



Pennsylvania Association of School Business Officials

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**Testimony of Jay Himes, CAE
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Act 32 of 2008
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Good afternoon, I am Jay Himes, executive director of the PA Association of School Business Officials (PASBO). We are an association of 3,000 members, two-thirds of which are K-12 non-instructional administrators who provide finance, accounting, operations, facilities, transportation, food service, technology, communication, human resources, purchasing and safety services to support classroom learning in schools in Pennsylvania. In the majority of school district our members have been appointed as the school district delegate to the new committees created under the new law. Thank you to Chairman Levdansky, Minority Chairman Rohrer and other members of the committee for the opportunity to present our viewpoints regarding the implementation of Act 32 of 2008.

The new, built-from-scratch Earned Income Tax (EIT) infrastructure mandated by Act 32 is progressing. In some cases the work of the 69 Tax Collection Committees (TCCs) has been smooth and as efficient as could be expected from the perspective of starting from the ground up to create new governmental entities without many resources. In other cases the road to Act 32 implementation has been a little bumpy.

Expectations should have been low. Act 32 is a sweeping mandate and at least for start-up costs, it is an unfunded mandate. Of course, schools and municipal governments always complain about mandates. All mandates create additional requirements, obstacles and challenges and usually carry little, if any, state funding with them. In that respect Act 32 is no different. It has imposed a significant level of new work for local governments and required unprecedented cooperation between schools and municipalities in every county (excluding Philadelphia) in the Commonwealth.

However, the usual concern about mandates and inadequate funding aside, Act 32 is not an unreasonable mandate. In fact we testified in support of the legislation despite the fact that it was a mandate. Most mandates are simply unreasonable from a school district perspective and they impose cost, both in dollars and in time. But Act 32 was a public policy necessity in our state. With more than 500 EIT collectors in the state, sometimes requiring taxpayers to file different local returns for the school district and the municipality where they resided combined with a lack uniform collection procedures, state intervention was necessary. We needed a more efficient collection infrastructure and we needed a state statute to get us there.

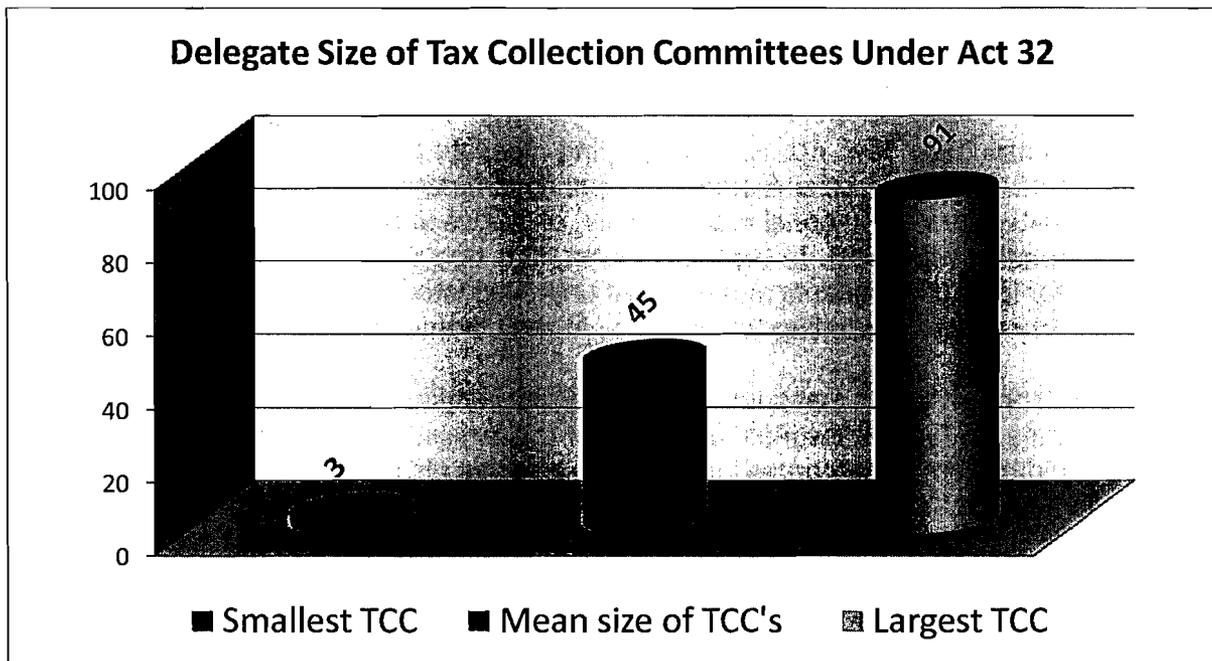
In an effort to be objective in recognition of the potential future benefits the new statute will bring, Act 32 is a reasonable mandate. It would have perhaps been even acceptable if school and municipal start up costs had been funded in Act 32.

