

Pennsylvania State Association of Boroughs



Testimony on

Act 47 The Municipal Financial Recovery Act

presented before

*The Committees of the Senate Community, Economic and
Recreational Development Committee;*

Senate & House Local Government Committees;

House Urban Affairs Committee

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*Edward C. Troxell,
PSAB Director of Government Affairs*

PSAB Department of Government Affairs
800-232-7722 x21 - - - Fax 717-236-8289
www.boroughs.org

2nd Joint Public Hearing on Act 47 (Municipalities Financial Recovery Act)

Thank you for the opportunity to present the outlook of the Pennsylvania State Association of Boroughs who, on behalf of the boroughs of our Commonwealth, seek to promote effective local governance. My name is Ed Troxell, I am the Director of Government Affairs for the Pennsylvania State Association of Boroughs. As Director my role is to develop, oversee and implement the association legislative agenda as well as the public policy of the membership of PSAB. This is done through various processes within the PSAB wherein I act as a facilitator and staff support.

During this year 2011, PSAB is celebrating its century of service to the boroughs of the Commonwealth. This is not only a year of self-congratulatory events; it is a pivotal year for the legislative/public policy agenda of the Association. Recent passage of a package of bills amending the various municipal codes regarding bidding limits as well as the introduction of a modernization of The Borough Code in House Bill 1702, illustrate the critical mission of the Pennsylvania State Association of Boroughs. That mission is found in The Borough Code as “advancing the interests of the boroughs”¹. So PSAB reflecting the interests of its boroughs stands as one distinct municipal association, we represent actual political subdivisions “the boroughs”, this gives us a unique perspective as an association that not only advocates for elected & appointed officials, but also for the general welfare of those who reside within our communities. The result is an association that can provide a broad range of benefits, services, education and research to the public sector.

Today, as the four committees² continue their joint hearings on Act 47 of 1987, **The Municipalities Financial Recovery Act** and its impact on local governments, businesses, community and labor I would briefly present to the committees the perspective of PSAB through the lens of a public interest group. That lens will maintain a borough focus and in the following testimony PSAB will seek to discuss relevant points regarding Act 47 such as:

- Precepts of Act 47
- History of the use of Act 47 throughout the Commonwealth.
- The universe of Act 47 boroughs and their experiences with the act.
- Administrative dynamics contained in Act 47.
- Recommendations leading to a fiscally prudent Act 47.
- The role for Act 47 in twenty-first century governance.

¹ The Borough Code, Article VII, sec. 701

² PA Senate Committee on Community, Economic & Recreational Development, House Urban Affairs Committee, Senate & House Committees on Local Government.

Precepts of Act 47

Signed into law as Act 47 in September of 1987, The Municipalities Financial Recovery Act was the product of **Senate Bill 864** whose prime sponsor Senator Jim Rhoades sought the co-sponsorship of 20 additional senators in the bills final form. The act was very specific in its purpose and legislative intent in declaring “. . . a public policy of the Commonwealth to foster fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens. . . ”. The policy statement in the act continued to recognize that deteriorating conditions in municipalities not only impacted “. . . the citizens of the municipality but also of other citizens in this Commonwealth”.³

With this policy perspective, the PA General Assembly was recognizing the dynamic that the whole and its success were based on the sum of its parts. Continuing in this recognition, the legislative intent of the Act was outlined in section 102 (b) to accomplish three very relevant intentions the legislature sought to secure:

1. “Enact procedures and provide powers and guidelines to ensure fiscal integrity. . . while leaving principal responsibility for conducting the governmental affairs of a municipality, . . . **to the charge of its elected officials.** . . ”⁴
2. “Enact procedures for the **adjustment of municipal debt** by *negotiated agreement* with creditors.”⁵
3. Regarding citizens’ rights to remedy conditions in “that the citizens of those communities should be granted the **opportunity to voluntarily consolidate or merge their municipalities** . . . to reflect the geographic and economic realities of a distressed area, to merge a common community of interest, to take advantage of economies of scale. . . to provide necessary public services to the citizens of financially distressed municipalities.”⁶

Overall, when the General Assembly passed and the Governor signed Senate Bill 864 as Act 47 they recognized these three principles in effecting law beneficial to addressing municipalities facing economic distress impacting the health, safety and welfare of its citizenry. Those principles: sovereignty of locally elected officials, assistance with fiscal conditions and citizen driven consolidation\merger powers must be preserved throughout the processes outlined in Act 47. This can be observed in how the act has been used throughout the Commonwealth since 1987.

