



Goehring Rutter & Boehm

ATTORNEYS AT LAW

Straightforward Thinking.

MEMORANDUM

► Pittsburgh Office

437 Grant Street
14th Floor
Pittsburgh, PA 15219

Phone: 412-281-0587
Fax: 412-281-2971

► North Hills Office

Waterfront Corporate Park
2100 Georgetowne Drive
Suite 300
Sewickley, PA 15143

Phone: 724-935-4777
Fax: 724-935-4123

www.grblaw.com

TO: Hon. Keith Gillespie, Chair, House Committee on Urban Affairs (via facsimile)
Hon. R. Ted Harhai, Democratic Chair, House Committee on Urban Affairs (via facsimile)
Members, House Committee on Urban Affairs (via facsimile)

FROM: Michael G. McCabe, Esquire, Goehring, Rutter & Boehm

DATE: November 12, 2013

RE: Written Testimony Related to House Bill 1409

Introduction

My name is Michael McCabe. I am a Shareholder with Goehring, Rutter & Boehm, where I have practiced law since 1987. I would like to thank the Urban Affairs Committee for this opportunity to provide testimony concerning House Bill 1409. For the past 27 years, I have assisted Pennsylvania taxing jurisdictions in the collection of a variety of taxes, including delinquent real estate taxes. Our clients include the City and School District of Philadelphia, the County of Allegheny, the City and School District of Pittsburgh, the Pittsburgh Water and Sewer Authority and dozens of other municipalities, school districts and authorities in the collection of past due and delinquent real estate taxes and municipal claims. Our efforts have generated hundreds of millions of dollars in collections for our public sector clients. In 2003 and 2004, I assisted in drafting amendments to the Municipal Claim and Tax Lien Law. Act 20 of 2003 and Act 83 of 2004 permit taxing jurisdictions to require delinquent taxpayers to pay the costs, fees and expenses of delinquent collection. These laws have saved Pennsylvania taxing bodies tens of millions of dollars over the past 10 years.

Allegheny County and Philadelphia do not have tax claim bureaus. They collect delinquent taxes pursuant to the Municipal Claim and Tax Lien Law. The judicial sale remedies of the Municipal Claim and Tax Lien Law meet constitutional due process standards, and bidders that purchase properties at Sheriff's Sale receive good and marketable title. Allegheny County only pursues Sheriff's Sales if there is a known interested purchaser or if the properties are likely to attract bidders. Avoiding the sale of unsellable properties saves the County tens of millions of dollars in out-of-pocket expenses.

Allegheny County Collection Results and Procedure

Allegheny County has a comprehensive delinquent real estate tax collection system that works. The chart below shows the County's current and overall collection rates for tax years 2009 through 2012. The County's current annual collection rate is more than 96% and the total collection rate, including delinquent tax collection, is approximately 99% within three years.

Tax Year	Current Collection Rate	Overall Collection Rate 10/31/2013	
2009	96.49	98.79	(3.5 years delinquent)
2010	96.72	98.83	(2.5 years delinquent)
2011	96.89	98.48	(1.5 years delinquent)
2012	96.70	97.83	(.5 year delinquent)

To achieve the 99% collection rate, the County contracts with a private delinquent tax collector and our law firm. The County does not incur any charges for collection and legal services. Philadelphia follows the same model.

Taxes are delinquent on December 31st of each year and delinquent collection begins immediately in January for the prior year's unpaid taxes. About 90% of the County's delinquent taxes are collected before legal action is filed. Where legal action is filed, approximately 90% of the cases pay at some point prior to Sheriff's Sale. Each year, several thousand taxpayers enter into installment payment plans. Payment plan terms for some of the poorest and elderly taxpayers are 5 or more years.

The Allegheny County judicial sale resembles a mortgage foreclosure. The Philadelphia procedure is more streamlined and cost-effective. Both procedures are less time consuming and are more cost effective than the procedure proposed in HB 1409.

House Bill 1409 Analysis

Complying with HB 1409 would exponentially increase the County's delinquent tax collection costs with no increase in delinquent taxes collected. The following are just some of Allegheny County's concerns with HB 1409:

HB 1409 would create an unfunded mandate on Allegheny County.

1. Allegheny County does not have a tax claim bureau. HB 1409 would require Allegheny County to create, staff and operate a new County tax collection office to collect delinquent taxes for its 173 municipalities and school districts

even if Allegheny County opts out of HB 1409. Allegheny County does not have the revenue to create and maintain a tax collection bureau.

