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PENNSYLVANIA STATE ASSOCIATION OF BOROUGHS ■ PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS  
THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP COMMISSIONERS ■ PENNSYLVANIA MUNICIPAL LEAGUE

**JOINT TESTIMONY BY  
THE PENNSYLVANIA STATE ASSOCIATION OF BOROUGHS,  
THE PENNSYLVANIA STATE ASSOCIATION OF  
TOWNSHIP SUPERVISORS,  
THE PENNSYLVANIA STATE ASSOCIATION OF  
TOWNSHIP COMMISSIONERS,  
AND THE PENNSYLVANIA MUNICIPAL LEAGUE**

**BEFORE THE  
SENATE LOCAL GOVERNMENT COMMITTEE**

**ON**

**SB 1157 (PN 1560) AND**

**HB 1773 (PN 3288)**

**APRIL 10, 2014**

**HARRISBURG, PA**

Chairman Eichelberger, Chairman Teplitz, and members of the Senate Local Government Committee, thank you for holding today's hearing on Senate Bill 1157. I am Amy Sturges, Director of Governmental Affairs for the Pennsylvania Municipal League and the Pennsylvania State Association of Township Commissioners. With me today are Elam Herr, Assistant Executive Director, of the Pennsylvania State Association of Township Supervisors and Ed Troxell, Director of Governmental Affairs, for the Pennsylvania State Association of Boroughs. Our testimony is a joint effort with all four associations sharing the thoughts and concerns expressed today.

We would like to start by acknowledging that our associations did have representation on the Act 47 Task Force. While our representatives took part in the various subcommittees which they were assigned, the timing of the final report did not lend itself to a full vetting of the more controversial concepts now found in SB 1157 and HB 1773. Additionally, the scope of issues was narrowed once the Task Force was formed and the subcommittee work began. Our associations certainly respect the work of the Task Force members, the chairmen, the Local Government Commission staff and the legislative staff; we believe, however, that there is more work to be done.

Our testimony will outline the positive aspects of the legislation and then move into the areas that give us serious reservation. We have based our testimony on both bills, assuming HB 1773 will be in the Senate Local Government Committee shortly.

From our perspective, we are losing a great opportunity. This legislation attempts to change the outcome of fiscally challenged communities without wading into the tough, but *absolutely* necessary causes of Act 47 distress. We believe those causes are an old and inflexible local taxing structure; outdated public safety personnel laws; the over-burden of tax-exempt properties; the length of time between county reassessments; and various other mandates. After twenty-five years of experience utilizing the Municipalities Financial Recovery Act, this Commonwealth should be addressing the causes of municipal distress, no matter how difficult.

**POSITIVES:**

**Early Intervention Program**

Placing the Early Intervention Program into statute is a positive move. The Program has helped many communities reverse or stave off Act 47 status. Codification will elevate the Program and hopefully its funding status and allow more municipalities to utilize the resources and expertise of the Program. It is also important to look for ways to remove the stigma associated with utilizing this Program.

A new provision of the Program found in both bills gives DCED the leeway to determine the amount of local match (between 10% and 50%) required to enter the Early Intervention Program. Additionally, any part of the local match may be in-kind. This is a positive step in ensuring that any community in need of the Program is able to participate and get assistance.

**Powers and Duties of DCED**

Language is added to allow DCED to make a determination and a recommendation, from an evaluation of the financial data submitted annually to the Department, that a community utilize the Early Intervention Program. This is positive in that DCED can actively approach communities it determines are getting into financial trouble rather than waiting for the elected body to make that determination. This may or may not get communities on

the path to recovery quicker, but an outside voice making the recommendation may help the elected body to make a decision.

DCED is also required to notify the heads of all Commonwealth agencies of a distressed determination and of the priority funding requirement given to all distressed municipalities. Other agencies not involved in assessing the finances of municipalities are not in tune with Act 47. This requirement will help to bring financial distress to the attention of other agencies and will ensure grant applications from distressed municipalities are given a closer look. Furthermore, new language allows a Commonwealth agency to waive certain regulatory mandates on a distressed municipality. This could be of assistance to an Act 47 community, but we need some examples of the mandates this is intended to lift.