History of the overall use of Act 47

The following is a brief synopsis on how Act 47 has been used by cities, boroughs and townships over its 24 year time period. To begin with it is helpful to realize the distinctions of the municipal entities which have

³ Act 47, Chap 1, Section 102 (a) Purpose and legislative intent.

⁴ Act 47 Section 102(b)(1)(i)

⁵ Act 47 Section 102(b)(1)(ii)

⁶ Act 47 Section 102(b)(2)

accessed the program. Included in the 26 municipalities that at one time have come under distressed determinations leading to Act 47 procedures, there is one city of the Second class, one city of the Second class A, 10 cities of the Third class, 12 boroughs, and 2 townships of the Second class.⁷ It may be noted as well that this total of 26 municipalities out of the 2574 included in the 2011 US Census scarcely accounts for 1% of our municipal universe. Adding that these 26 municipalities that have at one time or are currently determined as distressed under Act 47, a chronology of determinations for those entities is helpful toward the consideration of any revision or amendment to the Act, it is as follows.

Upon its enactment in the fall of **1987**, two cities of the Third class were determined to be distressed by the DCED secretary. Considering the process of review to obtain distressed determination is roughly 40 days these municipalities reflect an anticipation of the passage of the legislation creating Act 47. The next year, **1988** saw the greatest number of municipalities enter Act 47, one city of the Third class and 4 boroughs came under distress classification.⁸ **1989** and **1990** each saw one borough enter distress status. **1991**, one Third class city; **1992**, two Third class cities and one borough; **1993** two boroughs entered Act 47. A Third class city as well as one borough in **1995** obtained distressed status. A substantial period of time lapsed until **2002** when one borough entered the program. Followed by the final borough to enter the program in **2003**, as well as a city of the Second class; years **2004**, **2006**, **2007** each witnessed one municipality determined as distressed. Finally, **2009** saw a city of the Third class and a township of the second class enter Act 47. Lastly in late **2010** a Third class city, while denying the disposition, qualified as a distressed municipality.⁹ In our consideration of how Act 47 has manifested itself as a tool of fiscal management for municipalities in the Commonwealth it would be wise to account for the *frequency* at which municipalities have entered the program as well.

As the first two years of the program can be considered its “honeymoon”, where many entities accessed the program with elevated expectations, the following 20 years have since leveled off to an average of one municipality entering the program annually.¹⁰ It should be noted that several entities have had their Act 47 status rescinded in the process of their recoveries. Moreover, consider this one observation which leads us to an overview of boroughs and Act 47. Of the total 26 entities determined distressed, 12 of them were boroughs and of those 12 boroughs, six have since had their Act 47 status determinations rescinded by DCED.¹¹

⁷ DCED Website for Act 47

⁸ 2 of the 4 boroughs have had their distress status rescinded

⁹ Chronology (*attached page 9*)

¹⁰ A six year break from 1996-2001 occurred where no municipalities entered the program

¹¹ Distress Determination list at end of testimony (*attached page 10*)

Universe of Act 47 boroughs

As noted earlier boroughs make up a large, almost majority of those communities that have entered the Act 47 program (12 of 26). The program seems to work well with borough communities due to its contingent sanctions for failure to adopt or implement Act 47 coordinator plans.¹² The potential loss of funds is a significant motivator in communities like boroughs whose levels of distress and dissonance from their governing bodies is not as severe as other entities similarly determined as distressed. The following summary does not account for boroughs that have accessed the Early Intervention Program to offset formal enrollment into the Act 47 program.¹³ To review, here are some observations regarding Act 47 and the boroughs of the Commonwealth.

In **1988** four boroughs entered the Act 47 program: Braddock, Franklin, Shenandoah and Wilkinsburg. Of those four boroughs, Shenandoah (Schuylkill) and Wilkinsburg (Allegheny) have since had their distress status rescinded.¹⁴ The remaining boroughs of Braddock and Franklin according to latest census figures have both seen a loss of population over 26%. Comparatively, Shenandoah is reported with a 9.8% loss and Wilkinsburg at 17% downturn.