Given our association's support of the regionalization of EIT collection and given the fact that there was ample opportunity for addressing concerns during the protracted legislative deliberation of the legislation by this committee, we chose to be proactive in helping our members to navigate the organizational hurdles to implementing Act 32. We developed an extensive series of technical and legal assistance documents as indicated in the attachment to this testimony. We created a new 30 member task force to leverage our members' expertise. We appointed special counsel, Kegel, Kelin, Almy and Grimm of Lancaster to help us through the myriad of legal issues necessary to implement Act 32.

We believe, unfortunately, that there has been some degree of wasted energy by those who have used confusion, lack of understanding and outright denial of the requirements of Act 32 to impede the many necessary steps to ramp up for being able to meet the January 1, 2012 launch date for the 69 newly-created Tax Collection Committees to be fully implementing a new EIT collection system.

While we think there were and are some shortcomings in Act 32, the time for seeking major changes are now past and the full energy of local officials—both school and municipal—should be focused on meeting the significant challenges of building a new EIT collection system. The enormity of the front-end requirements for this challenge is significant.

The statute provided everyone with a voice. Democratic institutions provide in some form an opportunity to be heard. Act 32 provided every school district and municipality within a county that levies the tax, a role in the creation, governance and operation of the 69 TCCs. In order to accomplish that, many TCCs had large and unwieldy governance structures. The median size of a TCC is 45 delegates. Essentially, the TCCs are a mini-United Nations.



The large TCC structure intensified any number of potential intra-county conflicts—geographic, political, urban/suburban, size, school-municipal and others. Overlay these factors with a split in current EIT collector structures (bureaus vs. for profit collectors) and you had the potential for a very rocky start to building the new regional EIT collection infrastructure. As a result some of the initial TCC meetings went long hours with short results.

Moving forward required an unprecedented level of school-municipal cooperation. I have worked for both school and municipal statewide associations and I cannot point to any state statute that required joint decisions made by a majority of school and municipal representatives within a designated region. Act 32 is clearly establishing a new standard for local government decision-making.

Another perceived stumbling block has been the voting requirements in Act 32. The statute provides for weighted voting based on EIT revenues collected by the school district or municipality. We believe this allocation of votes is the most appropriate method. Those who have the most EIT revenues at stake should have the most standing to determine collection structures. However, in Act 32, an option is provided to TCCs to establish non-weighted voting as well.

Local decision-making ultimately determines the voting process which we believe is also a beneficial provision of Act 32 that you provided. Further, the law also apportions the cost of the TCC based on weighting of EIT revenues. Those who have the most votes also bear the most cost which again we believe is the most appropriate and the most fair. You can't argue both ways—equal voting rights and unequal expense allocation.

Since the pace of deciding and building the infrastructure for regional EIT collection mechanisms has varied from TCC to TCC, it is fortunate that you built-in a significant ramp up time for implementation. The statutory obligation is that the new infrastructure must be established and ready for operation effective January 1, 2012. However, we believe some TCCs may consider early adoption. Again you provided flexibility in Act 32 for a January 1, 2011 effective date at the option of the TCC.

The transition from many EIT collectors to a single county-wide collector potentially will create disruptions in cash flow. There will be a significant hurdle in consolidating taxpayer and employer information for a single new collector. In some cases that may mean one competing collector cooperating with another competing collector or a municipal/school district structure. We hope and encourage everyone to provide a smooth, timely and complete turnover of records in the transition.