### **Act 47**

Once accepted into the Act 47 Program, the legislation provides for a longer outlook of fiscal planning going from three to five years. This, as well as, requiring the annual budget process to begin 150 days before the end of the fiscal year are both positive changes to Act 47 and will help municipalities plan more effectively into the future.

### **Act 47 Coordinator**

New language is added authorizing the coordinator to investigate the tax-exempt status of property within a distressed municipality and advise the governing body of appealing the assessment or exempt status. Additionally, the coordinator is authorized to solicit and negotiate payments in lieu of taxes from tax-exempt property owners. While this new authorization may not result in more revenue for the municipality, it does bring attention to an important consideration in the financial distress of municipalities, as well as the impact of tax-exempt properties on the residents and businesses who cover the expenses of services to all property owners.

The coordinator would be required to solicit comments from consultants, the elected and appointed officials, and members of the collective bargaining units. We support this information gathering as the coordinator should be making a sound decision based on all the relevant information that is available.

The bills include new language requiring a performance review of the coordinator by DCED beginning in 2015. This is an important addition to the Act 47 process. Coordinators are hired by the Commonwealth and the distressed municipality to develop a plan and assist the municipality through Act 47. If a coordinator is not doing its job there should be a mechanism for removal. We believe the cost of the coordinator should be public record, as well, if it isn't already.

### **NEGATIVES:**

#### **Taxing Options**

You have heard this before – the local government tax structure is antiquated and static. Today's local officials are attempting to provide services to today's resident with a revenue structure developed in the 1960's. This is difficult for a community still on good financial footing and impossible for one in financial crisis.

The legislation's step forward in providing new revenue options is positive, but it does not go far enough. The stipulations of adopting new taxes will render them of limited benefit. The taxing options – an increased Local Services Tax, a Payroll Preparation Tax and an Alcohol Consumption Tax (removed from HB 1773) -- must receive

court approval on an annual basis. How can a financially challenged municipality adopt and follow a five year recovery plan without knowledge that a tax is going to be available all five years? While we can support additional revenue options for those communities in Act 47, we argue that comprehensive local tax reform is a major part of the solution to helping communities exit from Act 47, while at the same time, helping other communities stay out of Act 47.

A further limitation of the revenue enhancements is that they are of limited gain. If a municipality implements the increased Local Services Tax, it must also increase the exemption level, and the higher rate of the Earned Income Tax under Act 47 would not be available. In exchange for a Payroll Preparation Tax, the Business Privilege or Mercantile Tax is suspended. If a municipality is not levying a Business Privilege or Mercantile Tax, the Payroll Preparation Tax is not an available option. Additionally, we question the cost of administering and the ease of implementing a new tax that has to be approved annually and then terminated a few short years after implementing.

Finally, the removal of the Alcohol Consumption Tax as an option from HB 1773 guarantees its fate as the Senate considers SB 1157. Here too, the increased Local Services Tax would not be available if the Alcohol Consumption Tax was levied.

#### **Five year Limitation and Secretary Determination**

One of the most significant changes to Act 47 found in both bills is the new limitation on how long a community can stay in the Program. It makes sense to want to move a municipality out of Act 47 as soon as possible. However, the five year limitation, with the possibility of a three year extension, is an arbitrary, one size fits all approach. This timeline does not reflect the varying factors of distress or the varying factors within the municipalities themselves. For example, a municipality that pushes off Act 47 until there is no other option is going to be under very different circumstances than a municipality that enters Act 47 at the first signs of distress. Perhaps a better approach would be for each coordinator to set a timeframe in each plan consistent with the individual factors impacting each municipality.

House Bill 1773 has added an appeal provision to the Secretary's determination that we cannot support. Section 255.1(D) allows a labor union who is party to a collective bargaining agreement with the distressed municipality the express authorization to appeal the determination of the Secretary. The unions are already receiving great benefit from the five year limitation on Act 47 protection. Giving them the authority to appeal a decision by the Secretary will not benefit the municipality or its taxpayers. We must ask why this stakeholder is being treated with higher regard than any other stakeholder?