2. Allegheny County cannot afford to comply with HB 1409's advertising requirements which we estimate will cost over \$120,000,000, not including tens of millions of additional title search, service and posting expenses. HB 1409 mandates the Sale of all delinquent properties regardless of type, condition, location or tax balance due. This includes properties with no present or foreseeable development potential. Most of the costs to sell these properties will not be recovered.

3. HB 1409's 5% penalty would be insufficient to cover the cost of creating and maintaining the new County office and the new website mandated by HB 1409.

4. Allegheny County achieves a 99% collection rate without posting and advertising a pre-judicial sale notice. HB 1409's pre-judicial sale notice alone would cost the County more than \$40,000,000 and achieve little to no additional collections. Moreover, most of that amount would not be recovered as it will relate to vacant and abandoned properties.

5. HB 1409 would require the County to purchase 35 to 40 thousand or more properties at tax sale. These are the same problem properties that the County has avoided listing for sale. This mandate is cost prohibitive and places an unreasonable burden on the County. In addition, it is not feasible to pursue tens of thousands of tax sales at one time.

HB 1409 would limit the County's ability to provide Hardship Payment Plans to elderly and poor taxpayers.

6. HB 1409's 24-month payment plan maximum term is insufficient for many of the County's poorest taxpayers. Requiring the advertising of a pre-judicial sale notice will cost approximately \$1,000 per property, adding to the financial burden of many struggling taxpayers and ensuring that many more taxpayers will lose their properties as a result of being unable to pay the balance due over 24 months.

7. HB 1409 will also restrict taxpayers from entering into payment plans once a legal action is filed and will not allow taxpayers to pay the tax debt due up to the date of the sale. This will result in sales that could have been avoided.

Memorandum
November 12, 2013
Page 4 of 4

The Assignment Provisions of HB 1409 are too restrictive and give county tax collection bureaus discretion to assign another taxing jurisdiction's liens without its approval.

8. Allegheny County does not believe that a County operated tax collection bureau should be permitted to sell or assign another taxing jurisdiction's assets.

9. Allegheny County has successfully used the assignment provisions of the Municipal Claim and Tax Lien Law to assign some of its tax liens and receivables to meet its revenue needs. The proposed assignment provisions of HB 1409 are too restrictive and limit the opportunity for future assignment transactions.

HB 1409 does not address pending judicial sales.

10. There are presently tens of thousands of open and pending court proceedings pursuant to the Municipal Claim and Tax Lien Law filed against properties in Philadelphia and Allegheny County, as well as in other jurisdictions throughout Pennsylvania. Judgments have been entered in many of these actions. HB 1409 does not provide for the disposition of any of these pending proceedings or for the recovery of any costs, fees and expenses already incurred.

Conclusion

For the foregoing reasons, Allegheny County requests that HB 1409 exclude Counties of the Second Class in all respects, including the notice provisions.

Thank you again for the opportunity to testify. If you have any questions, I am available to answer them at any time.



Goehring Rutter & Boehm

ATTORNEYS AT LAW

Straightforward Thinking.

► Pittsburgh Office

437 Grant Street
14th Floor
Pittsburgh, PA 15219

Phone: 412-281-0587
Fax: 412-281-2971

► North Hills Office

Waterfront Corporate Park
2100 Georgetowne Drive
Suite 300
Sewickley, PA 15143

Phone: 724-935-4777
Fax: 724-935-4123

www.grblaw.com

MEMORANDUM

TO: Hon. Keith Gillespie, Chair, House Committee on Urban Affairs
Hon. R. Ted Harhai, Democratic Chair, House Committee on Urban Affairs

FROM: Michael G. McCabe, Esquire, Goehring, Rutter & Boehm

DATE: November 12, 2013

RE: Testimony Related to House Bill 1409

Introduction

My name is Michael McCabe. I am a Shareholder with the Pittsburgh based law firm, Goehring, Rutter & Boehm, where I have practiced law since 1987. We also maintain a law and taxpayer assistance office in Center City, Philadelphia. I manage our firm's municipal creditors' rights practice, as well as our Philadelphia Office. I would like to thank the Urban Affairs Committee for this opportunity to provide testimony concerning House Bill 1409.

We represent the City and School District of Philadelphia, the County of Allegheny, the City and School District of Pittsburgh, the Pittsburgh Water and Sewer Authority and dozens of other municipalities and school districts in the collection of past due and delinquent real estate taxes and municipal claims.

