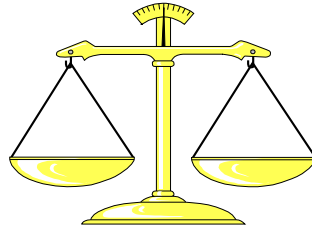


LAW BUREAU



CONFIDENTIAL LEGAL OPINION

DATE: August 30, 2011
TO: Council President Gloria Martin-Roberts
FROM: Jason M. Hess, Acting City Solicitor
SUBJECT: **Amendments to Mayor's Act 47 Plan**

I have been asked to provide an opinion on the question of whether City Council has the ability to amend the Mayor's Act 47 Plan. Act 47 does not give City Council the ability to amend the final version of the Mayor's Financial Recovery Plan submitted to City Council. Act 47 gives Council the authority only to enact an ordinance approving the plan as submitted to them.

Section 246 of Act 47 addresses procedures that must be taken by a municipality following rejection of the plan presented by the Act 47 Coordinators. The question of who prepares the "alternate" plan depends on the form of government followed by the municipality. In the case of a municipality operating under an optional form of government (as does the City of Harrisburg) or a home rule charter, the Act calls for the preparation of an alternate plan by the Chief Executive, which in the City's case is the Mayor. 53 P.S. § 11701.246(a). In municipalities operating under other forms of government, the "alternate" plan is prepared by the governing body. 53 P.S. § 11701.246(b).

After the preparation of the alternate plan by whichever branch is given the authority to draft the plan, the procedures for conducting public hearings and for adoption of the plan are fashioned after the procedures for adoption of the coordinator's plan. In neither case can the council amend the plan that is presented to them. Section 246(c) states as follows:

Following the public meeting on the chief executive officer's plan or the governing body's plan, the governing body may enact an ordinance, including necessary related implementing ordinances or revisions to ordinances, approving the plan.

53 P.S. § 11701.246(c)

Whether the governing body enacts an ordinance approving the chief executive officer's plan or the governing body's plan depends on what type of government under which the municipality operates. Clearly, if the alternate plan was prepared by the Mayor, as in this case, then the governing body (in this case, City Council) must vote on approving **that** plan. Nothing in Act 47 gives Council the ability to enact an ordinance approving a plan, as amended by Council. Had the legislators who enacted Act 47 desired to give the Council the ability to make amendments to the plan before acting on it, they would have expressly included provisions in the Act allowing for such amendments.

In conclusion, although the Act gives Council the ability to ultimately decide on whether to adopt a plan, it does not give City Council the ability to unilaterally make amendments to the plan. In municipalities operating under optional plans, the Act clearly seeks to preserve the separation of powers by giving the executive branch the authority to draft the plan, and the legislative branch the ability to vote on it.

It is worth noting that the Chief Counsel of DCED concurs with my interpretation of the Act in this regard. If you should have any further questions regarding the content of this memo, please feel free to contact me.

Cc: Members of City Council
Kirk Petroski, Acting City Clerk