Working within the new five year limitation, what new tools are available to help a municipality get back on solid financial footing? Further, what new tools will keep municipalities from having to return to Act 47 a few years after they exit? We do not see anything in these bills that will change the fate of fiscally distressed communities for the better. In fact, we are concerned that the five year limitation and the alternative steps of disincorporation and receivership will force municipalities out of Act 47 prematurely. The existing protections of Act 47 will then be removed and the cycle will start all over again.

If the distress cannot be turned around in five to eight years, the next set of options are a further black eye to the community – bankruptcy (in the case of SB 1157), disincorporation or receivership.

## Disincorporation

While we can agree with many of the proposed enhancements to Act 47 as previously stated, our associations stand opposed to municipal disincorporation both as a mandated concept and as a last option as presented in this legislation. In addition to opposing disincorporation as a concept, we must oppose the provisions in the bill as unworkable, with draconian fees levied on properties in the community that would lead to a mass exodus and increased blight.

We certainly understand the need to compel a community into making tough decisions that it has to this point failed to do. However, we believe that other options as presented in the bill, such as a receivership, would provide that incentive while creating a workable but temporary default process that should result in putting the municipality back on its feet and giving it a chance to prosper.

In contrast, we must respectfully ask what is the purpose of disincorporation? If the intent is to provide a viable last resort to continuing in distressed status, then why does the House version limit its reach to communities without police or fire employees? In addition, if it only takes hiring a single police officer to eliminate the possibility of disincorporation, why wouldn't a community exercise this option?

Under Section 431.1, the path to disincorporation would begin with a recommendation by the Act 47 coordinator or receiver to the Secretary, who must consider a set of fairly vague and undefined criteria, including whether the municipality is unable to deliver "essential services" to its residents and that all efforts "to restore economic viability" have failed, and that merger or consolidation is "unachievable." There are no objective measurements in this section. If the distressed municipality meets these criteria, the Secretary recommends disincorporation. Where is citizen input in the initial phase of this process? Where do the citizens have a chance to comment on the decision-making process of an appointed official in Harrisburg over the future of their community? The answer is that they have no say into this process that will affect their pocketbooks, their businesses, and their property.

Once the secretary has made his determination, the governing body may pass an ordinance to disincorporate or, if they fail to do so, the citizens may sign a petition to implement disincorporation. However, if the citizens and the governing body refuse to move forward, the secretary is compelled to force disincorporation against the will of the citizens. Why is the community only given the option of implementing disincorporation and are given no means of stopping or slowing down the process?

If the governing body or citizens would choose to implement disincorporation, the issue would go before the court of common pleas for review. Interested parties could file exceptions and the court would hold a hearing. However, despite any objections, the court would be required to issue a decree implementing disincorporation unless **it finds, by clear and convincing evidence that the municipality should continue to exist as a separate municipal corporation because of a reasonable expectation that the municipality is viable.** This seems to be a very high standard that may render very worthwhile arguments null and void!

If the Secretary implements disincorporation against the will of the citizens, it appears as though the hearing process in Section 433 is circumvented and the court proceeds directly to issuing a judicial decree under Section 433(e), the "clear and convincing evidence" provision just mentioned. Is this true or must the hearing be held? We contend that the governing body and citizens must have an opportunity for input and to present arguments in opposition to disincorporation. We must oppose a provision that allows the secretary to circumvent the will of the citizens without an opportunity to weigh the facts and arguments of the case.

Once disincorporated, the Commonwealth would hold title to all of the former municipality's assets, to be held in trust for the residents and property owners of the unincorporated district under Section 439(d). All powers for the administration of the district would be vested in the department, through the administrator (441(b)). However, the district would continue to be responsible for any debt and its citizens would be required to pay assessments for "essential services", administrative costs (including the expense of the administrator), and debt payments. While a district advisory committee would be formed, they would not possess any real powers (441). It appears that the citizens would have no control over services or assessments.

### **Administrator**

Once a judicial decree to disincorporate is issued, the legislation would give an unelected bureaucrat, appointed by the Secretary, broad authority to oversee and administer all aspects of the disincorporated municipality, including the ability to compel action from the soon-to-be out of business governing body. Where would this administrator be located? How would citizens access this person, if at all, with concerns or problems? There are no requirements that they have any office hours in the community, nor that they conduct the community's affairs in public. Essentially, the former municipality would be reduced to a "service district" administered by Harrisburg.