While population loss is a common factor eroding a local tax base, it is often not the primary factor for revenue loss resulting in distress in boroughs. As in **1989** when Rankin borough and **1990** Ambridge borough entered distress status, Rankin's population loss is gauged at 8.3% vs. -9.3% for Ambridge, yet the borough's distress status was rescinded three years later.¹⁵ To illustrate this dynamic further are the boroughs of Millbourne (Delaware) and North Braddock (Allegheny). Millbourne borough has witnessed over a 22% increase in its population and still remains under distress status, whereas North Braddock has seen its distress determination rescinded following 8 years under Act 47, and it has flourished with a 24% loss in population!

This leaves four boroughs which we have yet to address regarding the program, Greenville (Mercer), West Hazelton (Luzerne), East Pittsburgh (Allegheny) and Homestead (Allegheny) all of which are split 50-50 on their current distress status. Greenville borough located in Mercer County has been in the Act 47 program since 2002, its primary hurdle to rescission of distress status has been identified in its June 2011 plan amendment. Simply put, a structural deficit over the last 3 years ranging from \$500,000 - \$550,000 annually is caused by numerous factors.¹⁶ Among those factors are the large amounts of tax-exempt properties (estimated at 20%) such as a college, large hospital and the Greenville School District, this is combined with the recent loss of the boroughs largest employer and the costs of local public safety and emergency services. Conversely, the borough

¹² Act 47 Section 248. Failure to adopt or implement plan: This section withholds Commonwealth funds from distressed entity.

¹³ EIP summary from PA Legislator's Municipal Deskbook , Third Ed, 2006 (*attached page 11*)

¹⁴ Shenandoah 4/16/93, 5 yrs in program & Wilkinsburg 11/10/98, 10 yrs in program

¹⁵ Ambridge distressed determination was rescinded in 4/16/93

¹⁶ US Census population loss of 7.2% between '00-'10

of West Hazleton (Luzerne) entered distress status in 2003 however, under its 2007 amended Act 47 plan it finds itself able to respond to the requests of its citizens for increased police protection. This is the result of it following closely its original plan to reduce police staffing, privatizing select services and downsizing the public works complement. It has also realized over a 29% increase in population.

Altogether, while the boroughs of Greenville and West Hazleton still operate under distress status, their amended Act 47 plans have been modified and amended to address the uphill climb of rescission. Using the powers and guidance of Act 47 these boroughs will receive the supervision to operate in a fiscally prudent way to guarantee the health, safety and welfare of their residents. Their goal is to finish as the last two of our 12 boroughs that have utilized the Act 47 program have – *economically sound*. Both located in Allegheny County the boroughs of East Pittsburgh and Homestead entered the program in 1992 and 1993 respectively. East Pittsburgh’s status was rescinded just over seven years later in 1999 and Homestead saw a 14 year period under the program to emerge in 2007. In all, the cases of each of the 12 boroughs that have operated under the Municipalities Financial Recovery Act have much to offer in the consideration of the value of the program.

Administrative Dynamics within Act 47

Act 47 can be a double edged sword for boroughs; its determinations can enlist technical expertise which often is too costly for communities to maintain as well as hurtful in the potential loss of revenue flows to the municipality, not to mention the stigma which a “distressed” determination may arise. However, helpful to the municipality which is confronted with fiscal distress is DCED’s capacity to create or implement an “*early warning system*” commonly referred to as its **Early Intervention Program**. This program, the result of Section 121 (f) of Act 47 has been used successfully and PSAB would offer DCED its support in making more of our communities familiar with its availability when confronted with fiscally challenging circumstances.

One administrative dynamic which is worthy of examination under the current law is the designation of a Coordinator for the Act 47 plan.¹⁷ Under Section 221 the designation of plan coordinator is outlined in 5 subsections. They are (a) appointment, (b) qualifications, (c) compensation, (d) duties and (e) powers, the act is fairly straightforward on these sections however, there remains one aspect of concern. Under (b) qualifications, PSAB would offer that one of the actions leading to the qualifications of a Act 47 plan coordinator would be the interaction with the governing body to which the candidate coordinator would be appointed. This would foster familiarity and broaden the potential for future interactions with the community under consideration.

