

Neil A. Grover, Esquire PA53142
Attorney for Creditor
2201 North Second Street
Harrisburg, PA 17110
(717) 260-9651/ FAX (717) 233-2342
groverlaw@ix.netcom.com

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

)	Agency No. _____
)	
IN RE:)	Request for Determination
)	of Distress Under Act 47
THE CITY OF HARRISBURG)	
)	

**MOTION TO DISMISS
APPLICATION WITHOUT PREJUDICE AND
OTHER RELIEF IN THE ALTERNATIVE**

1. On or about October 1, 2010, the City of Harrisburg (hereinafter "the Applicant"), upon the signatures of its Mayor, the Honorable Linda D. Thompson and the Acting City Solicitor, Philip Harper, Esquire, filed a *Request for Determination of Distress* (hereinafter "the Application") with the Commonwealth of Pennsylvania through the Department of Community and Economic Development (hereinafter "DCED" or "the Agency"), seeking acceptance into certain programs administered by the Agency under the Financially Distressed Municipalities Act, Act of July 10, 1987, P.L. 246, 53 P.S. §§ 11701.101 -- 11701.501 (hereinafter "Act 47").

2. The Applicant reports several conditions to demonstrate that it should be deemed qualified for a formal designation as a distressed municipality for Act 47 purposes.

3. Those reported conditions are:

- (1) Defaults on certain loan guarantees and notes associated with the financing of a Resource Recovery Facility (hereinafter "RRF") controlled by The Harrisburg Authority (THA), starting in November 2009, with additional anticipated defaults in 2010 equal to \$43,561.696.

- (2) The Applicant's failure to promptly pay two (2) judgments that were subsequently subject to separate settlement agreements that require payments totaling \$960,000.00 over three (3) years, with \$530,000.00 of remains payable some time after this calendar year.
 - (3) The Applicant's attempts to obtain forbearance on RRF Revenue Bond and Note debt service obligations and other related RRF debt, the total of which they report exceeds 100 percent of the General Fund Budget.
 - (4) Potential gaps or inability to meet certain payroll obligations if funding does not materialize in the 12 to 26 day period following the submission of the Application.
 - (5) Potential default if other funding sources are not obtained on the 2010 Minimal Municipal Obligation on the Police Pension Plan due on December 31, 2010.
 - (6) The likely inevitable filing of a Chapter 9 Bankruptcy for the purposes of readjustment of municipal debt if no other option is pursued.
4. The requisite Application form furnished by DCED requests in relevant part why the Applicant believes the criteria of distress under Section 201 of Act 47 are "imminent and inevitable."
 5. On October 19, 2010, the Harrisburg Parking Authority (hereinafter "HPA") unanimously voted to authorize the immediate refinancing of its debt to effectively monetize its assets in a manner that will (1) decouple HPA from the Applicant, as the Applicant reportedly provides approximately \$86 million in guarantees on HPA debt and (2) provide the Applicant with up to \$60 million to \$75 million in near term relief to be used for certain qualified purposes. See HPA Overview, attached hereto, incorporated herein and marked DWH MOTION Exhibit 1 and PatriotNews Report of HPA interviews with analysis, marked DWH MOTION Exhibit 2.
 6. Subsequent to the Application, the Applicant was able to obtain interim funding for pending City obligations from the local municipal Authorities to meet short term funding needs.
 7. Subsequent to the Application, the City Administration also submitted (but then withdrew) draft legislation to the City Council for approval of a short term TRAN loan in excess of \$4 million to cover additional expenditures for the remainder of the year. This was withdrawn when the funding from the local Authorities was obtained.