This administrator would oversee all activity, finances, ordinances (now called "governing standards"), and other powers of the former municipality. The administrator would determine what "essential services," if any, are provided to the residents and businesses of the former municipality and be given unilateral authority to assess and collect fees on the citizens' property to pay for these services, as well as any remaining debts and legacy costs, with little opportunity for public input. The administrator would be able to compel actions of the soon to be former governing body, including disposal of assets and repayment of debts prior to disincorporation, and would enjoy sovereign immunity in their role.

In addition, the administrator would be authorized under Section 441(h) to appoint members to any authority boards that serve the district in lieu of the governing body. There is no public process to the appointment process, other than the administrator is required to consult with the advisory committee.

Section 441(j) states that the administrator would receive applications for construction permits under the Uniform Construction Code. Does this imply that the administrator would have an office in or near the district or would the administrator be based elsewhere? What is the process to comply with this provision? Or does the administrator establish his own?

If the administrator incurs debt on behalf of the district under Section 441(k), must they comply with the Local Government Unit Debt Act? It does not appear that they would. Would the administrator be required to comply with any procurement mandates on local governments, such as bid limits, prevailing wage, separations, and the sealed bid process? It does not appear that they would.

There is a short provision, Section 446, for the Auditor General to conduct an annual audit of the district. Is this an audit of the administrator? If not, who audits the administrator? What happens to the audit? Will the citizens be informed of the results?

Would the administrator have the authority to hire and manage employees or must all services be provided through contract? And who has oversight of the contracts?

The all-powerful administrator would have authority to approve, modify, renegotiate contracts and agreements to provide services to the residents and property owners and be solely responsible for all district funds. The administrator would be empowered to invalidate any act by the governing body that conflicted with the administrators' own "essential services plan." In practice, the administrator would have virtually unlimited authority over the unincorporated district.

Ironically, the administrator would be empowered to meet and consult with county officials to prevent, abate, and mediate blight as permissible by law....yet the assessment structure would be such that it would, in our opinion, lead directly to more blight.

### **Essential Services Plan**

The administrator's tool for administering the unincorporated district would be an "essential services plan" in Section 436 that he would develop privately in consultation with DCED -- not the citizens. Again, we must ask what are these "essential services" as they are not defined anywhere in either bill or in Act 47? In the House Bill, there is a reference to "vital and necessary services" as defined in Chapters 6 and 7 as a component of the plan. Does this mean each administrator will determine what these "essential services" are on a plan by plan basis? Interestingly, "vital and necessary services" does not include road maintenance (other than snow removal) or emergency management. However, Section 441 (d) states that the administrator shall provide for the repair and maintenance of all real property and roadways and the district would continue to receive liquid fuels payments under 441(f). In addition, "vital and necessary services" includes payroll services, but does not mention management of employees. Who will be responsible for any employees? Or will the administrator contract for all services?

Does the House Bill imply that the administrator can do away with an existing municipal police or fire department and contract for police services through an intergovernmental cooperation agreement? The legislation states that the administrator can negotiate contracts for regional police or fire service through intergovernmental cooperation agreements. We must question how this will work when the Intergovernmental Cooperation Act requires ordinances to implement these agreements and all such ordinances of the district are null and void and the district has no authority to adopt ordinances? Even contracts under the respective codes are only valid if with another municipality, which a services district is not. Will the administrator be contracting with private entities for these services? If so, what happens to bidding and other procurement requirements?

Under Section 439(c) the county would be given the obligation to enact all land use ordinances and administer zoning on behalf of the former municipality with timeframes that are not consistent with or in compliance with the Municipalities Planning Code. The county would be required to enact a zoning ordinance for the former municipality regardless of whether or not zoning had been in place. Our Associations must oppose this mandatory transfer of land use responsibilities to the county. What happens to these land use plans if the municipality is reincorporated or consolidated into another municipality?

Any debt or legal obligations of the former municipality not settled by disposition of assets would remain an obligation of the district and the residents and businesses would be required to shoulder this burden through fees assessed by the administrator. How is this different from existing taxes?

