COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

HOUSE URBAN AFFAIRS COMMITTEE

HOUSE LOCAL GOVERNMENT COMMITTEE

SENATE COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT COMMITTEE

SENATE LOCAL GOVERNMENT COMMITTEE

STATE CAPITOL
ROOM 140, MAIN CAPITOL BUILDING

THURSDAY, OCTOBER 20, 2011
9:30 A.M.

JOINT PUBLIC HEARING ON ACT 47

BEFORE HOUSE MEMBERS:

HONORABLE CHRIS ROSS, MAJORITY CHAIRMAN, URBAN AFFAIRS
HONORABLE THOMAS CREIGHTON, MAJORITY CHAIRMAN, LOCAL GOVERNMENT
HONORABLE W. CURTIS THOMAS, MINORITY CHAIRMAN, URBAN AFFAIRS
HONORABLE ROBERT FREEMAN, MINORITY CHAIRMAN, LOCAL GOVERNMENT
HONORABLE MICHELLE BROWNLEE
HONORABLE GARY DAY
HONORABLE MARIA DONATUCCI
HONORABLE SUE HELM
HONORABLE TIM HENNESSEY
HONORABLE DAVID MALONEY, SR.
HONORABLE NICK MICCARELLI
HONORABLE RICK MIRABITO
HONORABLE ROSEMARIE SWANGER
HONORABLE MIKE TOBASH
HONORABLE MARCY TOEPEL
HONORABLE TARAH TOOHIL
HONORABLE JAKE WHEATLEY

BEFORE SENATE MEMBERS:

HONORABLE JANE EARLL, MAJORITY CHAIRWOMAN,
ECONOMIC AND RECREATIONAL DEVELOPMENT COMMITTEE
HONORABLE JOHN EICHELBERGER, MAJORITY CHAIRMAN,
LOCAL GOVERNMENT COMMITTEE
HONORABLE JOHN BLAKE, MINORITY CHAIRMAN,
LOCAL GOVERNMENT COMMITTEE
HONORABLE ROBERT ROBBINS
HONORABLE JUDITH SCHWANK
HONORABLE LLOYD SMUCKER

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TESTIFIERS

CHAIRMAN ROSS: Good morning and I want to formally open this joint public hearing. The first Joint Public Hearing on Act 47 between the Senate Community, Economic and Recreational Development Committee, the Senate Local Government Committee, the House Local Government Committee and the Committee I Chair, House Urban Affairs. We're delighted to have a joint effort on this, we're going to keep our opening remarks brief and basically get into the hearing directly and particular because I know that Secretary Walker has other appointments and has very kindly spared a bit of time for us. So we want to get started, and for the information for all those in attendance this hearing is being videotaped by the broadcasting office of the House Bipartisan Management Committee, the video is also being made available to the news media and for streaming on House websites. I will introduce myself, I am state Representative Chris Ross, Majority Chair of the House Urban Affairs Committee, ask my fellow Chairs here to introduce themselves and then we'll go around the room and ask the other Members who are in attendance to introduce themselves so Senator Earll.

SENATOR EARLL: I'm Senator Jane Earll I represent the 49th district which is Erie County predominantly, I'm going to forgo any opening statements since I do think it's more important to get to the meat of the matter and let everyone else just briefly introduce themselves, but good morning Mr. Secretary.

CHAIRMAN ROSS: Senator Blake.

SENTATOR BLAKE: Thank you. Just wanted to express my thanks to the respective Chairs of the Committees and particularly Senator Earll and Senator Eichelberger and again my name is John Blake, I represent the 22nd Senatorial District, predominantly Lackawanna County and as the Chairman of my Community Economic Recreational Development Committee commented I won't take up any more time. We'll get right to the testimony. Thank you.

CHAIRMAN ROSS: Chairman Creighton.

CHAIRMAN CRIEGHTON: Representative Tom Creighton from Lancaster County, looking forward today, it will be an educational session for me and I'm sure it's very critical at this time in our economic environment, thank you very much for your participation.

CHAIRMAN ROSS: Senator Eichelberger.

CHAIRMAN EICHELBERGER: John Eichelberger from Blaire, Bedford, Huntingdon, Fulton and little piece of Mifflin County, Chair of Local Government Committee in the Senate, welcome everybody and we're looking forward to hearing everything today. Thank you.

CHAIRMAN ROSS: Representative Freeman.

REPRESENTATIVE ROBERT FREEMAN: Representative Bob Freeman, Northampton County 136th district, Democratic Chair of the Local Government Committee. My thanks to all the majority chairs for convening this special joint hearing. I think this is nothing of not timely; I'm looking forward to the testimony and hope we can think out of the box in terms of how we can stabilize our older communities and make them financially healthy once again.

CHAIRMAN ROSS: And my minority Chair, Representative Curtis Thomas is on his way and will be joining us shortly; and now if I could ask those Members to my far left to introduce themselves and indicate the committee assignments that they have.

REPRESENTATIVE MICCARELLI: Thank you, my name is Nicholas Miccarelli from Delaware County. I'd echo the statements that were said by our Chairman. Thank you Mr. Secretary and also I would like to give you a compliment, you have an excellent legis director, your staff is working very well, it's been a pleasure to work with them this far.

REPRESENTAITVE DAY: Representative Gary Day from Berks and Lehigh County with the House Republican House Urban Affairs Committee. I want to thank the Chairman and

Women here today from all the different Committees whether Republican, Democratic or Commissions for convening this jointly, I think this is a very important thing in the Commonwealth of Pennsylvania and I'm proud to be part of this effort.

REPRESENTATIVE HELM: Representative Sue Helm 104^{th} District of Dauphin County, a member of the House Urban Affairs Committee and looking forward to today's session.

REPRESENTATIVE DONATUCCI: Good morning Maria Donatucci, 185^{th} District, Philadelphia and Delaware Counties. I'm on the Urban Affairs Committee and thank you for this today.

REPRESENTATIVE BROWNLEE: Representative Michelle Brownlee, Philadelphia County, Member of the House Urban Affairs Committee.

REPRESENTATIVE MIRABITO: Rick Mirabito, 83^{rd} District, Lycoming County the Local Government Committee.

SENATOR SCHWANK: Good morning I'm State Senator Judy Schwank a Member of the Senate Local Government Committee representing the 11^{th} Senatorial District in Reading.

REPRESENTATIVE TOEPEL: Good morning, Representative Marcy Toepel from Montgomery County 147^{th} Legislative District I'm a Member of the Local Government Committee.

SENATOR ROBBINS: Senator Bob Robbins, Chairman of the Local Government Commission.

RERPESENTATIVE TOBASH: Representative Mike Tobash 125^{th} District, I'm a Member of the House Urban Affairs Committee.

REPRESENTATIVE SACCONE: Rick Saccone 39th District representing Washington and Allegheny Counties, I'm a Member of the House Urban Affairs Committee.

REPRESENTAIVE SWANGER: Good morning I'm Representative RoseMarie Swanger from Lebanon County 102nd District and I'm a Member of the Local Government Committee and I thank you for this opportunity to learn more about the details on Act 47.

REPRESENTATIVE WHEATLEY: Good morning, Representative Wheatley from Allegheny County, City of Pittsburgh, District 19, Local Government Committee.

CHAIRMAN ROSS: We will have other Members, I think we've recognized all the Members here and I do encourage each of the Members to sign their respective sign in sheets, we have them for each of the 4 different Committees. So without any further ado I would like to go directly into our first panel. This is attempting to get an overview of Act 47 and we have from the Department of Community and Economic Development the Secretary C. Alan Walker and also Frederick A. Reddig, Executive Director for the Governor's Center for Local Government Services and from the Local Government Commission we have Michael Gasbarre the Executive Director and also David Greene, Legal Counsel will be helping out as well. So if we could begin with Secretary Walker, thank you for joining us.

SECRETARY WALKER: Thank you. Mr. Chairman and Members of the Committee thank you for the opportunity to provide testimony this morning on the Municipalities Financial Recovery Act, Act 47 of 1987, I'm here on behalf of the Governor and the Department of Community and Economic Development. As the Secretary of the Department of Community and Economic Development a number of programs designed to aide local governments falls under my jurisdiction, including the Municipalities Financial Recovery Act, Act 47. Fred Reddig, Executive Director of the Governor's Center for Local Government Services will be going into more detail with regards to Act 47 and Municipal bankruptcy, however I would like to share with you a brief overview. Since 1987 the Department has declared 26 Municipalities as distressed, only 1 entered Chapter 9, which is federal bankruptcy. Westfall Township in Pike County, to date 6 of the designated Municipalities have emerged from the program, though 11 of the Municipalities have been in the program for 10 years or more. Having spent over 40 years in the private sector, in my experience I have found that those who fail to plan and think strategically, plan to fail and I've always made a point in business to think strategically. We're using that same approach at DCED. In some cases that is where Municipalities have failed and as a result find themselves in fiscal insolvency. That is where programs like the early intervention program and Act 47 come in. To work with the Municipality to develop a strategic recovery plan, generally Act 47 has been largely successful at stabilizing the deteriorated fiscal conditions that lead to distress in designated Municipalities. Through extensive technical assistance resources provided by the coordinator and DCED along with a grant and loan provisions of the Act, Municipalities have been able to restore physical stability and adequately provide for the health, safety and welfare of their residents. The Act has resulted in strengthened financial management systems, credit enhancement, and physical creditability in the market place, more effective management structures and a number of instances, service efficiencies through intergovernmental cooperation. With this being said, that is why hearings like today are so important. It really gives you the opportunity to listen to testimony about what has worked, what has not worked, and any gaps that may exists. We do not know for sure how many Municipalities will become insolvent in the future, however taking into account the current economic downturn it is likely that other Municipalities are becoming more and more at risk. I apologize that I am unable to stay today, but I look forward to working with you to continue providing our local governments with the support needed to succeed and provide core services to our citizens. Thank you very much.

CHAIRMAN ROSS: And I know that Mr. Redding is going to get into much more detail but I did just want to give a brief moment if anybody had any general questions on this topic of the Committee Members for the Secretary before he goes if you have a few minutes to answer them I'd appreciate it. Representative Freeman.

REPRESENTATIVE FREEMAN: Mr. Secretary, thank you for your presence here and your testimony it's much appreciated. We realize you have a busy schedule. One issue I hope that's addressed in this course of this hearing which I would like the Department to look at very closely too is an issue that we often times ignore when it comes to Act 47 communities. Many times Act 47 communities tend to be portrayed as having just been incompetent in how they've dealt with their own situation. And I think that's unfair to many of them, I think there are many local elected officials who serve in those capacities in those communities who try with a very limited tax base and very limited resources to address the needs of their community. I would hope that in the course of efforts to address Act 47 community problems that we take a good hard look at how we can find alternative sources of revenue, or ways of compensating those communities that have a high percentage of tax exempt properties. An examination of our Act 47 communities reveals that well over 1/3 have tax exempt property of about anywhere from 20 to 40 to 50% of the total assessed value of that property. The early intervention program communities that have gone through that program, that program has been a tremendous help in getting guidance, but many of them are in the same boat in fact ¾ of those communities have tax exempt property in the rage of 20 to 30 to 40 sometimes 50% and it strikes me that no matter how many times we try to guide them, give them good advice in terms of how to stabilize their professional finances, we’re never going to solve the true systemic problem unless we find a way to ensure that they can be compensated for this high level of tax exempt property which typically are assets that are of a regional nature whether they be non-profit hospitals, universities, colleges, medical centers, government buildings, like a county Court House and it’s complex. So I would hope that the Department will give a long hard look at finding ways to assist these communities to compensate them for their high levels of tax exempt property because I really feel that’s one of the root causes as to why so many of these communities have fallen into Act 47 status.

SECRETARY WALKER: I agree with you, you’re right on, my home community of Clearfield Pennsylvania has 23% non-taxable real estate within the borough, because it’s the county seat and a number of other things and you’re absolutely right. The other thing I think we should mention is and you hit on it, it’s not always the result of bad management practices, but we have a lot of these municipalities that have lost over 50% of their population over a 50 year period, that’s pretty significant and there’s no doubt it puts a real burden on the population that’s left there because most of the time they’re senior citizens, they’re people who probably aren’t in the work force anymore, so yes we’re certainly open to suggestions on how we address this because a lot of it is just the result of what’s happened to the economy, how the economy has changed and these people, and I think most of them work with really good intentions become victims that’s totally beyond their control.

REPRESENTATIVE FREEMAN: Thank you, that was my thoughts exactly, thank you Mr. Secretary.

CHAIRMAN ROSS: Representative Wheatley.

REPRESENTATIVE WHEATLEY: Thank you Mr. Chairman, thank you Mr. Secretary. Mr. Secretary I would be interested to know inside of your Department are there any plans or are you working currently, you mentioned earlier in your statement how there are other municipalities, townships and boroughs that may also be, because of whatever reasons close to entering into the necessary need to access Act 47 and taking what Chairman Freeman has said about the look at what we already know are some of the circumstances that lead communities to being distressed, are we or do we have a plan of action to try to prevent or head off further need for municipalities, are there other things in the works, you understand what I'm saying, are we planning for ways to divert municipalities, townships from being fallen into distressed status, or are we looking at what other types of things do we as a State regulatorally or financially have to do to maintain our municipalities and townships so they don't fall further into distress. I'm just interested in knowing if there's any plans in the works right now?

SECRETARY WALKER: Well we do have an early intervention plan whenever we begin to see red flags, lots of times the initial problem is unfunded pension liability and things like that. But understand we are not given a lot of financial resources to work with, I mean we can give guidance and direction and help them through the process but we're not the people who can write the check that says here's the solution to your problem, we don't have those resources.

REPRESENTATIVE WHEATLEY: So I guess what I'm asking is, is this something your shop is willing to work with us on this side, I'm assuming it's the Administration and the General Assembly that have the ability to do that if we so choose to but are there any conversations back and forth saying. Looking at what we see it happening and what has happened if we want to do this right, if we're really going to support our Municipalities and Townships and Boroughs and Cities we need to put a financial package together that prevents further decay of them. And this is what we see are the things that might be necessary financially, these are what we see regulatorally that may need to happen, these are some other things that we need to move around administratively, are there any types of conversations like that going on or should there be some type of conversation like that going on in order to really seriously address what we see as the current situation and prevent future situations from getting worse?

SECRETARY WALKER: Yes, the answer is yes and I think you are going to hear some very good testimony moving forward. There's merger of municipalities, which has not been easy in Pennsylvania because you always have one that's worse off than the other. We talk about how do we equalize that and level the playing field so it's not a bail out it's a merger of equals. So we're talking about a lot of things, but I think you're going to hear a lot more about that and that thought process as the testimony goes on today.

CHAIRMAN ROSS: I recognize I can't see everybody very clearly from my position here. But yes Senator Blake.

SENATOR BLAKE: Thank you Mr. Chairman and Secretary thank you for your testimony and your presence here. I really don't want to talk about what Representative Wheatley just said about you writing a check to bail out Cities in order to compensate them for the deficits that they face. What I do want to talk about is more about the financial capacity that you have to provide the technical assistance that's necessary to deal with it. Two things that I'm connecting here is that your testimony indicates that through extensive technical assistance, resources provided by the coordinator in DCED and your other comment about the fact that the economic conditions that were in there were likely to lead to additional Communities that are on the brink of financial distress. Which puts more of a burden on DCED, so this is not an appropriation discussion it's an Act 47 discussion but I would hope that your understanding and your leadership of this mission would require you to talk to the administration of other resources you need to intervene.

SECRETARY WALKER: We're strained as you know, because of your background, and an additional strain came about as a result of the flooding in certain parts of Pennsylvania that also hit our Department very hard, because you don't have a set aside for flooding. It just doesn't happen very often, at least on the scale that this did, so yes we're financial constrained.

SENATOR BALKE: I understand, thank you Mr. Secretary.

CHAIRMAN ROSS: And I think that wraps it up for you Secretary. Thank you very much for joining us I understand you have other appointments that you have to make.

SECREATRY WALKER: And miles to go before I sleep.

CHAIRMAN ROSS: Thank you for your attendance, I think the next presenter is Michael Gasbarre from the Local Government Commission along with David Greene. So we will recognize you now.