Goehring, Rutter & Boehm has litigated numerous real estate tax cases in both state and federal courts. We have assisted Allegheny County in closing several multi-million dollar tax lien and receivable assignment transactions. Our efforts have generated hundreds of millions of dollars in collections for our public sector clients. In 2003 and 2004, I assisted in drafting and providing technical support for both Act 20 of 2003 and Act 83 of 2004. Both of these Acts amended the Municipal Claim and Tax Lien Law, permitting taxing bodies to recover the costs, expenses and attorney fees of delinquent collection directly from delinquent taxpayers, rather than from the taxing bodies' general revenues. These laws have saved Pennsylvania taxing bodies tens of millions of dollars over the past 10 years.

Allegheny County Collection Results and Procedure

Before addressing House Bill 1409 specifically, I would like to describe delinquent real estate tax collection in Allegheny County. Allegheny County does not have a centralized County tax claim bureau. The County collects delinquent real estate taxes pursuant to the Municipal Claim and Tax Lien Law. Allegheny County does not have a delinquent real estate tax collection problem. In fact, Allegheny County achieves superlative current and delinquent tax collection rates and, as a result of Act 20 of 2003 and Act 83 of 2004, all delinquent collection services are provided to the County at no cost to the County. The chart below shows the County's current and overall collection rates for tax years 2009 through 2012.

Tax Year	Current Collection Rate	Overall Collection Rate 10/31/2013	
2009	96.49	98.79	(3.5 years delinquent)
2010	96.72	98.83	(2.5 years delinquent)
2011	96.89	98.48	(1.5 years delinquent)
2012	96.70	97.83	(.5 year delinquent)

In summary, Allegheny County achieves a current tax collection rate of more than 96%. Within three years of the end of each tax year, the County's overall collection rate is approximately 99%.

The County has approximately 600,000 taxable parcels. Approximately 56,000 properties comprise the 1% of uncollected taxes. Between 35,000 and 40,000 of these properties have low balances or are deemed to be uncollectible with no present or foreseeable development potential. These properties consist of properties with an annual tax liability of less than \$2.00, total aggregate tax liabilities of less than \$250.00, non-conforming vacant lots, hillsides, cliffs, small strips of land, remnants of properties taken for highways and roadways and vacant, abandoned and blighted properties. In fact, most of the low balance properties and other long-term delinquent properties are not likely to pay, are not likely to attract an interested bidder at Sheriff's Sale and have no present or foreseeable development potential.

Allegheny County taxes are considered delinquent on January 1st of each year. The County, pursuant to Act 83 of 2004, adds a 10% collection commission to the unpaid taxes. The taxes are then referred to a private tax collection company, which has been deputized by the County Treasurer since 2004, to collect the County's delinquent taxes. The County receives 100% of each

dollar of tax recovered. The collector's 10% commission is paid by the delinquent taxpayer.

Taxpayers receive the following mailed collection notices during the first 6 months of delinquency:

1. An initial collection notice urging taxpayers to pay the tax in full or to enter into an Installment Payment Agreement;
2. A letter before lien is mailed, giving taxpayers advance notice that a lien will be filed if the tax is not paid in full; and
3. A Notice pursuant to Act 20 of 2003 notifying the taxpayers that if a lawsuit is filed, they will be responsible for payment of all court costs, service and advertising expenses, title search expenses and attorney fees relating to the legal action.

Historically, approximately 90% of delinquent taxes are collected without the need to initiate legal action. For those taxpayers, the only additional charges due are a \$20.00 per year lien filing fee, postage and the delinquent collector's 10% collection commission. The final 10% of delinquent collections is achieved after the County initiates legal action. Of those cases initiated, approximately 90% result in payment at some point prior to Sheriff's Sale.

Like the commission charged for delinquent collections, the County has enacted a schedule of attorney fees pursuant to Act 20 of 2003. Allegheny County's attorney fee model is a tiered fee. Taxpayers who pay early in the proceeding pay less than taxpayers who wait to the end. Fees and expenses are only recovered if paid by the taxpayer or from the proceeds of Sheriff's Sale. Thus, the County achieves the 99% collection rate without any costs for the collection and legal services provided.

Allegheny County does not incur costs, fees and expenses for low balance properties and other properties which the County deems to be uncollectible. As circumstances change or if there are interested purchasers, the Municipal Claim and Tax Lien Law provides the County with a judicial tax sale procedure, much like a mortgage foreclosure, to pass good and marketable title to the Sheriff's Sale purchaser.