From the school side early transition would provide an opportunity to have the first year of the new county wide collection process in place before the school employee pension launch in fiscal year 2012-13. The pension launch year is perhaps the worst conceivable year to put a significant portion of non-property tax revenues at risk. The financial consequences of the pension launch will require cuts in school programs and personnel and all available resources. It is simply unfortunate timing that combines the pension launch and a new EIT collection process at the same time. The other reason you may see early implementation is that in some counties a collector, whether an existing bureau or a third party for-profit collector are predominantly the collector of choice for most school districts and municipalities in that county. Therefore the transition issues will not be as great and these TCCs are better positioned to move forward at a faster pace.

For those TCCs where the decision-making requires more deliberation, you set specific action deadlines during the ramp up period. Again, this is a positive aspect of Act 32 since it keeps TCCs working towards the ultimate implementation goal. For example by-laws are required to be adopted by April 15, 2010. The most significant deadline is for the appointment of a county-wide collector by September 15, 2010.

While there are a few technical amendments that could improve Act 32 there are really no fatal flaws. The most substantive and beneficial correction that could be made to the law is to reexamine the bonding requirements. The bonding requirements in Act 32 may be overreaching in the first place. The requirements are obviously directed at assuring the safety of taxpayer dollars.

However there may be other forms of insurance as opposed to bonding that could provide necessary protections perhaps at a lower cost.

Moreover, the bonding requirement may be problematic because the number of third party, private collectors that may be selected by TCCs in my opinion will end up being very limited. I believe that most of the existing bureaus, primarily located in the central and south central Pennsylvania region, will continue their current operations. These bureaus for the most part serve most, in some cases, all of the school districts and municipalities in their county currently. There may also be some consolidated tax collection operations of either school districts or municipalities currently in existence that could expand to become a county wide collector as well. However the number of these current not-for-profit operations that will be designated as the tax officer by their TCC is perhaps a dozen or two at the most in my opinion. That means we are likely to see about 45 or more TCCs choose private sector third party collectors as their tax officer.

Again, in my opinion, in those 45 or 50 TCCs, I would offer an informed guess that perhaps a dozen firms or less will be designated the tax officer. I would not be surprised if a half dozen firms are the tax officer for a majority of the TCCs. Consolidation of the EIT collection process to a few private sector firms has advantages and disadvantages. On the plus side will be economies of scale that will allow significant investment and maintenance of technology, the key fundamental asset needed to make the collection process efficient and effective.

However, a few major firms controlling most of the market raises questions of adequate capacity, the lack of competition to keep costs down and whether smaller TCCs in terms of EIT revenues will become the victims of a focus on larger TCC marketing efforts. There is not necessarily any indication of those negatives at this point but they are potential concerns that should be continued to be monitored.

The likelihood of a relatively small number of providers combined with the bonding requirements in Act 32 creates a more pressing problem. The amount of bonds required by Act 32 may not be as much of an issue if there were a significant number of providers. Providers could more easily obtain their own bonds from insurers. However, a small number of providers who now must meet the new bonding requirements of Act 32 might be in a more difficult position. It appears from our discussions that obtaining bonds will be more difficult at higher amounts for a small number of providers than for smaller amounts through a larger number of providers.

Another area of major concern is employer compliance. The key to assuring a relatively smooth transition in 2011 or 2012 and to prevent an interruption of critical cash flow to school districts and municipalities will be the readiness and cooperation of the employer community. If employers do not prepare for the transition and provide accurate information to the new EIT collector, major financial problems will be created for schools and municipalities. Act 32 does provide penalties for non-compliance by employers. However, the statute is very unclear about penalties for inaccurate or incomplete transmittal of tax withholding and employee information. The law also lacks penalties targeted to repeat employer violations. Employer compliance is now more critical. Act 32 prohibits the distribution of EIT revenues on an estimated basis. No longer can the collector make a distribution based on previous history or other estimating procedures and then reconcile employer withholdings afterwards. As a result, we could see a huge long jam of EIT revenues pending obtaining additional information from employers. The business community supported enactment of Act 32. We hope they will just as aggressively support employer education efforts to prevent a significant financial problem for school districts and municipalities.

