

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

**Tuesday, September 17, 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 via telephone  
Representative Robert Freeman  
Bill Dando, AFSCME-Council 13  
Fred Reddig, Department of Community & Economic Development  
Joseph Regan, Fraternal Order of Police  
Duane Searle, Legislative Reference Bureau  
Matthew Creme, PA Bar Association  
Gerald Cross, PA Economy League  
Amy Sturges for Bruce Kelley, PA Municipal League  
Rick Poulson for Art Martynuska, PA Professional Fire Fighters Association  
Christopher Cap, PA State Association of Boroughs  
John Kuntzelman, PA State Association of Township Commissioners  
George Wolfe, PA State Association of Township Supervisors  
Dean Kaplan, Public Financial Management Group  
John Kelly, U.S. Bankruptcy Court**

**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)  
Wanda Snader, House Local Government Committee (R)  
Robert Gaertner, House Local Government Committee (R)  
John Fulton, House Local Government Committee (D)  
Brianna Medevich, House Local Government Committee (D)  
Sarah Cassin, Senate Urban Affairs and Housing Committee (D)  
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  
Ron Jumper, Office of Senator Costa**

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. The minutes of the July 2, 2013, Task Force meeting were unanimously approved on a motion by Dean Kaplan and a second by Bill Dando.

Prior to the meeting, all Task Force Members and support staff received copies of the Summary of Draft Amendments to Act 47 of 1987 (Municipalities Financial Recovery Act) and draft legislation based on recommended changes identified by the four Subcommittees during meetings held throughout the summer. The four Subcommittees were as follows: Act 47 chaired by Senator Eichelberger; Labor chaired by Representative Ross; Community and Economic Development/Tax-Exempt Property chaired by Representative Freeman; and Finance/Indebtedness chaired by Senator Blake.

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The Summary of Draft Amendments was presented to the Task Force Members in by Commission staff in three segments:

- Chapter 1 (General Provisions) through Chapter 2 (Municipal Financial Distress) Subchapter C (Coordinator's Plan) (*see page 2*).
- Chapter 2 Subchapter C.1 (Duration of Distressed Status) through Subchapter E (Economic Assistance) (*see page 8*).
- Chapter 4 (Collective Bargaining in Merged or Consolidated Municipalities and Economically Nonviable Municipalities) Subchapter C (Disincorporation of Nonviable Municipalities) and Subchapter D (Unincorporated Service District) (*see page 10*).

Segment 1 was explained by Mike Gasbarre, Executive Director of the Local Government Commission:

**Chapter 1. General Provisions**

**Subchapter A. Preliminary Provisions**

**Section 102. Purpose and legislative intent.**

The Early Intervention Program is being codified in Chapter 1-A. It currently is a voluntary program in which municipalities may seek the assistance of the Department of Community and Economic Development (DCED) in addressing indicators of distress prior to possible entrance into Act 47. The legislative intent provisions of Act 47 are amended to include reference to this program in Section 102(b)(1)(i). Additionally, subsections 102(b)(1)(v) and (6) are added to reference that some municipalities after many years of participation in Act 47 are not viable and may be subject to new disincorporation procedures provided in Chapter 4, Subchapter C (Disincorporation of non-viable municipalities).

**Section 103. Definitions.**

The definition of "authority" is added to include a municipal authority, parking authority, or other authority subject to control by the municipality.

The definition of "municipal record" is being redefined to include not only municipal financial records that a coordinator or receiver under Chapters 2 and 7, respectively, would have the ability to examine, but also those financial records of a municipal authority and all other authorities that act on behalf of the municipality. In addition, records of entities that perform a governmental function on behalf of the municipality, other than those of the municipality or an authority, would be defined as municipal records and thus subject to examination by a coordinator or receiver. Information related to personnel matters and legal proceedings would be subject to redaction.

**Subchapter B. Administrative Provisions**

**Section 121. Powers and duties of the department.**

A reference in Section 121(a) relating to the two page length of the Survey of Financial Condition (SFC) that is submitted annually by municipalities to DCED is removed. Since most municipalities submit the survey electronically and the information that is needed for DCED to assess a municipality's fiscal health needs to be more detailed, the page limit is eliminated. This limitation was originally placed into Act 47 as a means of restricting the reporting burden imposed on municipalities. Based on the evaluation of the data submitted by a municipality, Section 121(b) is amended to provide that DCED may recommend that a municipality enter into the Early Intervention Program (EIP). In concert with requirements that distressed municipalities be given priority in community and economic development funding under Section 282, Section 121(c) is amended to require DCED to notify all state departments by January 1 of each year of the priority funding status. Subsection (h) is amended to provide that DCED, in concert with the Department of Revenue, shall promulgate rules and regulations regarding the collection, filing and

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appeals by vendors of an alcohol consumption tax that may be levied by distressed municipalities, with approval by the court, under a new Section 124. Appeals will be governed by the Taxpayer Bill of Rights provided in Title 53 of the Pennsylvania Consolidated Statutes Chapter 84, Subchapter C.

**Section 122. Duties of Commonwealth agencies.**

Section 122(c) is added to provide a limited waiver of regulatory mandates by state departments on distressed municipalities if requested by the coordinator or receiver. The waiver may not include a regulatory requirement that: (1) is expressly provided in federal law or regulation or state statute or is related to rights or terms of conditions of employment by the municipality, and (2) is likely to affect public health or safety.