MICHAEL GASBARRE: Thank you Mr. Chairman, with me is Dave Greene who is our legal counsel who's done substantial research lately on the constitutional provisions and limitations that we face with the challenges of Act 47 communities. On behalf of the staff and members of the Local Government Commission we wish to thank the Chairs and Members of the Senate Community and Economic and Recreational Development Committee, the Senate Local Government Committee and House Urban Affairs and Local Government Committees for permitting us to offer comments on the developmental history and significant challenges of Act 47. In the 24 years that have passed since the enactment of the Municipal Financial Recovery Act, issues have arisen, some recently, which make a comprehensive review of the statute effectiveness a necessity. However, we will emphasize the two most important considerations that Act 47 attempted to address, but which continue to be challenges. Potential constitutional limitations and the process of addressing the question of non-viable municipalities, in June 1985, the Local Government Commission authorized the formation of the task force to study problems associated with the distressed municipalities and to formulate a legislative proposal to hopefully alleviate these problems. The task force was comprised of members of the General Assembly and individuals representing various municipal associations, state agencies, research organizations, business interest groups, university community and United States bankruptcy court. The task force commenced its work in October 1985 by reviewing legislation statues in Pennsylvania and other states to aide in drafting a proposal that best reflected the current state of distress in municipalities in Pennsylvania. Much original thought and language was also included in the task force proposal to accomplish three objectives that the members believed needed to be addressed. The first, development of the State Assistance plan to aide distressed municipalities and restore their financial integrity, while leaving principle responsibility for the conduct of financial affairs of the municipality to its locally elected officials. Second, creation of an updated procedure to enable distressed municipalities to file for municipal debt readjustment action under Federal law. And third, development of a procedure to consolidate distressed municipalities that were no longer considered economically liable. The procedure enacted at the time was voluntary, it required approval of the majority of the voters in each municipality proposed to be consolidated, as an incentive merger consolidated municipalities were to be given priority in all community and economic development funding. The general philosophy of the task force was to draft legislation that would enable distressed municipalities to assist themselves through the adoption of an acceptable financial plan. Task force members and upon introduction to the legislation that became Act 47. Members of the Local Government Commission were opposed to an outright state bailout of municipalities in fiscal distress. This was seen as an unwise incentive for financially marginal communities to seek financial aid without recognizing their own fiscal limitations. Therefore distressed municipalities that refuse to adopt the fiscal plan pursuant to Act 47 would no longer be eligible to receive most state entitlements or grants. Of particular importance, the task force and staff and members of the Local Government Commission were very much aware of limitations on legislation affecting the state local relationship by the Constitution of Pennsylvania. These provisions relate to restrictions on local and special legislation, the extent of permissible regulation of local financial affairs by a public or private commission or association and the assumption of local debt by the Commonwealth. The Constitutional limitations were addressed as follows: general vs. special or local law. Article 3, section 32 of the Pennsylvania Constitution prohibits the General Assembly from enacting the local or special laws that can be provided for by general law and specifically the General Assembly may not pass any special law that regulates the affairs of Counties, Cities, Townships, Wards, Boroughs or School Districts. Thus Act 47 was drafted as a general law applicable to all classes of local government subsequent to its enactment. Although the Act was suspended in its application to Philadelphia in 1991 with the passing of the Pennsylvania intergovernmental Cooperation Authority Act for cities of the first class, other state models were examined during the formation of Act 47, such as New York. New York's recovery statutes were specific municipalities, but they were deemed constitutionally deficient in Pennsylvania because of this restriction. Act 47 recognizes that all local governments function as instrumentalist of the state, and that as such their fiscal integrity impacts the general health, safety and welfare of the entire Commonwealth. Accordingly the establishment of the statutory classification mechanism for addressing problems of fiscal distress has a natural relationship to a proper state purpose. And that is based upon a real distinction between fiscal stability and fiscal collapse. Assumption of municipal debt, Article 8 Section 9 of the Constitution prohibits the Commonwealth of assuming the debt, or any part thereof of any City, County, Borough, Incorporate Town, Township or General purpose unit of Government unless the debt was incurred to enable the Commonwealth to suppress insurrection or to assist the Commonwealth in the discharge of its present indebtedness. Once debt is incurred by a local Government, it must remain local debt. Act 47 does not permit or require the Commonwealth to assume the debts of Municipalities, in fact in relation to the grant and loan program provided in Chapter 3 of Act 47, a distressed Municipality must use state monetary resources solely for the purposes of payment of current operating expenses. Current operating expenses do not constitute debt or unfunded debt as defined under the local government debt act. Number three, delegation of certain powers prohibited, of all the restrictions imposed by the Constitution on state financial oversight of local governments, Article 3, Section 31, arguably is the most constraining. It prohibits the General Assembly from delegating to any special commission, private corporation or association any power. And I think that's worth, just to say that again. To any special commission, private corporation or association any power. To make supervisor interfere with any municipal improvement, money, property or effects, or to levy taxes, or to perform any municipal function whatever. The task force discussed whether a board of control similar to provisions existing for school districts could be created to actively control local government's finances but rejected the premise on the advice of counsel due to this constitutional provision. Consequently, Act 47 was originally enacted without a mandate on Municipalities to adopt and implement the solvency plans prescribed within it, it did not create a special commission public or private, to control the fiscal affairs of a distressed municipality or seize the policy making power of the local governing body. Article 3, Section 31 referred to by one commentator as a ripper clause was the first of its kind in State Constitutions in the United States, it was adopted after the Constitutional Convention convened in late 1872 at a time during which special and local legislation were used to grant favor to private industries and quasi-public entities at the expense of municipal governments and its citizens. The historical reasons for the adoption of Section 31 have largely vanished with the passage of time, and the tension between the provision and the modern era resulted in an amendment in 1967 that expressly provided an exception for binding arbitration in fire and police labor disputes. Arguably, the provision was never contemplated to prohibit the Commonwealth from directly intervening to stop the effects of fiscal distress from adversely affecting the welfare of a municipality's residents or other adjoining municipalities. Given the breadth of the provisions prohibition, the economic challenges facing municipal government and the interconnected nature of the fiscal health of state and local government; further amendment may be required to address modern challenges. In light of these challenges, the statements of the Professor David O. Porter in 1969 seem prescient today. A single constitutional clause is too narrow and may even be dysfunctional, as it is so difficult to amend. This argument, coupled with a review of history of the ripper clauses, gives considerable support to the familiar proposition that constitutions should be restricted to broad policy statements. In relation to cities, the fundamental law needs to allow flexibility for legislative and municipal experimentation to deal with emerging problems. Outdated or narrow constitutional clauses often become artificial barriers to the effect of handling of current problems. The ripper clause has not served as such a barrier, but perhaps a more effective way to promote orderly and effective adaptation to the changing physical and human environments of our cities is through constitutional provisions framed more broadly than the ripper clause. In addition to the constitutional considerations, the task force was faced with the significant problem of addressing the issue of nonviable municipalities. In the early 1980's with the demise of the steel industry, several Pennsylvania municipalities, most notably those in western Pennsylvania, experienced significant job losses that had a direct effect on the resultant tax base. These communities suffered from conditions that could be clearly stated as long-term distress caused by structural changes in their local economy resulting in the retrenchment of funding sources which the municipalities previously heavily relied on to balance their annual budgets. In an effort to address municipalities experiencing significant and damaging changes in their funding sources and the loss of population due to substantial decreases in employment, it became apparent to the task force that some municipalities had already become unable to provide necessary municipal services without considerable state assistance. Significant debate focused on whether these municipalities should be forcibly merged or consolidated into neighboring municipalities after a period of time during which the Commonwealth would provide financial incentives to encourage such boundary changes. However, practical considerations soon won out over the larger policy issue of whether nonviable communities should exist. The task force realized that a forced merger or consolidation frankly would be a non-starter, and would result either in failure of the General Assembly to consider fiscal solvency legislation or in outright defeat of the bill. As a result, the draft of what became Act 47 provided a voluntary merger and consolidation option for distressed municipalities and neighboring communities that involved initiating the process by a joint agreement of the governing bodies supportive of a merger consolidation or by initiative of the voters and the conduct of a referendum in all municipalities involved in the boundary change. As an incentive, a consolidated or merged municipality was given priority in all community and economic development funding by the Commonwealth. Incentives notwithstanding, to date, no mergers or consolidations involving any Act 47 communities has occurred. In an attempt to measure the effectiveness of Act 47, the Local Government Commission sponsored an external program evaluation of the statute four years after its enactment by the Graduate School of Public Policy and Administration at Penn State. The conclusions relating to voluntary boundary change were sobering if not predictable. The authors stated: The provision of Act 47 that outlines a process of voluntary consolidation of distressed municipalities with other jurisdictions is not in its present form viable. The reason is obvious, it is highly unlikely and understandable that residents of a jurisdiction which enjoy relative fiscal health, will be willing through initiative and referendum to incorporate within their legal borders a jurisdiction that does not. Without changes, this provision of the Act is by in large meaningless. The authors further concluded that consolidation or merger may be the only realistic available long term remedy, but that approval of a referendum in affected municipalities is a compelling force against any consolidation, no matter how needed or seemingly rational. Thus the program evaluation came to the same conclusion as the task force that policy and practical considerations outweigh no matter how controversial, the mandatory dissolution of municipalities no longer financially sustainable. Finally we would like to impart some thoughts on the additions of Chapter 6 and 7 to Act 47 that are provided by Senate Bill 1151 particularly in light of the previous comments on the ripper clause, and the bill's attempt to provide closure to an unanticipated outcome. It is an accurate statement that those who crafted Act 47 never envisioned a situation where a distressed municipality would fail to adopt either the coordinator's solvency plan or an alternative that could be drafted by a municipality's chief executive officer or governing body. Act 47's penalties, the loss of most state funding and the inability to incur additional debt, were thought to be too sever for that failure. In a concession to Article 3, Section 31, the alternate plan provisions were added. However, as recent events have occurred, leaving a municipality to its own demise by inaction or failures of governing is unreasonable from the standpoint of who pays the ultimate price, the very residents of the distressed municipality. Leaving a fiscally insolvent and likely destitute community with no solution to alleviate its fiscal condition is a clear weakness of Act 47. Without any other viable options, there’s no choice but for the Commonwealth to exercise its sovereign and plenary police power to protect the public health, welfare and safety of local residents. In a 1980 case, the Pennsylvania Supreme Court stated that the police power of the Commonwealth is fundamental because it enables civil society to respond in an appropriate and effective fashion to changing political, economic and social circumstances and thus to maintain its vitality and order. The police power of state must therefore be as comprehensive as the demands of society required under the circumstances. In an earlier case, the court stated the following: “That the legislature may properly exercise its police power in an attempt to remove causes of economic stress for the public welfare cannot be doubted.” In its report to the Constitutional Convention 1967 the Local Government Committee in its recommendation on the proposed Article 9, Section 1, of the Pennsylvania Constitution stated, “It is intended that the General Assembly shall have the continuing responsibility to provide for local government and that the power to regulate all levels of local government, notwithstanding any provisions granting authority to all local government units to frame and adopt charters, or grant of power to municipalities to adopt provisions for residual powers. This section preserves flexibility by enabling the General Assembly to make changes as required.” Thus to the extent that Article 9 contemplates the ability of municipalities to enact optional plans and charters, it also recognizes the sovereignty of the Commonwealth to provide for and control local government. There is no doubt that Chapter 6 relating to the declaration of a fiscal emergency and Chapter 7 that provides for the appointment of a receiver, are innovative. Article 3, Section 31 prohibits a special commission, private corporation or association from interfering with or regulating municipal fiscal affairs. Neither the Governor nor a receiver appointed by the court could reasonably be considered a special commission or association in the light of the origin of this provision. Act 47's constitutionality has been challenged and successfully defended, somewhat, we'll see as of the case from last night. It was very carefully engineered to withstand the test of time and it has. It provides a mechanism for willing municipalities that are experiencing financial difficulties to request state assistance, it now provides a mechanism for some municipalities that request state assistance but fail to act with the state means to address an unsustainable situation. Without speaking to the procedural aspects of Act 47 which the Department of Community and Economic Development is better able to address as the administrator of the statute, our staff would leave these final comments for the Members of the General Assembly to consider as policy options to improve the capability of Act 47. Should Article 3, Section 31, of the Constitution of Pennsylvania be amended to expressly provide for direct state intervention to alleviate municipal fiscal distress? Should Article 3, Section 32, of the Constitution of Pennsylvania be amended to permit Pennsylvania, similar to New York and other states, to craft special legislation to concisely deal with individual financially distressed municipalities in a limited manner without violating the current provisions that appear to prohibit interference with municipal affairs? Should the General Assembly enact specific boundary change legislation relating to the consolidation and merger nonviable, nonviable distressed municipalities outside the current initiative and referendum process? Should Chapter 6 and 7 be expanded to all municipalities in addition to cities of the third class? If acted upon consideration of the constitutional amendments would provide even greater public discourse and understanding to the citizens of the Commonwealth of the fiscal difficulties that many local governments are facing. Healthy debate would center on the need for more state action versus local control, but perhaps after 25 years it is time for that debate to occur. Although the scope of constitutional limitations, including those contained within Article 3, Section 31, may be subject to reevaluation and clarification, particularly in situations where a municipality under Act 47 fails to take corrective action, they nevertheless remain and should be examined in light of solutions to municipal fiscal distress in other states without them. The non-viability of municipalities and the ultimate discussion on the correct course of action may be considered provocative by some, but the continued inaction really does not address the issue. Nonviable municipalities should not be dependents of the state. If they are unable to survive on their own, then the question arises, "Should they exist?" If not, what should take their place? Chapters 6 and 7 were drafted to address an immediate concern. Up until this year, no municipality had refused to adopt either a coordinator's plan or a plan of their own. The implicit message of the chapters is that inaction has consequences and certain municipalities have fair notice that participation in Act 47 requires active involvement and constructive action. Failure to do so is no longer a choice. Although the application of the chapters is limited, the remote prospect of municipalities of other classes failing to act when faced with fiscal distress is real. Therefore, the General Assembly may wish to debate the merits of extending the provisions of Chapters 6 and 7 to all municipalities. We would be happy to answer any questions Dave and I are available.

CHAIRMAN ROSS: Thank you very much and I think that that is really helpful for a historical background of the creation of Act 47 and some of the debates that went on when it initially occurred and I'm going to ask that we continue with Mr. Reddig to give a summary of the current situations and some more recent history in relating to some of the issues and then we'll take questions from the Committee at that point.

MR. REDDIG: Thank you very much Mr. Chairman, Members of the Committee, thank you for the opportunity to provide testimony this morning on the Municipalities Financial Recovery Act, Act 47 of 1987. I think Mr. Gasbarre has provided a good background, what I'd like to do now is focus on the Departments charge which is the administration of Act 47, we have a responsibility to assist municipalities across the state that are experiencing severe financial problems in order to provide for the health, safety and welfare of their citizens, meet that obligations and other financial obligations when due, restore financial viability and maintain managerial stability and continuity. DCED likewise has a responsibility under the Act to monitor the fiscal condition of all local governments, and provide technical assistance to those experiencing certain symptoms of distress. As Secretary Walker noted DCED to date has declared 26 municipalities as distressed, of these 6 of these have emerged from the program though 11 of the municipalities have been in the program for 10 years or more. DCED has found that municipalities dealt with under the Act generally experience some degree of economic tax base decline, demographic changes and managerial deficiencies mismanagement. Following DCED intervention a triage process is undertaken to first stabilize the municipality, then address those issues within the prevue of local officials, and finally to develop and implement intergovernmental, community and economic development strategies that will achieve long term recovery. Certain strategies have emerged as key steps in the recovery process. Address the immediate financial crisis by providing emergency or long term loans and/or assisting with market based financing to address critical creditor issues. Develop, institute and/or strengthen sound fiscal management policies and effective municipal management procedures. Implement cost containment measures addressing personnel costs, operational costs and capital projects. Utilize the provisions of Section 252 to establish parameters on collective bargaining agreements and arbitration awards occurring after plan adoption. Identify and implement revenue advancement measures to maximize current revenues. Recognizing tax competitiveness issues, utilize new revenue sources only as a last resort, including the use of the extraordinary taxing authority provided by Act 47. Clearly state that such taxing authority if used is transitional revenue and will be phased out as longer term changes occur that correct structural imbalances. Develop partnerships with county government and local adjacent municipalities to build capacity and identify opportunities for service consolidation that will improve service delivery. Develop and implement community and economic development strategies designed to strengthen the tax base over the long term. Build both public-public and public-private partnerships that are necessary to implement these strategies. Act 47 has been successful in stabilizing the deteriorated fiscal conditions that led to distress in designated municipalities. Through extensive technical assistance resources provided by both the Coordinator and DCED along with the grant and loan provisions of the Act, municipalities have been able to restore fiscal stability and adequately provide for health, safety and welfare of their residents. The Act has resulted in strengthened financial management systems, credit enhancement and fiscal credibility in the marketplace, more effective management structures and in a number of instances service efficiencies through intergovernmental cooperation. Act 47 was written respecting Pennsylvania's constitutional provisions as you heard from Mr. Gasbarre dealing with State Government's relationship with local government, the state does not use day to day governments responsibilities of local government, although the Department has not made everyone happy, DCED treats a municipality fairly and provides ample opportunity for input from local officials in the process. The act is based on municipal self determination and DCED has respected that principle. This limitation however has made it more difficult to effect change, especially the pace of change as it can often be difficult for local officials to implement recovery plans at the speed that ideally should occur. This in part can be attributed to limited capacity and to the difficulty that local officials have with making difficult political decisions that are financially necessary. The Act provides short term solutions that can stabilize the municipality. However, it does not address the court issues that limit the ability to achieve cost containment especially with personnel cost and limited revenues that cannot keep pace with increased costs for services. The more a municipality's distress is attributable to economic decline, the more difficult the recovery process is. It is evident that the solutions to fiscal distress lie both within and beyond municipal boundaries and require actions from both within and outside the realm of local government. In its 24 year history Act 47 has successfully stabilized fiscal conditions and has addressed most of the issues that have been within the control of the municipality. The Act has struggled however, to provide long term solutions necessary to achieve ultimate recovery. The impact of national economic trends and even broader global trends has had a definite impact on municipal fiscal health an economic slump and the decline in the steel industry in the mid to late 1980s, due in large part to global competiveness issues resulted in the Act 47 enactment and an initial surge of distressed municipalities. Nine communities were designated in the first 5 years of the Act. As the broader economy improved marginal municipalities were able to maintain fiscal stability during the mid and late 1990s, only one municipality was designated from the period 1993 to the end of 2001. However, with the post 9-11 downturn we had an increase in fiscal stress which resulted in an increase in Act 47 municipalities. Four municipalities received designations from 2002 to 2004. The current economic downturn has resulted in 4 additional municipalities being designated distressed over the last 4 years and the potential exists for other marginal municipalities, especially some of third class cities to be so designated. Prior reviews and our experience with the Act have identified the following issues that both exacerbate a municipality's distress condition and impede its recovery process. Municipalities fall into 2 categories of distress. Managerial distress which is the result of inadequate, poor or corrupt management practices and economic or structural distress which is a result of severe erosion of the tax base. Act 47 has had success in addressing managerial distress but has struggled to a much greater extent in addressing structural distress. There is no limit to the time a municipality can be in Act 47, the Commonwealth's authority to address the factors of distress in a given municipality are the same in year 10 as they are in year 1. The ability to implement broader base solutions such as intergovernmental initiatives and boundary change necessitate a willing partner. Various legislative impediments have made this difficult. Without incentives to level the playing field it is highly unlikely that adjacent municipalities would be willing to consolidate with their distressed neighbor. This has been borne out in two unsuccessful boundary change initiatives in Act 47 communities in Mercer and Cambria Counties. Municipal officials are often unwilling to implement tough recovery plan recommendations; although there are sanctions in the Act they can have a negative impact on the municipality and potentially threaten health and safety issues. There is no practical stick in Act 47 to force compliance with difficult recovery plan provisions, especially in the personnel and service delivery areas. Personnel related costs are typically the largest related cost area of a distressed municipality budget, often times representing 70% or more. Although the Act has language to limit future collective bargaining, contracts, and arbitration awards entered into after the adoption of a recovery plan it has often been difficult to implement these provisions. Recovery plans can be thwarted by poor labor negotiations on the part of the municipality, unwillingness of labor unions to reach contract agreements, adverse arbitration decisions and protracted litigation to resolve inconsistent arbitration awards. In one instance Scranton, it took 3 ½ years to obtain 2 arbitration decisions. When issued they were not in conformance with the plan and were appealed to Commonwealth Court, it took another 3 years to reach resolution via Commonwealth's Courts, January 2009 decision. That decision though favorable to the Act was appealed to the Supreme Court and I have to alter my testimony at this point in light of what has happened over the last 24 hours to indicate that the decision is no longer pending but was issued last night and it overturned the Commonwealth Court decision adding yet another issue to be dealt with. The City of Scranton has experienced ongoing deficits and fiscal problems due to the extensive time involved with this process. They have been dealt with through one time fixes however until the litigation is resolved the long term solution will not occur. Pennsylvania's local government structure and current tax system makes recovery very difficult for those communities that have suffered fundamental economic decline, a community is usually a region of multiple municipalities. Human and regional economic boundaries are not reflected by municipal boundary lines but our tax system is. As economic activity moves from a core community to a growing suburb, taxes leave but service needs remain and in fact often multiply as the population of the core community becomes increasingly older, dependent, poor and violent. Service needs rise as the tax base exits, assets value of property typically decline thus placing added pressure on the real estate tax. If sufficient revenues are not available to meet increased service needs, infrastructure deteriorates and public safety is threatened resulting in a downward spiral. This trend has been especially true in the Mon Valley, Beaver Valley and Shenango Valley and parts of Cambria County. The archaic real estate assessment system under which local governments operate and the high percent of tax exempt property that exists in many of our core municipalities further compound fiscal stress. Many of our cities and core communities have tax exempt property that represents 30 to 40% or more of their assessment base. For many Act 47 municipalities non-profits that operate within their borders are in service industries of education, medicine that are growing, thus in some Act 47 municipalities their tax exempt property list continues to grow, municipalities are forced to rely on an ever shrinking tax base for more and more revenue creating an increasing downward spiral. Act 47 municipalities typically have significant legacy liabilities that involve unfunded pension obligations, debt burdens that exceed financial management policies, high workers compensation costs and post retirement liabilities, especially health care benefits that are only now being quantified and appearing on financial records as a result of GASB 45. Pension ratios in a number of our cities are at or less than 60% a significant cause of concern. Based on recently released 2011 actuarial reports the aggregate fund ratio for Pittsburgh's 3 plans was only 35% prior to PERC's recent acceptance of a dedicated revenue source as an asset, which did increase their fund ratio to 62%. Scranton's aggregate ratio was 42% and Johnstown's 54% and all were classified by the Public Employee Retirement Commission as either severely or moderately distressed likewise debt service obligations as a percent of revenue in these municipalities often well exceed the 10% GFOA threshold. In Pittsburgh's case it devotes almost 20% of revenues to debt service; very few municipalities have established a funding mechanism to address post retirement health care benefits, they are typically funded on a pay as you go basis though the liabilities can be significant. In Scranton's case the annual cost of health care for retirees equals the cost for current employees. These obligations were often incurred in order to provide certain benefits at a given point in time with the result being to push the liabilities off to future generations. Effective local leadership is often missing, and local management capacity is typically limited, without leadership, vision and effective management the extensive technical and financial resources provided under the Act can go for not. The lack of leadership may be due to the size of the municipality and it calls into question the viability of some municipalities for the long term. Municipal distress is often exasperated by regional economic demographic factors. Act 47 does not have the tools to effectively address regional factors of distress. Distressed municipalities often are served by distressed or fiscally weak school districts; in some instances they're even coterminous. How can we make the municipal government attractive for new residents when the education system is struggling? Clairton, Dusquesne and Chester are examples where school boards have operated under the Pennsylvania Department of Education's oversight and board of control. School districts and municipalities share the same tax base, yet there is no requirement for and seldom do they work together toward consistent fiscal policies, without a quality school system the ability to retain residents and to attract new residents is greatly diminished. Recognizing the fiscal stress many municipalities face following the post 9-11 economic downturn DCED established the early intervention program. As part of the economic stimulus program in 2004 the EIP was established to assist local governments in addressing fiscal management and financial difficulties in a timely and planned manner in order to avert a more severe fiscal crisis that would have an adverse impact on health, safety and welfare of residents. EIP is a preemptive step for counties and municipalities who realize their financial situation is deteriorating and want to take steps to avoid Act 47. It provides for an analysis of their historic and current fiscal position and a multi year financial plan with accompanying recommendations that if implemented will maintain fiscal stability. To date 11 Counties, 27 Cities, 14 Boroughs and 5 Townships have participated in the program. Only 4 of these of ultimately entered Act 47 while the rest have been able to at least marginally successfully avoid a worsening of their financial condition through EIP remedies, although identified as issues that exasperate the fiscal condition of Act 47 municipalities the 10 issues identified previously likewise are significant factors in the overall decline in fiscal health of municipalities across the state. Their level of impact may vary however the inability to address issues, address these issues will lead to the further deterioration of municipal fiscal health. Two independent reviews of municipal finance support these findings, the Pennsylvania Economy League (PEL) issued a 2007 report titled Structuring Healthy Communities, their analysis of financial data from 1970-2003 shows that fiscal distress often is inevitable under existing state laws. Current legislation and municipal codes leave the Commonwealth's Cities, Boroughs and Townships with revenue streams that are largely inelastic, capped and out of sync with budget needs. The best fiscal management and economic and community development programs are not enough to turn the tide within municipal boundaries. Over 30 years of trend data shows a growing trend problem with the fiscal health of the state's municipalities. PEL's detailed analysis of data dispels a commonly held belief that some communities, i.e. those that are currently fiscally sound and growing in population are somehow immune from municipal fiscal distress. Instead their analysis shows an alarming trend over more than 30 years; the overall fiscal condition of our communities becoming less healthy. Even many communities that remain relatively healthy today have seen a decline in fiscal health during that 30 year period. PEL's analysis of fiscal data shows a clear path of 5 stages that municipalities fall on a path towards fiscal distress. First, prosperity with low taxes, new development increases the revenue base with limited demand for services. Infrastructure is new and paid for by developers. In this stage revenues are increasing faster than the rate of inflation and faster than the cost of services. Second, increasing demand for services and gradually rising tax rates and service fees. The pace of new development is slow and yet citizens demand more services. Infrastructure costs increase due to maintenance needs and continued growth. Tax rates and fees are increasing, but the tax base remains strong. The rate of revenue growth is starting to slow. Three, tax base plateaus with reductions in non-core services. Tax base increases are minimal yet demand for and cost of services continues to grow. Taxes increase in response while non-core services are reduced. Pressure begins for residents to leave, especially those with resources to do so. Four, reductions in core services. There is a mismatch between revenues and expenditures that results in the tax structure that is noncompetitive with some neighboring municipalities. Core services such as public safety and infrastructure maintenance are reduced. The number of occupied households plateaus or begins to decline and municipal revenues also begin to decline. And five, the loss of tax base and distress. There is a noticeable decline in the number of occupied households as residents begin to vote with their feet. The municipality is fiscally distressed with declining revenues and a declining property base. PEL's study further looked at demographic trends in the Commonwealth. Their analysis found over 1,000 municipalities lost a population between 1990 and 2000. The US census projects the size of the state's work force those people ages 18 to 64 will grow less than 1% by 2020. By comparison the size of the Nation's work force is projected to grow 11.4%. The percent of people in Pennsylvania over ages 65 is expected to rise from 15 ½% percent in 2000 to almost 19% in 2020. Further migration within Pennsylvania's slowing growing population is seriously affecting the fiscal distress of older and more urban communities. Predictably these demographics will only exasperate Pennsylvania's unfavorable economic trends. Most pertinent to the sustainability of local government is the effect of the work force that is predicted not to grow, and a body of retirees that certainly will, or the need to provide and pay for local services which are supported mainly by local taxes based largely on earned income, not retirement income and real estate, on everybody's list for reduction. Thus pressure will fall on fewer and fewer individuals to support municipal budgets. The second study titled "The Enormous Problem of Municipal Distress" completed by Dr. George Dougherty of the University of Pittsburgh's Graduate School of Public and International Affairs in cooperation with Pittsburgh Today reviewed the fiscal health of municipalities in the Pittsburgh region which was released in 09. Using data from DCED's survey of financial condition over a 6 year period 2000-2005, the study found 58 ½% of municipalities in the 10 County Pittsburgh region experience 2 or more annual deficits. A full 80% of local governments experienced at least 1 deficit during the period, with only 101 or 20% able to avoid deficits during the period. This is a surprising finding and represents wide spread financial problems beyond expectations. Governments that want regular deficits, commonly define as 2 or more annual deficits in a 5 to 6 year period, shows significant signs of fiscal distress. Dr. Dougherty went on to state that structural deficits occur when expenditure growth is greater than revenue growth over at least a 5 year period, an unsustainable trend. One would expect struggling municipalities to increase revenues and/or reduce expenditures in response to poor financial performance, but there were substantial impediments to doing so. On the revenue side elected officials faced state imposed tax rates, strong oppositions by citizens to increase tax burdens and a competitive disadvantage if rates are raised higher than surrounding municipalities. The ability to make expenditure cuts is limited by statutory requirements to provide specific services, labor contracts, and citizen demand for services. There is an expectation that someone will police our neighborhoods, respond to fires and maintain our roads. The study further found that 49% of municipalities in the Southwest region experience at least 1 structural deficit from 2000-05 this means that expenditures grew at a faster pace than revenues. A closer look at the data shows that 29% of local governments face severe structural deficits where expenditure growth was more than 3% larger than revenue growth. Municipalities in the severe category will quickly run out of rainy day funds and face increasing annual deficits. The short term solution is to roll over the deficit from one year to the next creating a compounding effect that ultimately builds to the point of fiscal collapse. Both independent studies corroborate the data and experience of DCED in monitoring municipal fiscal health. The data makes a compelling argument that it is critical to act sooner rather than later as momentum of decline is increasing and almost certainly further accelerate given current national economic conditions that are beginning to ripple through the state. The fiscal impact of these trends on the state would be devastating. Discretionary services such as Parks and Recreation are the first to be cut. These cuts would impact quality of life considerations. Infrastructure replacement and maintenance would be cut next, ultimately resulting in adverse impact on health and safety. Core services such as police, fire and public works would then be reduced or eliminated. In many instances this would result in a transfer of responsibility to the state, especially for police protection thus placing increased pressure on state police. Municipalities would likewise have insufficient resources to meet debt obligations resulting in defaults and ultimately the potential for bankruptcy. Such actions would adversely impact not only the affected municipality but could ripple through adjacent municipalities' school districts and county and greatly impact future borrowing opportunities for all. Until 2009 no municipality had filed for Chapter 9 Municipal Bankruptcy since the Acts passage. The Westfall Township filing in 2009 was a unique situation and demonstrates how the Act 47 and Chapter 9 processes work together. Jim Roberts in his testimony later today will summarize the details of the Westfall bankruptcy; however the experience demonstrated that under the right circumstances, chapter 9 provisions within the Act are an appropriate remedy. The Department remains engaged with the Township today providing technical assistance and monitoring their progress. The Township's Act 47 status will be evaluated next year and if they make continued progress with the implementation of their recovery plan, their exit from the Act is probable. Although our experience with Westfall was a positive one the circumstances were very unique compared to those being experienced in other municipalities across the state where the discussion of bankruptcy has occurred. In situations where debt obligations are more significant with more parties involved and where municipal operations are more complex and unstable the issues related to bankruptcy also become more complex and the outcome uncertain. For instance it's unknown how municipal bankruptcy will impact current collective bargaining agreements, current pension plans and obligations and the status of outstanding debt. Chapter 9 experiences nationwide are limited, however, legal expenses will be significant and the time to go through the process lengthy as has been the case in Vallejo, California. So that brings me to the point what do we do? What should you as a legislature do? I would like to leave you with some proposed recommendations. There are a number of legislative and policy remedies that would greatly assist municipalities in dealing with fiscal stress and challenges that municipalities currently face, these remedies would remove certain impediments to change, address conflicts between statutes, provide greater flexibility to address the unique characteristics of Pennsylvania municipalities and strengthen the fiscal health of municipalities across the state. One, provide local officials with greater options for right sizing municipal services, use multi-municipal, regional and county structures that are appropriate for the character and fiscal resources of the community. Eliminate impediments to shared service arrangements such as issues dealing with municipal coding inconsistencies, pensions, collective bargaining, labor relations and civil service system. Two, provide for the development of viability standards for municipalities that are unable to meet certain basic requirements to function. Provide for shared services districts and county involvement in situations where a distressed municipality is determined to be non-viable. Although research has found that a disincorporation procedure has multiple procedural problems, it's important that municipalities adjacent to the non-viable municipality and the county are engaged in the development of a government solution that will provide for the health and safety of residents. Consider a proposal by the State Planning Board that was contained in Senate Bill 1357 from last year's session that would create a statewide boundary commission to address this issue. Three, deal proactively with the need for merger consolidation of non-viable

