

**STATE SENATE
COMMONWEALTH OF PENNSYLVANIA
LOCAL GOVERNMENT COMMITTEE**

**COMMITTEE HEARING
ON SB 1157**

April 10, 2014

**TESTIMONY OF NEIL A. GROVER
CITY SOLICITOR
HARRISBURG, PENNSYLVANIA**

On behalf of City of Harrisburg, Mayor Eric Papenfuse and our much put upon citizens, I wish to thank this Committee for the opportunity to comment on proposed revisions to the law impacting municipalities and specifically to Act 47 of 1987 and SB 1157.

My name is Neil Grover and I live in Harrisburg. In January, I was appointed by our new Mayor to act as the Harrisburg City Solicitor, a role that came my way because of past work with other citizens in battles for a fair, workable solution to the Harrisburg Debt Crisis. We had fought for fairness, but also for accountability, particularly from those individuals and groups who pushed our City to the brink of ruin, by willful and reckless behavior.

Along with other members of the public, I protested Act 47, fought against it and challenged what was plainly a new order being imposed on Harrisburg. We took that fight to agency hearings, to the Courts, into the halls of government and into heated public meetings. We fought, argued and lobbied for one thing: a fair and just solution to our City's fiscal woes. We opposed one proposal after another, as we found each proffered solution little more than a manual to guaranty a City's failure, for each plan straddled the City with restrictions and still failed to address the scope of our crisis. In the course of that unflinching push back, we eventually found leaders in and out of government who came to recognize the need for a better approach, one that in my own opinion was realized in a final negotiated plan

for Harrisburg. The Plan was consensual, jointly supported before the Court and ultimately confirmed. Harrisburg has stepped back from the brink of disaster and now has been left with a fighting chance to prosper once again.

For the people and the government of Harrisburg to now complete that hard work – and actually secure a fiscal recovery – we need new and improved tools. We need changes in the way Third Class Cities can operate. And we need our State law to catch up to the realities on the ground. The Legislature alone can provide those tools to our Capital City and other local governments. Doing so is a missing key to statewide prosperity.

We applaud the Senate for continuing to strive to forge new tools for local governance. We support the concept of Cities having real options on taxation and fees to be used to support infrastructure and provide for the health, safety and welfare of our people. In any reform, however, flexibility and adaptability are desperately needed. For example, in Harrisburg, we must rely on real estate taxes as a primary tool for supporting City services, just like other Third Class Cities. That piece of the design for supporting local governments works to some degree in many local governments, but not well for Harrisburg. Why? Because roughly 50% of the properties in the State Capital are tax exempt. Harrisburg therefore needs other fundamental options for the way it pays for city services. And everyone who has looked at the problem knows this.

We are not advocating for local governments to have the power to charge for everything and anything to produce revenue. That approach has been tried by former officials and we are all paying dearly for that unfettered creativity. What we are seeking is for the State to revisit core issues for local governance, including a precise determination of a local government's cost-drivers and available municipal revenue streams. Doing so is imperative if the real cause of local government distress is to be identified and overcome.

Just talking of what causes municipal distress is often viewed as political poison. So too is acknowledging the most obvious solutions. We have too many local governments. We have too many school districts. We have too many bureaus, departments, commissions and more. Each pays for separate

administrators and staffing. Each pays for separate computers and training. And each of us – no matter a democrat, republican, independent or none-of-the-above – each one of us supports that duplication of service, every single day. That must change.

One such tough issue is this reality: Despite tremendous growth in institutions of medicine and higher learning (some are part of billion dollar industries), when these major entities are classified for tax purposes, Pennsylvania still treats these primary employers as if their mission is running a volunteer soup kitchen in a church basement. We must acknowledge that all charities are not created equal. Pennsylvania needs to adapt to that reality so that cities hosting mega-nonprofits can survive. I'm not suggesting that we treat our hospitals and universities like banks, manufacturers or accounting firms. But we have to be able to adapt. We need to be able to decide at the local level if we must impose some version of a host fee – or whatever we call it -- for those organizations that generate real revenue and rely on our roads, sewers, bridges and infrastructure. Local revenues should not be left to hope, to the benevolence of the boards in local institutions or to reliance on the purely charitable choices of local charities. That is the reality of how we now function, as we try to persuade our local nonprofit employers to agree to "P.I.L.O.T." programs.

It's absolutely reasonable that our local governments not be empowered to simultaneously impose every possible form of tax and fee imaginable. That's a formula for abuse. But the ability to choose from a menu of real choices of permissible taxation and fees – and to change those choices as circumstances change – that is the real need of 21st century local governance.

My father was a Teamster and for some period of time a local union steward. And I have professionally handled labor and employment issues as a lawyer on the union side, at the organizational and member levels. I also now work with unions as a part of the city governance. And I have owned my own business. As someone who has lived on both sides of the issues of unionized labor, I can say that we have allowed a system to develop that is now fundamentally flawed, often being driven by the worst human instincts on both sides. If human nature teaches us something, it teaches us that some people, when given any power, will twist that power to their

own needs, the rest of the world be damned. We need to rid ourselves of allowing for that destructive element in collective bargaining. A union should not be left to defend members whose personal code of the conduct violates the basic tenants of honesty, decency, integrity and justice. But they must do so now, perhaps out of the real fear of surrendering the right to protect their most deserving workers. Nor should employers be left to cover for supervisors who impose cruelty, dishonesty, lawlessness or, perhaps even worse, indifference in a workplace. But they seemingly must do so now, perhaps out of fear that the acknowledgement of any wrongdoing will lead to even more formal disputes that cripple productivity during the grievance process.