**Section 123. Powers and duties of municipalities.**

Subsection (a) is amended to provide that, notwithstanding the provisions of Act 42 of 2013, which requires PennDOT to distribute liquid fuels monies to municipalities by March 1 of each year, the SFC must still be filed with DCED by March 15 before these funds may be distributed. In effect, there may be a 15 day delay in the distribution of the funds. It is difficult for PennDOT to bifurcate payments by making a portion of the initial payment by March 1 and the remainder at a later date once the SFC is filed by a municipality. This amendment clarifies the inconsistency with Act 42.

Subsection (c) is amended as follows:

- In clause (1), reference is made to new provisions of the 5-year/3-year exit plan from Act 47 provided by Subchapters C and C.1. A municipality must adopt, as the case may be, one of these plans to be eligible to apply to the court for a tax rate increase or approval of a newly authorized tax as provided in clause (1.1). In addition, consonant with case law, residents and nonresidents would be subject to a higher rate of earned income tax if the tax is a component of the coordinator's plan developed under Chapter 2 and is approved by the court on an annual basis. Current law does not specify that nonresidents are subject to an increase in the rate of earned income tax.
- Clause 1.1 is added to permit distressed municipalities to petition the court to increase the rate of the local services tax (LST), as limited by subsection (d)(1), a local payroll preparation tax as limited by subsection (d)(2), or an alcohol consumption tax as provided in Section 124.
- Increases in or enactment of the taxes provided in the above provisions are in effect for one year and require the submission of an annual petition to the court for renewal of the taxing power (subsection (c)(2)).
- In regard to current requirements imposed on the City of Scranton when petitioning the court for an annual increase in tax rates, these requirements will continue in effect notwithstanding a potential change in the municipal classification of the city.

Subsection (d) is added to provide additional taxing powers to assist in the alleviation of a municipality's fiscal distress and to give the coordinator more revenue options when analyzing current revenue and expenditure patterns in an effort to provide for an equitable distribution of the tax burden. These tax options include:

- Imposition of an increased LST at a maximum rate of \$156 per year on residents and nonresidents working in the distressed municipality (an increase from \$1 to up to \$3 per week per worker) *in lieu of* an increase in the local earned income tax that may be imposed on residents and nonresidents (the so-called "commuter tax"). If imposed, the increased LST must provide for an exemption for persons with income or net profits less than \$15,600 per year.
- Imposition of a payroll preparation tax that is provided in Section 303 of the Local Tax Enabling Act (which Pittsburgh currently levies) *not in excess of the amount of revenue raised from the municipality's mercantile or business privilege tax from the previous year*. The mercantile or business privilege tax could not be levied as long as

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the payroll preparation tax is in effect. This authority would be limited to those municipalities imposing a business privilege or mercantile tax in the year of the petition.

- Imposition of an alcohol consumption tax *in lieu of* a commuter tax or an increase in the rate of the LST.

**Section 124. Optional distressed municipality alcohol consumption tax.**

Section 124 is added to provide an alternative tax that could be levied as a replacement for the earned income (commuter) tax or an increase in the rate of the LST. The tax is similar to that levied by the City of Philadelphia and Allegheny County on consumers of liquor or malt and brewed beverages sold at retail. The rate of the tax would be up to 10% of the sale price. The tax would be collected by a tax collector designated by the municipal governing body who could be either the earned income tax collector designated under Act 511 or the elected tax collector. Vendors would be required to file monthly returns to the tax collector on uniform forms established by DCED. Duties of the tax collector are specified and persons aggrieved by a decision of the tax collector or who seek abatement of interest and penalties, or for compromise and refund of taxes, may appeal in a manner consistent with the Taxpayer Bill of Rights. Penalties for violation of the act are specified, including the right of the municipality to notify the Liquor Control Board of a violation of this section. Any vendor who fails or refuses to file a return or to collect or pay over the tax commits an unlawful act under Section 493 of the Liquor Code.

**Chapter 1-A. Early Intervention Program**

This is a new chapter intended to codify an existing program that provides matching grants to assist municipalities experiencing financial difficulties to develop multiyear fiscal plans and establish both short-term and long-term objectives. According to existing guidelines established by DCED, the EIP is “designed to offer a preemptive step for municipalities who feel as if their financial situations, while not yet formally declared distressed, are realizing difficulties and seek to improve their financial position.”

**Subchapter A. Preliminary Provisions**

**Section 101-A. Definitions.**

For purposes of this Chapter, the definitions of “Center” (Governor’s Center for Local Government Services), “Keystone Principles” and “Program” (EIP) are added.

**Section 102-A. Program objectives.**

This section delineates the objectives of the EIP including: providing resource assistance to assist a municipality in identifying, prioritizing and addressing financial difficulties; engaging in a review of management operations and service delivery; implementing a multiyear financial management plan; implementing financial trend analysis; promoting multimunicipal and regional planning and strategies, including cost sharing; adopting best management practices; and integrating sound community and economic development strategies.

**Subchapter B. Administrative Provisions**

**Section 103-A. Authorization.**

This section establishes the authority for the Center to provide assistance through grants to a municipality to insure fiscal stability by developing and implementing long-term financial, managerial and economic development strategies.

**Section 104-A. Grants.**

This section provides that the Center may award grants not exceeding \$200,000 in the initial fiscal year to one or more municipalities for the purposes stated in Section 1A03. The grant amount is to be adjusted annually by an increase in the Consumer Price Index. To be

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eligible for a grant, a municipality must meet the basic training requirements established in guidelines developed by the Center pursuant to Section 1A08. The grant amount is subject to a municipal match of 50% unless the Center determines that a match of lesser amount, but not less than 10%, is warranted. The municipality's matching amount may be offset by an undefined, in-kind match. Eligible activities for a grant are enumerated, including those specified in the program objectives as provided in Section 1A01 and a merger and consolidation feasibility study.