Act 47 municipalities. Without the ability to what I term "level the playing field" where address infrastructure and operational differences between the distressed and non-distressed municipalities, boundary change will not occur. Encourage merger/consolidation of municipalities through incentives to viable municipalities. Establish a priority funding through executive order across state agencies for boundary change efforts. The targeting of economic and community development program funds and resources by state agencies for locally initiated boundary change efforts is critical if the process has a chance of being successful. Four, provide for a fiscal recovery board for municipalities that have been in Act 47 for a period of 5 years after a coordinators plan has been adopted. Recovery plans should provide for key objectives to be accomplished in the initial 5 years with a hearing convened by DCED at the end of 5 years to ascertain whether the objectives have been met. If not, the Secretary would have the authority to appoint and empower a fiscal recovery board with authority to further implement recovery plan recommendations during the second and if necessary third recovery plan periods. The board would be established via the required agreement between the municipality and the board. Municipal officials are often unwilling to implement tough recovery plan recommendations; the Commonwealth's sole power to discipline a municipality currently is to invoke sanctions, which is the withholding Commonwealth grants, entitlements or payments. In cases where a municipality has failed to implement a recovery plan there has been a general reluctance to exercise its power because it is widely seen as exasperating the municipality's fundamental financial problem. There is therefore no practical stick in Act 47 to encourage or force compliance with the plan. The fiscal recovery board would address this problem. The functions of such a board should include direction over the management of municipal affairs and consultation with the coordinator during the second and third 5 year periods. The ultimate threat of a fiscal recovery board assuming management authority in the municipality may be sufficient impetus for the governing body to act before the board is invoked. Municipal officials would likely prefer to work hard to get out of Act 47 than be constrained by such a board. The Secretary of DCED could waive the requirement in those circumstances where the coordinator and DCED deemed the imposition of the board to be counterproductive. The board provision is designed to be a when all else fails nature, in which a municipality likely would not other emerge from distress. Five, provide for greater regional involvement in the recovery process, including tax base sharing programs, incentives for shared service arrangements and multi-municipal community and economic development planning and program implementation. Although tax revenue sharing is currently authorized under the municipalities planning code in instances where municipalities have adopted joint zoning, there is no specific authorization for tax base sharing such as other states like Minnesota have. A waterfront development in Homestead, West Homestead and Munhall in Allegheny County is an example of tax revenue sharing that was done under the intergovernmental cooperation act agreement. The sustainable funding source that provides incentives for collaborative approaches to service delivery is critical to address many of the initial costs as well as to provide the momentum for municipalities to implement cooperative programs. Six, address the tax exempt issue. Typically tax exempt properties represent a very high proportion of the tax base in fiscally distressed municipalities. Hospitals, educational institutions, cultural and civic facilities, libraries, churches and other nonprofit entities are valuable resources but they also place service needs on the municipality without providing corresponding tax revenue. As the assessed value of taxable property declines this issue is only further magnified. Efforts to negotiate PILOT payments have been largely unsuccessful subsequent to Purely Public Charities Act. Consider options such as the public utility reality approach that is used for public utilities or a payroll tax alternative. Seven. Address the equity of the collective bargaining/arbitration process and provide the ability for expedited resolution to collective bargaining/arbitration issues that limit the ability of the municipality to achieve cost containment measures necessary for fiscal stability. Labor costs represent the largest portion of a municipal budget and necessitate appropriate cost containment measures. Amend either Act 111 or Act 47 to provide a maximum time period for arbitrations and require the arbitration panel to render their award no later than 6 months from the commencement of the process. Provide authorization for an Act 47 municipality to immediately petition the Court of Common Pleas for relief if time frames are not met. Eight. Develop community leadership and capacity building to provide for better planning, decision making and allocation of resources that will result in long term viability, institute community leadership and capacity building training in order to involve all sectors of the community to address leadership and capacity issues. Governmental, educational, non-profit, business, social services and social/ethnic organizations in the community should all participate in the process. Work with the local school district to strengthen a civics component in their curriculum to instill a sense of community in students. Nine. A vibrant middle class is a critical element to successful recovery. Economic and community development strategies should focus on strengthening the middle class through job creation, affordable housing opportunities and a quality educational system. And Ten. Address legacy costs especially in the pension, health care and workers compensation areas. Most fiscally stressed municipalities have significant unfunded pension liabilities. As municipal employment levels decline the municipality receives a lesser amount of state pension assistance that places an even added strain on municipal budgets. The impact of post retirement health care liabilities is an emerging issue that places further stress on municipalities. GASB 45 now requires the determination of this liability; however, there is no funding mechanism in place to address these costs. Establish a state wide pension, municipal pension plan and require all municipalities or at least all Act 47 municipalities to participate. Remove pension benefits from bargaining process and freeze them for current employees. Provide authorization for defined contribution plans for new hires. Strengthen workers compensation procedures to eliminate the so called "double dipping" that can occur between workers comp and the Heart and Lung Act for public safety employees. Provide authorization for trust fund for OPEB benefits. Establish a funding formula or municipal obligation that is funded on an annual basis. Act 47 requires a significant commitment in both human and financial resources on the part of the Commonwealth. It is in the best interest of all to identify and address fiscal problems in municipalities that may be trending towards distress as possible while they are still manageable. Early intervention can address fiscal problems before they reach a crisis and avoid a condition that could adversely impact the health, safety and welfare of residents as well as save the Commonwealth and municipalities valuable resources over the long term. Implementation of the above action items is critical to reversing the downward fiscal spiral that will face many Pennsylvania municipalities in the years ahead. Thank you for the opportunity to testify and I'd be glad to address any questions you may have.

CHAIRMAN ROSS: Well just speaking on my own behalf here I've rarely heard a more comprehensive, in depth and complete analysis of a very difficult, technical set of issues and I personally feel that it really gives us a tremendous background on what we're facing and also, quite sobering and I also want to compliment you both on not being afraid to take on some politically very challenging issues and bring them up and put them in front of us here. I'm going to go around and ask Senator Earll do you have questions.

SENATOR EARLL: Thank you Representative Ross. Good morning gentleman. I just want to echo some of Representative Ross's comments; it really is very helpful to have an overview of the history of Act 47. How we got to 47 and then to have the thorough overview of what's been happening since we've had 47 but now it's so hard to sit here and not feel so overwhelmed by the depth and the breath of the problems that we're facing that are going to continue to get more serious and impact more municipalities across this Commonwealth. So I'm wondering on this list of you know your 10 action items where's the easy ones? And where's the shot of political testosterone that it's going to take to accomplish any of these under this dome. But I think that some of the things you point out we have discussed very generally and we know need to be done. There are no magic fixes to the systemic problems that are driving some of these costs in our municipalities and there's just no easy way to fix it. That being said I do just have a couple specific questions. The early intervention program – do municipalities have to come to us to ask to be in that program or do we reach out when we, do we have a way of determining those municipalities that are at risk that should start looking at involvement in the program. Or are we only giving advice if asked?

MR. REDDIG: It works both ways Senator; we do have a system in place to identify, at least to the degree possible, to identify communities that are experiences fiscal difficulty. Actually that plays out two ways, one a more formal way in the submission of a form the, The Survey of Financial Condition Form, that municipalities file with the Department where they're indicating the presence of certain fiscally distressed criteria, and secondly it plays out simply in a very informal way through the ongoing work, the center and working with local governments and our interaction with local governments where they will contact us when they're experiencing a serious fiscal difficulty. It often times will play out during the fall months whenever the budget process is taking place and a community is having very great difficulty meeting their budget.

SENATOR EARLL: Is the Department experiencing more frequent requests for early intervention?

MR. REDDIG: We have experienced an increasing demand; I gave you the numbers in the testimony of the communities that we have dealt with in that program. To formally enter that program it does take a proactive action on the part of the municipality and the reason for that is that we want a commitment on the part of the municipality that they are willing to follow through with the process. So they do have to ultimately, we can recommend that they come to us, we can't force them to come to us to actually engage in that program. It does require a proactive action on the part of the governing body to state, to apply for assistance under that program. And it does require some matching funds on their part to participate and in part we're looking for their commitment because the investment of our resources is significant and we want to have some degree of confidence that the municipality is going to follow through.

SENTATOR EARLL: I think I have a municipality that very successfully benefited from involvement from the early intervention program. The City of Erie. You're right though it did take a willingness on behalf of the local political leadership to implement some of those suggestions that were made by virtue of that process and were so far able to stave off involvement in Act 47. I know that there's probably a lot of questions, municipalities that have been in 47, 10 years or longer, what's the commonality of the reasoning why they can't get out?

MR. REDDIG: It's to a great extent, it falls on, I indicated that two basic areas of distress, managerial distress and structural distress which is the loss of tax base. Primarily has been the loss of tax base and if I can I would like to give you the example of the City of Farrell, which is the first community that ever entered Act 47, back in 1987. They are still in Act 47, the recovery plan as required under the Act the coordinator analyzed the long term viability of Farrell. Found that the City had made a finding in the initial recovery plan that has been continued that they were non-viable. The city went through a process with our involvement to reach out to the adjacent municipalities, the City of Sharon, Hermitage, Sharpsville and Wheatland to engage in a boundary change process as provided for under Act both Act 47 and Act 90 the Merger and Consolidation Act. The elected officials of all municipalities were all very open and engaged in that process. Ultimately it went to a ballot question. Roughly 8 years ago it was on the ballot and it passed in Farrell so the electorate in Farrell accepted their fate. It also passed in Sharon which is in our early intervention program and likewise has been struggling. It however failed in the other 3 municipalities and so the issue went down to defeat which really goes to the point of what do we do with our non-viable communities? An issue which both Mr. Gasbarre and I addressed in our testimony and I think it's a challenge for all of us to come with a solution, Farrell is not the only community in that situation but it highlights the viability issue.

SENATOR EARLL: But I think that at least the conclusion that we might have to have a more heavy handed approach than what historically has been our tradition in Pennsylvania with our ---lines on local autonomy. We might have to start really forcing those types of consolidation analysis and outcomes, because these communities can't get out of 47 otherwise and I think that’s going to increasingly happen. But with that I don’t want to hog the microphone. Thank you for your attendance this morning, we appreciate it.

CHAIRMAN ROSS: Thank you Senator. Senator Eichelberger.

SENATOR EICHELBERGER: Thank you Mr. Chairman, three things for the panel. This one for you Fred, do you think that the information we collect, the financial information we collect here in Harrisburg is sufficient? Do we get enough, because I understand that if you compare it to other states we may be a little behind what other states collect from their municipalities?

MR. REDDIG: I think the information that we collect is adequate so long as the information that comes into us is accurate, which goes to the process that is used at the local level to really compile their financial information. There is a requirement for an annual financial report, not a requirement for an annual financial audit and that is predicated on the requirements of the various municipal codes that allow for a financial report that is a compilation of, as opposed to an audit per se. Now many municipalities do undertake an annual audit and engage a professional to complete that, not all municipalities do that, and the municipal codes provide for an option of having an elected board of auditors who are laypeople in the community to provide for that audit. So I think it goes to the standard that exists right now for the compilation of financial information, but we are able to massage that data to the greatest extent possible to try to root out inaccuracies and improve the quality of the data.

SENATOR EICHELBERGER: Do you think that’s something we should address then as well?

MR. REDDIG: I think it is something that should be looked at, the counties looked at this issue and there was legislation in the early part of the last decade, Act 103 of I believe 2001 or 02 that established a different standard for the completion of a financial report at the county level. That’s something that I think would behoove you to take a look at.

SENATOR EICHELBERGER: Thank you. It also appears to me that without setting in your solutions proposed at the end of your testimony, you did talk about; I think it was number 4, you talked about setting up the 5 year review, at the end of 5 years. I was interested in your comments earlier and your testimony as well where we talked about no time limit to the Act 47 involvement. And was hoping that, it appears to me that the immediate situation is best to try and institute change because people then are, ever the community understands that there is a problem, it’s publically acknowledged and people are more apt to accept change at that point. As time drags on people perhaps get away with more if they understand it. Well we really don’t need to change our labor contracts, we can still squeeze by with this or that, there’s a lot of circumstances that continue over a period of time. So I’m interested in trying to push forward with as much change as quickly as possible if people get into Act 47, do you disagree with that approach?

MR. REDDIG: No I do not disagree at all. I think that the difficulty there as highlighted in my testimony is pushing the decision making process at the local level to implement.

SENATOR EICHELBERGER: So as Senator Earll mentioned, it’s going to take some real courage here at the Capitol to make some changes, but it also takes courage back in the municipalities to make those changes so it’s a double shot there and the last thing for everybody at the table; how do you propose we best fix last night’s decision by the Pennsylvania Supreme Court? Do we look at Act 111 and try to work through that, do you see ways that we can work through Act 47 and try to address that problem, do you have any ideas and certainly Dave who’s the solicitor for the Local Government Commission, and I know you haven’t thought through all of this yet but what do you think at this point?

MR. REDDIG: We do think a fix and again we just read this very quickly this morning. We do think the fix can be done legislatively. The section 252 of all the provisions in Cat 47 is the keystone provision as one who participated in the drafting of Act 47 I can tell you that was clearly intended to state that any perspective collective bargaining of contract or arbitration award that I think the statute says settlement would not infringe upon a solvency plan which was executed after the plan was put into effect. What the court did was take a look at the language in section 252, semantics and that type of thing and decided that the legislature would have to clearly distinguish what was meant in terms of the arbitration process. That’s what they said, the unfortunate consequence of the decision however is troublesome from one perspective that I just thought about this morning. You have situations now where you have municipalities probably that are on the cusp, ready to go into Act 47, does bankruptcy now become a more attractive option for them, because they know that section 252 for all intents and purposes has been substantially weakened from control costs standpoint. Now I’m basically looking at insolvency if I believe that I tried to deal with my creditors and obviously you have folks that are going to testify in bankruptcy this afternoon who know more about the subject than frankly I do, but they've tried to deal with their creditors and through the collective bargaining process just can't come to an agreement. Subsequently they have a willing governing body that will file the petition with the bankruptcy court, does that become more important now and in play than actually going through a formal recovery process under Act 47? That's a question, that is a real question that they could be a problem. I don't know if Dave if you want to say

MR. GREENE: I concur with your statements, it's just a matter of the Supreme Court decision is just a matter of the interpretation or the Supreme Courts willingness to expand on the literal meaning of the word settlement in 252 and they were unwilling given the strong public policy behind Act 111 in terms of arbitration that they did not want to do that. They wanted to make sure that the General Assembly did it explicitly through legislation action if they chose to do that. They weren't will to extrapolate the definition of the word settlement.

CHAIRMAN ROSS: Thank you. Senator Blake.

SENATOR BLAKE: Thank you Mr. Chairman and gentleman thank you for your extraordinary testimony, it's a rather stark assessment of the circumstances that we face and I want to also extend thanks to my colleague Senator Eichelberger for raising the tough question that I otherwise would have raised regarding this ruling last night. I have a question and maybe this is best answered by Attorney Greene, and in your testimony Michael you mentioned the innovation of 1151 with respect to the constitutionality issues and essentially being captured and enabled, right, being outside the constraint of constitutional language. But the other thing that was mentioned and I'm actually looking for an understanding of this. Act 47 was originally enacted without a mandate on municipalities to adopt and implement the solvency plans prescribed within it. So was it an assessment at that time that that kind of mandate would have been beyond the acceptance of the constitutional language meaning sort of what 1151 did, if a mandate had been issued would that have passed constitutional muster, that's what I'm asking?

When Act 47 was originally drafted I think for the most part we tried to be extremely conservative, when you look at the language at the constitutional provisions, specifically the ripper clause it talks about interference with municipal fiscal affairs. And I think we knew that Act 47 was going to be challenged constitutionally and we were right. The Wilkensburg case said one of the key provisions dealing with Act 47 specifically section 252 and everything that goes into Act 47 in terms of the process said that local decision making is left locally. So based upon a very conservative interpretation of the task force and wanting to see that statute withstand initial contests of contestations of its constitutionality it was drafted in that way. However when you look at the historical context of that provision, this is based upon additional research our staff has done, and looking at the historical concept in what was meant by that provision, it was meant and drafted back in the mid 1800's when the legislature was noted for some rather curious and corrupt practices and one of the things they used to do is create these special commissions that would frankly go in and undertake projects in municipal governments and leave and leave the municipalities with a debt. That's what the ripper clause is basically all about, we do have a situation now where there is a hole in Act 47, we all know that, the municipalities can say yea I know I'm in Act 47 but I'm not going to do anything about it, and I think that's what's happening here locally. Dave you wanted also to say something on this.

MR.GREENE: Yes just to touch on that Senator and there's a very interesting statement in the intermediate decision in the Wilkensburg case were the Commonwealth Court says that the purpose the central purpose of Act 47 is to relieve a municipality of debt. Whereas the evils that cause the creation of the ripper clause in Pennsylvania where situations were unilaterally the General Assembly would go in as Mike suggested, construct municipal improvements and inject debt into the municipal system unilaterally, okay. Another thing that you've seen in terms of both Pennsylvania case law and the case law in the other 5 states that have ripper clauses and it's evidenced by this hearing here today and some of Fred's testimony as well in terms of the municipal distress crosses municipal boundaries. It deals with economic consequences that aren't contained to the corporate limits of the township or borough. The municipal fiscal security is a state issue, it's not a municipal issue, ripper clause litigation involves a prohibition on purely municipal issues so the argument can be made and this is something that is acknowledged in federal bankruptcy law under chapter 9 and acknowledgement of the 10th amendment, the municipal fiscal security is something that is left to the states for the state to determine whether or not a municipality can avail itself of the federal law. So this is a state issue, it's not purely a municipal function, in light of that interpretation and certainly there's no antidotal or documented evidence that the drafters of Article 3 Section 31 ever considered an end game in terms of municipal fiscal distress as being a driving force behind that particular clause. In fact it's quite the opposite, during the mid 19th century we had an extraordinary economic boom that was being exploited by the General Assembly without any restrictions on special legislation or any restrictions on interference with municipal effects.