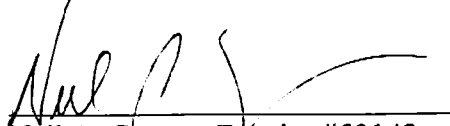
8. As the \$530,000.00 balance on the settled judgments cited by the Applicant are not due and owing until sometime in 2011, this does not represent an “imminent and inevitable” condition under the criteria set forth in Section 201.
9. As local Authority funding was obtained to meet immediate obligations of the Applicant in mid-October, this risk of failing to meet that payroll has fortunately passed without being realized and so the potential risk cited by the Applicant is no longer “imminent and inevitable” and so cannot satisfy the criteria set forth in Section 201.
10. The civil actions pending in the Dauphin County Court are not approaching the entry of any final Judgment or the imposition of any certain relief to the respective Complainants therein and so do not present an imminent or inevitable risk of financial loss, as most of the matters are at the preliminary stages of litigation, none are approaching a legally binding and enforceable final Order and Judgment and all provide rights of direct appeal to any determination. In essence, the matters are years away from completion.
11. The unanimous approval of the refinancing of HPA debts should:
 - (1) provide prompt, significant economic relief to the current pressing financial obligations of the Applicant in the very near future: and
 - (2) simultaneously free up financing options for the Applicant, as the removal of the current \$86 million in City guarantees of HPA debt should ease the ability to refinance insofar as current guarantees are counted toward statutory debt ceilings for the municipality.
12. In light of these material positive changes to the Applicant’s immediate financial concerns, the Applicant should be deemed as not presently satisfying the criteria set forth under Section 201, as no imminent or inevitable manifestation presently exists.
13. The Applicant through its local elected officials should remain free to exercise their duties without the imposition of a Coordinator and the uncertain, long term implications of Act 47 status.
14. The granting of the Motion to Dismiss Without Prejudice would in no way waive or impair the right of the Applicant to Reopen or re-file these proceedings or otherwise seek later relief under Act 47 should the recent positive economic developments prove less promising than they currently appear or economic circumstances shift significantly for the worse.

15. In the alternative, a STAY of these proceedings is hereby requested so that the parties hereto and DCED can adequately investigate the full application and ramifications of the HPA refinancing.
16. In the alternative, a CONTINUANCE of these proceedings should be granted so that so that the parties hereto and DCED can adequately investigate the full application and ramifications of the HPA refinancing and, if required, subpoena appropriate officials from HPA to more fully explain and address the issue.
17. In accordance with the Administrative Agency Law of this Commonwealth (hereinafter the AAL) and related administrative regulations, the hearing officer designated for these proceedings has the power and authority to grant each of the forms of relief requested herein., see 1 Pa Code 35.187 (authority delegated to presiding officers).
18. Moreover as Act 47 was adopted subsequently to the AAL and does not expressly supercede or modify the AAL in any way, the requirements of the AAL and related regulations apply to these proceedings, as the AAL expressly provides:

"No subsequent statute shall be held to supersede or modify the provisions of this title except to the extent that such statute shall do so expressly." See 2 Pa.C.S..A. § 106.
19. DCED expressly adopted provisions of the General Rules of Administrative Practice and Procedure, 31 Pa Code 31.1, et seq. by the adoption of its own regulations set forth in 12 Pa Code 115.10.
20. For all the foregoing reasons, the requested relief should be granted herein

Respectfully submitted,.

LAW OFFICE OF NEIL A. GROVER



Neil A. Grover, Esquire #53142
2201 North Second Street
Harrisburg, PA 17110
(717) 260-9651/ FAX (717) 233-2342
groverlaw@ix.netcom.com

Pro se and as Counsel for DEBT WATCH
HARRISBURG and its members

DWH MOTION EXHIBIT 1

October 14, 2010



Hardsburg Parking Authority

Investment Banking Proposal

BOENNING & SCATTERGOOD
ESTABLISHED 1914

Harrisburg Parking Authority

Overview

Boenning & Scattergood has developed a plan of finance for the debt restructuring and the monetization of surplus revenues of the Harrisburg Parking Authority

Summary of Plan:

The plan of finance combines the taxable and tax exempt refunding of all outstanding HPA debt with a capital borrowing ranging from \$30 million to \$60 million. The financing provides a new platform for the Harrisburg Parking Authority in terms of its debt structure and financial relationship with the City of Harrisburg.

Benefits to HPA:

- a) Removes all outstanding debt obligations of HPA from impact of the City of Harrisburg's unresolved financial difficulties
- b) Eliminates all City Guarantees of HPA Debt, currently approximately \$86 million
- c) Rationalizes the HPA's debt structure.
- d) Provides for the immediate availability of up to \$60 million to be used for certain qualified purposes, including providing funds in a lump sum or installment basis to the City of Harrisburg.
- e) Provides the HPA with the ability to remain an independent public entity serving the public interest by providing adequate downtown parking structures and on-street parking opportunities.
- f) This plan leaves the rate setting power in public hands and provides for the HPA to dedicate future revenues which are not pledged to the financing for approved public purposes.

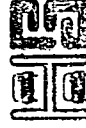
Issue Size

To fund the full defeasance of the outstanding debt and the capital program, issue size will range between \$140 million to approximately \$200 million.