These are the two greatest needs in term of fine tuning Act 32 with technical amendments. However, we would gladly live with the current law if the amendment process creates the potential for any major restructuring of Act 32. We fear that a lot of time, effort and cost of could be wasted if there are major changes to the law. What would be helpful is funding for some of the start-up costs. We acknowledge that some of these costs may be recaptured once the new system is fully implemented but again all mandates cost money.

Our association has made successful implementation a priority. We will continue to work extensively to make sure that the new law works well for schools, municipalities, employers and taxpayers. Thanks for the opportunity to present our perspective on this important issue. I will be glad to respond to your questions.

PASBO Implementation Packet

The following is a menu of currently available sample documents prepared by the PASBO Act 32 Task Force and Kegel Kelin Almy & Grimm LLP for consideration in implementing the Tax Collection Committee (TCC). TCCs should consult with legal counsel in determining which items to use, and appropriate modifications:

- 1A. TCC Major Action Timeline/Checklist
 - 1B. Tax Planning Committee Timeline/Checklist
 - 2. TCC Delegate Appointment Resolution
 - 2A. TCC Non-Voting Delegate Appointment Resolution
 - 3. TCC Delegate Appointment Letter
 - 4. Taxing Authority Letter to County Concerning TCC Delegate Appointment
 - 5. PASBO Guidance: Act 32 Tax Collection Committee Delegates
 - 5A. County Resolution Establishing TCC Meeting
 - 6. County Notice to Taxing Authorities and Delegates of First TCC Meeting
 - 7. County Public Notice of First TCC Meeting
 - 8. PASBO Guidance: Act 32 County Role
 - 9. PASBO Guidance: TCC Executive Director/Other Employees
 - 10. TCC Legal Services RFP
 - 11. Sample Tax Collection Committee Meeting Agendas
 - 11A. TCC First Meeting Agenda (simple version, without explanatory notes)
 - 11B. TCC First Meeting Agenda (detailed version, with explanatory notes)
 - 11C. TCC Delegate List (can also use 11F in lieu of 11C)
 - 11D. TCC Delegate Register Signature List
 - 11E. TCC Meeting Attendance List (without delegate names)
 - 11F. TCC Meeting Attendance List (with delegate names)
 - 12. TCC Right-to-Know Law Request Policy (short form)
 - 13. TCC Right-to-Know Law Request Policy (long form)
 - 14. TCC Model Bylaws (simple version, without explanatory notes)
 - 15. TCC Model Bylaws (detailed version, with explanatory notes)
 - 16. TCC Notice to DCED Concerning TCC Officers
 - 17. TCC Notice to DCED Concerning TCC Bylaws
 - 18. TCC Notice to Delegates of TCC Meeting Schedule
 - 19. TCC Notice to Delegates of Special TCC Meeting
 - 20. TCC Public Notice of TCC Meeting Schedule
 - 21. TCC Public Notice of TCC Special Meeting
 - 22. Tax Collector RFP
 - 23. TCC Tax Collection Agreement (to be included with tax collector RFP) (available at <http://www.pasbo.org/pasbostore.asp>).
 - 24. TCC Deposit and Investment Policy (Not Yet Available)
 - 25. TCC Tax Records Policy for Tax Collector (Not Yet Available)
 - 26. TCC Tax Collector Appointment Resolution
 - 27. TCC Tax Collector RFP Weighted Scoring Sheet
 - 28. TCC Notice to DCED Concerning Tax Collector Appointment
 - 29. TCC Auditor RFP/ Auditor Appointment Resolution
 - 30. TCC Banking Services RFP
 - 31. TCC Bank Account Resolution
- Documents to Be Developed**
- 32. TCC General Records Policy
 - 33. School District EIT Tax Resolution
 - 34. Municipality EIT Tax Ordinance
 - 35. TCC Tax Appeal Board Appointment Resolution
 - 36. TCC Tax Collector Bonding Policy
 - 37. TCC Unidentified Funds Policy
 - 38. TCC Interest Payment/Claim Policy
 - 39. TCC Tax Regulations, Policies, and Procedures

Act 32: Key Dates/Timeline for Required Steps

[Important notes: (1) This is merely a general timeline; a more detailed timeline of specific steps will also be required. (2) If the TCC decides to create a tax bureau, many additional steps will be required. This general timeline does not address the separate issues associated with creating a tax bureau. (3) This document is a work in process that will be modified from time to time. (4) The KKAG Detailed Legal Analysis explains the various law changes, steps, and other requirements in greater detail.]