The Sheriff's Sale Process

The Municipal Claim and Tax Lien Law procedures applicable to second class counties require legal actions to be initiated by the filing of a Writ of Scire Facias, which is much like a Complaint in Mortgage Foreclosure. The taxpayer can file a defense to the Writ if there is a dispute about the taxes. The Writ is served by the Sheriff or by court ordered alternative service pursuant to Pennsylvania Rule of Civil Procedure 410.

For those taxpayers who do not pay or raise a defense, judgment is entered against the property for the tax balance due. After judgment, a Writ of Execution, identical to a Mortgage Foreclosure Execution, is issued by the Court and is delivered to the Sheriff. The property is posted with notice, notices are mailed to the property owner and to all interested parties and the sale is advertised. Taxpayers are permitted to pay the taxes due plus any costs, fees and expenses of the Sheriff's Sale at any time prior to the Sheriff's Sale date. This provides taxpayers with every possible opportunity to pay the taxes due to avoid Sheriff's Sale.

As shown on the above chart, most of the delinquent taxes are recovered within the first year and a half of delinquency. In addition, Sheriff's Sale proceedings are often initiated within 8 months of the tax becoming delinquent, and many of those cases are concluded within 12 months of the tax becoming delinquent.

We have experienced excellent collection and foreclosure results since we began our representation of the City and School District of Philadelphia in 2009. Philadelphia has a significant number of tax delinquent properties in blighted areas which have no present or foreseeable development potential and are not likely to pay or sell if listed for Sheriff's Sale. However, the collectible delinquent taxes are being recovered. There are specific provisions of the Municipal Claim and Tax Lien Law which are applicable only to Philadelphia. The Philadelphia provisions are even more streamlined and cost-effective than those provisions applicable to Allegheny County. Despite these differences, the process in both Allegheny County and Philadelphia are far less time consuming and are far more cost-effective than the procedures proposed by House Bill 1409.

House Bill 1409 Analysis

I have extensively reviewed the proposed gut and replace amendment to House Bill 1409. The most recent version does provide an opt-out provision for taxing bodies which desire to utilize the procedures of the Municipal Claim and Tax

Memorandum
November 12, 2013
Page 5 of 8

Lien Law. However, the Bill provides that any taxing body which chooses to opt out must comply with all of the notice requirements of House Bill 1409.

My testimony assumes that Allegheny County will opt out of House Bill 1409 and continue to utilize the provisions of the Municipal Claim and Tax Lien Law.

I realize that a significant amount of time and effort has gone into the most recent version of House Bill 1409. My comments should not, in any way, be interpreted as disparaging the efforts of any person who has participated in the most recent draft or any of the prior drafts of House Bill 1409. I understand the intent is to provide a uniform judicial tax sale remedy in Pennsylvania, especially in counties presently following the provisions of the Real Estate Tax Sale Law of 1947, which is not a judicial tax sale procedure.

The issues which I raise relate mainly to the time and expense of the proposed new tax sale notice provisions. The cost and expense of complying with the new mandatory pre-judicial sale notice and mandatory foreclosure of all properties are particularly concerning, especially for jurisdictions like Allegheny County and Philadelphia and for taxpayers who are experiencing financial difficulties.

House Bill 1409 mandates the mailing, posting and advertising of a pre-foreclosure notice to all delinquent properties. Advertising must appear in two newspapers of general circulation in the County and in the Bar Association's Legal Journal. In Allegheny County, the cost per property to meet this requirement is approximately \$1,000.00 if the notice relates only to owners and \$1,500.00 or more if notice also lists all interested parties. This requirement alone will cost Allegheny County in excess of \$40 million, most of which it will not recover. Since advertising and posting expenses will have to be advanced, the County does not have the financial resources to meet this requirement. Keep in mind that 99% of Allegheny County's present collections are achieved at no cost to the County, except for postage and printing of tax bills.

House Bill 1409 also requires two additional advertisements and an optional fourth advertisement. To comply with all required advertisements alone would cost Allegheny County more than \$100 million with no current or foreseeable opportunity to recover. Philadelphia will likely experience even more unrecoverable expenses. There are also tens of millions of dollars in title search expenses, posting expenses, service of process expenses and attorney fee

expenses which will also be incurred with no foreseeable opportunity to recover.

As to taxpayers who are already experiencing financial difficulties, adding all of these additional advertising and posting expenses even before a legal action is filed will certainly make it far less likely that they will be able to retire their tax debt, especially given the maximum 24-month payment plan term proposed by House Bill 1409.