SENATOR BLAKE: Understood thank you. I don't want to monopolize the time, I only have one other question and it really has to do with Fred, Mr. Reddig with your testimony. And I think I'm understanding that the General Assembly needs to keep in mind Act 47 is but one statute, meant for a singular purpose with regard to allowing the state to become a partner in allowing communities to assess their circumstances and hopefully exit their fiscal distress and I think it's important for Members of the Assembly to know that Act 47 focuses on the cost side that triage that you mentioned focuses on the cost side first. So what we've heard here in your testimony is that and maybe this isn't a good analogy but we have this flu, this fiscal flu that our communities have and there are several drugs namely statutes that they take and there are contraindications, so it's not just an Act 47 issue there are layers of legislation that impact and diverse issues of legislation that like drugs have contraindications. So I think if you can offer just some feedback to me on the maybe the 3 or 4 or 5 different statutory vehicles that we ought to be looking at that essentially I think should inform an improvement of Act 47, can you speak to that?

MR. GREENE: Certainly and you're absolutely correct Senator, Act 47 is but one tool and clearly Act 47 as indicated from our experience and my testimony can only go so far in dealing with the municipality. It is not a panacea, there is a lot of interaction that Act 47 has with any number of other state statutes and on the cost containment expenditure side you have statutes that deal with pensions, you have statutes that deal with collective bargaining, you have statutes that deal with workers compensation, you have statutes that are municipal codes some of the inconsistencies there that limit or at least put some impediments in the way of intergovernmental cooperation initiatives. For instance some codes provide for civil service commissions other don't, how do you marry that together. You likewise have the issue that I know Representative Freeman raised about the tax exempt properties and the Purely Public Charities Act that comes into play, so there are a multiplicity of statutes and many of them were as I went through my recommendations were indicated there that relate very much to Act 47, to the fiscal health of our municipalities whether they are in 47 or whether they are not in 47 but are trending that way.

SENATOR BLAKE: Thank you very much, thank you Mr. Chairman.

CHAIRMAN ROSS: Thank you and I'd like to recognize that we've been joined by the Minority Chair of my committee the Urban Affairs Committee, Representative Thomas and I believe he has a question he would like to ask at this point.

CHAIRMAN THOMAS: Thank you Mr. Chair and let me thank the other Chairs for convening this very important hearing. Thank you for your testimony. I have one question on your recommendations. Recommendations which focus on county and municipal sharing, working together. Have you had a chance to take a look at, I think the Pennsylvania Emergency Management Agency which handles this whole issue of Homeland Security for local municipalities and they have come up with a good way in which counties and municipalities are working together on dealing with homeland security issues as it relates to local concerns. I'm just curious as to whether you've had a chance to look at that model as a way of encouraging resisting municipalities or townships on how to, how they can deal with rising costs around some issues like pension, health care and some other concerns?

MR GREENE: I have not looked at that particular model I do have experience however with working with the Emergency Management Agency with a related issue and that's the 911 legislation whenever it was enacted back in the mid 1990's our Department in fact had a leadership role working with PEMA and the Public Utility Commission to implement that legislation and I think although there was resistance that existed, ultimately that resistance was able to be overcome and you had a consolidation of the public safety answering points i.e. the 911 centers that did have a positive impact on a number of municipalities in reducing some of the public safety costs. I will take your comments though under advisement and contact PEMA about the Homeland Security model as well.

CHAIRMAN THOMAS: I think and I'm somewhat familiar with Southeastern Pennsylvania where all 5 of those counties are required to come together and come up with their particular needs and costs associated with those needs and sense it appears as though all the Homeland Security dollars flow through the Commonwealth. The Commonwealth has been able to establish some standards by which they can submit their collaborative needs to the Commonwealth rather than individual municipalities or individual cities are able to submit requests to the Commonwealth so and it seems to have been working pretty good so I am just curious as to whether we have taken a look at that with respect to these distressed municipalities. Which might be a way to work through some of this rather than try to force local communities to work together in a way that we might think they need to, need to be working.

MR. GREENE: Mr. Chairman parenthetically I'll note similar to Fred I haven't looked into applying that paradigm to fiscal, fiscally distressed municipalities but the Pennsylvania

Constitution in Article 9 Section 6 and 7 provide for the Government in areas involving 2 or more municipalities. To my knowledge it has not been utilized except for in one statute in Title 53, the Environmental Improvement Compact Statute, so there is certainly in the constitutional framing of 1967 there was the idea by the framers that there could be special districts or overlay zones, government that could alleviate individual municipalities of the burdens that they may face through cooperative government, self contained elected cooperative government overlay. The Constitution contemplates that.

CHAIRMAN ROSS: Representative Freeman.

REPRESENTATIVE FREEMAN: Thank you Mr. Chairman. Gentlemen thank you for your expert testimony, it’s most helpful to the work our Committees and I appreciate both the overview of the origin of Act 47 and the detailed analysis of how Act 47 has progressed and how the program has worked in our state. Mr. Reddig you touched on an issue near and dear to my heart which is the one of tax exempt properties. As you know I’ve worked on that issue for a number of sessions now and a few sessions ago I introduced legislation to create a tax exempt property municipal assistance fund. Something I will shortly be reintroducing in this session. I did want to touch about some aspects of the tax exempt issue with you if you could just maybe address a few questions. In your testimony you have noted that the pilot approach has been difficult to actually benefit the communities that peruse that, pilot being payments in lieu of taxes. What have been some of the short falls of the pilot approach in trying to use that to get major tax exempt entities to provide some resources to host municipalities?

MR REDDIG: The basic shortfall is that it’s a voluntary program it necessitates the willingness of the non-profit community to come to the table and you know the magnitude of the contributions are voluntary, it is one where you and in our experience in a number of municipalities just have to invest considerable effort in sitting down, and meeting, and talking and working towards some reasonable contributions. But it’s all purely voluntary there is no standard that issues, there is no particular methodology that is employed such as there are when you move to the taxation system of a real estate tax or some other tax. I mentioned the purda approach that issues with public utilities who do not pay real estate taxes but do through a methodology process make a payment under the purda legislation, which is then provided back to local governments. So it is simply that it is strictly a voluntary program Representative.

REPRESENTATIVE FREEMAN: Do you see any potential and I would offer this also to the other Gentleman at the table in crafting legislation to mandate pilots or does that run up against a lot of our standards as to what a charity is and as to whether they can be taxed or fees can be drawn out of them in some way?

MR. REDDIG: I think it’s a two edge sword as are many of the issues that we’ve talked about here today and certainly there is a lot of value that a non-profit community brings to a community. You know that Pennsylvania is blessed with many educational and medical facilities that bring tremendous resources, tremendous, have a tremendous positive impact on the city, but you look at those and then you look at a private sector corporation of some sort and they likewise are bringing resources to the community, what is an equitable balance. How do you equitably asses some revenue from that non-profit entity versus what is being done with the for profit entity, and recognizing the impact, the positive impact that those entities bring to a community.

RERPESENTATIVE FREEMAN: Yea I mean they are major employers in most cases, sometimes the only significant employer within the community. Which is why I think my legislative approach to provide a fund that would be a sort of revenue sharing fund recognizes up front that these are valuable assets to the community, major employers, major cultural facilities as well, things that enhance the quality of life in a region. But since they are really of a regional nature in terms of their impact on an area, it’s rather unfair to assume that the host municipality has to bear the burden of having such a large percentage of its property tax exempt, since property taxes still constitute a major revenue source for municipal government, so it’s unfair to require that municipality to have these entities and not be able to get the resources they need to provide the essential services to make those communities livable and stable. So that being in mind, do you see greater merit in the approach of some sort of revenue sharing, whether it be in a greater regional approach at the local level or as I have proposed, getting the state to recognize that we can’t allow these communities to fail, that to do so would harm the entire region in which they exists but also the stability of our state long term. Therefore, the state should step up to the plate, identify a revenue source, and drive that back into high tax exempt municipalities in order to give them the stability that they require to be successful and not have a constant drain on resources at the state and local level. Because through that revenue sharing we help to give them stability. Do you see the merits in that as a more

MR. REDDIG: I think the revenue sharing approach in some manner is certainly a viable approach to pursue.

REPRESENTATIVE FREEMAN: And one that could probably provide more long term stability than again seeking temporary pilots or nibbling around the edges as we too often do

MR. REDDIG: And that's what the pilots do they don't provide a long term solution they're temporary in nature and they're voluntary.

REPRESENTATIVE FREEMAN: Is there any merit, again I throw this out to the entire panel. For us to reopen our Purely Public Charities Act, that was rewritten a number of years ago and in doing so it's been my interpretation, expanding the potential of what is considered a charity, not all charities, not all tax exempt properties are created equal. There's a world of difference between the soup kitchen and a major medical facility where the CEO pulls down a six figure salary and produces a profit which isn't interpreted as a profit since it goes back into the mission of the facility. Obviously you don't want to harm that mission, but there is a world of difference between that soup kitchen and that major medical facility, that if it were not considered a non-profit entity would be approached as any other profitable entity and there are now for-profit hospitals in our state where once they were very rare. So is there any merit in reopening our Purely Public Charities Act and seeing if we can more clearly define what constitutes a genuine charity versus something that is a quasi charity, charity in its mission but not necessarily charity in terms of how it achieves large sums of money in providing its service.

MR. GREENE: Mr. Chairman that would be a strategy that would have to require very careful consideration in terms of legislatively augmenting the definition of charity. Remember that institution of Purely Public Charities Act emanates from Article 8 of the Pennsylvania Constitution, which enables the General Assembly to provide special tax provisions for charitable institutions. Because that is a constitutional term, the Supreme Court has determined that it is the sole arbitrator of the, of that particular definition of that constitutional term and as a consequence of the Legislature's attempt to codify that particular act, we essentially have a two tiered test now. To satisfy the requirement for the pilot programs and satisfy the requirements of the act, there has to be satisfaction both the act and the constitutional standard itself. So Article 8 of the Pennsylvania Constitution has to be acknowledged and examined carefully whenever we're looking at attempting to legislatively augment the definition of charity.

REPRESENTATIVE FREEMAN: Would you not agree that we've expanded on that definition of charity when we rewrote the law some time ago?

MR. GREENE: Excuse me?

REPRESENTATIVE FREEMAN: That we expanded on the definition of charity.

MR. GREENE: Well expanding the definition of charity for special tax provisions would run afoul of constitution.

REPRESENTATIVE FREEMAN: No I'm saying that we did that when we revisited

MR. GREENE: Yes

REPRESENTATIVE FREEMAN: And my final question and I thank the Chair for its indulgence, I saw the smile on his face. Mr. Reddig you touched on the issue of creating a good solid middle class in our distressed municipalities and I agree, that is one of the greatest stabilizing efforts we can do. So anything we can do to enhance the economic opportunity with our older communities, to make them stable, vibrant communities once again is to the benefit of all of Pennsylvania in that regard. One aspect which is often referred to is the educational aspect, many younger couples are drawn to the urban scene, there's a good restaurant scene, if there's a vibrant farmer's market, cultural amenities. They like that when they first come to a city, once they have children they're worried about the educational system and that's where you often times see those couples leave for the suburbs where the school system is deemed to be better, better provided for financially able to offer more. Should we not in our attempts to address the Act 47 distress situation be trying to fashion ways of making our local public schools in these distressed municipalities more user friendly and appealing to those families we want to retain and the point I wish to point to is the use of the neighborhood schools. At one time almost all communities had neighborhood based elementary schools, they were an anchor to that neighborhood, they provided easy access for the parents to be a participant in the education of their child and to have parent/teacher meetings, and the scale of them were ideal, class sizes were small, the scale of the building was small, it really enhanced the educational experience. Should we not be looking at how we can reincorporate the neighborhood school concept within many of our distressed municipalities as an appealing approach to retain those families and to enhance the educational opportunities within our distressed municipalities?

MR. REDDIG: Representative I will not profess to be an expert in the educational area however, I would state to you as I did in my testimony that there is a very, there is a need to have a very close involvement school district with coming up with a solution to the distressed situation. Because of the example that you just indicated and we have seen it happen all to often, having a viable quality school district is a critical component to maintaining that middle class, it's a critical component to maintaining a healthy tax base in the municipality and working with the Department of Education and with educational policies, facing goals of with municipal issues is a critical element in solving this very comprehensive issue of fiscal stress.

REPRESENTATIVE FREEMAN: Thank you, thank you very much gentleman, thank you Mr. Chairman.

CHAIRMAN ROSS: I will urge my colleagues, I know many of us have very strong feelings about these issues but if we can try and focus our questions a little bit and limit them that would be helpful, because we still have a number of other Members that are eager to ask questions and at this point also for those Members that don't happen to have a microphone in front of them because of the transcription and the recording I would urge you to use the two podiums that we have on either side which have microphones on them. At this point I would like to recognize Senator Robbins.

SENATOR ROBBINS: Okay Mr. Chairman if I could I'm going to change the discussion a little bit because I think there is something else that we as legislators have to look at that that is very, very important in this difficult discussion and fortunately or unfortunately depending on how you look at it, I've been here since the beginning of this discussion back in the 80's and what I want to point out for the Legislators here, we have 2 mechanisms that are very important to us as the Legislature and we created to help us in this process that as we have dealt with the budgetary problems in the last couple of years. There are people who in fact want to either do away with them or reduce their meaningful work, I worked hard on establishing the merger of the department and creating the Center for Local Government, it's our toll in the structure to deal with our local communities on a day to day basis that, to help them through the process and in our last couple of very tough budgetary years there have been reductions and I'm going to quickly ask, that let me finish as I go, but Fred if you would address the scenario and what in the structure of the Administration would there be to shift the work to the Local Government Commission if we continue the budgetary problems that we have with the addressed and the other as you well know there is a movement to merge or do away with the commissions that we have established as our tools. And the Local Government Commission has been the tool that we have used of expertise over the years, it's very small very directed in the work they do but again in our budgetary processes the last year and going into this year and maybe next the possibility of doing away with them. So I would share and I would just like if they feel comfortable, make a couple of comments on their role but to remind all of us of the importance of the commission, not just in this area but in when we codify the laws of the Boroughs and the Cities and the other things out there the very, very important position we have created for them, and they have in fact have developed for us, and if we don't' have that this whole discussion becomes much more difficult, so if Mike would make a comment. Where would that expertise go or how would we in fact then get that expertise to deal with these major issues, the same with the Local, I believe now that the Local Government Center handles all of the Act 47 that has developed and again tough budgetary years we have to deal with them, but we as a Legislature what would happen if we would lose those 2 entities in this very difficult scenario that we're right in the middle of? And I request all of us to think of that very importantly as we deal with the budget process and what are our tools to deal with this very, very difficult issue.

MR. GASSBARRE: Wow all I can say, we can't obviously comment on legislation that our members don't sponsor because we can't advocate or oppose any legislation. All I can say is like all state agencies and even the caucuses we've all seen diminished appropriations in the past, the past 3 years we have been hit substantially we've lost 3 people in 14 months. But none the less we have been able to carry our work because of the knowledge of the staff and their institutional knowledge. I think any time there is retention in funding and subsequent resulting on decreasing of staff you lose the institutional knowledge and that you can't gain back, that's all I can say about that and I'm sure Fred feels the same way with his employees.

MR. REDDIG: Okay, thank you Mike and Senator thank you. As the architect really of Act 58 that did merge the 2 Departments and it created the Center for Local Government Services, the center was established to be the one stop shop for local governments to really provide a host of services, not just Act 47, but to provide information through publications and information, training, technical and financial resources to local governments across the state. The last several budget cycles have been very difficult for us to deal with, within the department and across state government as you well know. I have lost 10 staff, basically about 1/3 of my staff over that time period, primarily due to their moving on, either retiring or moving into other positions, but we have not been able to replace those positions and our program funding has dropped from in 2008 the various programs the center provides from 8.7 million dollars down to 2.3 million dollars so it's been a substantial reduction and those are tools that are used, not just Act 47 funding but other tools that promote intergovernmental cooperation strategies, that promote sound land use and community and economic development planning strategies, all of that flows out of that funding source, so it has been difficult, all of that said you know the center continues to provide services to the greatest extent possible, we have reached a point where we have to prioritize however, some of the services simply because of the limitations that we're faced with. But we're still out there, across the state, we have a regional office presence and we're trying to do the best job that we can do to assist local governments in the very difficult work that they have within their communities.

CHAIRMAN ROSS: Thank you. Senator Smucker.

SENATOR SMUCKER: Thank you very much and I will start by thanking the Chairs for holding this very important hearing the, as Representative Freeman, Chairman Freeman just pointed out the health of our urban centers is critical not only for folks who live in urban centers but for surrounding areas as well, my district includes Lancaster County and Lancaster City and we're concerned obviously about the quality of life within the city but also outside the city. Too often folks don't make that connection, we're interested for instance in Lancaster County in farm land preservation. One of the best ways that we can preserve our agricultural heritage is by making the cities and the urban centers a great place to be, a great place to live work and play. And so this is important for all of Pennsylvania, not just for urban centers. In Lancaster, and I'll get to a question here shortly, but in Lancaster we have a 3rd class city that is doing fairly well. There is a revitalization going on in Lancaster, we've had fairly good leadership as we have in many other 3rd class cities and boroughs across the Commonwealth. However, the long term health of Lancaster City is deteriorating, just as it is in every other 3rd class city, and in fact it's not sustainable long term. Recently a group of business leaders have worked in conjunction with the Mayor of our City to put together a paper called which they entitled "Prosper or Perish" which identifies some problems that we have in the overall financial structure of our cities. And they have come up with recommended solutions that are very similar to some of the recommendations in your report here Mr. Redding, I very much appreciate your taking discussion, this discussion beyond just Act 47 to the financial strength of all of our cities. Because we do have some 3rd class cities that aren't at the point of going into Act 47 but the face the same problems. So this gets to my question, the Mayor put it this way in the discussion that I had with him "Why are we waiting to close the door of the barn until after the horse gets out?" Why aren't we providing the tools, even some of the tools that are within Act 47 to cities who are not quite there yet? Act 47 Lancaster City for instance, I'm just using that as an example from my district, is one that would benefit from some of the provisions that are within Act 47, some of the tools we make available to them within Act 47. But they don't have access to it because there is a sort of stigma with going into Act 47, it's not meant to be punitive I know but it's seen that way at times. I'll take the Mayor's example just a little bit further, the cities are really an entity created by the state and we are the ones that provide the tools that they have available at their disposal to effectively run the city and I'll take the example, we take that horse that comes out of the barn, we hitch it to cart, we take the wheels off the cart, and then we whip the horse for not being able to pull the load. And too often I think that's the way, the cities at least see their relationship with the state. Lancaster City in this prosper or perish has specifically said make some of these tools available to us that are available under Act 47 without forcing us to go into that situation. I know the recommendations are very, very tough when you get to looking at additional sources of revenue or different ways of generating revenue other than just property tax you get to looking at the exempt properties, non-profits, you look at Act 111, all of those are really, will all come from different perspectives and it's hard for us to vote for some of those things but frankly it's going to have to include all of that in my view and we're going to have to at some point be willing to address these issues that are tough for all of us in different ways. So my question for you today is, do you see tools that are available within Act 47 that we could implement and make available to cities that are not currently within the Act?

MR. REDDIG: There are 3 extraordinary authorities that accrue a municipality that is in Act 47, above and beyond the direct technical assistance that is provided through the Department and the coordinator and those extraordinary authorities are one, the ability to increase either the real estate or the earned income tax above statutory limits and I think that in part goes to the point that you're speaking of, especially as it relates to the ability to impose both a resident and a non-resident or "quote" commuter tax that's one extraordinary authority that has been used, not in all but in some of the Act 47 communities and it does get to a regional approach to dealing with fiscal stress. Secondly, the ability to establish limits on future collective bargaining agreements and/or arbitration awards that are entered into after adoption of the recovery plan and that provision does not negate the Act 111, Act 195 bargaining processes but rather has layers on top of it, the limitation that at the end of the process, any settlement or award that is issued must conform to the recovery plan. The third priority or the third authority is a priority status for community and economic development programs that are state funded. So those are the 3 extraordinary authorities that accrue to an Act 47 municipality and I think with all of them, to some degree go back to the 10 recommendations that I made in my testimony.

CHAIRMAN ROSS: Senator Schwank.

SENTAOR SCHWANK: Thank you and thank you to the panel, you've done an outstanding job and I'm very impressed with the information you've imparted this morning. You know Fred I was really struck by the 5 steps of the stages that communities go through that was created by the Pennsylvania Economy League that you talk about how a municipality starts with great health and then slowly starts to spiral down into a very, very different scenario, and I think you very charitably characterized it as stages you know stages of life or fiscal distress, I frankly think it's a slow death spiral, and I think it's certainly something that needs for all of us to have an understanding of what communities, municipalities throughout the Commonwealth are facing. And this gets to my point, I think Act 47, certainly we're getting some good ideas on what can be changed, but maybe Act 47 is a little to, is not enough and it's too late in this stage. I mean we talk about boundary change, or municipal merger, who would merge with a community that's just about on the verge of falling into Act 47 or even sometimes even prior to that communities know exactly what's going on within their region and know that this is something they don't want to take on, they don't want to take on that burden. So my question for you is, what can we do, what tools can we use, how can we use merger, merger and boundary change more effectively, what can we do within the Intergovernmental Cooperation Act to help foster more shared services and really do it forcefully rather than just suggesting. And I guess in a way going to lead you to what I think are part of the answers or are more carrots rather than sticks and how do we do that? Thank you.

MR. REDDIG: Well one approach Senator that I would suggest is that there be a dedicated funding line item for boundary change. I mentioned the Farrell experience a little bit earlier and in my testimony talked about the need to level the playing field. Clearly a have community is not going to accept a have not community that is deficient from an infrastructure standpoint that has debt liabilities and other pension liabilities, you have to equate the 2 communities and put them on the same playing field and there is no funding stream that currently exists to be able to do that. So that is one step that is a critical element I think it's something that has been talked about from time to time but a dedicated funding stream that would accrue to municipalities that were going through the merger consolidation process that at the end of the process they would achieve funding to level the playing field so that one community isn't incurring the liabilities of another. I think the amendments to the Merger and Consolidation Statute that were advanced by the planning board and enacted last year have helped to remove some impediments, but we're still faced with the non-viable community situation and maybe and to your point about a stronger approach with it, the discussion about a state boundary commission to look at the viability issue that would not be done in a vacuum, but that would involve the county, that would involve the adjacent municipalities working together to come up with some solution, some government solution to that issue is another recommendation that I would make.