We must rethink, redesign and re-embrace collective bargaining, in a way that demands both sides to be held accountable for past abuses – not by sudden punishment, but by structural changes that allow for the correction of abuses. We need a law with safe harbors on both sides of the aisle, so that good faith can be restored to the negotiation process, not just while bargaining, but while working under the terms of the bargain.

We need to address the realities of the almost unfettered power union arbitrators now possess. We should bar the heavy costs of AAA Arbitration from our local public contracts. We should mandate that arbitrators be qualified to explain the financial impact of some or all of their rulings on local taxpayers, and to clearly spell out that analysis in their written decisions. And should any decision fail to include a fiscal analysis or provide an opinion unsupported by actual evidence, than municipalities should be free to challenge that part of a decision and secure a re-calculation from a state agency or court.

We also need to impose a cap on the formula for overtime wages, something that already occurs in other settings. Local governments have remained free to use overtime as a blank-check bargaining chip that only gets valued in future budgets, mandating payment of the expense as written, whether budgeted or not. We are not suggesting that cities bar overtime work or overtime pay or require anyone to work hours without pay. But like some private-sector workers who work for an hourly rate, the State should mandate a cap on additional hourly rates for public employees, starting by requiring that to be paid for more than 40 hours per week,

the worker must actually have provided services on the job for 40 hours that week and then, if the job exceeds 40-hours in a work week, then any OT payments be paid at a half-time rate. Doing so would dis-incentivize overtime work on the taxpayer dime. Now, by default, our local leaders simply accept that their town will continue approving formal agreements that risk incurring overtime costs far in excess of some employees' budgeted annual salaries. That cannot continue.

And yes, we agree – fully agree – that municipalities must be able to get themselves not only out of Act 47 – but more importantly, beyond fiscal distress. Harrisburg – like the cities of Philadelphia, Pittsburgh and Scranton before it – fell hard into financial distress. And like those sister Cities, addressing Harrisburg's woes ultimately required the passage of new or amended State legislation. If our system for addressing financial distress must be supplemented or rewritten each time a major crisis visits a large municipal government, then the system itself needs to be redesigned, with more flexibility and better funding.

For example, one mechanism to provide flexibility and better funding would be the Legislature opting to fund a major, low-cost revolving loan pool for distressed local governments, with participation exclusively available through its recovery program, and then, only if the State undertakes strict fiscal oversight on all local borrowing. Real funding for Act 47 loans – funding that reflects the actual collective need of Pennsylvania's distressed local governments – simply has been ignored. Yet fully funding a low-cost loan pool for short term relief or for fiscal re-organization by our distressed municipalities should be the bedrock of Pennsylvania's recovery program.

We would support adopting Act 47 amendments or separate legislation that allow for a local surcharge or tax on alcohol as a new revenue stream for local governance, but implementing that tax should be optional. We support the use of a formula for a mix of taxes to generate a baseline of revenue to support the health, safety and welfare of the citizens that local officials are required to protect. But that menu should offer real choices, with strict limits and off-sets for other revenue streams.

Therefore, as SB 1157 includes an option for imposing an alcohol consumption tax during designated eras of distress, we support that concept. We would go even further, however, making that option available to municipalities that do not bear a distress designation. The current Bill also includes an option for a temporary increase in the Local Services Tax and we support that too. We did not have enough information to evaluate the proposed option for a payroll preparation tax, so cannot comment on its practicality or usefulness.

SB1157 also shows municipalities an exit door from Act 47. We support that concept, though keenly aware it may miss the mark. We need an exit from fiscal distress, not just the program overseeing cities in fiscal distress. Without the latter, the prior seems to place local government back to working with the limited tools that lead to distress. That solves nothing.

The Act 47 system now in place – which right now stands as the only State process available --exists to help local governments address their bottom line when that bottom line slides into oblivion. Very often, however, that program barely provides life support. If Pennsylvania is to thrive, grow and be a place of prosperity, then our municipal governments must be brought back to good health. All of them must be. That is the reform that is needed. And that reform should be what this legislative body finds itself obligated to make a reality. The Senate and the whole of our General Assembly should help our citizenry prosper by fixing those local governmental structures that affect citizens' lives every day, in both obvious and near invisible ways. That is duty of public office, for each of us.

Thank you for inviting Harrisburg to be heard. Mayor Papenfuse, the City Council, the Controller and the Treasurer – the whole of our elected representatives – are striving to insure recovery. The changes addressed here and others at the State level are needed to make recovery a reality. I implore you to help those elected officials serve the people who put them in office and push real reforms through the Assembly and onto the Governor's desk in this session.