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HB 1171 (Printer's No. 1227) Analysis

Date: April 14, 2021

**Amending the Municipalities Financial Recovery Act –
Enhancing Ethical Provisions**

Prime Sponsor: Representative Freeman

A. Synopsis of Bill

This bill provides for the responsibilities of coordinators and receivers appointed to assist financially distressed municipalities by requiring compliance with ethics statutes.

B. Summary and Analysis of Bill

This bill would amend the Municipalities Financial Recovery Act, or “Act 47,” by specifying additional ethical compliance requirements for the appointees, recovery coordinators and receiver, who work directly with financially distressed municipalities on behalf of the Department of Community and Economic Development (DCED). A recovery coordinator would be prohibited from engaging in conduct that is prohibited under the Ethics Act (65 Pa.C.S. Ch. 11) and the State Adverse Interests Act (Act 451 of 1957). These acts require covered persons to avoid conflicts of interest, nepotism and self-dealing in contracts among other things.

Both recovery coordinators and receivers would be prohibited from using their appointment to obtain any kind of financial compensation from a financially distressed municipality that is not explicitly authorized by the appointee’s contract with DCED. Additionally, recovery coordinators and receivers would be prohibited from receiving any form of compensation or profit from any sale, lease or other financial transaction that involves the distressed municipality, or a municipal authority that is under the direct or indirect control of the municipality.

A violation of these prohibitions by a recovery coordinator would constitute grounds for the termination of the coordinator’s contract with DCED.

Finally, this bill clarifies that its ethics requirements do not bar an individual coordinator, receiver or other legal or financial consultant from qualifying for a contract to serve the same municipality under a separate

program in Act 47. It is common, for example, for a financial consultant hired by a local government or DCED during the Early Intervention Program to ultimately serve as the recovery coordinator if the municipality later becomes a distressed municipality under the act.

The act would take effect in 60 days.

C. Relevant Current Law

Act 47 contains separate qualifications for a person or consulting firm to be appointed as a recovery coordinator or receiver. Those qualifications in current law do not prohibit a coordinator to engage in conduct that would violate the Ethics Act or the State Adverse Interest Act, even though a receiver does have that prohibition. Additionally, current law does not expressly forbid a coordinator or receiver from taking a financial interest in a distressed municipality's recovery.

D. Background of Bill

The Local Government Commission Committee on Act 47 conducted a stakeholder survey with recovery coordinators, consultants, municipal associations, the Governor's Center for Local Government Services and others to identify areas of improvement for the Act 47 program and advise the committee accordingly. Clarifying and improving ethical responsibilities for appointees administering the program emerged as an area with a high degree of consensus between the contributors.

E. Effect of Bill

This bill would increase public confidence in the work of recovery coordinators and receivers appointed to assist financially distressed municipalities. Struggling local governments face difficult questions about financial management, which may concern the sale or lease of assets, alternative local service delivery, financial instrument restructuring and debt issues, among other things. For each of these options and others, local leaders and the public at large need the assistance of impartial advisors.

F. Issues, Policy Questions and Stakeholder Feedback

The Governor's Center for Local Government Services of the Department of Community and Economic Development has reviewed the proposal and suggested additional language, which has been incorporated into the bill.

In addition, the following local government associations have expressed support for the concepts contained in this bill:

- Pennsylvania Municipal League
- Pennsylvania State Association of Township Supervisors
- Pennsylvania State Association of Boroughs

G. Bill History

In the 2019-2020 Session, this bill was introduced in the House as House Bill 1246. House Bill 1246 was passed by the House on September 23, 2019 (199-0). The bill was referred to the Senate Community, Economic and Recreational Development Committee on October 8, 2019 where it remained upon sine die adjournment. This legislation was also introduced in the Senate during the 2019-2020 Session as Senate Bill 554. The bill was referred to the Senate Community, Economic and Recreational Development Committee on May 9, 2019 where it remained upon sine die adjournment.