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**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 ISSUE
SUBPOENAS TO COMPEL
TESTIMONY OF BOARD MEMBERS OF
THE HARRISBURG AUTHORITY, THEIR BOND COUNSEL
AND LITIGATION COUNSEL**

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, No. 47, 53 P.S. §§ 11701.101 -- 11701.501 (hereinafter “Act 47”).

2. The Application is a form provided by the Agency, which it was statutorily mandated to create and furnish to applicants. 53 P.S. § 11701.203.

3. Consistent with the mandates of Act 47, the Agency’s application requires that the applicant report and explain why the manifestation of the criteria for distressed status is both imminent and inevitable.

4. On October 20, 2010, an Act 47 administrative hearing was commenced. That hearing is not yet concluded.

5. Despite its direct involvement with the majority of the debts owed by and defaults attributed to the Applicant, no member or representative of The Harrisburg Authority (hereinafter “THA”) offered testimony at the administrative proceedings on October 20

6. Information on the status of THA’s debts and pending litigation status for its Resource Recovery Facility (hereinafter “RRF”) is material and highly probative of whether the manifestation of distress criteria under Act 47 is imminent and inevitable..

7. Under both the federal and state constitutions, there exists a fundamental right of due process of law for all parties to a proceeding, including administrative proceedings.

8. Under Pennsylvania law, the process due a party to protect and insure those fundamental rights are set forth in Administrative Agency Law, 2 Pa.C..S.A. §101. et seq. and bolstered by the General Rules of Administrative Practice and Procedure, as well as any given Agency’s own properly promulgated procedural regulations for hearings and appeals. DCED has not promulgated any specific regulations for hearings and appeals, other than 12 Pa Code 115.10, which requires the Agency to follow the procedures set forth in GRAPP.

9. The right to be heard has been universally held to require that a hearing must provide each party with meaningful right.

10. No representative for THA voluntarily appeared to offer testimony at the proceedings on October 20, 2010.

11. As the imminent and inevitable manifestation of statutory criteria for municipal distress is a factual issue for this Act 47 hearing, the testimony of a proper persons of THA in these matters is material, relevant and of great probative value on this issue.

12. Act 47 requires a hearing be commenced within 30 days of the Notice of Hearing, which must be issued within 10 days of the filing of Application.

13. The implementation and carrying out of the mandates of Act 47 does not and simply cannot permit or authorize the Secretary or his designee to strip from any party their fundamental rights to due process of law .

14. Act 47 is silent as to when a hearing must be concluded, indicating only that it must be initially held within 30 days. Held does not mean completed but commenced. Just as a speedy trial requirement is recognized to mean that the trial of a person charged with a criminal offense must be commenced within 180 days, but not concluded therein, the same legal application of principles and analysis applies to the 30-day hearing requirement under Act 47.

See Pa. R. of Cr P. 100 and its progeny. Otherwise, the 30-day requirement itself would violate due process and thereby be unconstitutional construct on its face.

15. Neither the grant or denial of the Application will provide the Applicant with immediate funds to address current financial obligations. Any funds available to them now will be available to them whether the application is merely pending or is in fact granted. Therefore, there is no urgency or emergency that justifies the premature closing of the hearing record

16. Accordingly, the Presiding Officer should hold the record of these proceedings open for the additional taking of testimony and issue Subpoenas to each Board member of THA – William Cluck, Mark Karowski, and Wesburn Majors – as well as to their bond and litigation counsel to attest to the public and interested persons under Act 47 those non-privileged details of the future scope of bond payments, income projections and defenses raised to any aspect of any of the guaranteed debt. The hearing should be reconvened with public Notice to take this important testimony. In the alternative, depositions via subpoena should be authorized and taken so that this information may be made part of the record.

17. In accordance with the general requirements of the Administrative Agency Law of this Commonwealth (hereinafter the AAL), see 2 Pa.C.S.A. §101, et seq., and the related administrative regulations, the presiding hearing officer designated for these proceedings has the power and authority to issue subpoenas to compel testimony, see 1 Pa Code 35.187 (3) and the power to take or cause to be taken depositions, .see 1 Pa Code 35.187 (5).

18 Accordingly, it is respectfully requested that subpoenas for the testimony of each of the above referenced members and agents of The Harrisburg Authority be issued.

19. This and other motions were lawfully and properly presented orally at the hearing and now a written form of the motion is being filed as mandated by the presiding officer with a noon filing deadline the day after the proceedings ended at approximately 9:00 p.m.

20. For all the foregoing reasons, the requested relief should be granted herein

Respectfully submitted,.

LAW OFFICE OF NEIL A. GROVER

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

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

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

I hereby certify that I have this 21th 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 _____
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