The notice provisions proposed in House Bill 1409 are exponentially more than is required to meet constitutional due process standards. The Municipal Claim and Tax Lien Law's judicial sale procedure does comply with constitutional due process protections. Both the Philadelphia and Allegheny County procedures have been deemed to provide adequate due process notice. Thus, complying with notice pursuant to existing law is significantly more cost-effective for government and places far less of a burden on delinquent taxpayers.

**House Bill 1409 Creates a Significant
Unfunded Mandate on Allegheny County**

Allegheny County does not presently have a County operated tax claim bureau. As a result, even if the County should opt out of House Bill 1409, the Law would still require that it create a tax collection bureau. Allegheny County is comprised of 130 municipalities and 43 school districts.

The County does not have the revenue necessary to create and staff such a large office and certainly does not have the revenue to comply with House Bill 1409's notice requirements. This is also true for the mandatory website requirement. While all municipal, school and County tax liens are part of an online public website, payoffs must be obtained from the individual taxing jurisdiction. The County does not house real time collection and tax data for the 173 taxing jurisdictions within the County. Requiring them to do so with no ability to recover the expense of programming, data conversion and maintenance would be another unfunded mandate created by House Bill 1409.

One Size Does Not Necessarily Fit All

Because of their sheer size and demographics, there are many laws that relate only to first class cities and second class counties. Philadelphia and Allegheny County, while collecting significant amounts of collectible delinquent taxes, also have a significant number of blighted and otherwise problematic tax

delinquent properties with no current or foreseeable development potential. Mandatory advertising for all properties will not work. The advertising costs alone would cripple the budgets of both taxing jurisdictions. The time tested notice provisions of the Municipal Claim and Tax Lien Law work.

**Notice Provisions of House Bill 1409 Do Not Work
with the Municipal Claim and Tax Lien Law**

The notice requirements of House Bill 1409 conflict with the notice requirements of the Rules of Civil Procedure and the Municipal Claim and Tax Lien Law. Mandating different notice procedures will not work if a taxing body is following the judicial sale procedures of the Municipal Claim and Tax Lien Law.

House Bill 1409 Delays the Initiation of Legal Proceedings

Both Allegheny County and Philadelphia begin the collection and judicial sale process immediately after the tax becomes delinquent. House Bill 1409 does not permit the initiation of the judicial sale action until 12 months after the taxes are delinquent. Waiting a year before a legal action can be initiated will deprive taxing bodies of excellent collection opportunities and will be detrimental to taxpayers as well.

House Bill 1409 Does Not Address Pending Judicial Sales

There are presently tens of thousands of court proceedings pursuant to the Municipal Claim and Tax Lien Law filed against properties in Philadelphia and Allegheny County, as well as in other jurisdictions throughout Pennsylvania. These actions are at various stages. House Bill 1409 does not provide for the disposition of any of these pending proceedings or for the recovery of any costs, fees and expenses already incurred by the taxing jurisdictions for attorney fees, court costs, service of process, advertising or title searches. Many of these actions are already at judgment and it is questionable whether a new judicial action can legally be brought against the same property for the same tax delinquencies that have already been reduced to judgment.

House Bill 1409 is Proposed to be Effective in 60 Days

If House Bill 1409 passes, it will be a significant departure from existing law. By way of example, Pennsylvania, through Act 32 of 2008, significantly changed the way in which local earned income taxes are collected. Act 32 was studied several years before it was introduced. Act 32 became law in 2008, but

Memorandum
November 12, 2013
Page 8 of 8

was effective January 1, 2012. By contrast, House Bill 1409, particularly with respect to Allegheny County, would require the County to form and staff a bureau, create computer programs and create a brand new tax website with up-to-date balances for all 170 taxing jurisdictions in the County in 60 days.

Conclusion

Delinquent real estate tax collection is not broken in Allegheny County. Additionally, the remedies provided by the Municipal Claim and Tax Lien Law for both Allegheny County and Philadelphia are significantly more cost effective than the procedure proposed for House Bill 1409. The Municipal Claim and Tax Lien Law provides more flexibility for taxing jurisdictions, allows them to recover the full amount of their costs, fees and expenses for cases that pay and provide flexibility to work with taxpayers to resolve their delinquencies over time.

Thank you for the opportunity to provide this testimony. I'd be happy to answer any questions which the Committee Members may have.