SENATOR SCHWANK: I might add that from another historical standpoint in the Local Government Commission, I introduced much of the legislation that implemented Article 9 of the Constitution think about ergo Intergovernmental Cooperation --- Act, so those factors they were all Local Government Commission sponsored bills. They also introduced the uniform boundary change legislation which did create a boundary change commission back in the late, well when I first came here in 1978 there was legislation to accomplish that. Needless to say it ran into serious opposition. Physical boundary change is always going to be a difficult issue if it's mandated. There is no question of that, there have been proposals within this past decade for instance, rather than going that route, is to look at and Fred touched on it very briefly in his testimony, disincorporation of distressed municipalities that are considered viable and obviously you would have to have criteria to accomplish that. The means to do that are a different story; you do it through a court action and a clear and convincing evidence standard where they just can't exist anymore and then subsequent to that how do you treat them? Well in the 90's or last, in the last decade although it was specific to Allegheny County you did have legislation which provided for that mechanism. That a municipality which was considered to be non-viable could be disincorporated either by petition of the governing body, or ordinance of the governing body, or by the petition signed by 15% of the voters, or 67% of the voters without a referendum. So which shows that 2/3 of the voters want to no longer to exist, what would happen in that case then Allegheny County eventually would take over the administration of that unincorporated area which would be classified as a local government, as a municipality, as a unincorporated district for constitutional purposes. But the county would actually levy the subjects of taxation of that municipality, what it had been prior to its disincorporation, so if it was a borough subject to taxation it would be boroughs. But that, say you have this unincorporated area now again you have the process that it's been disincorporated, you still have to get it up to a standard where it's going to be acceptable a few years down the road and joined or merged with another municipality and I think that's where the community and economic development funding priority comes. You have to make it attractive to another municipality for it to be accepted and those are some means perhaps that could be explored as well as Dave's suggestion of taking a look at area wide government under the constitution as an overlay district for specific purposes, fire districts, police districts, that type of thing.

CHAIRMAN ROSS: Thank you. I did want to mention, I wanted to recognize that Representative Hennessey had joined us and he had joined us and he's now has to go to another meeting so, but also we've been joined by Representative Toohil and I wanted to now recognize Representative Wheatley for a question.

REPRESENTATIVE WHEATLEY: Thank you Mr. Chairman and let me join with the other members here today and just thank the various committees for coming together, at least for me has been very valuable to listen and to the panel, the information that you have presented today again for me has been very eye opening, the things I thought I knew about the Act and our communities certainly are now minuscule to what I've learned today in just the several hours of listening to you and being here. But with that being said I think the very first thing and it goes to Mr. Gasbarre what you kind of said in your presentation, for me I'm a plain simple type dude alright and so do we as the state and I want to be clear on what I think I heard you say from constitutional perspective, do we as a state have the right and power to force a municipality, borough or township to accept a plan that we deem fiscally better for them and their citizens or our citizens, they're our citizens, do we currently have that right to do that if we wanted to?

MR. GASBARRE: The testimony that I gave dealt with a specific situation where there was a failure to act. The situation at hand obviously there has been 3 different times the municipal governing body has failed to act and if they fail to act for a 4th time the community basically becomes insolvent at the end of the year. In other words vital services cannot be provided. In that case I would think that any elected official at any level, your first and paramount duty is the protection of your citizens. If that's probably a part of your constitutional law whether you're an elected official or a Member of the State Legislature; if vital services aren't carried out then the community fails and in that respect there is --- police power, the Commonwealth is sovereign, local governments are not. They're creatures of the state. So when there is a clear failure to act for their citizens then someone has to step in. This is an extremely unfortunate situation as everybody is aware, what we think after this historical interpretation of the constitutional provisions that exist now specifically Article 3 Section 31, we don't think it was ever intended to prohibited the General Assembly from engaging in saving one of its municipalities. We don't think that's what that was intended for. So exercising the police power we believe the Commonwealth is in this unique situation does have that power.

REPRESENTATIVE WHEATLEY: And with that being said I think when I heard Fred your testimony I wanted to just highlight, we all hear and see things that we want to hear and see that fits our perspective of the world, but there was something you said that stuck in my head. The more a municipality is distressed is attributable to an economic decline, the more difficult the recovery process is. Then you go on to say that the Act, referring to Act 47 has struggled however to provide long term solutions necessary to achieve ultimate recovery. You talk about the Farrel being one that is the first one going in and still today has not came out of recovery. And this goes to the prior Senator's comment too it made me think is it time now for us to really sit down re-evaluate Act 47 and what we originally intended for it to do, to see if it's even viable in today's circumstances and if it's not to create something totally different to address the new realities that we find ourselves in our municipalities and boroughs and townships. Again it goes back to the fact, if in fact we know the economic conditions of some things that we cannot control they are outside of our control, that we know boroughs, townships and municipalities under current construct are going to fall into this distress situation. Is it now time for us to say, understanding this we need to have a new set of tools, a new set of rules and by which we can support not on the backend for the failure but again going to Lancaster situation, before they get there, and does that mean again I go back to my original statement around are there regulations that we need to revamp, redo, are there some administrative things again that we need to work with our local municipalities to work on so that they have control over themselves and then are there some financial supports that we need to pump into a system in some form or fashion and on the fore side of this is how do we work in a regional construct because no longer can we, I don't think we can just singly look at municipalities and boroughs, we should be looking at regions and how they function together, how they share resources, how they provide for the things that are necessary for our municipalities to function, should we now start to do things like that in the new reality altogether like take what we know, take what we see coming down the pike and figure out how we revamp this so that we don't have so many more of our municipalities and townships falling into this situation and we're sitting here another 10 years from now saying, wow, we still don't still don't have the tools necessary to address this issue.

MR. GASBARRE: I think the, I think you make an excellent point Representative I think the struggle is how do we deal with our local government structure in the 21st century and the economics of today recognizing the strong foundation upon which local government was built and what is the appropriate balance there that can achieve a healthy local government climate while still respecting that local governments that autonomy that you know was part of our founding fathers construct of local government in Pennsylvania, today we do look at municipalities singular as part of a region. They are part of a group of communities, you can't isolate a given municipality even one such as the City of Pittsburgh, they are part of a region. A hundred years ago that wasn't the case; municipalities did everything on their own, but today we live in one municipality, we work in another, we recreate in yet another, there's an interaction that occurs and we have to look at a structure that accommodates that from a service provision standpoint. You know how do we effectively provide services across that region, across that group of communities, from a community and economic development standpoint. Who has what assets, you have to take a look at the assets that a given municipality has. Maybe one municipality has that hospital or has that higher educational institution, another municipality, much like Senator Smucker indicated in Lancaster County has the agricultural land, how do we balance those and I think that's the challenge before all of us today is looking at reforms both legislative and administrative reforms that create that balance.

RERPESENTATIVE WHEATLEY: I'm sorry but I just wanted to make this one point on this, I'm going to be real quick, I'm sorry Mr. Chairman, that's the point what I was making when I asked the original question, do we have the obligation when we see ongoing danger that's coming down that could impact citizens all throughout the Commonwealth in their abilities to receive services. Do we have an obligation to make those difficult decisions now versus waiting for the piece meal effect in a coming one at a time that then we deal with it from one municipality to the next so that's, I'm glad you said that. Thank you Mr. Chairman.

CHAIRMAN ROSS: We have gone over our allotted time, we are due for a break and I know the panel has been very patient with us I do have 2 remaining questioners, I'm hoping they might be brief and with the indulgence of the other members if we can get the last 2 questioners in and then take our break and move on with the rest of the hearing after a 15 minute break, that's agreeable with everyone, then I'll call on Representative Mirabito.

REPRESENTATIVE MIRABITO: Thank you. You know I'm struck as I read this by the interrelatedness of the problems, especially with regards to the non-profits. As the tax base goes down by more and more properties being purchased we see the middle class being driven out because frankly they can get more bang for their buck in the neighboring community where they get the same house for a whole less real estate taxes. We see businesses being driven out, I've talked to a number of businesses in my community who don't want to be subject to the business privilege tax and I guess what I, and I share the concerns of some of the other members that I think from a business perspective, if I'm looking at it from triage, we have cash flow problems in many of our third class cities and these municipalities, so immediately as a businessman I'm thinking I need to get the cash flow up and I'm wondering if there are carrots that we can't use to get some of the non-profits, especially as was discussed earlier a soup kitchen where people are making 25 thousand dollars a year and working 80 hours a week is very different from an institution where if you pull their IRS 990 you'll see that the top 3 leaders of the institution are making 5 times medium income, they may be paying 250 – 300,000 dollars. Are there tools, I feel out of equity to the other tax payers, are there tools that we can use to say look in situations where you've made a decision as an institution to pay a salary of 250,000 dollars you have an obligation to pay something to this community for real estate taxes and other taxes and I guess what I'm asking you is what are the carrots and how, how could we do that legislatively without running to afoul, because if we can solve the cash flow crisis in the immediate circumstance we may avert some of these. We do have to get the pension, the collective bargaining, those are problems that have to get under control, but we have to get the cash flow. If you can maybe give some suggestions.

MR. REDDIG: It may be possible to take a look at that particular threshold type issue. Of course we're always going to have the issue of the uniformity clause okay. And you're going to have to treat similarly situated tax payers or potential tax payers similarly, that is ingrained in the Pennsylvania Constitution, now typically that is analyzed in terms of whether or not the classification is reasonable, okay, so as long as that can be made, as long as that argument can be made and the legislation can be crafted that could be certainly be examined, it would have to be brushed up against the Constitutional standards and similarly, in similar situations, but again as I discussed with Chairman Freeman, we do have specific constitutional terms as to what constitutes charity that could complicate such a model as a sort of graduated type of charity obligations in terms of thresholds of gross receipts of their 990 or whatever that might be. But it’s worth taking a look at, but there has to be constitutional considerations in that context.

CHAIRMAN ROSS: Thank you and finally Representative Day.

REPRESENTATIVE DAY: Thank you Mr. Chairman, I’m going to go for the Chairman’s gold star here, I’m going to try to get right to the question and I’m going to ask it as succinctly as possible. I have 2 questions, 1 in the box, 1 out of the box. Our municipality’s code is framework for how to run our different types of municipalities, would you consider codification of certain management metrics viable toward contributing toward the prevention of municipalities entering into a distressed status. Let’s say I think I read in one of the testimonies here today, expense growth ratio with revenue growth and whether we would have a parameter that people would have to operate within, so that would be my example and I would just briefly explain that every time you make a political decision to increase expenses there is a financial result of that and tying that together with a ratio and forcing municipalities to keep that ratio within a certain bounds, through statute, through making it mandatory, do you think there’s a list of management metrics that we should codify?

MR. REDDIG: I guess I would ask, let’s say that that does occur and there are some limited standards even out there now, what type of an enforcement mechanism would you use though to require that it happen?

REPRESENTATIVE DAY: Step one would be just the publication of such information, transparency, letting the people know, my municipal managers are managing outside the range of what is commonly accepted practice or their breaking the law is what it would be if we would codify it. So then penalties, I’m not going to suggest what the penalties exactly should be, but within when you don’t manage within in the municipalities code, people would be able to take you to court in that case and get relief from the judicial system. That would be my quick off the top of my head answer.

MR. REDDIG: Let me give you a couple standards, one is actually statutory, that's the pension standard relative to fund ratio and it sets certain gradations of fund ratio and classifies you accordingly. Another is a best practices model on the debts side, where there is a best practice GFOA standard, government finance officers' association standard, for debt service not to exceed 10% of your expenditures. We have municipalities where that ratio is as high as 20%, which limits then their ability to fund other activities, including personnel and operational costs. There is no prohibition against that, we do have, taking that another step under the Local Government Unit Debt Act, there are debt requirements, borrowing limits that are established that doesn't preclude a municipality however from being above that best practice standard in terms of the commitment of resources they're making to debt services.

REPRESENTATIVE DAY: Thank you, I could probably go through the break and through 2 hours of discussing this with you, we can do that later through e-mail and I can learn more about some more metrics or ideas that you may have. My second question back to really what we're here to talk about, has anyone considered as a result of not participating in Act 47, that's really what we're, one of the core issues we're here to talk about, not consolidation but the complete opposite, the breaking apart of the municipality, the dissolution of the municipality, where there'd be different parts going to different municipalities. To try to swallow a 60,000 person municipality is something that a 20,000 person township would never want to do because then what would happen is the electorates would bring the same type of electoral decisions to that municipality and over a 20 or 30 year period probably go down the same path. But dissolution of the municipality is that something that should be considered as a result of non-compliance?

NAME?: I would suggest that first of all there is a constitutional provision that deals with boundary change that says that the General Assembly may provide for other means of boundary change. Outside of the constitutional provisions now and the Merger Consolidation Act, so that could be accomplished. I would think that disincorporation because you are changing boundaries would be a form of boundary change so that would have to be formally provided for by statute. Basically what you're talking about, once you get a disincorporation and you want to divide it into any numbers you're talking about perhaps these other communities annexing those provisions that, those territories that had been previously part of another municipality. Annexation is pretty brutal, let's be honest; again the only way to do that currently is you have to have an initiative in any municipality considered for an annexation, taking part of what a municipality put in the other, 5% of the voters who voted in the last gubernatorial election had a successful referendum in both. But having said that, that would not preclude an additional method to provide for what you're asking for. It just has to be clarified.

REPRESENTATIVE DAY: And I appreciate that and I'll just make 1 comment on that. In my experience in municipalities, most townships were formed to prevent annexation of the boroughs or the cities as they grew and these townships or other incorporated municipalities tried to prevent that from happening. So I know it's, annexation is a really tough process to get through and I appreciate your answers. Mr. Chairman, did I achieve the gold star?

CHAIRMAN ROSS: Well we're going to work up from bronze or silver here but we appreciate your assistance and all the members and most particularly I really want to thank the panel who have really a tremendous depth of knowledge in this area, have worked hard on it for many, many years and I appreciate them taking the time to prepare their testimony and share it with us today and also a thoughtful responses to our questions. I would like to try and reconvene at 12:15 and we'll take a break at this point for all the members and be back to start up again at 12:15 with our next panel. Thank you. I'd like to reconvene the joint public hearing on Act 47, Municipalities Financial Recovery Act. Introduce our next panel which is combination, we're merging panels, what happened here? There are more of you there than I expected, this section is referred to as other state programs for municipal financial recovery and we have Dean Kaplan, Managing Director, Strategic Consulting Group, The PFM Group and if you would please also introduce those that you have with you here today, we'll be able to begin again.

MR KAPLAN: Thank you Mr. Chairman and Members of the various committees, we appreciate being here today, my name is Dean Kaplan, I am a Managing Director of the Strategic Consulting Practice at Public Financial Management, to my right and your left is Gordon Mann and to my left your right is Erik Solivan both of whom work with me around the state and the country with municipalities in financial distress. Thank you for having us. Public Financial Management or PFM is a financial services and management consulting firm that works predominantly for state and local governments and for non-profits, we have offices in over 20 states across the country but we are proud to be headquartered right here in Pennsylvania. We have over 225 employees in the state, in Philadelphia, Pittsburgh, Malvern, and right here in Harrisburg at Front and Market Streets. The group that we, the 3 of us work in the strategic consulting practice is the national leader in the development of multiyear financial plans in the public sector, we help strong governments plan for the future and help distressed governments achieve fiscal recovery. We in this process we provide a broad range of services to those local governments, operational efficiency reviews, work force analysis, government consolidation and shared services studies, many of the things we talked about earlier this morning. For example we are helping New Orleans restructure its budget process after the disastrous effects of the hurricanes there. We worked with Vallejo California when it was in bankruptcy to help analyze their labor costs. Most recently we've worked in Gary Indiana and served as their fiscal monitor to help develop a multiyear financial plan for that very distressed municipality. Here in Pennsylvania we're the Act 47 coordinator for the cities of Pittsburgh, New Castle, and Reading. In the first 2 we collaborate with Jim Roberts who will be on your next panel, and we also prepared multiyear financial plans under the Commonwealth's Early Intervention Plan which we discussed this morning. We've done that for York, Allentown, Easton, Wilkes Barre and for Luzerne County. PFM has developed or implemented various approaches to municipal financial recovery in all of these multiple states and districts and also has worked on some school district recoveries. So this morning I want to talk a little bit about how other states manage this, obviously we are very, very unique in terms of especially the number of local governments we have in our long history of autonomy but there are a few things that we can learn from others. The remainder of my remarks will focus on some of the commonality among the Pennsylvania distressed municipalities we work with and fortunately the earlier panel hit a lot of those points really, really well and like you I really appreciated the testimony, I learned a lot of things this morning, but I'll try to fill in some of the specific practitioner items that we really see on the ground in some of these communities. The way we look at the other states and how they handle this is to think about a continuum starting with monitoring, going through assistance, oversight and then to control as to how they deal with their distressed municipalities. Some states blend those approaches, 2 or 3 of them, some states will go straight through that continuum from the beginning to the end. I won't spend much time on monitoring because I think from comments this morning we're well beyond that, but there are states like Georgia or California which basically say you're on your own. I think the next step when you look at a more interventionist upfront monitoring system, good example would be the state of Ohio. The State auditor's office collects financial data and ratio indicators and benchmarks to identify those communities that have fiscal stream. And then they categorize them as communities that need caution, watch, or emergency. So under caution really the auditor will just know that they have significant problems and will monitor their finances on an ongoing basis. If a municipality's deficit exceeds 2% of their revenue or their expenditures exceed general fund revenue forecast by 8% it can go under financial fiscal watch, there they will get more specific state technical support, similar to what we provide in Pennsylvania, and then if those indicators get worse, if revenues exceed expenditures by more than 16% that triggers a fiscal emergency which has the state create a board, a financial planning and supervision commission to develop a multiyear plan so it sounds kind of familiar. Those commissions tend to be a little broader than ours so they might include state officials and county officials as well, which is an interesting thought to consider as we look at the law. The commissions can make recommendations to improve local government accounting and financial recording and you'll hear at the end of my testimony that we think that's one of the most critical factors here. We need to make sure that Fred Reddig and his colleagues at DCED are getting really good numbers and you heard in his response to one of the questions that one of the key issues is are the numbers reliable? When they're done the municipality submits a plan to the Commission on how it will implement the changes that are made. And I think that's another area where we can probably enhance our existing EIP which is a good program by helping the DCED come in at the back end and give them more resources to make sure those plans get implemented. In Ohio they're currently 24 municipalities that are under the supervision of one of those commissions and of course their state like ours it has a lot of local governments. The next level we see is really more of a hard oversight board and that's similar to some of the provisions that were in the legislation that was passed this week. But probably go even farther than that, Florida is a good example, there an oversight board is triggered when a government fails to pay debts, or pay taxes on income, make payroll, or is unable to resolve deficits. It can very similar to the Act 47 criteria here but there the state sets up a board with very broad authority in the board that was set up for Miami in the 1990's which we worked with, there was a substantial amount of control over budget including the power to prohibit the City from spending funds that were not authorized by the board. So the board had really a veto power and the only exception was for debt service which is an interesting exception given events here. The board was authorized to remain in existence for 3 years after the City produced 2 successive years of balanced operations and that no longer an emergency condition. So one of the themes here is get in early, provide much stronger powers and then get out and that's something we'll get into Member's questions really focused on this morning. And then in Michigan which has revised its law this year and is worth a close look by the committee, the grants run powers to a single receiver. Similar to the powers that were in 1151 this week, but those receivers are called emergency financial managers and they have the authority to amend, revise, approve, or disapprove the municipal budget, so that's a fairly strong power that we don't have. Assume and exercise the authority of the local pension board, and we know and you know from your work in the last couple years on pensions that there are governments, I would specifically say Philadelphia which have passed increases to pension plans even thought they were severely underfunded over their Mayor's veto so this would allow you to block this sort of action. The EFM's can authorize borrowing, the can sell assets, to pay municipalities outstanding obligations. So, those are pretty radical powers and pretty far beyond what was discussed earlier here today. But is a good example of sort of what the other end of the spectrum is. The new act 4 passes here but a new Governor and Legislature in Michigan granted the EFM's the power to modify or terminate collective bargaining agreements, so again a fairly different approach and I would mention that Massachusetts has a somewhat similar structure, although they use State appointed boards to do that. In our various experience looking at these other states and working here there are 4 or 5 key drivers that we see for fiscal distress and most of these have been raised by the other panels earlier this morning, but I wanted to talk about 1 or 2 of them in more detail and give you a little of our experience on the ground with those. The first is capacity and we talked a bit about how there are a lot of things local governments need to do and need to do well. But the small size of a lot of the governments there simply aren't many people to do all of the things that we talked about asking them to do this morning. There is a focus obviously on public safety, public works, and getting the pot holes filled and policing the streets so the back office tends to be a place that gets cut first or early and doesn't have a lot of resources and we're asking not only for our own documentation, but you've got worker's comp, and federal tax payments and other changes coming down the road for them. So in fact as things get worse, you also see not only have you often created an incentive for people to leave because we've all said governments should be smaller. Of course a lot of the people that leave are as someone mentioned earlier people with the institutional knowledge as you've seen right here with the earlier State panel, and of course there's also simple stress I think from this process. So what we see in a lot of cases are not only the back office people departing but we're we talking with Senator Schwank at the break about our work in Reading, they have had significant troubles with their accounting system and financial reporting for the better part of a decade, we've been working as coordinator for about a year and a half and are really having what I would describe as a devil of a time working back through their books with their outside auditors, with some outside help we've brought in with Mr. Reddig's assistance to try and sort through several years of very confusing numbers, so even after quite some time we're having a very, a very difficult time of making sure that the numbers we're discussing publically to get them out of trouble are really the right numbers and Gordon Mann who's with me today is now on his third city where he is doing this. So it is not a unique problem that is unique to Reading. Just also mention that in a lot of these cases we're looking at places where the salaries are relatively limited for the amount of work we're asking people to take on, in Pittsburgh they've been trying to recruit a new head for their building inspections for 3 years and they've made a couple of offers to good people from out of state but the salaries are not competitive with what they were already receiving else ware at lower positions. Finally of course the problems we face with just retaining young people state wide, which we've seen across multiple industries meaning that people coming in at the bottom of that, there are fewer of them. The one thing we've done is Act 47 coordinators have tried to recruit people to fill those positions, we've had some success in it, and it's really a matter that you have to be fairly aggressive, we found a really phenomenal young woman to be the CFO in New Castle, Mr. Mann participated on that panel with them to help do it and we also funded through the States grant as part of the Act 47 process the DCED approved a declining --- 3 year funding stream to hire 2 new financial professionals for Reading and they've been really great as well. So the other thing we've done is used the Commonwealth's temporary loan executive program to hit specific problems in IT and else ware so there is a good place for shared services where people can come and help institute assistance that they have in their own nearby municipalities. A bunch of the earlier panelists talked about right sizing as did you, I just wanted to build on the issue, we talked about how the cities are getting smaller and the core communities, there are a couple other issues related to the service needed to those left behind that Fred Reddig mentioned, one is of course is a number of these places have significant commuter populations that mean that not only are your base for service provisions down, but you have a big spike in the middle of the day. So your need for EMS services or other backup is actually very uneven compared to your population. So a lot of places like Pittsburgh has lost half its population but its daily population for employment has been very stable, so they're not seeing the let up on that side. Second thing is geographic downsizing sounds really great, it's pretty hard to do. In one of my prior jobs I was CFO of the Water Sewer Utility of Philadelphia and even if you empty out a part of the City you, frequently unsafe for hydraulic reasons you couldn't abandoned part of your water sewer system which might save you money so there is that issue on downsizing and then finally a lot of these places are growing. So you know Reading is far smaller than it was 40 years ago but it's bigger than it was 10 years ago so and in the last, since 1990 it's --- became 12% of the population, of course a lot of those residents have as Fred mentioned, much greater needs. The other area that people touched on and all of you really focused on in your questions were local collaboration, shared services and joint working, and I think the really important thing to mention is that you already do a lot of this. We all sort of say it's a strong local government state, we're not very, we have a lot of bias against cooperating and I think we really hit those points hard. But I did want to mention that we see a lot of regional cooperative efforts around the Commonwealth, regional police and fire departments as you know exists in York, in Berks, in Pike and Lancaster Counties, we've worked with some of them and many of you helped create them. Pittsburgh recently took over fire service for Wilkinsburg which it surrounds on 2 sides and that was a long effort that involved members of the fire fighters union, the city, Wilkinsburg, and both sides, in Reading they police Kenhorst, small borough adjacent to the City. So there are those models out there and I think we can expand them, in Berks County the Commissioners helped do the police study for the region, helped fund it and sponsor it, so those efforts are out there and I think you can help facilitate them. You've also done as a couple of you have mentioned 911 consolidation was critical, it's really helped local governments, we work with off load some of their costs and of course this really helped public safety. That's something that again the Legislature pushed, and then the other thing that really occurs to us is you look around, someone mention, or one of the Members asked about education, when specialty services were needed and no one really cared who they were provided for, you created several decades of intermediate units for schools. So you now have very broad, mostly county wide or multi county intermediate units that provide a lot of services which don't have to come from individual school districts; great model for some of the back office things that local governments could do. We talked a lot about work force cost and issues and you're pretty familiar with a lot of the benefit drivers, I think the one thing I didn't hear this morning, and I know you're aware of but I want to make sure we had on the record is that there is a fundamental long term problem which is national of course and we're really struggling with. We want to make, our advice would be as you consider these problems to make sure that we also don't forget the long term pressure we face. Obviously benefits, pension benefits, health care benefits, and a lot of the other non-salary items are increasing far faster than inflation, have been for decades and continue to do so. As long as that driver is on the expenditure side, a lot of those good solutions we talked about today will catch us up and then we're going to fall behind again. I'm not sure I have a great answer to that but I think we just want to make sure we're keeping an eye on that ball. One of the things I commend your attention to is the US General Accountability Office has done a series of updated studies they started about 3 years ago and the most recent one was I think April of this year, where they look at that nationally, it's very frightening, but it's also reassuring to know that it's just not us making mistakes. But there's a big dynamic out there to deal with. Couple other minor items to hit on, we talked a bit on other post employment benefits and the growth there and a number of you have focused on those quite a bit. Pennsylvania we think based on current coffers has about 11 billion in OPEB and most governments don't have an OPEB trust, don't have a way to fund it, we are very pleased to report that we're working pretty hard with Pittsburgh in getting one and they will probably be the first big city to have that as part of their exit from Act 47. But that is a good example of a place where post employment, post employment benefits were eliminated as part of their Act 47 plan in 2005 and 2006, but there OPEB is still going up because the people who are already qualified for the benefits are facing as they begin taking them, health care costs are higher, so the actual retiree health care costs have pretty much doubled in Pittsburgh since we've been there even though new employees don't receive them. So that's another case of the long curve on the outside. In then as a final matter on that we just want to frame a couple of recommendations with 2 questions. One is given the number of communities that are still struggling after an EIP and after an Act 47 plan how do we improve the continue of identifying them up front and getting in early. I think I heard that a lot from what you were asking; we think that's a great idea, it's been successful in other states and I'll mention in a minute you, most of you have experience with that being successful and then the second question being how do we keep people in balance in the long term? So we wanted to throw out a couple of short ideas for things that worked here and in other states and I think most importantly early intervention, being really, really early in talking to you and hearing what we've heard today, Erie, Lancaster, Easton, Blair County have all done early intervention plans and all of them of course have not gone into Act 47. Secretary Walker had a colloquy with the Chairs about the limited resources and of course the same thing came up in Fred's discussion, but this is a place where we may be able to flag people earlier, get in and provide some targeted assistance, maybe not always with a lot of money, to help them. The other thing I wanted to mention in that context is I think there's a lot of you have latched onto a good idea that's worked well which is to broaden that discussion, so that it's not just the DCED and us and/or the locality but some group of community and business leaders. Of course Erie has done that, Senator Smucker mentioned in Lancaster bringing in the business community and Easton they brought in Lafayette College, the biggest non-profit in the business community and of course York, Mayor Bracey after her election convened a committee that included city council, member from the county commission and the business community. And of course none of those folks ended up in Act 47. The other thing that we find is that people tend to suffer what I would call the stress of distress. Tempers and patience frays, there's a lot of difficult relationships between councils and mayors, councils and department heads, one of the biggest things we do in our work in 47 is to bring people together to help them sit down and meet regularly and be the kind of the --- broker and neutral. That's something else that could happen much earlier with relatively limited resources. We talked a lot about involving counties, we find that there are a lot of places where historically for good reason cities have taken over county services like police detectives that are really statutory county responsibilities and while though very desirable they may not be able to afford them anymore. Counties are a lot closer to these problems than the States and officials understand the dangers as was just discussed in great detail to the whole county of having a weak financial, financially weak components especially the County Seat and a number of you have served as County Commissioners and know that well. So we think that's a place where, in some of the places we work with counties that are very involved and some places less so. And then finally we wanted to mention just the possibility of providing revenues that grow more aggressively than we've seen. If we do have this problem in the expenditure side that some things that we don't control like pensions and health care numbers are going to continue to be outside of our control and continue to grow at 5 to 15% a year in the future. We're going to have to find some way to bring revenue growth into our revenue mix for local governments. We don't have it from the property tax, one thing that Mr. Reddig mentioned that I just wanted to touch on is as part of the Pittsburgh recovery, actually the legislature mandated that the City move from a suite of business privilege taxes to a payroll tax. While there are a lot of pros and cons to that issue it requires some more study, it's been a robust source for the City, they generated about 50 million dollars a year and it's been growing because even though, even with the economic downturn there has been some growth in wages. So those kinds of solutions I think and revenue options will help meet these expenditure --- that continue to grow. So with that thank you very much, we appreciate your having us here to testify today and we'd be happy to answer any questions you have.

