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August 4, 2011

C. Allan Walker, Secretary  
Commonwealth of Pennsylvania  
Department of Community and  
Economic Development  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0255

***Re: Section 246 Procedures for the City of Harrisburg***

Dear Secretary Walker:

I represent DEBT WATCH HARRISBURG, a local taxpayer organization and active participant in Act 47 proceedings for Harrisburg. We now respectfully offer the following analysis of the purpose, meaning and application of Section 246 of the Act, as DCED works through this process for the very first time. Our hope is that it will provide all involved in this important and complex matter with a framework that permits everyone to complete the necessary work to return our City to fiscal stability without unintended procedural roadblocks.

When the governing body of the City of Harrisburg became the first to exercise the lawful option of rejecting a proposed Act 47 Plan, it was acting in a manner authorized by the law itself. Still, a problem now arises. The Act 47 process finds itself entering new, untested waters. Moreover, the limited body of caselaw developed to hone the meaning and application of the obscurities within Act 47 has not explored any Section 246 requirements in a meaningful way. But an analysis of the statute reveals that ours is not an unanticipated situation.

Moving forward, the participants should know what the law actually requires and allows, as knowing that will reveal what can and should be done after a rejection. A careful review of the statute helps illuminate the process envisioned by our Legislature.

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In constructing the mechanisms for Act 47, the Pennsylvania Legislature must be presumed to know both the law and legislative processes in existence at the time of adoption. That is why any new law that expressly upends the requirements of existing law supplants the old, while an enactment that leaves existing law untouched requires both the old and new to be construed together. Applying that standard to the immediate issue, we ask the Commonwealth and DCED in particular to recognize that the currently applicable provisions of Act 47 can and do easily mesh with the well-known local legislative process that predates the Act. That cannot be an accident.

Section 246(a) of Act 47 identifies, in brevity, the steps a municipal government must undertake after rejecting a coordinator's plan. In our Mayor-Council form of government, the Mayor is required to submit a Plan within 14 days of rejection and then hold a public meeting to review it within 10 days. These are the *only* solid deadlines the law prescribed. That too should not be deemed an accident

In order to recognize the intent of the Legislation, compare the brevity of the scant post-rejection process to the rigorous detailed timetable imposed on a coordinator. Likewise, review of the language describing *how* a municipality must proceed. Under section 246, Act 47 affords local governments a much more flexible process to arrive at a Plan of their own. That added flexibility arises from the obvious absence of detailed time periods for adoption of a local government's own final Plan. Such internal differences within the language of the statute can and should not be presumed to be unintentional or simply ignored.

When Pennsylvania adopted Act 47, a definitive process did not exist for appointed "coordinators" to perform or present their work, and so, our State mandated one. By contrast, at the time of adoption, Pennsylvania already had a well-developed, long-known procedure for municipal governments to review and consider any proposed law. For example, in the City of Harrisburg, a proposed ordinance must be introduced at an advertised session of City Council. It then gets routinely assigned to committee. The bill then may be amended, revised or otherwise reworked by Council, followed by a motion to adopt one or more such recommendations. It must get three (3) public readings before being offered for a vote of the full Council, and, if approved, it is sent to the Mayor to be approved or vetoed. Laws get adopted in much the same way at most levels of government.

Under Act 47, the Legislature obviously knew this process well. They left it alone, but for the addition of one wrinkle: the requirement that a Section 246 Plan receive the

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approval of the Secretary. With that addition, DCED was granted an effective veto over any such Act 47 Plan.

So why the civics lesson? Because DWH believes that the point illustrates and supports what we view as the best and intended framework for how to proceed under Section 246. While working in a post-rejection process, DCED should recognize that the Legislature would have anticipated the normal give-and-take of a municipal government if they have opted to create and adopt their own Plan. Therefore, any Act 47 Plan that Harrisburg ultimately adopts now must satisfy the Mayor, a majority of City Council and the Secretary. Each participant has a real say. DCED should recognize that the Legislature allowed for the existing normal mechanism of local governance to remain in place for such post-rejection proceedings, or they otherwise would have set forth detailed post-rejection time constraints. All things considered, that is just as it should be, as local control over local matters using local practices represents the very essence of governing.

On a related point, please recognize that Act 47 places no real limitation on a Mayor's right to amend, modify, substitute or resubmit any plan. None should be presumed, as any such limitation would impair the normal process of governing. Likewise, unlike the Act's provisions on a coordinator's Plan, Act 47 does not prohibit a Council from seeking changes to a Mayor's Plan through normal negotiations and committee input before voting on the matter. There is no once-and-done restriction on a Mayor's Plan. If the proposal is rejected by either Council or the Secretary, a municipality is not simply abandoned or forever prohibited from bringing forth another Plan, or still another. Instead, the Act leaves the process open in order to permit the molding and reworking of a local solution by all three (3) offices until each is satisfied.

Accordingly, as a careful consideration of the laws of our Commonwealth suggests that our Legislature quite intentionally left the local mechanisms for reviewing and adopting a locally grown Act 47 Plan in place, DCED should not now impose artificial deadlines on Harrisburg to finalize their Section 246 Plan. That would be negating a careful, balanced Legislative design and so impermissibly presume that our lawmakers somehow lacked knowledge of local legislative processes when they drafted the Act.

Proceeding under this balanced approach does not suggest that real deadlines do not exist for the City. But those deadlines are dictated – like any local matter – by the constraints of current events, such as the financial concerns that brought about the original Application for Distressed Status. The City of Harrisburg has an urgency to

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stay on task and take action. The pressures of that imperative should not be needlessly compounded with the imposition of arbitrary dictates not found in the Act.

Accordingly, it is respectfully suggested that the Commonwealth of Pennsylvania strive to abide by the dictates of Act 47, refrain from imposing preferred but artificial deadlines for completion of an already challenging job and thus permit our local legislative process to work, with of course your active input, personally or through your designee(s).

Sincerely,

LAW OFFICE OF NEIL A. GROVER

Neil A. Grover

NAG/

cc: Dave Unkovic, Esquire, Chief Counsel, DCED  
Jason Hess, Esquire, Acting City Solicitor  
Stephen S. Aichele Esquire, General Counsel, Commonwealth of Pennsylvania  
Mayor Linda D. Thompson  
Harrisburg City Council, All Members  
Kirk Petroski, Acting City Clerk  
Debt Watch Harrisburg, Members