Pre-TCC Stage – 2008/2009	Advance Planning for TCC Process
July 2, 2008	Chapter 3 general tax law provisions and Chapter 7 delinquent tax collection provisions effective (mostly a reenactment with minimal changes of prior LTEA)
January 1, 2009	<p><i>Taxing authorities should begin advance planning for TCC governance/first meeting/chairperson selection/other initial decisions</i> (Advance planning is necessary to simplify what will otherwise be a cumbersome TCC process. One or more individuals will need to form a planning group and assume a leadership role in each geographic area in order to facilitate advance planning. In addition, PASBO and other organizations representing school districts and municipalities should identify steps that can be taken to save TCC expense and facilitate the TCC process. In this regard, PASBO is already in the process of planning advance preparation of standard documents that will be needed by all TCCs. Consideration should also be given to sponsorship of joint purchase programs to satisfy common TCC needs such as insurance. Collaboration between school districts and municipalities will be important on all of these points.)</p> <p>Tax collectors should begin planning to update technology and take other steps to implement Act 32 requirements</p>
January 28, 2009	DCED deadline to publish TCD map and list
February/March 2009	Taxing authorities should appoint TCC voting delegates and alternates (Although the deadline is 9/15/09, earlier appointment is recommended to facilitate TCC advance planning.)
May 1, 2009	TCC delegates and alternates deadline to file Ethics Act Statement of Financial Interests with TCC for prior calendar year (if appointed before May 1)

July 1, 2009	Lancaster County taxing authorities deadline to adopt resolutions choosing whether to continue to collect EIT through the Lancaster County Tax Collection Bureau
September 1, 2009	DCED deadline to publish weighted vote for each taxing authority within each TCD (Hopefully, DCED will do so well in advance of September 1 to facilitate TCC advance planning.)
TCC First Stage – Year #1 – 2009/2010	TCC Organization and Tax Collection Decision
September 15, 2009	<i>Taxing authorities deadline to appoint TCC voting delegates and alternates</i> (Although the deadline is 9/15/09, earlier appointment is recommended to facilitate TCC advance planning.) County Commissioners Chair notifies taxing authorities of TCC first meeting
October 26 (21 days before TCC meeting)	County Commissioners Chair gives public notice of TCC first meeting
November 15, 2009	<i>TCC first meeting deadline</i> <ul style="list-style-type: none"> ➤ <i>County Commissioner Chair or designee convene meeting</i> ➤ <i>Must elect chairperson, vice chairperson, secretary</i> (and possibly other officers) ➤ <i>Should elect legal counsel</i> ➤ <i>Should adopt bylaws</i> – if possible based on advance planning (In the absence of advance planning, bylaw adoption will need to be deferred to a later meeting, but should be done ASAP.)
After officer election and bylaw adoption/ before tax collector appointment	TCC takes the following steps: <ul style="list-style-type: none"> ➤ TCC management structure decisions <ul style="list-style-type: none"> ○ Who will be the leader/chief operating officer to lead and make sure all required TCC steps occur and all TCC responsibilities are fulfilled? ○ Is an employee required? ➤ TCC finance decisions <ul style="list-style-type: none"> ○ TCC budget ○ TCC financing mechanism ○ TCC auditor ○ TCC bank ○ Tax collection cost allocation plan ➤ TCC insurance decisions ➤ Decision on TCC jurisdiction over LST and other taxes ➤ Decision on single-county or multi-county TCC ➤ Study income tax collection options ➤ Decision on tax bureau vs. third party collector ➤ Appoint new tax appeal board ➤ Adopt mandatory and other policies <ul style="list-style-type: none"> ○ Right-to-Know records policy/appoint Open Records Officer (priority – 2009) ○ Investment policy