**Section 105-A. Applications.**

Contents of the application form for an EIP grant are specified. An application submitted by a municipality is to be on a form prescribed by DCED utilizing the electronic single application format.

**Section 106-A. Evaluation Criteria.**

Applications are to be evaluated on the basis of municipal financial characteristics and the quality of the proposed program. Factors to be considered include: (1) current and projected financial condition of the municipality; (2) economic and demographic conditions; (3) proactive measures the municipality has taken regarding its finances, including adherence to generally accepted financial management, budget and reporting standards; (4) intergovernmental cooperation efforts; (5) commitment to improve the municipality's financial and managerial operations; (6) past performance relating funding assistance granted by DCED to the municipality; (7) where applicable, inclusion of the Keystone Principles as part of the evaluation process; and (8) any other factors the Center considers relevant.

**Section 107-A. Award.**

Awarding of grants is subject to the availability of funds. Successful applicants will be announced by letter from the Secretary of DCED.

**Section 108-A. Guidelines.**

DCED is to establish operational guidelines relating to program requirements and measurements. The program must include a requirement of a financial audit of the municipality, prepared by an independent auditor or firm for the fiscal year immediately preceding the application for funds by a municipality. DCED may accept any previous audit prepared in accordance with the guidelines.

**Chapter 2. Municipal Financial Distress**

**Subchapter B. Coordinator**

**Section 221. Designation.**

Subsection (d) is amended by specifically imposing the duty upon the coordinator, within 45 days of the execution of a contract with DCED, to issue a list of preliminary findings on the fiscal condition of the municipality. The listing would include projected operating deficits for the current fiscal year and projections of revenues and operating expenses for the next three fiscal years, all outstanding debt obligations, the cost and term of outstanding contracts, and other relevant information. The coordinator would further be required to solicit comments from those who may have participated in the EIP, consultants who provided assistance to the municipality on issues related to distress, elected officials and employees, and members of collective bargaining units. Under subsection (e), the coordinator would be empowered to investigate the tax-exempt status of property within the municipality and solicit and negotiate payment of in lieu of taxes from institutions of purely public charity and other tax-exempt property owners.

**Section 222. Access to information.**

To obtain needed municipal financial information and the ability to compel those who hold those records to provide the information, Section 222 is bifurcated to comport with the amendment to the definition of “municipal record.” Subsection (b) would pertain to records held by public officials and employees of the municipality, a municipal authority or other authorities. Failure on the part of these officials or employees to cooperate or provide records could lead to the coordinator seeking a subpoena to compel testimony or to obtain records. Similarly, subsection (c) is added to provide parallel provisions for other entities that possess municipal records.

**Subchapter C. Coordinator’s Plan**

**Section 241. Contents.**

Incorporated as areas to be examined by the coordinator when the coordinator is formulating a solvency plan are the following:

- **Subsection 7.1 – An analysis of whether economic conditions are so severe that the municipality should be disincorporated under new provisions provided in Chapter 4;**
- **Subsection 10.1 – Recommendations for enhanced cooperation and changes in land use planning, including regional approaches that would promote economic development;**
- **Subsection 12 – An analysis of current revenue sources and modification of revenue sources, including subjects and rates of taxation provided in Section 123 and Section 124. Elements of the analysis, with consideration given to economic development, employment and tax burden, would include: examination of the tax bases of current and recommended revenue sources from both within and outside the municipality; collection rates and proposed revenue sources; current fees, charges, penalties and fine provisions in municipal enactments; and revenue as defined in Section 103.**

**Section 242. Publication.**

In subsection (a), the period of time a coordinator possesses to complete a solvency plan once a contract is executed with DCED is extended from 90 to 120 days. Similar to Section 221(d)(2), subsection (c.1) is added to require the coordinator, when formulating the coordinator’s plan that will be presented at a required public meeting, to solicit comments on a proposed plan from those who have participated in the EIP, consultants acting on behalf of the municipality on issues associated with the municipality’s distress, and employees and members of a collective bargaining unit.

**Section 245. Adoption by Municipality.**

For consistency, the provision of this section relating to adoption of plans by home rule and optional plan municipalities is amended to provide that a chief executive officer “shall” issue an order directing implementation of the plan.

**Section 246. Preparation and action on alternate plan.**

When the Secretary of DCED reviews an alternate plan prepared by a municipal governing body or chief executive officer (when the coordinator’s plan has been rejected by the municipality), and if the Secretary believes that the alternate plan will not overcome the municipality’s financial problems, an added subsection (d)(3)(iv) provides that the Secretary shall notify the municipality of the application of the procedures in Chapter 6 (Fiscal Emergencies in Municipalities) and Chapter 7 (Receivership).

**Section 248. Failure to adopt or implement plan.**

Under current law, if no plan is adopted pursuant to Act 47, then certain state monies will be withheld from the municipality and held in escrow by the Secretary until there is compliance with this act. In this event, Section 248 is amended to specify that upon

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recommendation of the coordinator, the Secretary may request a declaration of a financial emergency from the Governor under Chapter 6.