Many variables contribute to the final sizing such as interest rates, the statutory life of the HPA and the level of up-front funding desired.

Timing

The plan of finance can be completed in 40 to 60 days from initiation. As the HPA is issuing debt on its own credit, the DCED filing process will not be required. This will allow a closing by mid-December 2010.



Harrisburg Parking Authority

Ratings and Structure

Ratings Factors

- ✓ The plan of finance will be constructed based upon rating agency considerations designed to achieve an investment grade rating without a City guaranty.
- ✓ With its independent rating, Harrisburg Parking Authority will be a stand-alone entity from a financial and capital markets perspective, able to issue bonds for future projects on its own.
- ✓ In the current structure, HPA would issue its debt without City backing or credit enhancement, allowing it to retain its independence in the debt markets.
- ✓ An important factor in the ratings analysis will be the level of debt service coverage which the HPA can support from current operations and future revenue projections.
- ✓ From a cash flow perspective, the debt service coverage will provide surplus revenues which can be used to fund capital reserves, defined payments to the City and/or the retirement of debt.

DWH MOTION EXHIBIT 2



Parking Authority refinancing could bring Harrisburg up to \$75 million

Published: Tuesday, October 19, 2010, 11:28 PM Updated: Wednesday, October 20, 2010, 12:03 AM



Laura Vecsey



[View full size](#)

The Patriot-News/file

Harrisburg has mulled bankruptcy as an option to deal with its debt.

On the eve of a hearing about whether Harrisburg should be granted distressed city status by the state, a game-changing plan has been approved by the Harrisburg Parking Authority that will allow millions of dollars to flow to the city.

While the money wouldn't be enough to retire the city's \$288 million debt, which has effectively bankrupted Harrisburg, it's a surprising start for a city in desperate need of solutions.

Board members of the Parking Authority, which is separate from the City Council, on Tuesday night unanimously approved a resolution for a finance plan to restructure the surplus revenues of the Harrisburg Parking Authority. The plan, which will aim to close by the end of the December, calls for \$30 million to \$75 million to be placed in trust for the city's use.

"I think this is a very positive thing for the city of Harrisburg," said new board member Corky Goldstein, adding: "This will be of tremendous assistance to the city and the taxpayers, but a lot will depend on how this all falls."

Authority solicitor Tim Anderson said the amount of money that could be realized for the city through the refinancing will depend on several factors, including whether the financing is done over 27 years or longer. If the deal extended through 2045, the city could realize as much as \$75 million by the end of the year.

"This deal could be done right now," Anderson said before the vote that set in motion a refinancing deal that could alter the steps the city now takes to pull itself out of fiscal peril.

It was unclear what impact news of this deal will have on a hearing scheduled for 5 p.m. today. Harrisburg has been told by

state officials, including Gov. Ed Rendell, to apply for Act 47 status. The Department of Community and Economic Development will hear testimony from stakeholders in the city's fiscal situation.

Council members issued a letter to DCED officials Tuesday asking for a stay of tonight's hearing. The City Council said it was not prepared to adequately represent its position in the application process without retaining expert counsel. Council members Brad Koplinski and Susan Brown Wilson said they expect the hearing will go on regardless of their request.

However, after waiting 10 months for a plan to emerge from Mayor Linda Thompson, council members said they were heartened to hear of developments out of the parking authority.

© 2010 PennLive.com. All rights reserved.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

)	Agency No. _____
)	
IN RE:)	Request for Determination
)	of Distress Under Act 47
THE CITY OF HARRISBURG)	
)	

CERTIFICATE OF SERVICE

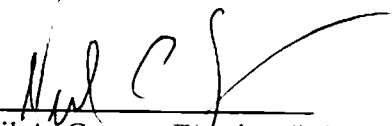
I hereby certify that I have this 20th day of October 2010, served a true and correct copy of the foregoing Motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

Steven J. Fishman, Esquire
Charles Brown, Esquire
Department of Community &
Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Fax No. 717-783-1402

Philip Harper, Esquire
Solicitor for the City of Harrisburg
Rev. Dr. Martin Luther King, Jr. City Gvn't
Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
Fax No: 717-255-3056

Respectfully submitted,

LAW OFFICE OF NEIL A. GROVER

By 
Neil A. Grover, Esquire #53142
2201 North Second Street
Harrisburg, PA 17110
(717) 260-9651/ FAX (717) 233-2342
groverlaw@ix.netcom.com