

STATEMENT OF

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POLITICAL AND LEGISLATIVE DEPARTMENT

BEFORE THE

JOINT HEARINGS COMMITTEES ON ACT 47

DECEMBER 8, 2011

Good Afternoon and thank you to the Chairmen and members of all the Committees here today for this opportunity to address concerns regarding Act 47 of 1987, the Municipalities Financial Recovery Act.

My name is William Dando. I am the Director of the Political and Legislative Department at AFSCME Council 13. AFSCME Council 13 and its affiliates represent over 65,000 State, City, County, and Municipal employees here in Pennsylvania. I again thank the Committees for taking time to listen to our concerns and suggestions for improving Act 47.

Among AFSCME Council 13's membership are employees of a number of distressed municipalities across the Commonwealth, including some that have been under a declaration of distress for decades, such as the City of Johnstown, and a number that were declared distressed within the last several years, including the Cities of Pittsburgh, Reading, Scranton and, most recently, the City of Harrisburg.

Our experience over years of working with these municipalities indicates that the most important positive change that could be made to Act 47 would be to add a sunset provision for a declaration of distress. Under the present framework, there is no real end game for most distressed municipalities. The statute's current provisions regarding termination of distressed status, found in Section 253 of the Act, provide only two means of coming out of distress: either the municipality or the Secretary of the Department of Community and Economic Development may seek a hearing to determine if the municipality is no longer financially distressed, after which the Secretary makes a determination. In making this determination, the Secretary must consider four factors:

- (1) Whether the monthly reports submitted by the Plan Coordinator to the DCED indicate that termination of the status of municipal financial distress is appropriate;
- (2) Whether the municipality's accrued deficits have been eliminated;
- (3) Whether the obligations issued to finance all or part of the municipality's deficit has been retired; and
- (4) Whether the municipalities audited financial statements show that it has operated for at least a year under positive current operating fund balance or equity.

In considering the effectiveness of these mechanisms, it is revealing to consider the fact that, in the 24 years since Act 47's passage, only 6 of the 26 municipalities that have been declared distressed have ever seen that declaration rescinded. More than 40% – eleven municipalities – have been in a state of fiscal distress for over 15 years. I do not claim any special expertise in municipal finance, but what we believe is obvious from this track record is that either Section 253's criteria are unattainable for struggling municipalities, or Act 47 itself does not provide sufficient incentives for those municipalities to do what is necessary to achieve the statute's objective: financial recovery.

AFSCME Council 13 and other Labor Unions are not alone in our belief that Act 47's is not working to bring municipalities out of distress, or that the addition of some sort of timeline for recovery would go a long way to help distressed municipalities get their fiscal house in order. Supreme Court Justice Eakin, in a recent concurring opinion in a case involving the City of Scranton voiced the same concern:

“During argument of this case, counsel candidly acknowledged that of approximately 25 cities that have “entered” Act 47 and its protections, only a handful have recovered to the point of leaving the protections of Act 47. The remaining cities have apparently found a home there; Scranton has been there nearly 20 years.

I do not propose to fault the cities or their leaders for this condition – the crutchlike aid of Act 47 can understandably lead to dependence, and extrication from a state of dependence can be difficult.”

At a recent event hosted by the Harrisburg Regional Chamber’s State of the City event, the remarks of two Mayors of distressed Third Class Cities also echoed our concerns about Act 47’s shortcomings. Reading Mayor Thomas McMahon, who has been dealing with the Act 47 process since Reading was declared distressed just over two years ago stated, “Act 47 has helped Reading incrementally, but it hasn’t provided permanent solutions.” He also remarked that, “Kicking the can down the road, Act 47 is an interim policy. It does not solve the long-term problems of our cities in Pennsylvania; this is something we need in this room and everybody in this state to recognize.” Mayor Chris Doherty of Scranton, offered these thoughts on the subject: “The state should enforce stricter time mandates. The way the law is structured now, I don’t see anybody getting out. I’ve always felt that if you are going to go into Act 47, there should be a time period of 12 to 18 months where you bring a sense of urgency to everyone in the room and the state having the power where they bring everybody together in a room saying this is the plan, you are going to have to

do it, and if you don't, we're going to make you do it, and then you are on your own throughout.”

A somewhat longer timeline may be more realistic, given the magnitude of the problems faced by a distressed municipality. But we share Mayor Doherty's belief that a mechanism is needed to provide a sense of urgency to those tasked with righting the municipality's fiscal ship. After all, the rigorous provisions of Act 47 were designed to allow the governmental entity to regain its financial footing, not to keep the municipality forever on the brink of recovery, but never quite able to regain its independence.

In order to provide an incentive to everyone involved to do what is necessary to bring the municipality out of fiscal distress, we suggest establishing a presumption that after five years of distressed status, the municipality should have become financially secure. Specifically, we suggest Section 253 of the statute be amended to should provide that on the fifth anniversary of the declaration of distress, the municipality would automatically come out of distressed status, unless the municipality could demonstrate that it is still distressed. And we suggest that the standard that the municipality must meet should be the same standard that triggered distress status in the first place. In this way, those municipalities that continue to struggle despite their best efforts to return to fiscal health could continue benefitting from state oversight and assistance. However, those who are no longer truly in distress, but who nevertheless have declined to seek a determination to that effect, would be required to retake responsibility for their future, rather than continuing the depend upon the Commonwealth.

One alternative to consider would be to add more criteria to Act 47 under Section 253, and allow for termination of distressed

status if the municipality meets a certain percentage of the listed criteria. This would not just leave the discretion of the Secretary, or the request of the municipality itself, as the only ways out of Act 47. Another alternative would be to allow an interested party, such as a labor union, to petition the Court of Common Pleas to remove a municipality from distressed status after five years have elapsed if it does not happen automatically and the Secretary of DCED is not responsive.

In closing, AFSCME Council 13 believes that now is the time, as you have heard throughout the day here from other testimony, that Act 47 needs to be improved to better assist our municipalities in these troubling times and to give all our municipalities a fighting chance to better their financial situations.

I will be happy to attempt to answer any questions you might have at this time.