CHAIRMAN ROSS: Thank you very much and I know Senator Eichelberger is on a tight schedule here so I'm going to recognize him first.

SENTATOR EICHELBERGER: Thank you very much, wish the people in the Senate were that nice to me. I appreciate that Chris, I really like what you guys had to say and you stopped in my office yesterday as you did several Member's offices, that was very advantageous. If you can just talk for a minute about trying to ramp up the system so that we do 2 things I guess as I see it and I asked about this earlier when Fred was on, was there testifying. Getting the information early, making sure it's good information, having some system in place that something happens, I mean either municipalities ask for it or if they don't then we're in a situation where they continue to falter and spiral downward and nothing happens until it's too late, do you have any ideas about that especially in comparison to the other states and I know you have some information in here about that and then really your opinion on the 5 year plan that Fred had suggested and looking at maybe 5 years down the road having a review at that point or is there anything that you suggest maybe we should do before that. Because it seems to me really in a matter of months in the first year and not to long after that that's whenever our focus is really on the mark at that particular moment in time, people are focused on the problem, they acknowledge it, they're willing to work on it, you can get fresh new ideas and we talked yesterday too about maybe some bold approaches not just more efficiency and better management but looking at changing how the work force is in that city, looking at selling off assets, we have problems too with authorities, we have a lot of authorities that are doing things outside the scope of what they're really, what their mission is. We have an authority in Altoona that decided to build a war memorial at the new water authority office building and everybody is glad to honor the veterans but for 100,000 dollars was that part of the mission for that water authority to build a veterans memorial there? And these things go on I know across the State so that's a lot to throw at you but the urgency of it and making big changes and making them early, do you want to talk about that a little bit?

MR. KAPLAN: Sure, you know Fred was very diplomatic about EIP, we know there are some Governments that have been approached by DCED and have refused that help. So one of the things I didn't mention is we did provide the Committee staff a white paper on what other states have done particularly Ohio and North Carolina have worked on that and we'll provide you with some additional information and templates and other issues for that because I think Fred's right there's, this is an existing body of knowledge, the question is at what point does it get too expensive to create more, could we create a structure where people have to come in. Second thing in terms of the multiyear approach I think that the one obstacle for us in many cases is because Act 47 requires you prior to yesterday's decision did not allow the coordinator to effect even current labor agreements, in some cases those go out for many years so in New Castle we had the Mayor once he knew he was going to 47 reach agreements that lasted as long as 7 years so the timing, so on the one hand you have to just put all that in the mix and the other hand you're absolutely right, those of you whom we've talked to in the last couple days we've said that we feel like we've made a tremendous amount of progress in Pittsburgh, we think they're on the road to exiting Act 47, but even at this point we've been there quite long enough. So the 5 year I think Fred's idea about the 5 year trigger is a great one and probably could move that date around a little bit. Asset sales are important in 2 ways, 1 is we have had some concerns about places we work with the government having gotten into distress suddenly being presented with a very large sum of money. So the key factor there is to tie any sort of assets sale or restructuring to the solution of the long term very costly problem which is also of a similar tenure, so if you were going to sell an asset we would want to see you fill in your pension liability, eliminate your OPEB liability, don't just use it to patch up your operating budget and there may be a way that you can write into law some rules about that and then finally on authorities, we would welcome the expansion of whatever structure you would come up with to cover authorities, we’ve had some of the same experiences where it would be very, very helpful to have authorities as part of the solution and be formally integrated into the process.

CHAIRMAN ROSS: Thanks, Senator Earll

SENATOR ERALL: Thank you Mr. Chairman, good afternoon gentlemen, it is nice to hear from people who are actually on the front lines, doing some of the hard work that you are charged with, you mention the example of my City of Erie who in conjunction with the early intervention team and I think the benefit of having the early intervention team there was, they kind of echoed and reinforced what Council and the Mayor knew they should probably be doing anyway so and it did stave off their getting into 47 but I question how long that is sustainable for the reasons that you already mentioned, we still have an out migration from the city, we have a deteriorating quality of education in the school districts, we have increasing numbers of tax exempt properties, that ultimately it is going to be a constant battle to keep out of 47 and that’s not unique to Erie, I guess I come at this from maybe a fundamental different kind of philosophy, I don’t think the end game here is to preserve --- municipality in Pennsylvania. I think that that is not a realistic scenario; I think that we need to not just be asking these municipalities to look at merging and consolidating; we have made that process even so cumbersome that they don’t want to undertake that analysis, but at the end game I don’t think is to make sure every municipality survives, I just think that that’s unrealistic and we would be better off if we would admit that up front and then figure out well how do we handle that fallout in as least traumatic of a way as possible, I guess I don’t really expect you to comment on that, it’s a policy decision but people here I think need to give that some thought, one question that I do have you mentioned Philadelphia, well it pertains to Philadelphia too but the Pittsburgh example. Now Pittsburgh is unique in that we have an oversight council as well as Act 47 proceeding on a parallel track, and actually Philadelphia had the same, not identical, but an oversight council as well, could you give me some thoughts about the benefit of an oversight council versus 47 and I suspect some of the things that have been done in Pittsburgh are by virtue of the oversight council having much more authority and controlling the purse strings to a certain extent much more than an Act 47 team typically does. So if you have any insights or different, that you can share about the benefits of either above.

MR KAPLAN: Yes I think that certainly for the last several years the Intergovernmental Cooperation Authority (ICA) in Pittsburgh and our group the 3 of us and Jim Roberts our colleague who will be on the next panel have worked very, very closely together and I think have been have been able to use our complimentary power as well. So in the case of the ICA they do have authority over authorities, they have some ability to review debt issue, they review the annual budget and capital plan and multiyear plan every year, it's required they be provide around 100 days before they end of the year so their normal budget would come in November instead the end of September we get a preview. We usually work jointly with the city before hand to look at that and they just approved the city's budget yesterday, for our part, because they have very limited staff, we actually do the analysis of the budget for them, and this year Gordon Mann did a really thorough document for - because there were 3 new members on the ICA, we met with them several times, we went over it, we helped answer their questions and did that liaison, we also, the ICA also does regular reporting for the City, it's a quarterly report which is required in our plan it was included in the ICA Act and we originally worked on those and now have handed it off to the City, but we vet them and then work with the ICA to go through them. So on the other hand the power we formally had under the labor provisions of the Act was very critical to getting their work force costs in line and to restructuring their work force there. That was a power that the ICA didn't have, so there are clearly elements of both that could be brought together and they somewhat echo the things that you've been talking about today.

SENATOR EARLL: The expense of having both of those operating at the same time has been justified you think?

MR KAPLAN: I think that the, clearly at the very beginning because the ICA was in new contract it's not exactly parallel to Philadelphia's structure, it took some years to work that out. But now that we are I think very much on the same page it's been, I think we've been fairly effective and fairly cost effective together. One other thing you mentioned about the governments and merger I would say without, I'm probably not very well qualified to talk about specific merger issues but one thing I would say is our experience nationally is that size is really important. Bigger governments are going to be more successful because they just have more ability to weather short downturns and short term problems; they are going to have bigger back offices with people who actually will be there so that if the 1 person goes on vacation someone else can answer the question, all of those factors that we really get, you really see in the larger governments will generally do better.

SENATOR EARLL: One just the benefit of having a combined tax base. And what I'm seeing in my own local area with particularly the smaller municipalities they are having difficulty getting people to run for office, they don't have quorums to conduct business, they don't necessarily, the people that are running don't necessarily have the sophistication that maybe some of these budgeting matters require. And is that, of all of those issues is they continue to become more pervasive, we're going to have no choice but to look at whether you call it merger consolidation, unincorporate and join with somebody else, whatever it is. It is going to become inevitable.

MR KAPLAN: With the firefighter issues, the number of, the issue of the volunteer recruiting, volunteer firefighters and ironically a lot of times the Act 47 community with the fully paid fire department is the one with the ladder truck that has to serve all of the surrounding communities and gets no reimbursement.

SENATOR EARLL: Exactly, thank you.

CHAIRMAN ROSS: Thank you. Senator Schwank.

SENATOR SCHWANK: Thank you. I would be remiss if I didn't start my remarks by complimenting Mr. Kaplan and Mr. Mann for their work in the City of Reading at least I have some faith now that we're not going to find un-cashed checks in the desk drawers of city hall, some faith, so I certainly want to compliment you on the work that you have done there. But my question is this; and you've talked about it a little bit as well as Fred Reddig did too, I think it's somewhat a decent conclusion to come to that even in the case of the best fiscal management some of these cities are going to continue to step towards the edge of the cliff, even after they right the ship, that's going to continue to happen so we need to look at revenue and what we can do differently there, some of the things that we have implemented in Pennsylvania, Pittsburgh has the regional asset district, so you've had experience with Pittsburgh and I'd like to get your understanding on that. Is that a model that could be used in other areas of the state, I think too we also talk about property tax as being, becoming more problematic as a resource not only for these communities but for others, even those that are healthy can see that there is a change coming. Address that issue if you would for me too.

MR KAPLAN: Sure I'll start and then ask some of my colleagues to jump in on that. For those that are not as familiar with it, the regional asset district in Pittsburgh was formed at the same time the 1% went in in Philadelphia for the PICA legislation but the RAD splits that money between regional assets like the zoo and the aviary, some money goes to the county and then the municipalities split the difference. So there is actually a sales tax component to Allegheny County municipalities budgets which is a little bit more stable we obviously all saw the downturn the last recession, but it's a little bit more stable and it's a new external source of revenue and that's certainly something that's been discussed in legislature why they would be, nationally you see 3 sources of revenue, there's the property tax, some sort of income related tax whether it's an earnings, or a retiree income, and sales tax, so most places you have 1, 2 or 3 of those legs of the stool as your major tax sources and everything else is sort of commentary. So we would certainly think that that is something that the legislature should consider in other areas, it's a matter of making sure you get the split right and the people really get a piece of it. The joint collections legislation that you passed a couple years ago which DCED worked really hard on and I know Fred worked really hard to get, it is just going into effect now. Couple places went in early last year including Reading, we think that will be very, very, very helpful, and that may be a model for other taxes as well. In Reading in our plan and we encourage the City and to their credit they have taken other similar revenues so since the EIT is obviously a wage based erroneous so the LST and perhaps other wage based tax, if we want them to move all of those to the outside collector as well, so they will be using the same database to look for the same people. And on assessments I think the biggest thing we see in Pennsylvania is that the very, very outdated assessments cause a lot of problems for the declining communities because you essentially have a mismatch between evaluation and a tax effort at the county level so when you reassess you tend to redistribute some of those taxes to the growth areas and that tends to lower the county portion of the tax bill for the locals who usually almost always already have the highest tax effort in the county. Obviously politically that's incredibly difficult and that's why people haven't done it but Luzerne finished their reassessment 2 or 3 years ago, they continue to have about 100% STEB ratio and they're really proud of it and it's really worked well and they were a good example of a county which had huge growth in the I-80 corridor with lots of new houses, very wealthy relatively to the older parts of the county and it's been relatively successful with relatively little disruption.

NAME?: The one thing I would add thanks Dean, you mentioned the revenue side I think one of the reasons, one of our approaches both in Reading and nationally is we come in with the recognition that the problems are very wide, that there's a lot of pain, that there's tax payers that are paying more than they can afford, that there are employees who are not certain about their job, that there are residents that are frustrated that they see their taxes go up and they don't see their services go up, and there are older residents that are frustrated because the community isn't what it used to be. So we come in with that approach saying that everybody is going to have to contribute and that means on both a revenue and an expenditure side. And the revenue side will make people understandably nervous because they've been paying taxes and it's hard to convince somebody who doesn't think they are getting the bang for their buck to a bigger investment and on the expenditure side we also understand because you're talking very frequently about cops and firefighters to be bluntly, because a lot of these cities that's what they have left and there's a need there, clearly when your house is on fire, when there's a crime you need somebody to respond, so it's not just an accounting exercise where I snap my fingers and I make 10 positions go away and the problem is solved. So what we look at as much as we can are short and long term solutions, on the revenue side sometimes some sort of property tax increase is necessary because that's the only lever or one of the few that a community has but on the longer side you need your revenues to grow as Dean mentioned, you need something to grow because even if you freeze wages and do cuts, eventually you're going to want to give your cops a raise, eventually health insurance costs are going to go up, they actually go up every year, eventually the stock markets going to crash again and you're going to have to do something with your pension fund. And the same thing is true on the expenditure side there are short term things that you sometimes have to do, sometimes you have to do wage freezes, sometimes you have to say we just can't afford to do X anymore, not because X is bad or X is a waste a money, but just because we don't have money for X anymore, but at the same time you have to find ways, talking about the expenditure side, to find a way to get at those longer term growths, the pension growth, the other post employment benefit growth, because unless you get at those long term issues you're never going to be able to do enough on a short term basis to sustain the community and create a community people want to live in.

MR KAPLAN: And I could say both the regionalization's theme that Senator Schwank and Senator Earll both mentioned, I mean you're certainly making that base bigger as another piece of it.

CHAIRMAN ROSS: Thank you, Representative Freeman.

REPRESNETATIVE FREEMAN: Thank you Mr. Chairman. Couple of quick questions and I will keep them short. First thank you for your testimony and your expertise in this field it's most welcome to have you here to give us some guidance and I also appreciate your coming to see me in my office this week to give me a heads up on some of the topics we're covering today. Senator Eichelberger touched on the issue of assets, and a lot of times in Act 47 communities as we're seeing here in Harrisburg play out, one of the things recommended is to sell off the assets, get the cash and deal with your immediate fiscal problems. Is there not though a cautionary note to that approach, in that when you have a municipality which by its very nature has a limited tax base, because again of the tax exempt issue, you've got lots of properties not subject to the real estate tax, you might have a population that is higher in poverty, therefore the earned income tax doesn't bring in much, or higher senior population on fixed and retired incomes not subject to earned income tax. So in many cases assets like a parking garage or something of that nature can provide maybe an unconventional revenue stream, but none the less a revenue stream that once that asset is sold it really leaves them in a worse position to have ongoing funding to deal with the ongoing operation of government long term, not short term but long term. Is that not a potential problem when we approach Act 47 communities and immediately start saying well you have these great assets, sell them off, get them into the private sector, you'll deal with your current budget crisis.

MR KAPLAN: I think there are kind of 2 sides to that, one is that as I mentioned we've been a little bit reluctant to start with assets sales only because a lot of times, Reading is a great example, they were in such trouble that we were concerned that having, we really needed to get a handle on the whole situation before we generated a large amount of cash, we weren't quite sure where we wanted to put it, and also under the current Act 47 powers it wasn't clear that we would necessarily have control over that, of those funds if they were generated so making sure they got used correctly for some sort of long term fiscal challenge or liability was really important. The other thing you mentioned certainly from the local perspective we've heard very, very strongly in Reading and actually changed our draft plan in the final version because again under Act 47 the Council has to vote for and the Mayor has to sign the plan so there's a very as Mr. Reddig has described it, it's a real collaboration, it's a real conversation, you have to come up with something which people may not be entirely happy about but they can all work with. In that case they felt very, very strongly since we were affecting a lot of local taxes that they wanted to have a little bit of a regional effect, the parking authority in their case the regional water authority were two places where they did get some ownership revenue. Essentially from those 2 authorities, so they were very interested in keeping those and not selling them so that in the short term, so that they could have the whole region share somewhat in the, in the recovery, so those are I think, it really depends, I think it's very much a case by case situation. The one thing I would say is one of the other things we found around the country is that there's certainly a lot of public services that particularly smaller governments have difficulty running well. So there perhaps sale isn't always the right issue, sometimes it may be a --- that just involves a private operator with continued public ownership but there particularly in the smaller governments as I mentioned earlier capacity is such a problem, you may want to consider having a different certainly a different management structure.