Recommendations

Under its current construction Act 47 and its capacity to remedy fiscal distress in municipalities is reasonably sound. The presence of the Early Intervention Program gives municipalities the ability to anticipate

¹⁷ Act 47, Section 221

fiscal irregularities and plan or adapt for them. There are however, areas of recent concern that would prompt PSAB to suggest or make recommendations that would enhance the law as it is currently constructed. We would begin by placing a focus on the Department of Community and Economic Development.

As DCED is the main actor in Act 47, its processes, determinations and plans, PSAB would reinforce to the department the need to consider a stronger, collaborative role for a municipality's respective association. Wherein the legislative intent of Act 47 is to among other things, leave principal responsibilities to "the charge of its elected officials", those officials in most cases, maintain membership in an association of their peers which is able to offer resources useful in these events.

Our recommendation is that as the Early Intervention Program is accessed or inquired of by borough communities, DCED would contact PSAB of that action. This would enable the association in collaboration and cooperation with both the department and the borough to offer resources and any helpful assistance. We understand that change may take an act of legislation, such as an addition to the definitions section of the act, however this may coincide with other recommended definitions changes in the current Act. This recommendation also will necessitate an amendment to the administrative provisions of the Act. Specifically, under Subchapter B, section 121 (f).¹⁸

Lastly among our recommendations would be an endorsement of a legislative proposal put forth as the result of a court decision which has the potential to wreak havoc on existing Act 47 plans and their communities. The recent PA Supreme Court decision in Scranton v. Firefighters Local Union No. 60 sadly will place an undue focus on all Act 47 plans either in their early, mid or late stages of execution. Clearly the court erred and PSAB agrees with the author of **Senate Bill 1321** who stated that "A failure to maintain the past application of the provisions of section 252 of Act 47 would be costly and harmful to distressed municipalities and take away an important tool available under Act 47 to Pennsylvania municipalities and the citizens that reside there".¹⁹

Act 47 in 21st Century Governance

In closing this brief statement on Act 47, PSAB would echo that this vital instrument of law is developed for a specialized purpose – to remedy fiscal and economic distress impacting our Commonwealth's citizenry. Act 47 communities do not exist in a vacuum and their fiscally imperiled determinations reach across municipal borders to affect people and their health, safety and welfare. It is unfortunate when a competent volume of law such as Act 47 is misinterpreted at the cost of the taxpayer, but that is unfortunately what has occurred in the Scranton case. Remedies are indeed needed to restore the viability of the Act.

¹⁸ The subsection of the act directing the development of an early warning system.

¹⁹ October 25, 2011 Senator Jane M. Earll , Co-sponsorship Memo "Legislation Amending Act 47"

The remedy encased in Senate Bill 1321 is a first step to protecting the tools municipalities need in the future, especially during this economic downturn. Moreover, it enables a plan to remain whole, consistent and reliable removing outside factors which may indeed undermine the goals of a plan. With the added recommendations from PSAB allowing municipal associations to collaborate with DCED in performance of Act 47 law the future would indeed be brightening in creating remedies able to restore and reinvigorate the fiscal conditions of our Commonwealth's communities.

Thank you again for the opportunity to discuss this critical issue impacting all our citizens.

Chronology of Municipalities Determined as Distressed Act 47

1987

City of Farrell, Mercer County - November 12, 1987

City of Aliquippa, Beaver County - December 22, 1987

1988

City of Clairton, Allegheny County - January 19, 1988

Borough of Braddock, Allegheny County - June 15, 1988

Borough of Franklin, Cambria County - July 26, 1988

Borough of Shenandoah, Schuylkill- Designated 5/20/88; *Rescinded 4/16/93*

Borough of Wilkesburg, Allegheny-Designated 1/19/88; *Rescinded 11/10/98*

1989

Borough of Rankin, Allegheny County - January 9, 1989

1990

Borough of Ambridge, Beaver County - Designated 4/10/90; *Rescinded 4/16/93*

1991

City of Duquesne, Allegheny County - June 20, 1991

1992

City of Scranton, Lackawanna County - January 10, 1992

City of Johnstown, Cambria County - August 21, 1992

Borough of East Pittsburgh, Allegheny County - Designated 11/13/92; *Rescinded 12/27/99*