	<ul style="list-style-type: none"> ○ Tax records policy ○ Tax collector investment income distribution policy ○ Tax collector unidentified funds rules ○ Regulations, policies, and procedures for tax administration <ul style="list-style-type: none"> ➤ If tax will be collected by independent third party tax collector, prepare tax collector RFP and conduct RFP process (As part of this process, the TCC must develop the formal written Act 32 Tax Collection Agreement and address the many important issues to be addressed therein, including bonding rules.) ➤ Decision on whether to accelerate universal non-resident withholding requirement to date earlier than January 1, 2012 ➤ Department of Revenue information exchange agreement
December 31, 2009	DCED deadline to provide a report to TCCs including sample bylaws, sample tax collector RFP, and also existing effective practices, methods, procedures and risk management strategies. (Hopefully, DCED will provide most of this information far in advance of September 1, since TCC bylaw adoption should be one of the very first TCC steps.) Section 509(d)(1) also mandates DCED to establish tax collector bond and security guidelines. (Although no deadline is established, hopefully DCED will provide these guidelines by December 31, 2009 for use in connection with the tax collector selection process.)
April 15, 2010	TCC deadline to adopt bylaws (In fact, it will be important to adopt bylaws far in advance of this date.)
June 1, 2010	TCC deadline to establish new Tax Appeal Board
September 15, 2010	TCC deadline to appoint county-wide tax collector (should also sign new, written Act 32 Tax Collection Agreement by this date) (effective 01/01/11 or 01/01/12)
September 25, 2010	TCC deadline to notify DCED of tax collector appointment and contact information

TCC First Stage – Year #2 – 2010/2011	Transition to New Act 32 Tax Collector
November 1, 2010	Taxing authority deadline to decide whether its current tax collector or the new Act 32 tax collector will collect 2011 tax
December 1, 2010	Taxing authority deadline to notify DCED of tax collector for 2011 tax
December 31, 2010	Although no statutory deadline, DCED should provide mandated tax return and other forms, regulations and guidelines by this date in order to facilitate effective transition mandated starting one year later.
May/June 2011	<i>School districts adopt new EIT or PIT resolutions effective January 1, 2012</i>
July 1, 2011	TCC deadline to adopt and begin implementing transition plan for transferring responsibilities to new Act 32 tax collector and implementing Act 32 tax law changes
November/December 2011	<i>Municipalities adopt new EIT or PIT ordinances effective January 1, 2012</i> (might want to accelerate to earlier date)
TCC Second Stage – 2012 and Future Years	New Tax Law/TCC Tax Collection Oversight
January 1, 2012	<p><i>Act 32 county-wide collection begins</i></p> <p><i>Act 32 income tax law changes effective</i>, including:</p> <ul style="list-style-type: none"> ➤ Change in law on business losses/military service ➤ Mandatory quarterly estimated returns for individuals ➤ New tax return and other forms ➤ Universal non-resident withholding ➤ Multi-site employer option to pay in one county ➤ Tax collector monthly distributions; prohibition on estimated distributions ➤ Tax collector claim/interest payment rules ➤ New tax appeal board ➤ Second stage of TCC responsibilities begins, involving oversight of county-wide tax collection arrangements and periodic decisionmaking on continuing or changing arrangements
June 30, 2012	Former LTEA tax collector deadline to turn over tax records to new Act 32 tax collector. Delinquent income tax from 2011 or prior years become responsibility of new tax collector, except to the extent a taxing authority has made other provisions for the collection of delinquent taxes.
Future Annual Requirements	
Within 30 days	TCC file with DCED notice of election of any new officers within 30 days of election

May 1	TCC delegates deadline to file Ethics Act Statement of Financial Interests with TCC
July 1	DCED deadline to annually recalculate taxing authority weighted vote
September 1	TCC deadline to file tax collector financial statement/ auditor report for prior calendar year with taxing authorities and DCED
By December 31	<ul style="list-style-type: none"> ➤ School district and municipality annual appointment of TCC delegates ➤ TCC annual election of officers ➤ TCC selection of TCC auditor for next calendar year ➤ TCC deadline for approval of auditor for tax collector records for next calendar year ➤ TCC deadline to establish tax collector bond amount for next calendar year (This step should be taken earlier in the year within a reasonable time after receipt and review of the tax collector audited financial statements reflecting prior year tax collections.)