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During or at the conclusion of Mr. Gasbarre's presentation, the following alterations to the draft legislation were discussed:

- Page 13, Section 123(c)(3), line 16, should read: "city of the second class A" versus "city of the second class."
- Page 15, Section 123(d)(2), line 5, as requested by Representative Freeman, clarify that the mercantile or business privilege tax could not be levied as long as the payroll preparation tax is in effect, but could resume upon expiration of the levy of the payroll preparation tax.
- Page 15, Section 123(d)(3), line 14, Wanda Snader raised the prospect of an offset of the real property tax with the alcohol consumption tax, which Michael Gasbarre said was discussed, but concluded that the only offsets endorsed were those in lieu of an increase in local services tax or an increase in the earned income tax. Representative Ross emphasized that Act 47 provides additional taxing powers, but is not intended to alter the underlying tax structure.
- Page 20. Section 124(l), lines 25-27, as requested by Gerald Cross, amend the definition of tax collector so that the optional distressed municipality alcohol consumption tax would be collected by the earned income tax collector designated under Act 511 of 1965. Mr. Cross also suggested that the tax collector be paid by a percentage of the return or a salary.
- Tyrone Powell raised the issue that if a municipality wants to shift from mercantile to a payroll preparation tax, the proposal appears to limit the municipality to its existing level of revenue. He continued that this may be objectionable to some Members if the municipality cannot realize a tax shift that results in a long-term increase in revenue. Representative Ross indicated that if the intent of the tax shift is to realize an increase in revenue beyond the scope of Act 47, it may raise political issues and therefore, suggested that Mr. Powell's comment be taken under advisement. Mr. Powell stated, for the record, that certain Senators want a continuation of the increased taxing powers or otherwise question the purpose of the tax shift. Dean Kaplan also commented on the issue of tax shifts and suggested that it might be a topic of further discussions. Senator Eichelberger clarified that the focus of the Task Force is to address deficiencies in Act 47 and that if remedies in other laws are necessary, they are outside the scope of this effort, but may be considered separately, which Representative Ross and Senator Blake reinforced. Senator Blake further emphasized working within the confines of Act 47 and Act 47 becoming a temporary status under which a distressed municipality may function and receive extraordinary taxing powers.
- Fred Reddig brought up the concept of shifting from mercantile or business privilege tax to the payroll preparation tax under Act 47 and then back to the former tax upon exiting Act 47 may "upset the apple cart" in a municipality by altering the subjects of taxation. Michael Gasbarre clarified that the municipality cannot realize a windfall from the tax shift, but concurred on a change in the subjects of taxation. Senator Blake brought up the consideration of a referendum for a long-term shift in taxation. Representative Ross restated that this most likely requires changes in another law, most likely Act 511 of 1965, which may be pursued separately if needed.
- Rick Poulson representing the Fraternal Order of Police and the Pennsylvania Professional Fire Fighters Association questioned how tax exempt properties are being addressed. Representative Ross recalled extensive discussions on how to equitably achieve payment in lieu of taxes, but an inability to achieve consensus.

Senator Eichelberger brought out that the issue of revenues from tax-exempt properties, similar to permanent tax shifts, generally is outside the parameters of Act 47 and may be addressed separately. Michel Gasbarre pointed out, however, the proposed legislation does require the coordinator, with the municipality, to pursue an appeal of the assessment or exempt status of property and payment in lieu of taxes. Rick Poulson proposed strengthening the language at which time Fred Reddig noted that this as an element included in the scope of work for the coordinator, which Representative Ross recognized as sufficient to address the concern.

- Dean Kaplan suggested changing the name of the Early Intervention Program because of the possible stigma attached to the name and proposed an alternative like “Local Government Assistance Program.” Upon Fred Reddig having reinforced the justification for the name, Representative Ross concluded to leave the name as is for the time being.

Segment 2 of the Summary of Draft Amendments to Act 47 of 1987 was explained by David Greene:

#### **Subchapter C-1. Duration of Distressed Status**

##### **Background**

Task Force discussions focused, in part, on the lack of a specified end to the distressed status of municipalities. Particularly in those cases in which a distressed municipality has become dependent on the additional taxing authority under Section 123, the lack of an express endpoint to distress can reduce the immediacy of difficult decision-making on the part of governing bodies. Furthermore, in the rare case in which a municipality is deemed “nonviable,” unable to emerge from Act 47, and unable to merge or consolidate with other municipalities, the Act currently permits a perpetual distressed status for a municipality that cannot realistically function independently. Along with the new procedures for disincorporation contain in Chapter 4, the new Subchapter C.1 is intended to provide a timetable of events leading to financial recovery or disincorporation.

##### **Section 254. Five-year limitation.**

This section establishes a general rule for the termination of distress. As of the effective date of Section 254, municipalities will be subject to a five-year limitation on distressed status, subject to a possible three-year exit plan extension. For municipalities in distressed status as of the effective date of the section, the five-year period would begin to run from the effective date of the most recent recovery plan or amendment. For municipalities in their last year of a recovery plan on the effective date of the section, the date for the termination of distressed status would be three years from the termination date of the current plan. For municipalities emerging from receivership back into the Chapter 2 distressed proceeding, the five-year period would begin to run from the termination of the receivership. Amendments to the plan shall not affect the termination date as provided in the section, and the ability to emerge from distressed status prior to the termination date is expressly preserved.

##### **Section 255. Coordinator’s report.**

This section imposes a duty on the coordinator to prepare a report in the last year of distressed status as determined by Section 254. The report may recommend one of the following:

- That the distressed status of the municipality be rescinded.
- That the municipality be disincorporated.
- That the municipality be authorized to seek bankruptcy protection.
- That the municipality, because of noncompliance with recovery recommendations, enters receivership.
- That a three-year exit plan be adopted.