1993

Borough of Homestead, Allegheny County -Designated 3/22/93; *Rescinded 3/28/07*

Borough of Millbourne, Delaware County - January 7, 1993

1995

City of Chester, Delaware County - April 6, 1995

Borough of North Braddock, Allegheny County -Designated 5/22/95; *Rescinded 4/11/03*

2002

Borough of Greenville, Mercer County - May 8, 2002

2003

City of Pittsburgh, Allegheny County – December 29, 2003

Borough of West Hazleton, Luzerne County - March 27, 2003

2004

Township of Plymouth, Luzerne County – July 27, 2004

2006

City of Nanticoke, Luzerne County – May 26, 2006

2007

City of New Castle, Lawrence County – January 5, 2007

2009

City of Reading, Berks County - November 12, 2009

Westfall Township, Pike County - April 14, 2009 – *Chap 9*

2010

City of Harrisburg, Dauphin County - December 15, 2010

Municipalities Financial Recovery Act 47 of 1987

DISTRESS DETERMINATIONS

City of Pittsburgh, Allegheny County – December 29, 2003

City of Scranton, Lackawanna County - January 10, 1992

City of Farrell, Mercer County - November 12, 1987

City of Aliquippa, Beaver County - December 22, 1987

City of Clairton, Allegheny County - January 19, 1988

City of Duquesne, Allegheny County - June 20, 1991

City of Johnstown, Cambria County - August 21, 1992

City of Chester, Delaware County - April 6, 1995

City of Nanticoke, Luzerne County – May 26, 2006

City of New Castle, Lawrence County – January 5, 2007

City of Reading, Berks County - November 12, 2009

City of Harrisburg, Dauphin County - December 15, 2010

Borough of Braddock, Allegheny County - June 15, 1988

Borough of Franklin, Cambria County - July 26, 1988

Borough of Rankin, Allegheny County - January 9, 1989

Borough of Millbourne, Delaware County - January 7, 1993

Borough of Greenville, Mercer County - May 8, 2002

Borough of West Hazleton, Luzerne County - March 27, 2003

Township of Plymouth, Luzerne County – July 27, 2004

Westfall Township, Pike County - April 14, 2009 Chap 9

DISTRESS DETERMINATION RESCISSIONS

Borough of Shenandoah, Schuylkill, pop. 5,071 - Designated 5/20/88; Rescinded 4/16/93

Borough of Ambridge, Beaver, pop. 7,050 - Designated 4/10/90; Rescinded 4/16/93

Borough of Wilksburg, Allegheny, pop. 15,930 - Designated 1/19/88; Rescinded 11/10/98

Borough of East Pittsburgh, Allegheny, pop. 1,822- Designated 11/13/92; Rescinded 12/27/99

Borough of North Braddock, Allegheny, pop. 4,857 -Designated 5/22/95; Rescinded 4/11/03

Borough of Homestead, Allegheny, pop. 3,165 -Designated 3/22/93; Rescinded 3/28/07

Early Intervention Program⁵

The Early Intervention Program, which is administered by the Pennsylvania Department of Community and Economic Development, provides assistance to Pennsylvania local governments by helping them to deal with financial management and fiscal difficulties in a timely and deliberate manner so as to avert potential adverse impacts on public health, safety, and welfare. According to the Department:

The guiding philosophy of the program involves five specific measures that a local government can take to effectively manage its financial position and achieve or maintain long term fiscal and economic viability:

- a. Expenditure reduction;
- b. Revenue enhancement;
- c. Implementation of long-term community and economic development strategies for tax base stabilization;
- d. Adoption of best management practices to achieve operating efficiencies; and
- e. Pursuit of intergovernmental cost-sharing strategies.⁶

Local governments may make an Early Intervention grant application to the Department for:

1. The development, adoption and implementation of Multiyear Financial Management Plans.
2. Consultant services to assist a municipality in the development of a Multiyear Financial Management Plan or related municipal financial and management studies.
3. The development of related studies to improve the management practices and/or financial administration procedures of the local government.
4. The development of multimunicipal or regional intergovernmental cooperation initiatives and cost sharing strategies.⁷

The Department generally requires that the grantee normally provide a 50 percent cash match. However, it may provide exceptions in certain cases.

⁵ *Early Intervention Program Guidelines*, Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, Pa., September 2005.

⁶ *Id.*, p. 2.

⁷ *Id.*