REPRESENTATIVE FREEMAN: You touched on too I think briefly the issue of authorities. Have they posed a problem actually in terms of trying to stabilize a City? Authorities in Pennsylvania have a lot of independent power, they're sort of off on their own, that was designed years ago during the progressive era to create a sort of insulation between political decisions and what would be seen as a more professional delivery of services but, one of the end results of that is we have these independent little chiefdoms which often times go off on their own course and are not in sync with the municipalities long term plans or needs, is that a problem of the Act 47 communities that we're not really looking at closely or addressing?

MR KAPLAN: In some cases it is, sometimes it's not, but I think as Senator Earll had in her question if they were included and covered by the plan I think that would be an advantage, because then you would be able to be much more comprehensive. And in the case of Reading for example we spent a lot, the City more so than us, they spent a lot of time working with those 2 authorities, which they control and appoint all the members of to come up with a solution that works and it's not nearly so easy as it should be, so I think having them under the rubric of whatever Act 47 structure we have in the future would be advantageous to getting things worked out faster.

REPRESENTATIVE FREEMAN: And my final question I promise Mr. Chairman because I saw you move to the microphone, is the issue of Counties, you alluded to this in your testimony, counties having perhaps a role to play in delivery of services, if that were to be a model we would look to as a long term way of stabilizing these communities, what kind of services do you think they're well prepared to provide, or could be well prepared to provide in a very short period of time, and is there a need for structural change in our form of county government to make that a more greater likelihood, since in many respects if you're not home rule county government, you have a system of county government that really was instituted in the 19^{th} century, 3 Commissioners, row offices, things that really don't seem to fit into a modern governmental structure.

MR KAPLAN: I think the areas, that obviously counties are very strong in human services and judicial and public safety functions, so the key places are continuation on homeland security, 911 and other issues there, greater coordination on as I mentioned county detectives and sort of integration between the usually the DA and the Police Department, the I think again Berks County has done a great job on kind of leading the way within its county of looking at regionalization studies and helping to bring together the local governments that's something that's a little easier for them to do, and then finally, the trickiest one is that obviously the counties tend to be the home of the judiciary. That's a big county issue they're always, certainly our work in Luzerne County and the EIP, just at the time of the judicial crisis there, that was one of their biggest issues, but a very unseen thing for example is police overtime driven by court scheduling, very, very hard to, you know we've had a lot of luck getting DA's and Police Chiefs and union folks together in a room to talk about what they might do, but then you have to bring the Judges in, so those sorts of forum are something that counties are a little bit better at doing.

REPRESENTATIVE FREEMAN: Thank you. Thank you Mr. Chairman.

CHAIRMAN ROSS: They're all good questions I know, but there are so many good questions, that's all. And Senator Blake please.

SENATOR BLAKE: Thank you Mr. Chairman, and thank you Dean and gentleman for your presence and testimony and expertise and experience, it's much appreciated. I think some of these questions have already been answered but I want to get a little clarity if I can, first I want to ask a follow-on to what Senator Earll mentioned about this issue of process and how within Act 47, a possible innovation that we might want to consider, because my understanding on the Act 47 process quite simply is the petition to the Commonwealth for designation of distress, the designation then made and then the engagement through a procurement process of a coordinator, I thought of what you said earlier regarding other states and this issue actually mentioned in your testimony about asking, actually making the states rule stronger. And then I thought of what

Senator Earll mentioned about ICA in Pittsburgh, BCRA in Philadelphia, for me the issue of a coordinator versus a board, this issue of a governing body that would have a little more of a hammer if you will, and if you heard the earlier testimony about the time, this issue of the establishment of a board versus just a coordinator may be requiring a re-visiting of the circumstance that you could find a means towards exit. I wonder if you can speak to that a little bit better to me, because it seems to me in the case, both the cases of Pittsburgh and Philadelphia those board were kind of follow on, right? It came later, so the issue, and I know in the City of Scranton where we have a 20 year Act 47 community that period of time has raised great suspicions among members of the governing body about the dynamic between the state and the coordinator versus something where state --- involvement and the power of aboard might be levied. So that's my first question, so if you could speak to that a little better Dean?

MR KAPLAN: Yea I think that what we've found is that there really is a need for some technically expertise and support, partially for the capacity reasons I just mentioned and partially because normally when a community gets to this point they have already gone through a few rounds of what are the solutions, and we mentioned, I mentioned earlier that a number of these, the groups that have been convened like in Erie and Lancaster have been able to implement those solutions themselves without having any kind of entry into Act 47 and they serve outside help, in Pittsburgh on the other hand a number of boards were convened in advance including some very distinguished ones who provided a lot of ideas that we actually used in Act 47, in our plan, but they couldn't develop the political consensus to make it happen, so I think there is a political role for, we're talking about sort of a stronger board power, more aggressive implementation and maybe a time line. I think that you'll find that you still need some technical resources and certainly those could reside in the Department, they could continue to be provided on an ad hock basis by the department or by contractors like us. But my sense is that having done this around the country is that in most places it would be states are not maintaining sort of a cod ray of people who do what we do.

SENATOR BLAKE: Understood, Mr. Chairman, 2 quick ones, try to get this finished quickly, first thing I want to ask you about is and this has already been mentioned on the municipal authorities because your commentary and your advice that we look at the municipal authority relationship to these municipal jurisdictions is an important one. In some cases the municipal authorities have created the opportunity for revenue for one term fixes on the front end and to my colleagues point Representative Freeman the issue of selling those assets to deal with the short term fix and maybe compromising the long term things. So I appreciate your commentary on the municipal authorities and I think that Senator Eichelberger's comment about making sure they stay on the reservation within the conduct of their mission is important and we should look very closely at that. My last point, the issue of revenue that you raised, and the City of Pittsburgh did go from a business privilege tax to a payroll tax. It was not offered as an opportunity state wide, that is something I think we have an opportunity to do in the short term here with respect to some legislation that's moving. But was the payroll tax in your interpretation, did it distribute the burden better, did it not undermine the competitive position of the City and is it necessarily fair in your view?

MR KAPLAN: I think that we were talking about this at the break and I think the jury is a little bit out on that. There are a couple other cities that use it, St Louis, San Francisco, and it's probably worthy of investigation by all of us, I think the answer to your question though is yes only because the old BPT system that Pittsburgh had was so riddled, it was a swiss cheese system where if you, Jim will correct me which side it was, if you got takeout pizza you paid BPT out, they paid BPT, if you ate in it wasn't BPT. A lot of major businesses most importantly the banks headquartered in Pittsburgh didn't pay. They had gotten an exemption, so you had a, it was reflected, we convened a group with the help of the Allegheny conference and the chamber in Pittsburgh to come up with a better business model and it really depended, we had a lot of business leaders committed their time to help us design a new tax structure and really where it came down just depended on whether the business had a lot of people, or a lot of assets, and sort of what you tax so it was a good compromise for Pittsburgh at the time.

SENATOR BLAKE: Thank you, thank you Mr. Chairman.

CHAIRMAN ROSS: Thank you. And Senator Smucker.

SENATOR SMUCKER: Thank you Mr. Chairman. Appreciate your testimony, particularly interested in your experience both with Cities developing the plans here in the Commonwealth as well as working out other states. For a business owner, one of the things it never has to do with trying to find best practices and other businesses and stole them whenever we possibly could and put them to use. So your experience in other states I just would like to ask the question, you see how Pennsylvania operates, you see how the other states operate that you participated in, and I'm interested in the sustainability of third class cities and municipalities long term. We talked about a lot of different solutions, a lot of different ideas, talked about revenue, talked about expense side, and I guess what I'm asking you is; do you see in working in Pennsylvania any particular areas where we really need improvement, if you look at the entire landscape and you say we as a legislator could ask yourself what is it that we could do now that could really make a difference? What would you identify as some of the top areas where we need improvement compared to other states that you work in?

MR KAPLAN: I think if we look at the size issue that you started with I think the most successful states appear to have the largest combined government. So if you look at a place like Virginia, and we're not going to become Virginia, Virginia has most counties have county government and a school district, and that's it. So you have fairly large geographic areas with a large population and all the decisions being made, now to be fair in a number of places we worked in Virginia the county and school districts still don't get along. So no matter what structure you have you'll find those kinds of issues, but certainly some of the joint working, up scaling of some of the issues that we have here is very critical. We have a lot of small government in part because of our geography too and we're going to continue to have smaller cities so not all of those changes can be made but finding a way to make people as unitary as possible, Fred mentioned the effort, several efforts to combine municipalities, obviously this state and DCED also worked on a unitary county for Cameron County a few years ago, and we know what the obstacles are so we need to find other ways to get there probably without legal consolidation.

NAME?: Yea one thing I would add is, when we look at these cities, it's very easy to become paralyzed by the complexity, to look at it and go; "Oh my gosh, look at all these problems, I can't fix this school district and I can't effect the authorities, and I can't bring factories back that left 10 years ago" and we try and emphasize the need to while all of that's true, to pick one a couple of things, and I think a couple of things going back to the testimony, one is capacity, what we did in New Castle where we brought together somebody from a neighboring township, someone from city council, someone with an outside financial background, we sat down, we interviewed some candidates, we talked with council about them, they've come out with a wonderful CFO business administrator who does a great job, not a big investment in time or in money, and it's made a world of difference there. The other thing to do is, you know there has been a lot of talk about boundary change, normally the way we approach shared services, there is a lot we can do before we make your government go away. If you talk about regionalization, it's easy to think about police and fire, but information technology, computers and technology, a vital part of any kind of government, something individual units struggle to invest in because they don't have the expertise or they don't have the money, something that on a polled approach is not scary to a resident because they don't interact with the IT department anyway and something that on a regional basis is very valuable. Give you an example, Pittsburgh, Allegheny, Pittsburgh school district, the sports and the exhibition authority, the zoo, the water authority, and the parking authority all have separate IT departments. We talk about let's muster the resources from outside the community, how about we muster the resources from inside the city first?

SENATOR SMUCKER: On the issue of revenue I'd just like to throw an idea at you just to get your reaction, the group that I had mentioned in Lancaster looked at all these problems and when initially they looked at it they recognized additional revenue obviously would help solve these issues, but the conclusion they came to was that before we focus on additional revenue we've got to look at the structure and they felt, in their report they pretty much lay out that additional revenue now would solve the problem for a little while, but only for a little while. And what we really need to do is focus on structure, sure additional revenue may very well be a part of the solution long term but their priority was to focus on some of the other issues first, I just wanted to get your reaction to that?

MR KAPLAN: Well all of our plans and our work with every government we work with in the country starts in the expenditure side because you certainly can't ask anybody for it's normally more taxes before you have your structure ready. I think the key thing for us is to decide what we want local governments to do. It's pretty clear we want police, fire, and EMS service, we want the streets paved, we want the traffic lights to work, and the stop signs to be put up. Beyond that there are a lot of options, but even though, just as a side, if that's all we do we know that those costs are going to grow over time so we do need to think about growing revenue sources, but on the other side, Lancaster is a great example because you have a very unique approach for example to regional recreation. It's a long standing structure which we've encouraged Reading and Berks to look at in, because we don't think the City is going to have a very difficult time continuing to provide the level of recreation services it has in the past. So that's something that's sort of outside the city government a bit, it's more regional, and essentially you decided that those services --- provided outside of the municipal structure. In Berks County the Berks County Commissioners have decided that they're role is passive recreation. So they've taken over all the passive recreation, they've made as part of various financial issues they've made some purchases of open space that they use for that. And that's something that is no longer within the prevue of local governments. So I think those kind of structural decisions of starting with what do you want to do, and then how do you best deliver it. You can still deliver the services you want regionally, but being very careful to think about them and whether you can afford to do everything you wanted to. We've seen that particularly with television stations that, cable stations that local governments have and great idea, often can't afford it.

SENATOR SMUCKER: Thank you, thank you Mr. Chairman.

CHAIRMAN ROSS: Representative Maloney.

REPRESENTATIVE MALONEY: Thank you Mr. Chairman, thank you gentlemen, I apologize I was at another hearing earlier and I don't want to duplicate anything but I did get all of your testimony, I missed Mr. Reddig's, but I heard a lot of comparative discussion and I guess my concern and/or question is really directed towards, we hear a lot about accountability and oversight and I believe in your testimony you talked about the possibility of a board and the powers that they may have, and I want to just go to the second bullet point where it says appoint, remove, supervise, control all city employees and set forth terms and conditions of employment held by other employees and/or officers of the city. I guess when I think about some of the things that have been discussed, fantastic discussion and I really enjoyed the different questions. When I hear about the authorities, when I hear about supervisors especially in small townships, different conflicts of interest that may arise, we may have authorities that interact possibly inappropriately with supervisors or vice versa to the debt if you will of the tax payer then, this other testimony acknowledges the challenge I believe in the Westfall Township I think that took place in Pike Township, Pike County rather, we're all familiar with that, I think my question would be more directed to if you had suggestions for oversight, how those things would take place, and I want to go back to Westfall Township where these individuals, they denied an individual their constitutional rights and civil rights to the tune of millions of dollars that they later went in to an agreement and denied that, which cost the tax payers more money, so I guess my question and concern is that do we really have oversight, can we really accept or I mean expect accountability, and would you have any suggestions with that and I'll sit down.

MR KAPLAN: Two quick things one is that Jim Roberts is on the next panel, is the Act 47 coordinator for Westfall and probably could speak best to the specifics to the Westfall situation, I think on the other issue, I think Fred Reddig mentioned that there are cases of malfeasants or poor operations and then there are cases of structural distress, I would say that while the ones that are malfeasants get a lot of attention, the vast majority of people we work with are very good intentioned and are working hard to deal with a situation that's well beyond them. So I think we just need to take those 2 pieces probably slightly separately.

CHAIRMAN ROSS: And I'm going to ask one question myself, we've talked a lot about the kinds of cutting back of cost, rationalization, focusing in, so forth, I know from our experience in the Urban Affairs Committee that in some cases municipalities have restructured themselves and grown out, we've had descriptions of municipalities that had old industries that went away and then they reinvented themselves and grew back. And I was wondering in the course of your work with these municipalities beyond shrinking back and dealing with some of the obvious core functions, is there a role for consideration of expenditures or a program that would essentially do redevelopment and luring additional kinds of new viable new industries and commercial enterprises back into the city or is this all a shrinking process?

MR KAPLAN: I think 2 things, 1 is when we talked the other day we were discussing Providence and of course Providence is in the air and the governor of Rhode Island just went to Pittsburgh to talk to Pittsburgh about how did you transition from being an old industry town to being a dynamic new industry town, so I think the potential is not only there, but we've had some examples of it that are quite good. The other thing is I want to really give credit to Fred Reddig and the DCED, they constantly emphasize this issue as part of the Act 47 process to think about how we can improve development, and I think frankly speaking as a coordinator, we don't do a great job of it. I think most of the time we come in and we are dealing with the sky falling and we tend to put up whatever props we can to keep it from happening and really get down in the weeds very quickly, I think that's a place where as we look at the Act and then again we probably want to solicit a lot of advice from DCED as how can we augment the sort of the skills that we bring with a greater capacity for integrated county and regular development plans. One thing we did do in Reading is that you know Reading has multiple economic development authorities, they had just put out their own county wide plan in the city because of its problems, was a little bit excluded from that. So we made a major priority of our first year of trying to get the City back into that process, integrated with it, Erik Solivan has spent a lot of time working with the City, we did bring in the, as part of the plan we had the City hire a couple of experts to help them do that, so there's clearly a place for that in this process, I don't think we have that it completely worked out yet, but I would, but I think it's a great question and that's something that the committee should really include going forward.

CHAIRMAN ROSS: It would be good to have some good news to go along with all of the bad news.

NAME?: Yea that was our, you know we did work in Gary Indiana and we put together a plan for extremely distressed community and one of the criticisms that we received, that I thought was really valid, was he said I see how we get this City budget balanced, I don't see how we create a place where I want to live anymore. And one of the things we took away from that and we've been using in Reading is, you can't do everything, you can't do as much as you used to do, but you have to try and do something, and you have to at least put yourself in a position where you're ready to take advantage of opportunities when they come.

CHAIRMAN ROSS: Thank you very much, it was very helpful and we appreciate your testifying today. And we're going to step right onto our final 3 testifiers, and if you wouldn't mind, if you would all come up together, I know that we have 2 Professors, and then also an expert, and we will ask that you come up right now. Our final panel is focusing in on Chapter 9 Federal Bankruptcy as it relates to municipalities and we will begin with Professor Juliet Moringiello of the Widener University School of Law and Professor David Arthur Skeel of University of Pennsylvania Law School, and then they will be followed up by James Roberts, Member and Chair of the Municipal Law Group at Eckert, Seamans, Cherin & Mellot. Thank you.

MS MORINGIELLO: Okay, Thank you. We're happy to be here Professor Skeel and I are going to talk about the Chapter 9 process, what Chapter 9 bankruptcy means, how a municipality gets in, how a municipality gets out, and the benefits that Chapter 9 might have for a municipality but we'll also talk about the limitations of chapter 9, what it cannot do for a municipality. Generally as you probably know, bankruptcy is a process that enables a debtor to resolve its financial distress. It is governed by federal law, the bankruptcy code. When a person or entity files for bankruptcy it is usually because many creditors are trying to get payment or property from that person, and so a debtor, whether it is an individual, a company, a municipality, will file because that entity cannot make all of its payments to all of its creditors and the entity needs protection from its creditors while it figures out how to repay. Chapter 9 of the bankruptcy code is the only chapter that is available to a municipality, a municipality must file under Chapter 9, the purpose therefore of chapter 9 is to provide a financially distressed municipality with protection from its creditors while it develops and negotiates a plan for adjusting its stats. I am going to focus on the eligibility requirements for Chapter 9 and then Professor Skeel is going to focus on what happens once a municipality is in Chapter 9, once it is determined that a municipality is eligible. Chapter 9 is unique in the bankruptcy code because it does have strict eligibility requirements unlike Chapter 11, any company can file for Chapter 11 but in order for a municipality to file for Chapter 9, first of all it must be a municipality which is a political subdivision, or public agency, or instrumentality of a state, this definition encompasses not only towns, cities and counties but generally also includes districts such as water districts, sewer districts, hospital districts and similar entities. Most of the Chapter 9 filings have been by those smaller entities, only a very small handful have been by Cities, Counties, Towns. The municipality must also be specifically authorized to file for bankruptcy under state law. That is because under the 10th amendment of the United States Constitution powers that are not granted to the Federal Government nor prohibited to the states by the Constitution are reserved to the states. And this is an important restatement of federalism and limits the power that the Federal Government can exercise over Cities. Pennsylvania law generally allows a municipality to file for bankruptcy but of course in June of 2011 the legislature revoked that authorization for 1 year for 3rd class Cities. It’s important to note that about half of the states do have statutes on their books authorizing municipalities to file for bankruptcy, and those statutes do vary in their entry requirements. For instance California just passed a law that requires that a municipality submit to mediation before filing for bankruptcy. The next requirement is that a municipality must be insolvent in order to file for bankruptcy, many people think well gee isn’t that the case for everybody, but actually that’s not the case for everybody. A business can file for bankruptcy without being insolvent, most are, but one doesn’t have to be. The definition of insolvency for purposes of municipal bankruptcy is that the municipality must be either unable to pay its debts as they become due, or generally not paying its debts as they become due. A municipality in order to file for Chapter 9 must also be willing to implement a plan to adjust its debts and the municipality must have either obtained the agreement of its creditors holding the majority in the amount of claims against it to a plan of adjustment, or the municipality must have negotiated in good faith with its creditors before filing, or it must show that such a negotiation with its creditors would be impracticable. A municipality must also show that it filed the petition for bankruptcy in good faith. If all of those requirements are not met, the bankruptcy case will be dismissed. And now Professor Skeel will talk about some of the benefits of the bankruptcy