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The report would be filed, publicly open for inspection, and subject to comment and a public meeting in a manner similar to that found in Subchapter C of Chapter 2, relating to the formulation of a recovery plan. Subsection (e) authorizes the coordinator to amend the report after conducting the meeting and receiving comment.

**Section 256. Exit plan.**

If the coordinator's report prepared in accordance with the new Section 255 recommends a three-year exit plan, the coordinator shall prepare an exit plan within 90 days of the public meeting referred to in Section 255. The exit plan would be subject to the same notice, comment and meeting requirements as the report. Subsection (c) requires the governing body to adopt the exit plan as an ordinance or the Secretary shall, upon a recommendation of the coordinator, seek the appointment of a receiver in accordance with Chapter 7.

**Section 257. Post report procedures.**

This section establishes the duties of the Secretary as a result of the coordinator's report in Section 255, as well as duties related to the administration of an exit plan. Depending on the recommendations of the coordinator's report, the Secretary shall do one of the following:

- Terminate the distressed status of the municipality.
- Initiate disincorporation proceedings.
- Authorize bankruptcy.
- Seek the appointment of a receiver.

In the case of an implemented exit plan, the Secretary, at any time during the plan, may:

- Terminate the distressed status of the municipality, or
- Seek the appointment of a receiver.

At the end of the exit plan the Secretary shall either:

- Authorize bankruptcy, or
- Terminate the distressed status of the municipality upon disincorporation.

**Subchapter E – Economic Assistance**

**Section 282. Priority.**

Under this section, distressed municipalities are to be given priority in all community and economic development funding. Section 282(b.1) is added to comport with Section 441 which makes unincorporated districts created under Chapter 4 also eligible for such priority funding.

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During Mr. Greene's presentation, the following adjustment to the draft legislation was provided:

- Page 44, Section 257(c)(1), line 4, should read: “. . . the distressed status of the municipality . . .” The letter “t” was omitted erroneously from the first “the” in the line.

Segment 3 of the Summary of Draft Amendments to Act 47 of 1987 was presented to the Task Force Members by Kristopher Gazsi:

**Chapter 4. Collective Bargaining in Merged or Consolidated Municipalities,  
and Economically Nonviable Municipalities**

**Subchapters C and D**

## **Background**

Subchapters C and D of Chapter 4 provide a new approach under Pennsylvania law for addressing municipalities that simply have an inadequate tax base to provide for a functional municipality even if the municipality reorganizes its debts through bankruptcy. Complex political, economic and case-by-case challenges have interfered with voluntary merger or consolidation of nonviable municipalities with neighboring municipalities to date, and efforts to force a consolidation or merger, though constitutionally possible, are widely considered to be politically unachievable. The following subchapters establish instead, a new procedure by which the affairs, obligations and assets of a nonviable municipality are wound down and a special purpose entity of the Commonwealth, referred to here as an unincorporated service district, is established to provide for the essential needs of the residents and property owners of the district. Ultimately, the goal served by establishment of the district is to remove some of the complex issues and barriers that may have made voluntary merger or consolidation so far unachievable for a community.

The added subchapters were developed through discussions among Members of the Local Government Commission serving on the Act 47 Task Force and their staff and in consideration of the work conducted by the Task Force subcommittees.

### **Subchapter C. Disincorporation of Nonviable Municipalities**

#### **Section 431. Definitions.**

Section 431 provides the definitions of “administrator,” “district,” “restricted account” and “governing standards” as they are used throughout this chapter.

#### **Section 431.1. Determination of nonviability.**

This section requires the Secretary of DCED to determine whether a municipality is nonviable after receiving a recommendation of nonviability from a coordinator or receiver. To make a determination that the municipality is nonviable the Secretary is required by this section to find that *all* of the following are true: (1) the municipality is unable to provide essential services to its residents and property owners and otherwise function as a municipality; (2) the municipality has experienced a collapse of its economy and tax base such that all reasonable efforts to restore economic vitality have failed; and (3) merging or consolidating with a neighboring municipality is either unachievable or will not solve the problem of nonviability. If the Secretary makes a determination that the municipality is nonviable, the secretary is required to provide notice to the governing body of the municipality and recommend that the municipality be disincorporated under this chapter.

#### **Section 432. Procedure for disincorporation.**

If the Secretary determines that the municipality is nonviable under Section 431, this section provides three methods by which the process of disincorporation may be initiated:

- The first is that the municipality may enact an ordinance initiating disincorporation within 45 days of the Secretary’s determination.
- The second, which is authorized if the governing body does not enact an ordinance initiating disincorporation, is a petition comprised of 51% of the electors who voted in the last gubernatorial election submitted to the court of common pleas within 60 days of the deadline for the municipality to adopt an ordinance.
- The third authorizes the Secretary, after the time has expired for disincorporation to be initiated by ordinance or petition by electors, to petition the court directly to initiate disincorporation.

