid fuels revenue from April 1 each year to March 1. Under Act 47, municipalities are required to submit the Survey of Financial Condition to DCED prior to March 15 in order to be eligible to receive liquid fuels revenue on April 1. Senator Eichelberger invited comment from the members of the Task Force about how a resulting conflict created by SB 492 should be addressed. Mr. Reddig opined that the deadline for submission of the Survey could be moved up to be ahead of the March 1 distribution date. Mr. Wolfe questioned whether it would really be feasible for municipalities to comply with this any earlier than March 15, and suggested that instead of tying a municipality's submission of the survey of financial condition to the current year's distribution of liquid fuels revenue, it could instead be tied to the following year's distribution of liquid fuels revenue. Mr. Reddig and Mr. Eichelberger both expressed that Mr. Wolfe's suggestion could be one potential solution.

Prior to adjournment, Senator Eichelberger and Representative Ross urged the designated working groups to arrange meetings as soon as possible and to funnel all work through Commission staff. The Co-Chairs then gave their closing remarks and determined that the next full Task Force meeting would tentatively occur on September 17, 2013.

Mr. Gasbarre reviewed the four items that remain to be addressed during the summer. They are as follows:

1. Commission staff to meet with legislative and DCED staffs to draft amendments as instructed by the Co-Chairs.
2. Meet with the Subcommittees of Senator Blake and Representative Freeman to formulate more concrete proposals regarding tax-exempt property and taxation issues and to draft appropriate language.
3. Meet with Senator Eichelberger and Representative Ross and their respective Subcommittees to address issues of nonviability and disincorporation and draft language for same.
4. Commission staff to write a letter to the Governor under the signatures of the Co-Chairs to ascertain the method by which each State Department ensures that the provisions of Section 282 are satisfied.

The meeting adjourned at 12:00 Noon.

Attested: _____
July 12, 2013