MR SKEEL: So I'm going to start with the municipality that is in bankruptcy and talk about what the effects of bankruptcy are, what some of the benefits are and what some of the limitations are. So starting off with the benefits of Chapter 9 for municipality, the first benefit is, the moment a municipality files for bankruptcy a so called automatic stay goes into effect, the automatic stay prohibits any efforts by creditors to continue trying to collect what they're owed. So if there is litigation against the municipality or whatever the debtor is, that has to stop any efforts of any sort to collect what the creditor is owed have to stop. That is often described as giving the debtor a breathing space after it files for bankruptcy and the principle is that bankruptcy is designed to provide a collective proceeding where the problems of the entity are resolved collectively and in an orderly way. So the automatic stay is seen as facilitating that. One really big exception to the automatic stay for municipalities is special revenue bonds are not subject to the automatic stay, so those payments need to be keep being made, special revenue bonds are kind of cordoned off from other obligations in the bankruptcy case. So first of the 3 benefits that I'll talk about is the automatic stay, kind of a cease and desist order that goes into effect, second benefit that is very much in the news now, not quite so much here as else ware is that bankruptcy enables a municipality to restructure its contracts, to keep the contract it wants, to reject the contracts it doesn't want, and often times to do something in between the 2 of those to restructure a contract whose terms it doesn't like and obviously the type of contract that's gotten the most attention is labor contracts, public employee collective bargaining agreements, and the like. In Chapter 9 those can be restructured, this is a very controversial issue now and there's some questions as to what kinds of qualifications there are to the ability to restructure, but it is a power that clearly is available in Chapter 9. Final benefit is I suppose the most obvious benefit of bankruptcy and that is bankruptcy can be used to restructure the municipalities' obligations. So a restructuring plan under Chapter 9 can modify contracts, it can modify debts, it can do a lot of other things as well, it can provide for the sale of property, a municipality can't be forced to sell a property but if the municipality proposes that as part of a plan they can do that, once a restructuring plan is approved it goes into effect and it permanently restructures those obligations, it's what's known as a discharge in bankruptcy. So if there's a proposal to cut an obligation in half and the plan is approved, that obligation is cut in half and that is the limit of the obligation. Next thing I'll say a little bit about is the rule of the court in a Chapter 9 proceeding and I'm also going to talk a little bit more about the restructuring plan in connection with that, there is often a misconception about the role of Judges in bankruptcy, you frequently see statements such as the Judge decided that the municipality was going to do this or that or the Judge proposed a restructuring plan and imposed that restructuring plan on the municipality or the corporation or whatever it is. Bankruptcy judge doesn't do that, the objective of the bankruptcy code with respect to the bankruptcy judge is for the bankruptcy judge really to be in umpire, not to make the decisions but to enforce the rules and make sure that the rules are being properly followed. So a bankruptcy judge can't take control of a municipality and in fact Chapter 9 bends over backwards to make clear that the Judge cannot interfere with governmental functions, this was one of the provisions that was put into Chapter 9 to make sure it was Constitutional back in the 1930's because there were doubts about the constitutionality in the 1930's. Important to keep in mind that the Judge is an umpire, not a primary decision maker. One of the most, one of the largest powers that the Judge does have consistent with this umpiring role is that the Judge is the one who decides whether to confirm the plan, the restructuring plan or not. So what does it take for a plan to be confirmed? The major requirement is simply that each class of creditors vote on the plan and approve it. There's specified voting rules in Chapter 9, the basic voting rule is that for a class of creditors, a majority in number of those creditors and 2/3 in amount have to vote yes. So the simplest way you confirm a restructuring plan is the plan is proposed and each class votes yes on that plan. Now there is prevision for the possibility that maybe not everybody votes yes but we still ought to confirm the restructuring plan. So Chapter 9 like corporate reorganization also includes a cram down provision, a way to confirm a plan even if not every class of creditors votes in favor of the plan. Now in Chapter 11, in corporate reorganization it's pretty clear what you get under a cram, what you have to get under a cram down plan, you have to be paid on full or nobody lower in priority than you can get anything. In Chapter 9 it's a little bit more opaque because with the municipality you can't liquidate the municipality and we don't have share holders of municipalities, so the standards are a little bit less clear for municipalities but the basic idea is in a cram down plan the creditors have to get as much as they reasonably would be expected to get under the circumstances. Couple other requirements; these requirements apply both with a consensual voted upon approved plan and in a cram down. The most important and the most debated is what's known as the best interest of the creditors test. In a corporate reorganization what best interest of the creditors' means is that every creditor is getting at least as much as they would have gotten if the company were liquidated, if all the assets were sold and the proceeds distributed. Obviously that's not an option for a municipality or at a least not a bankruptcy option for the municipality, so the general thinking on the best interest of the creditors is that the court has to concluded this plan is better than any other realistic alternative or easily plausible alternative so best interest of the creditors requirement, very important requirement, kind of in some levels uncertain requirement. Last 2 requirements I'll mention are that the plan must be feasible; the bankruptcy judge has to conclude this plan is not likely to crash and burn, that after this plan is approved it's likely to be fulfilled according to its terms. Finally if any action under the plan requires would require under state law specified steps be taken, such as there is electoral approval if you wanted to raise taxes or something of that sort, the plan has to be conditioned on those requirements being met. That's another place where Chapter 9 is designed to defer to ordinary, local and state law principal, so if you want to raise taxes as part of a plan, that raising of taxes has to be conditioned on the appropriate approvals at the municipality or State level. So it should be clear by this point the power in Chapter 9 is in a very real sense in the municipalities hands, they can't be forced, there is very little of it that they can be forced to do, very little that the court can do over the objections of the municipality, the court's power is primarily defensive, the court can refuse to confirm a plan that the municipality is approving, the court cannot impose any plan or any requirements on the municipality. So briefly to summarize and then just to throw out some open questions that Professor Moringiello and I came up with and thought might be worth talking about, starting with the summary, some benefits of Chapter 9, one is the automatic stay, the cease and desist order that bankruptcy puts in place, second benefit is that Chapter 9 can be used to restructure contracts, such as labor contracts, third benefit is the restructuring is permanent, there's a discharge after the plan is confirmed, so the restructuring does indeed restructure those obligations, creditors can't come back and say we really would like to be paid in full. That said, there's some down sides to Chapter 9, Chapter 9 can't solve a municipalities budget problems, that's something that has to be done internally, not through the bankruptcy process, bankruptcy also can't solve a municipalities governments problems, and you frequently see these issues raised as complaints about Chapter 9 and other proposals for bankruptcy that would involve sovereign or sub-sovereign entities. One other downside of bankruptcy that would we couldn't bear to put on our outline and that is it can be kind of expensive. Bankruptcy lawyers like the students that we teach get paid in Chapter 9 and so the cost of the process is something else that a municipality needs to consider. So very briefly some open questions in Chapter 9, it is a very big open question whether Chapter 9 is successful or not, as Professor Moringiello mentioned there have been very few substantial Chapter 9 cases in the 70 or 75, my math isn't very good, municipal bankruptcy, first went into place constitutionally in 1937, since 1937 there have been about 630 municipal bankruptcies, vast majority of them are special districts of various sorts, a small handful of more sizeable cities and counties. Second issue, what kind of effect would a municipal bankruptcy have on the municipal bond market, either for that municipality or for other related or unrelated municipalities? A lot of debate about that, I have some personal opinions about that but it is uncertain whether as is often described the contagion of fact of a Chapter 9 filing is likely to be significant or not significant. Relatidly a municipality when it files for bankruptcy will it be able to tap the capital markets again and if so how long will it take? Another open issue we have some evidence from Chapter 9 filings and parallel evidence from things like countries defaulting on their obligation. Argentina defaulting on its obligation, but there's no slam dunk certain answer to that question, still some questions as I suggested as to what standards the court would apply to the restructuring or termination of labor contracts. Chapter 9 as it's written is wide open, it's actually more wide open than corporate reorganization is. But there's a debate as to whether courts are likely to interpret it as being as flexible on termination as the statute would seem to suggest. Finally there's always the question of what are the alternatives to Chapter 9? Here obviously we have Act 47 other states have other alternatives there are a variety of choices when a municipality is in financial distress and there's a real debate as to which is the best choice under different circumstances. And I'll stop with that.

CHAIRMAN ROSS: And unless I get strong objections I'm going to ask for Mr. Roberts to give his testimony and then we'll take questions for the entire panel. Thank you.

MR ROBERTS: Thank you very much. Again my name is Jim Roberts I'm a member of the law firm of Eckert, Seamans, Cherin & Mellott in its Pittsburgh office, currently serving as the Act 47 coordinator in Pittsburgh and New Castle in conjunction with my colleagues at Public Financial Management and also Johnstown and prior to that I served 4 other communities as the Act 47 coordinator. So I have a total of 7 of these under my belt and the scars are deep. But I'm here today to talk about an actual bankruptcy that occurred in Pennsylvania, just 2 years ago and more specifically I think it's instructive because this bankruptcy occurred within the context of Act 47. So it is really the first opportunity we've had to see how the bankruptcy provisions in Act 47 actually mesh with a live bankruptcy court and in fact resulted in approved Chapter 9 plan. We're speaking of course of Westfall Township in Pike County, as I mentioned it's the only municipality to invoke the bankruptcy provisions of Act 47 in the history of the Act and then to go on and successfully adopt not only an Act 47 plan but have an Article 9 bankruptcy plan approved by the bankruptcy court. I want to emphasize because of its small size the relative simplicity of its municipal operation and the limited scope of its financial distress, Westfall was probably the perfect test case for municipal bankruptcy in Pennsylvania. Westfall Township is decidedly not Vallejo California, by any stretch of the imagination. Westfall is a second class township, has a population of about 23 hundred people, its annual budget in 2009 was a million dollars, Westfall has no unions, it has no collective bargaining agreements, it has no pension plans, it has very little debt. The township basically provides road maintenance through its public works department, fire service through a volunteer company, and I think quite creatively it provides its police services through a regional police department that has been very successful in that portion of Pike County. Prior to 2009 the Township has a positive operating balance; it regularly balanced its budget and it met all of its debt obligations. So you ask what is the problem? The problem was the Federal Civil Rights piece of litigation with a developer, in the Federal District Court for the Middle District of Pennsylvania that went back to the early 1990's. That litigation resulted in a 7 million dollar judgment against the Township, when you remember that this was Federal Civil Rights litigation so that a victory for the plaintiff comes with attorneys fees, the 7 million dollar judgment was combined with attorneys fees, interest and costs. In addition, along the way the Township breached a settlement agreement that it had reached with the developer, that resulted in more litigation, many appeals to the appellant courts, all the time with mounting plaintiffs, attorneys fees, costs and interests, until by February 2009 the liability had grown to just shy of 21 million dollars. Remember this is a Township with an annual budget of 1 million dollars. Eventually in April of 2009 the developer filed a mandamus motion in Federal Court to force payment of the judgment, and a few days before the mandamus hearing the Township filed its Chapter 9 petition in Bankruptcy Court for the Middle District of Pennsylvania. Now, let's talk about how this meshes with Act 47, pursuant to Act 47 a municipality which files a municipal debt adjustment action as it is termed under Act 47, quote "shall be deemed to be a financially distressed municipality under the Act". So on April 14, 2009 upon the receipt and review of the townships already filed Chapter 9 bankruptcy petition, the DCED Secretary ordered that the township be deemed to be a distressed municipality under Act 47, and in May the Secretary appointed Eckert Seamans as the coordinator. So now we have a municipality that's officially in Act 47, it's also in bankruptcy court. Act 47 further requires that the coordinator formulate the Act 47 plan in cooperation with the bankruptcy court and taking advantage of unique tools available to the municipality under Chapter 9 bankruptcy. Specifically the township is charged with utilizing the procedures that are already set up under Act 47, quote "concurrently with processing of the Federal action, so as to efficiently expedite the formulation of a plan, its timely confirmation by the Federal Court having jurisdiction and its adoption by ordinance". So Act 47 says the coordinator puts together an Act 47 plan just as he would have otherwise, that plan has to be adopted by ordinance, as any other Act 47 plan, it also has to be confirmed by the bankruptcy court. So in August of 2009 we as the coordinator filed a motion to intervene in the townships Chapter 9 bankruptcy case so that we could fulfill our responsibilities under state law, bankruptcy court granted the motion. With the townships filing of the Chapter 9 petition as a backdrop and including particularly the leverage provide by the cram down provisions which my fellow panelists have just described to you the township and the developer reached a settlement, not surprisingly, which reduced the judgment to 6 million dollars, from 21 million dollars, payable in quarterly amounts of 75,000 dollars, plus payment by the township of the cost of construction of certain improvements, such as a sewage pumping station and water service lines, that had been something the township had agreed to all along and had never got around to constructing, so it not only had these cash payments it was obligated for but it also had to do some construction. So that's a long term, that's 75,000 dollars a quarter for long time in order to fulfill even this vastly reduced obligation. As coordinator, I worked closely with the Township's bankruptcy council to craft an Act 47 plan that was consistent with the Chapter 9 plan the bankruptcy council was working on, with the main goal of requiring the township to levy the taxes necessary to meet its obligations under the settlement with the developer, to meet its ongoing debt obligations, and obviously to continue to provide services to its residents. You've heard my colleagues here refer to the fact that the bankruptcy judge has to determine that the Chapter 9 plan is feasible. So I viewed the main function of the Act 47 plan to make sure that the taxes were levied, were sufficient to satisfy the obligation, particularly to the developer, which was the source of the problem in the first place. So that lead to extensive discussions with the townships board of supervisors about the options that they had under state law to raise the required revenue, the Act 47 plan eventually required the board to increase the property tax millage very significantly, and to set aside and segregate in a special account the revenues necessary to fund the cash, payments, the quarterly cash payments, and the construction obligation to the developer. Interestingly enough the Westfall Township had not imposed an earned income tax, and in fact we found out a lot of the communities in Pike County had not imposed an earned income tax. So we talked with the Township about the possibility of whether they wanted to remove some of the burden of this new tax obligation from the backs of property owners and have it shared with wage earners in the municipality. However we told them that their obligation is to raise the money, we left it to them to determine as a policy decision whether they wanted to split the burden between wage tax and property tax, they decided to go strictly with property tax, so the millage increase was substantial. The plan addressed the satisfaction of all the townships obligations, provided that the final amount of those obligations would be as final determined by the bankruptcy court, again we're doing this very careful dance with the bankruptcy court to make sure that all of the state law requirements were observed but understanding that we're in Federal Court now, pursuant to federal rules, and asking the court to let us take advantage of all of the tools available under Chapter 9. The Act 47 plan was adopted by ordinance, then by the supervisors on November 5 of 2009, we then subsequently attached it as an exhibit to the Chapter 9 plan. I appeared at the Chapter 9 confirmation hearing, I testified as to the content of the Act 47 plan, the fact that it supported the feasibility of the Chapter 9 plan, and I testified as to the interplay between state law and the form of Act 47 and Chapter 9, the bankruptcy judge was very amenable to that testimony and to this first for him and first I think probably first in Pennsylvania of how these 2 statues interacted. Then on March 2 of 2010 the bankruptcy court confirmed the Chapter 9 plan and as part of that approval, approved the Act 47 plan in one confirmation order. I mentioned earlier that Westfall was an excellent test case, it's a small community with limited services, the bankruptcy process was certainly simplified because as I said Westfall has no unions, no collective bargaining agreements, no pension plans and very little debt. Higher profile bankruptcies like Vallejo California are clearly complicated by the presence of all of those elements. But complexities aside, I'd like to emphasize for the committees that Westfall Township's legal bills, even though they had a fairly simple case to address compared to these other communities, legal bills were substantial, bankruptcy council was involved for a significant period of time. My services are paid for by the Commonwealth, bankruptcy council services are paid for by the municipality and it's a significant burden. But I have to say that in view of very bitter litigation, as you can imagine, over many years, resulting in a judgment that was clearly beyond the township's ability to pay, the township and its legal advisors having concluded that the township had no other option, the leverage provided by Chapter 9 and particularly its cram down provisions was central the townships ability to settle the litigation on obviously painful but manageable terms. So thank you, I really appreciate the opportunity for all of us to discuss this very important issue with the Committees and I'm sure we'd be happy to answer questions.

CHAIRMAN ROSS: Thank you, Senator Schwank.

SENATOR SCHWANK: Thank you, I'm not familiar with this community but I certainly appreciate the detail you've gone to in describing this process. My question is what was the political fallout of doing something like this, what's the future for this community, how have they accepted it, and what do you see as this being, is this still viable as an opportunity for communities, it worked, I guess it worked in this case for the community?

MR ROBERTS: Well the political fallout was some extremely angry residents, as you can imagine, now understand that we got involved about 2 decades after the events surrounding this developers application and its, and I'll call it its treatment by the township, but at the time when obviously we have public meetings and public hearings about this plan, and so at the time that we're talking about the tax increases, the current residents, some of whom didn't live in Westfall Township when this all came down weren't real happy. The courage that it took, you can imagine that all of the elected officials have turned over since the events that occurred, new solicitor, everybody was new, they had to make the very difficult decision that you know the time is up. We don't have any other options, we have got to meet this obligation, we've done our best to reduce it but there is no way around the fact that current residents are going to have to pay the bill for something that was done 15 or 20 years ago. As I say right now as far as Westfall is concerned, they are meeting all of their obligations, to the developer, their still providing the same municipal services that they provided before, they are doing very well, they're going to come out of this just fine.

CHAIRMAN ROSS: Representative Freeman.

REPRESENTATIVE FREEMAN: Thank you Mr. Chairman, thank you all for your testimonies appreciate it very much, giving us a real good hands on I'm sure a provision of the law which actually is extremely complicated so you've made that very clear to us. I just have one question that I would like to direct to Professor Skeel, you mentioned that one of the benefits of Chapter 9 is the ability of a municipality to restructure its contractual obligations. Now I'm not an attorney so forgive me but I was always laboring under the assumption that based on both the federal constitution and the state constitution, you cannot abrogate contractual obligations, am I missing or where am I off base.

MR SKEEL: You're not missing anything at all except kind of a Supreme Court track record, your exactly right, the contracts clause of the constitution forbids a state from impairing contractual obligations, so a state cannot change an existing contract, the federal government can, the contracts clause does not apply to the federal government and hopefully we have a minute so I can digress for a second or for a minute and say this was the big issue when municipal bankruptcy was first put in place in the 1930's, in 1936 it was struck down as unconstitutional, and what the court said was that it was an interference with state sovereignty even though it was, the State had control over whether a municipality could file or not and that the federal government was assisting a state in violating the contracts clause. So that if you have a federal bankruptcy law that allows a municipality to restructure contracts, the Supreme Court said that's really the State restructuring contracts it violates the contracts clause. Two years later the Supreme Court changed its mind and for those of you who went to law school you may know why, in 1937 the Supreme Court went from striking down new deal legislation to upholding it, 1938 the Supreme Court took another municipal bankruptcy case and it said it's not a violation of state sovereignty as long as it's entirely voluntary, the municipality cannot be thrown into bankruptcy, it has to chose to go into bankruptcy, and the State has to have control over the decision, and it can't interfere with governmental functions, if those conditions are met it doesn't violate state sovereignty and the court also concluded it doesn't violate the contract clause, on the view that the Federal Government can change contracts.

REPRESENTATIVE FREEMAN: So in other words even though the Municipalities, the creature of the State, and the State cannot abrogate the contractual obligation, is the sticking point the fact that it's occurring in Federal bankruptcy court.

MR SKEEL: That's exactly right and I believe if this case went back up to the Supreme Court, the Supreme Court would continue to uphold Chapter 9. But people still make that argument; they still say I'm a little uncomfortable with what Chapter 9 does with contracts.

REPRESENTATIVE FREEMAN: Thanks for clarifying that, Thank you.

CHAIRMAN ROSS: And Senator Smucker.

SENTATOR SMUCKER: Thank you. I wonder if any of you could speak to the potential impact, I think you lay out some benefits of bankruptcy for a Municipality that's in dire straits, but the Municipality that you mentioned Westfall, didn't have debt of any significance. And in larger entities that may be contemplating bankruptcy with debt to bond holders or to other entities, I've heard the argument against bankruptcy and that case it could really disrupt the bond market. So I was just curious whether we have any experience that would give us an idea of how that would bare itself out.

MS MORINGIELLO: Well I think we know what happened last week. And actually I only say that half jokingly; the bond market didn't do anything. Really hard to tell because of the small number of large Municipalities that have filed for bankruptcy, and it depends on the bond obligations themselves. For instance, some Cities, like the one we're sitting in, the bond obligations were guaranteed and you know there is a reputable guarantee company behind the bonds, if that's the case there is less of an impact on the bond market. But it really does differ and you know because it has happened so few times. I also should add what really affects a Municipality's credit rating is a Municipality solvency. Many Cities are insolvent and do not file for bankruptcy. Many Cities before even considering filing for bankruptcy have terrible bond ratings, so yes we laid out the benefits and the impact on the bond market is a very open question, but the truth is if a City is insolvent which it has to be before filing for bankruptcy, chances are its bond rating is pretty bad to begin with.

MR ROBERTS: If I could just add quickly Westfall did have some debt, even a community the size of Westfall can't operate without some debt, but its debt was a local bank and there was in fact an extension of the payback terms with the local bank as part of the Chapter 9 plan but, the local bank wanted to be cooperative, they had been lending the township money for years, wanted to maintain the relationship, so it wasn't combative, when you're dealing with public bond holders that's a different question obviously.

CHAIRMAN ROSS: I have two quick ones. One I notice for a very, very small municipality it took about a year or so from beginning to end. Could you talk about time for these kinds of Chapter 9 filings if we get into bigger municipalities? Are we talking years?

MR SKEEL: That's a great question and the answer I think is we may be, so with Vallejo I forget the exact number of months but they filed for bankruptcy in 2008 and they're just coming out now. So roughly 3 years, Orange County I believe was quicker, I don't remember exactly how long that lasted but the markets changed during that period of times so there was a lot of other stuff going on, so the short answer to your question would be there is no guarantee you're going to come straight out of bankruptcy, it's liable to be several years, realistically.

CHAIRMAN ROSS: And this one I don't expect you to answer to answer today but it you have a relatively pulled together kind of short case study of the potential Chapter 9 filings that are in a larger Municipal type of category that you could share with our staff and just sort of give us a "here's what happened in this case, here's what happened in that case" and just simple details on it, I think that would be very helpful for us. Anybody have anything else?

SENATOR SMUCKER: One more question sir, Mr. Chairman. This emanates form prior testimony and it's speculative and I don't know, perhaps Attorney Roberts would be best to respond to it but there was a Supreme Court ruling that came down last night in regard to the City of Scranton, and there was also a representation made here by the head of, the Director of the Local Government Commission that the perspective impacts of that ruling would that, would be that perhaps it would steer Municipal officials from an eye on Act 47 to Chapter 9. Could you talk to that at all?

MR ROBERTS: Well I personally hope that's not the case. I have to say first I have not read the opinions, I wish they had come down 2 days earlier so I could have, but they didn't, they rarely do. I hope that's not the result. If there is a legislative fix to the issue that the Supreme Court discussed, I would encourage you with all of the energy that I have as a Pennsylvania resident, to fix the problem legislatively. I do not think it's a solution for every community that has a labor agreement that they cannot afford to go into Chapter 9 bankruptcy. The Professors have mentioned that that's a dark forest in terms of how a bankruptcy court is going deal with labor agreements. I can tell you it's certainly going to be, it's certainly unknown on how they would deal with pension plans and with health care obligations. So I don't think, I hope that's not the solution but I can certainly see why a community might well be more tempted now than before to do that, to pursue bankruptcy.

SENATOR SMUCKER: Thank you, Thank you Mr. Chairman

SENATOR EARLL: Just to clarify, not all states allow municipalities to file.

MS MORINGIELLO: That is correct,

SENATOR EARLL: How many States don't?

MS MORINGIELLO: About half don't have any legislation at all that even mention it. There are some I believe that specifically forbid a City from filing for bankruptcy, but yes about half do not specifically allow municipalities to file. And again that's because of the constitutional concerns of an instrumentality of the state, a political subdivision of the state, submitting to the Federal bankruptcy code.

SENATOR EARLL: Prior to the 1930's nobody, no municipalities were allowed to file.

MS MORINGIELLO: Right that is correct.

SENATOR EARLL: Okay, thank you

MR SKEEL: Just to add to that, just reinforcing what Professor Moringiello said, the state has to explicitly allow the filing, either of that particular municipality or through legislation that says municipalities in this state can file for bankruptcy. So a bankruptcy court cannot assume that it would be okay to file in the state there has to be some sort of legislative authorization.

CHAIRMAN ROSS: Enabling legislation essentially

MR SKEEL: Right, Right

CHAIRMAN ROSS: Thank you all very much and I want to thank all of our testifiers. I particularly want to thank the staff, it's pretty challenging getting 4 committees bicameral together and they've done an excellent job and I really appreciate their work. We have another hearing planned November 17th, that will be our next hearing, again at 9:30 am, we're expecting it to be in the same room and we have a number of other testifiers including some who have been in municipalities that have been working in and under Act 47. So I'm looking forward to hearing from them as well. And again thank you to all of the Members and my fellow Chairs here and at this point we're going to adjourn.

The above is a full and accurate transcript of proceeding produced by the Chief Clerk's Office of the Pennsylvania House of Representatives.

Nedra A. Applegate, Chief Clerk's Office