#### **Section 433. Judicial review of ordinance or petition.**

After disincorporation is initiated by ordinance or petition by either the electors of the municipality or the Secretary, the court is required to hold a hearing to decide whether to issue a decree approving disincorporation. This section establishes the procedure for the court’s review which provides for, among other things, a notification of the public by the

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prothonotary that a hearing will take place and that the governing body of the municipality and any taxpayer, creditor, bondholder, collective bargaining unit or contractor of the municipality may file exceptions with the court before the hearing. At the hearing, the governing body of the municipality, individuals and entities who have filed exceptions and the Secretary, or the Secretary's designee, have the opportunity to present testimony and other relevant evidence about whether the municipality is, in fact, nonviable, what effect disincorporation would have on the residents and taxpayers, whether other plans or strategies could be employed that would restore viability, and what effect disincorporation would have on debts and obligations of the municipality. After taking evidence at the hearing, the court is charged to issue a decree upholding the municipality's ordinance for disincorporation or granting the electors' or Secretary's petition initiating disincorporation, unless it finds by clear and convincing evidence that the municipality should continue to be incorporated because of a reasonable expectation that the municipality is viable. In the event that the court does not issue a decree that would initiate disincorporation, the Secretary is required to decide what should happen to the municipality instead of disincorporation. The Secretary may find that:

- The municipality should continue to operate under its recovery plan if it has not run out of time by the limitations of Subchapter C.1 of Chapter 2;
- The elected and appointed officials of the municipality have failed to implement recovery measures and the municipality is an appropriate candidate for receivership and the application of chapters 6 and 7;
- The municipality's distressed status should be terminated under section 253; or
- The municipality should initiate proceedings for a federal debt adjustment under bankruptcy.

**Section 434. Service district administrator.**

This section establishes an administrator who will serve the Commonwealth during the municipality's disincorporation process to ensure that the residents' and taxpayers' needs for services are met, and then manage the day-to-day operations of the unincorporated area that results from the municipality's disincorporation, which is referred to in Chapter 4 as an "unincorporated service district." The administrator is appointed by the Secretary of DCED and must meet similar qualifications as a receiver appointed to administer Chapters 6 and 7. As discussed more fully in Section 436, the administrator will form a plan for the provision of essential services for the district after the municipality's disincorporation. This section sets out a list of powers and duties that enable the administrator to form and carry out that plan, including the power to negotiate contracts for the provision of services, administer monies from a restricted account of the Commonwealth, apply for grants, loans and payments on behalf of the district, and establish an assessment of fees necessary for the provision of services.

**Section 435. Powers and duties of municipality.**

After the court issues a decree under Section 433, the municipality's powers are limited by this section to require that the municipality not act in any manner that is inconsistent with the administrator's plan. The municipality's modified duties under this section require it to enact a final budget providing for the municipality until the date that the municipality is disincorporated by operation of the administrator's plan, transfer any municipal pension to a public or private pension fund that maintains the pension benefits due to any current or past employee of the municipality, and appoint a service district advisory committee, established by Section 442, which will advise the administrator after the municipality's disincorporation. Finally, the municipality may opt, by the procedure established in this section, to recommend to the administrator by ordinance a set of governing standards to be included in the plan, which are detailed in Section 436.

**Section 436. Essential services plan.**

This section requires the administrator, within 90 days of appointment, to formulate an essential services plan that will provide for vital and necessary services, emergency management of the district, payment of short-term obligations and long-term debt

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obligations, disposal of municipal property by sale, lease or conveyance for the benefit of residents and property owners, and the disincorporation of the municipality and the establishment and administration of the unincorporated service district. To pay for the services provided by the plan, the administrator will establish an assessment, governed by Section 443, on property within the district, but will not be authorized to levy or collect any taxes, incur debt other than for short-term cash flow, or terminate any obligation to repay the debt of the municipality. This section also specifically provides that, notwithstanding the provisions of Section 443, the assessment in the first full year may not be greater than 5% more than the total taxes levied by the municipality in the municipality's final year.

Finally, the plan must contain governing standards for the district which establish rules and conduct for the maintenance of property, conduct in public places and parking of vehicles in public places to protect the health, safety and welfare of the residents and property owners of the district, as well as provide for fines or other relief which may be granted by a court for violations of these standards. If the governing body of the municipality recommends governing standards for inclusion in the plan as provided by Section 435, the administrator is required to incorporate the recommended governing standards unless the administrator finds that the recommendations would be unlawful or unconstitutional or would substantially impede the administration of the essential services plan.

**Section 437. Proposed essential services plan.**

This section establishes the procedure for the administrator to present and provide public notice of a proposed essential services plan formed under Section 436. These procedures are similar to those established in Chapter 2 for the presentation of a coordinator's plan, and like the presentation of a coordinator's plan, they invite comment from the public both in writing and at a public meeting held by the administrator for the consideration of the plan.

**Section 438. Final essential services plan.**

The administrator must consider all timely submitted and presented comments and requests for revision of the plan before filing a final essential services plan within 45 days of the public meeting. Where the governing body of the municipality has presented with its comments requests for revisions of the plan that propose a different method of calculation of the assessment or a different level of service than provided by the plan, the administrator is required to either amend the plan accordingly or explain in the final plan why the requested revisions were not feasible to be included in the final plan.

After giving notice of the final essential services plan as provided in this section, any party aggrieved by the plan may appeal the plan to the court of common pleas within 30 days. An appeal does not automatically result in a stay of the implementation of the plan, and the court should only sustain the appeal where it finds that the plan is unlawful or unconstitutional or the conduct of the administrator is arbitrary or capricious.

**Section 439. Disincorporation of the municipality.**

This section provides the final procedures that will result in the disincorporation of the municipality. Before disincorporation takes effect, the administrator is required to execute all contracts necessary to implement the essential services plan, provide notice of assessments under the plan to the property owners within the unincorporated service district, and provide notice to the Governor and all Commonwealth agencies of the municipality's disincorporation.

If the municipality has a zoning ordinance and/or an official map, the county in which the municipality is located must adopt the same, which contain the substance of the municipality's zoning ordinance and/or official map, and if necessary, amend its comprehensive plan to be generally consistent with the zoning ordinance. The county must also adopt a subdivision and land development ordinance (SLDO) that may be the county's existing SLDO, which will apply to all unincorporated service districts within the county. After disincorporation of the municipality, the county will provide for the administration of the land use ordinances applicable to the district as required.