The administrator would develop the essential services plan with no input from the community. When the administrator publishes the plan and delivers it to the outgoing government officials, those affected have only 15 days to provide written comments or attend a public meeting that will be no more than 20 days from

publication to provide input. Under Section 437(d), the administrator only must use those written comments that he deems valuable when revising the final essential services plan. However, Section 438(a) states that the administrator “shall consider all timely written comments” before publishing a final essential services plan. The administrator would be required to tell members of the soon-to-be eliminated governing body why their suggestions were not incorporated into the final plan, but the citizens would have no such standing. Their only recourse would be to file an appeal with the court of common pleas within 30 days of the publication of the final plan as provided under 438(c), however this would not stay the plan and the appeal would only be sustained where the court found the plan to be unlawful, unconstitutional, or the conduct of the administrator to be arbitrary or capricious! Whatever happened to fairness!

Under Section 444(b), once disincorporated, the administrator could file a proposed essential services plan amendment with the secretary and advisory committee at any time. This would follow a similar process to the original plan. Would the public or advisory committee have any type of advance notice that a revised plan is being filed? It appears that a public meeting would only be held if so requested by the advisory committee and even then, it is unclear whether this is referring to a public meeting or public hearing as the terms are used interchangeably in the section. Under Section 444, there is a distinct lack of public input from the citizens and businesses within the district. It appears that the administrator would be free to ignore public comment and only must respond to those comments provided by the advisory committee, but is not required to incorporate these comments. As in the original plan, an appeal of the final essential services plan amendment under Section 444(i) must be filed in 30 days, does not stay any portion of the plan amendment, and may only be sustained where the court finds the amendment is unlawful, unconstitutional or the conduct of the administrator is arbitrary or capricious. Nowhere do the impacted residents have the ability to question the fairness of their assessment or any portion of the plan! Beyond that, nowhere does the district have any ability to question the payments that they must make to the commonwealth for the services of the administrator!

We are not sure what situation would lead to an emergency essential services plan amendments, in Section 444(g), since we are unclear on what “essential services” are under this proposal.

We must again protest that this is simply too much power for the administrator and far too little for the citizens and businesses whose only remaining ability to protest any provision of the plan will be to leave the district! And again, the timeframe for public participation, while based on the original Act 47 process, is too short.

### **Governing Standards**

One of the key components of the essential services plan are “governing standards” for the service district. This concept is not defined, but appears to function as a set of local laws, replacing the former municipality’s ordinances. One of the final roles of the former governing body in Section 435(c) would be to recommend governing standards for inclusion in the essential services plan, which it would adopt by ordinance and reference previously enacted ordinances of the municipality. However, in 436(c)(2), the administrator would not have to include these standards if they were unlawful, unconstitutional, or would “substantially impede the administration of the essential services plan.” This is too much discretion for the administrator!

Finally, once the disincorporation takes effect, under Section 439(a)(2) all ordinances of the former municipality become null and void. How are these governing standards, based on nullified ordinances, to be enforced? How would they be appealed to district magistrates and how would the district magistrates deal with violations of these standards under Title 42 of the Pennsylvania Consolidated Statutes? Also, under Section 436(c), these governing standards are required to contain rules for the maintenance of property, conduct in public places, and

parking of vehicles. How will this work when parking of vehicles can only be regulated in accordance with Title 75 of the Pennsylvania Consolidated Statutes, which must be by ordinance, but the district can't have ordinances? And what about other Vehicle Code ordinances which regulate speed limits and weight limits? Would these just be invalid since Title 75 has very specific rules for putting these in place by ordinance? Would any local "rule" be enforceable in the new district?

Under Section 441(i), the standards could be enforced by civil action by the administrator or any aggrieved property owner or resident of the district. Again, will the administrator be located in the district or in an office in Harrisburg? Can the administrator hire a codes enforcement officer to enforce codes or will the property owners be left fending for themselves?

Also, this section states that "a violation of the governing standards shall constitute a public nuisance." It is our understanding from the courts that a nuisance must be proven and cannot simply be a public nuisance *per se*. Further, 441(i)(3) is simply confusing. What does this mean? What "relief" are they referring to? The cost to file civil action, relief from the alleged public nuisance, or both? Nowhere does it state that such relief is to be included in the essential services plan!

