PENNSYLVANIA
BANKERS ASSOCIATION

Testimony on H.B. 2738 Prohibiting Campaign Contributions to State Treasurer Candidates by Those with an Investment Relationship
House Finance Committee Public Hearing
August 19, 2008

Good morning Chairman Levdansky, Minority Chairman Nickol and members of the House Finance Committee. My name is Jim Biery and I am President and CEO of the Pennsylvania Bankers Association. I appreciate the opportunity to appear before you today to present PBA's views on Representative Nickol's legislation that would prohibit certain investment advisors with an investment relationship with the State Treasury Department from making campaign contributions to candidates for the office of State Treasurer.

The Pennsylvania Bankers Association is the statewide trade association representing approximately 200 financial institutions of all sizes located throughout the Commonwealth including national and state banks, bank and trust companies, trust companies, savings institutions, and their subsidiaries and affiliates.

PBA members currently provide investment advisory services or serve as state depositories of Commonwealth public funds. Financial institutions providing investment advisory services as defined in the legislation would be impacted by its prohibitions.

Under the bill, the Treasury Department would be prohibited from entering into an investment relationship with a person who has solicited any campaign contribution on behalf of or made any campaign contribution to a candidate committee or election fund of the State Treasurer or any candidate for State Treasurer. This prohibition would apply to solicitations and contributions made by the person, by an individual representing the person or by a political action committee controlled by the person.

In addition, a "person" that has agreed to or already entered into an investment relationship with the Treasury Department could not knowingly solicit or make any campaign contribution to a candidate committee or election fund of the State Treasurer or any candidate for State Treasurer and this prohibition would likewise apply to solicitations and contributions made by the person, by an individual representing the person or by a political action committee controlled by the person.

"Person" is defined as an individual, organization or partnership currently engaged in or seeking to engage in an investment relationship with the Treasury Department where the relationship can reasonably be expected to generate at least $25,000 annually in income, fees or other revenue to the individual, organization or partnership and shall include: 1) authorized or key personnel as defined or identified by a contracting party by being attached to the contract; 2) persons who expect to or do experience a material financial effect on their economic interests, including salary, bonuses, options or other financial incentives directly deriving from an investment relationship.

An "investment relationship" is defined as a relationship between a person and the Treasury Department for the purpose of providing investment services such as legal services, investment banking services, investment advisory services, underwriting services, financial advisory services or brokerage firm services for brokerage, underwriting and financial advisory activities.

Although the legislation only applies to contributions made and investment relationships entered into after November 30, 2010, once the legislation takes effect these prohibitions would apply to the time period which begins two years prior to the date upon which the Treasury Department first announces a procurement or search process that could lead to an investment relationship which can reasonably be expected to generate at least $25,000 annually in income, fees or other revenue for the person, or the date upon which a person approaches the Treasury Department with a proposal to enter into an investment relationship with the Treasury Department by discussing the specific facts and financial terms of a particular investment transaction or strategy, and ends upon the termination of the investment relationship. For example, if the Treasury Department announces a procurement or search process on December 1, 2012, which results in an investment relationship commencing July 1,2013, the legislation would apply to contributions made on any date on or after December 1, 2010.

While PBA appreciates the intent of Representative Nickol and the proponents of the legislation to eliminate any appearance of an environment where those who wish to provide investment services or enter into investment relationships with the state Treasury Department feel they are compelled to contribute to a state Treasurer candidate's campaign committee in order to improve their chances of obtaining business with the Treasurer, we respectfully disagree that a so-called "pay to play" environment exists or has ever existed in dealings with the State Treasury Department and State Treasurers past or present.

Our members advise us that the majority of contracts entered into with the Treasury Department are competitively bid and decisions by the Treasurer are based on the terms of service and conditions in the bid proposal.

Just as we do not believe that state legislators determine how they are going to vote on a piece of legislation based on who has contributed to their campaigns for election and re-election, we simply do not believe that state Treasurers base their investment relationship decisions on those firms or individuals that have contributed to their campaigns.

Individuals, employees of corporations and members of organizations such as ours that participate in the political process contribute to candidates for elected office for various reasons. Often it is because the candidate shares the same beliefs or philosophy, the candidate has a vision or goal for the office they are seeking election to that attracts supporters, or perhaps because there is an existing professional or even personal relationship with the candidate. These hold true whether it is a candidate for Township Commissioner or President of the United States.

An outright ban on campaign contributions as this legislation seeks to impose also raises questions of constitutionality as it can be argued that such a prohibition would limit citizens' first amendment rights. We believe this question needs further study and requires input from those with more expertise than I can offer today.

We are also concerned that the two-year look back provision in the legislation will be very difficult to comply with and needs to be deleted from the bill. For example, if a candidate for state Treasurer that is currently another officer holder such as a state legislator or other statewide office holder runs for Treasurer in 2012, and a contribution was made to his or her campaign committee while holding the other office but within the 2 year look-back timeframe, we believe it would not be possible to have an investment relationship with that individual if they are elected as state treasurer. At the very least, the legislation should clarify that when procurement or search processes begin on or after December 1, 2010, the look back period will not apply to periods prior to December 1, 2010.

If this Committee and the General Assembly are intent on enacting changes to campaign finance law, we suggest that any campaign contribution prohibitions should apply uniformly and be applicable to candidates for Governor, Auditor General, Attorney General, Treasurer and the General Assembly. We do not believe it is equitable to apply any restrictions one office at a time.

To avoid questions of the constitutionality of campaign contribution prohibitions, the Committee may also wish to look to existing federal election law contribution limits, rather

than a complete ban. These limitations provide than an individual may currently contribute $2,300 to each federal candidate or candidate committee per election. Multi-candidate political action committees may contribute $5,000 to a federal candidate per election. The individual contribution limits set forth in the federal campaign finance laws are adjusted every election cycle to account for changes in the consumer price index (CPI).

We also recommend that the Committee carefully review the limitations upon campaign contributions already imposed by Rule G-37 of the Municipal Securities Rulemaking Board. The MSRB is a federal agency established in 1975 by Congress (pursuant to 15 USC § 780-4) to develop rules regulating securities firms and banks involved in underwriting, trading, and selling municipal securities, i.e., bonds and notes issued by states, cities, and counties or their agencies to help finance public projects. Rule G-37 applies to brokers, dealers, or municipal securities dealers, or municipal financial professionals associated with a broker, dealer, or municipal securities dealer, engaging in the "municipal securities business" with an issuer. The term municipal securities business as defined in Rule G-37 refers to any negotiated underwriting, a private placement, or the provision of financial advisory, consultant or remarketing agent services relating to a negotiated underwriting or private placement, and does not apply to the purchase, offer or sale of securities or the provision of services on a competitive bid basis. The Committee should consider whether Rule G-37 renders the legislation unnecessary, and to the extent the Committee decides that some expansion of the restrictions imposed by Rule G-37 may be appropriate, how to develop legislation that is consistent with and complies with the various exceptions and limitations included in Rule G-37.

While we disagree with the underlying assumptions that are prompting this legislation, at the very least it should be made very clear that it is prospective in its application until some point after its effective date and the two year look back provision should either be eliminated or clarified as well.

I again appreciate this opportunity to appear before you on behalf of the Pennsylvania Bankers Association and will try and answer any questions you may have.