Finally, on the date that disincorporation is to take effect under the provisions of the essential services plan, the terms of office of the elected officials of the municipality end, the

ordinances are nullified, the corporate powers of the municipality terminate, and the municipality is deemed disincorporated. Upon disincorporation, an unincorporated service district is established containing the entire area that was formally within the municipality as provided by Subchapter D.

#### **Subchapter D. Unincorporated Service District**

##### **Section 441. Establishment of unincorporated service district.**

An unincorporated service district established under this section is an entity of the Commonwealth that is established for the special purpose of providing essential services to the residents and property owners of the district. The district is operated according to the provisions of the essential services plan established under Subchapter C, administered by the administrator appointed under Section 434, and funded primarily by assessments established under the plan on property within the district, which shall serve as a credit against any municipality's attempt to collect nonresident income taxes on residents of the district. The district is precluded under this section from exercising corporate powers granted to municipalities, including the power to tax and the power to establish elected or appointed officers. The only new debt that the district is permitted to incur, apart from any former municipal debt transferred for the district's administration, is short-term debt or credit for the purposes of managing the district's cash flow, which must be satisfied within one year.

The remainder of this section addresses assumption of assets and debts of the municipality once the unincorporated service district is established, and reconciliation with other state laws and programs to provide for the governance of the district. All property of the municipality that is not previously sold, conveyed or otherwise disposed of during the disincorporation process becomes the Commonwealth's property in trust for the benefit of the residents and property owners and maintained by the administrator. Similarly, the debts of the municipality are placed in the trust of the Commonwealth to provide for the service of the debt by the administrator. This provision has been carefully tailored to provide that the credit of the Commonwealth is not used to secure the debt, and not serviced by any source of the Commonwealth's revenue except for fees collected from the property owners in the district by the administrator.

The district is specifically permitted to be eligible for the grants, loans and payments that it would have been eligible to receive when it was a municipality, including the same priority consideration for economic development programs under Chapter 2, Subchapter E as distressed municipalities. This section also specifically includes liquid fuels monies distributed to municipalities for repair, maintenance and construction of roads. The administrator is charged with applying for and managing funds authorized by this section.

To the extent that residents of the district were served by an authority prior to disincorporation, this section authorizes the authority to continue its services, and future appointments to the authority that would have been appointments by the governing body of the municipality would be made by the administrator.

Finally, although the ordinances of the municipality are nullified by disincorporation under Section 439, the governing standards adopted by the essential services plan under Subchapter C become enforceable standards, which provide a cause of action for violations by aggrieved residents, property owners or the administrator, and also constitute a public nuisance. Separately, enforcement of the Uniform Construction Code is handled by the procedures for an 'opt-out' municipality under the Pennsylvania Construction Code Act, which allows municipalities who do not adopt the code by ordinance for municipal enforcement to enforce the code privately and through certain approvals of the Department of Labor and Industry.

##### **Section 442. Service district advisory committee.**

This section presents the composition, appointment, duties and powers of the service district advisory committee, which will serve the residents of the district as a body providing advice to the administrator on issues facing residents and property owners, the

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county on land use issues facing the residents and property owners, and DCED on issues related to the district's conceivable reincorporation as a new municipality or merger or consolidation with another municipality.

The committee is made up of two resident property owners and one business owner (if any) of the district who are initially appointed by the governing body of the municipality before disincorporation, and subsequent vacancies, caused by expiration of terms or other reasons, are filled by the remaining members of the committee if there is one vacancy, or the administrator if there are two or more vacancies.

Although the committee does not have any powers on its own, its recommendations must be considered by the administrator. In the case of recommendations by the committee proposing amendment of the governing standards within the essential services plan, or recommendations proposed by a petition of 10% of the electors of the district who voted in the last gubernatorial election for amendment of the governing standards, the administrator is required to include those recommendations as a proposed plan amendment, discussed under section 444, unless the administrator finds that the recommendations would be unlawful, unconstitutional or substantially impede the administration of the essential services plan.

**Section 443. Assessments.**

The administrator is authorized to establish an annual assessment, calculated on a front-foot or benefit conferred basis, or some combination thereof, that will allow the administrator to collect the funding necessary to provide services under the essential services plan, service debts, provide necessary upkeep of property held in trust by the Commonwealth, reimburse DCED for the compensation and expenses of the administrator, and maintain a reserve of up to 15% of the annual estimated cost of the essential services plan for unanticipated expenses. The administrator is authorized to establish a limited assessment for those properties held by governmental or other public entities, assessing only for services that are directly consumed by the property such as water, sewer, and solid waste services.

After the first assessment, which may be a partial year assessment depending upon the date of disincorporation under Subchapter C, the administrator is required to provide notice of the annual assessment by October 1 of the year preceding the assessment, and require payment of the assessment by March 1, unless the administrator allows the assessment to be collected on a quarterly or semiannual basis. Unpaid and delinquent assessments accrue interest, and may be enforced by the establishment of a lien under the procedures outlined in the Municipal Claim and Tax Lien Law.

**Section 444. Amendment of essential services plan.**

This section authorizes the administrator to propose amendments to the essential services plan at any time. Once an amendment is proposed, the administrator is required to receive written comments on the plan, and, if requested by the service district advisory committee, hold a public meeting for consideration of the plan amendment. The administrator is required to consider comments submitted before publishing a final plan amendment, and where a request for revision of the plan amendment is submitted by the advisory committee that proposes a different method of calculation of the assessment or a different level of service than provided by the plan amendment, the administrator is required to either incorporate the recommendations in the final plan amendment accordingly or explain in the final plan amendment why the requested revisions are not feasible. At any time, if amendment of the essential services plan is immediately necessary to protect public safety, human health or the environment, the Secretary may waive the requirements for the consideration of a proposed plan amendment and issue a plan amendment that immediately takes effect.