Section 442(h) would authorize the district advisory committee to recommend changes to the governing standards, as well as by petition of at least 10 percent of the voters. However, the administrator may choose to not include such recommendations if he determines that it would "substantially impede the administration of the essential services plan." Again, this does not appear to be an objective standard, but gives the administrator overly broad discretion.

### **District Advisory Committee**

One of the final duties of the about-to-be eliminated governing body is to appoint three members to a district advisory committee. What happens if the governing body chooses not to appoint these members or is unable to agree? There is no other provision for appointing this board and one must assume that in such dire situations that the governing board is assumed to be unable to function. In addition, there is nothing to prohibit choosing the members of the district advisory committee from the members of the governing body, which could have pros and cons.

Once appointed, the members of the district advisory committee would appoint their replacements as each vacancy occurred. This is certain to create problems as two members would appoint or reappoint the third. If the remaining two failed to agree, the administrator would be empowered to fill the vacancies of the only body that is authorized to provide any input to the administrator. That would certainly color who the administrator chooses!

The advisory committee would be required to meet at least quarterly with the administrator and may make recommendations for revisions to the essential services plan and rate calculations. While the administrator, "shall consider" all recommendations, they would not be required to act. The committee would be required to hold public meetings, but would they be required to accept public comment? They are not a local government or a governing body. How do the residents have input? Does the committee or the administrator have to listen or accept their input?

Does the requirement for an annual meeting in Section 444(a) replace one of the quarterly meetings in Section 442(e)? Why do these sections contain essentially the same process? What is different about these meetings?

We are not sure what is intended by Section 442(f). Wouldn't the citizens have greater standing to provide their own comments directly to the county? What is meant by "to any county official"? Is this meant to be some sort of go-between? What does "land-use related matter" mean?

If the committee provides a recommendation to merge or consolidate or incorporate to the department under Section 442(g), what happens? Does it trigger some sort of process?

### **Assessments**

While the legislation takes great pains to make it clear that the administrator cannot levy taxes on behalf of the district in Section 436(b)(1), it then includes a cap the first year's assessment rate in Section 436(b)(3) of 5 percent more than the *total taxes* levied in the municipality's final year. This cap is language found to cap property taxes in the year after a reassessment, which is distinctly tax language, not "assessments." The original rate of assessment is part of the essential services plan.

In addition, Section 441(g) states that payment of fees shall constitute a credit against the collection of any income tax by a municipality on nonresidents. Again, this sounds like a tax that is being called an assessment.

One of our primary concerns about the assessments is that this would replace ALL taxation in place during the distressed municipality's final year. This would include revenue from the property tax, earned income tax, per capita, local services tax, amusement tax, possibly a business privilege or mercantile tax, and possibly additional taxes proposed under this legislation. The end result would be that a diversified tax base would now be levied directly on property within the district on a front-foot or benefit-conferred basis. This is a huge tax shift that will be extremely difficult for those with limited or fixed incomes.

In addition, we must make an assumption that if the former municipality was not viable based on the taxes it was collecting at the time and that debt is not eliminated, that more revenue, not less will be needed. This could have a catastrophic impact on the community and would likely drive businesses and residents from the district, leaving a trail of blighted property behind.

Section 443 provides the details and they are rather vague. The only option to challenge an assessment is filing action in the court of common pleas within 30 days of receiving notice.

This type of assessment can be difficult to collect and, as in this case, liens are the primary means of collection, which can only be settled when the property is sold. We question how much property will be sold if the assessments are going to replace all taxes from the former municipality. We are concerned that this will end up creating vacant, blighted property.

What is "other public property" under 443(i). We understand federal and commonwealth property, but what does "public property" entail and why wouldn't it need to pay its fair share of the assessments?

### **Merger, Consolidation, or Reincorporation**

The only way out of disincorporation is to merge, consolidate, or reincorporate under Section 447. While the process in Section 447(a) appropriately gives the citizens the ability to petition the court to begin the merger or consolidation process and allows the will of the citizens to prevail, the provisions of Section 447(b) allow the secretary to exert tight control over the possibility of reincorporating.

## **Conclusion on Disincorporation**

As you can see, given the ramifications, what governing body, what citizenry, would choose disincorporation as an option for its already bleak future?