After giving notice of the final plan amendment or emergency plan amendment as provided, any party aggrieved by the plan amendment may appeal the plan amendment to the court of common pleas within 30 days. An appeal does not automatically result in a stay of the implementation of the plan amendment and may not be used to bring objections to

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other portions of the plan not amended. The court should only sustain the appeal where it finds that the plan amendment is unlawful or unconstitutional or the conduct of the administrator is arbitrary or capricious.

**Section 445. Unincorporated Service District Trust Fund.**

The State Treasury is to create a separate special Unincorporated Service District Trust Fund for the purpose of holding moneys and paying expenses and obligations of unincorporated services districts. This section authorizes an appropriation of any moneys in the fund for the purposes provided in the essential services plans and other purposes authorized by Subchapter D.

**Section 445.1. Restricted account.**

The State Treasury also is to establish a restricted account in the Unincorporated Service District Trust Fund for each unincorporated service district in which the administrator for each district shall deposit all collected moneys within 30 days after collection and from which the administrator shall pay expenses and obligations of the service district. DCED may also pay for compensation and expenses of the administrator out of the restricted account. This section authorizes an appropriation of any funds in the account for the purposes provided in the essential services plan and other purposes authorized by Subchapter D.

**Section 446. Audit.**

The Auditor General of the Commonwealth is required to conduct an annual audit of the account, and assessments and transactions of the district.

**Section 447. Merger and consolidation; incorporation of a municipal corporation.**

This section allows the district to become part of another municipality or become a new independent municipality. It allows the district to participate in a merger or consolidation as provided under Title 53 of the Pennsylvania Consolidated Statutes whereby the residents of the district first initiate the process of merger or consolidation by petition. After the residents' petition, the administrator, in consultation with the service district advisory committee, is authorized to have the powers of a governing body of a municipality to enter into a merger or consolidation agreement with another municipality, provide for the transition of the district into a consolidated or merged municipality and expend district funds to the extent authorized by law to provide for incorporation.

Separately, if the Secretary determines that the district could be incorporated as a viable municipality, the residents are authorized to incorporate the area of the district as a municipality using any municipal code or other provision of law providing for incorporation.

Where the district becomes part of another existing or a new municipality, DCED is authorized to issue any grant or loan authorized under Chapter 3 to provide transitional assistance. Once reincorporated, all assets and debts held by the Commonwealth in trust on behalf of the residents and property owners of the district are assumed by the municipality.

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During or at the conclusion of Mr. Gazsi's presentation, the following modifications to the draft legislation were discussed:

- Page 46, Section 431, add a definition for municipality for the purpose of Chapter 4 that reflects the definition of municipality for the entire act, but specifically excludes cities of the first class.
- Page 64, Section 441(a), lines 2-3, as requested by George Wolfe, add clarifying language to describe the length of time that an unincorporated service district is to exist and stating that the service district will exist until the area is incorporated as a municipality or merged or consolidated with an existing municipality under Section 447.

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- Pages 67-69, Section 442, as requested by Representative Freeman, add a stipulation that meetings of the service district advisory committee must comply with Title 65 of the Pennsylvania Consolidated Statutes Chapter 7, also known as the Sunshine Act.
- Michael Gasbarre emphasized that in Chapter 4 there is no forced merger and consolidation and no assumption of responsibilities of distressed municipalities by counties. The chapter only pertains to municipalities under Act 47. For that purpose, a definition of municipality should be added on page 46, Section 441, which would exclude Philadelphia.

The remainder of the Summary of Draft Amendments to Act 47 of 1987 was presented to the Task Force Members by Michael Gasbarre:

**Chapter 6. Fiscal Emergencies in Municipalities**

**Chapter 7. Receivership in Municipalities**

These two chapters are editorially and technically changed to provide that procedures found in both chapters will apply, with the exception of Philadelphia, to all municipalities instead of only cities of the third class.

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Shield language is added at the end of the legislation specifying that Section 122(c), relating to waiver of regulatory mandates, will apply to all state rules and regulations in effect on or after the effective date of the section.

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Representative Ross stated that all changes discussed at the meeting would be incorporated into both the draft legislation and the Summary of Draft Amendments to Act 47, which will be disseminated to all Act 47 Task Force Members and support staff for final review and comment. It is the wish of the Act 47 Task Force Co-Chairmen to have the proposed legislation approved by the Local Government Commission Members and introduced in the Senate of Pennsylvania and the House of Representatives by December. Representative Ross and Senator Eichelberger also requested letters of support for the legislation from organizations that could do so. Representative Ross separately emphasized possibly revisiting the issues of tax-exempt property and subjects of taxation outside the context of Act 47.

Senator Eichelberger announced that a report detailing the Act 47 Task Force's findings and recommendations will be written by Philip Klotz. The report will be made available to all Task Force Members and support staff prior to public distribution.

Senator Eichelberger, Senator Blake, Representative Ross and Representative Freeman expressed their gratitude to the Local Government Commission Staff, Act 47 Task Force Members and Committee staff for the dedication and commitment to the Task Force.

The meeting adjourned at 11:50 a.m.

Attested: \_\_\_\_\_  
September 30, 2013