While we cannot accept the concept of forced disincorporation administered by a state bureaucrat, we do support the will of our citizens to control their destiny. Should the residents and taxpayers of a municipality determine that disincorporation under a revised proposal was a viable option and this was truly the choice of the community, proposed by the citizens or elected officials and subject to a referendum vote, we would not oppose the will of the citizens to disincorporate. However, this decision must be made locally by the governing body of the municipality and its voters. It is simply unacceptable to allow the secretary of the Department of Community and Economic Development to seek disincorporation without local affirmation of the citizens who must live with the consequences.

## **Miscellaneous Comments**

Throughout the proposal, there are numerous timeframes for action. In most of these cases, including those throughout the disincorporation provisions, these timeframes are too short to appropriately allow for public comment and deliberative action on behalf of a governing body. In most cases, the public has 15 days after filing of a plan to submit written comments, a public hearing must be held no less than 20 days from filing, and then the governing body must act within 25 or 30 days from the date of the public hearing.

Section 241, Section 10.1 would require the coordinator's plan to include recommendations for enhanced cooperation and changes in land use planning and zoning, including regional approaches that would promote economic development and improve residential, commercial, and industrial use availability within and around the municipality. We have concerns with this provision being part of the coordinator's plan. Such changes to land use are complex to enact and must go through the appropriate channels and timeframes required by the MPC. We don't see how a distressed municipality could agree to such recommendations within the required time frames of plan adoption. Otherwise, it appears that such provisions would be in direct conflict with the MPC. If the plan recommendations were to investigate the feasibility of whether such changes would be appropriate, this may be more acceptable.

Section 242 would increase the time given to the coordinator, from 90 to 120 days, to develop and file a municipality's plan. This contrasts with many of the very short time frames for public input throughout the legislation. We support more opportunity for public input and longer time frames for deliberation and action.

Exit plans under Section 256 must include any recommendation to change the form of municipal government or configuration of elected or appointed officials or employees. However, how can the municipality accept the exit plan and agree to these changes if a resolution or ordinance is required just to put the question on the ballot? What happens if the residents reject the change? Is the exit plan invalid? Does this propel the municipality into receivership or disincorporation? What if the timing of the exit plan is such that the deadline for the next ballot can't be met?

Finally, we must question the inclusion of the Keystone Principles in the Early Intervention Program and as part of the evaluation criteria in Section 106-A of the program. As a policy from the Rendell administration that does not exist in statute or regulation, we don't believe it is appropriate to place these guidelines into statute now.

## **Conclusion**

We ask the Committee to step back and study the proposed legislation before moving it any further. The intentions are admirable, communities should not be left to languish in Act 47. However, the solutions presented on the one hand do not go far enough and on the other hand go to the extreme of what our members consider good public policy.

Disincorporation is extreme and the provisions putting forth in this concept leave us with many unanswered questions about the implementation and day to day administration of a disincorporated municipality. Whether the communities to be disincorporated have 1,000 or 100,000 citizens, this is a foreign concept to all of local government in Pennsylvania and one that should not be rushed. Our associations question whether the impacted citizens would really accept this as the appropriate solution.

Setting a limitation on the length of stay in Act 47 is also extreme, especially given the number of years some communities have been in and the fact that there are no new tools provided in the bills we are discussing today. A plan with a specified number of years based on the coordinator's plan recommendations would be much more appropriate than the arbitrary number of five years.

Setting aside the hot button topics of disincorporation and the length of time a community should be allowed to use Act 47, we are still not addressing the fundamental issues of reversing and preventing fiscal distress. We cannot make this point enough -- as a Commonwealth, our goal should be fiscally sound local governments that attract new residents and businesses bringing growth to our regions and stability to our Commonwealth. We should be asking ourselves, what do we need to do to prevent municipalities from having to turn to Act 47?

In that vein, every legislator supporting these bills and voting to move them through the legislative process should also be supporting SB 1111 (Eichelberger), HB 1845 (Kauffman), and HB 1581 (Grove). These bills will do more toward reversing municipal fiscal distress than any other legislation introduced this session.

We hope the Committee will consider our comments as constructive. We are available and would welcome more discussion on the concepts presented today. Thank you again for the opportunity to present testimony. We are happy to address your questions.