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# Municipalities Financial Recovery Act

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# **Municipalities Financial Recovery Act**

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# Municipalities Financial Recovery Act

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## Section 101. Short title

This act shall be known and may be cited as the Municipalities Financial Recovery Act.

## Section 102. Purpose and legislative intent

- (a) **POLICY.--** It is hereby declared to be a public policy of the Commonwealth to foster fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices. The failure of a municipality to do so is hereby determined to affect adversely the health, safety and welfare not only of the citizens of the municipality but also of other citizens in this Commonwealth.
- (b) **LEGISLATIVE INTENT.--** The General Assembly finds and declares as follows:
- (1) It is the intent of the General Assembly to:
    - (i) Enact procedures and provide powers and guidelines to ensure fiscal integrity of municipalities while leaving principal responsibility for conducting the governmental affairs of a municipality, including choosing the priorities for and manner of expenditures based on available revenues, to the charge of its elected officials, consistent with the public policy set forth in this section.
    - (ii) Enact procedures for the adjustment of municipal debt by negotiated agreement with creditors.
    - (iii) Provide for the exercise of the Commonwealth's sovereign and plenary police power in emergency fiscal conditions to protect the health, safety and welfare of a municipality's citizens when local officials are unwilling or unable to accept a solvency plan developed for the benefit of the community.
  - (2) Changing and deteriorating economic conditions, developing technologies and attendant unemployment erode local tax bases and threaten essential municipal services. Under such circumstances, such distressed governmental units may no longer be viable and that the citizens of those communities should be granted the opportunity to voluntarily consolidate or merge their municipalities with other municipalities in an effort to allow municipal boundaries to reflect the geographic and economic realities of a distressed area, to merge a common community of interest, to take advantage of economies of scale in providing services and to create an expanded revenue base to provide necessary public services to the citizens of financially distressed municipalities.
  - (3) Policies of certain municipalities are so ineffective and the financial conditions so severe that the provision of vital and necessary services is threatened.
  - (4) Sustained failure of a municipality to enact or implement a fiscal plan to adequately address or prevent insolvency after repeated opportunities to do so:
    - (i) constitutes a fiscal emergency; and
    - (ii) signifies:
      - (A) a breakdown in the function of municipal government;
      - (B) a dereliction of its elected officials' paramount public duty to safeguard the health, safety and welfare of its citizens; and
      - (C) a threat to the fiscal stability of neighboring communities.

- (5) Pursuant to the Commonwealth's paramount right and duty to maintain law and order and protect and preserve the health, safety and welfare of its citizens and ensure compliance with this act under Article IX of the Constitution of Pennsylvania, the Governor is authorized to act in the face of a fiscal emergency under paragraph (4)(i) and dereliction of official duty under paragraph (4)(ii)(B).

## **Section 103. Definitions**

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"ARBITRATION SETTLEMENT."** An adjustment or settlement of a collective bargaining agreement or dispute. The term includes a final or binding arbitration award or other.

**"BASIS OF ACCOUNTING."** Revenues and expenditures may be recognized on the cash, modified accrual or full accrual basis of accounting, provided that basis is applied consistently throughout the fiscal periods reported for evaluation purposes.

**"CHIEF EXECUTIVE OFFICER."** Mayor in a mayor-council form of government or manager in a council-manager form of government of a city operating under an optional form of government pursuant to the act of July 15, 1957 (P.L. 901, No. 399), known as the Optional Third Class City Charter Law; a mayor of a city of the first class under the act of April 21, 1949 (P.L. 665, No. 155), known as the First Class City Home Rule Act; or an individual serving in such capacity as designated by a home rule charter or optional plan pursuant to the act of April 13, 1972 (P.L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law.

**"CLAIM."** Right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or right to an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**"COMMONWEALTH AGENCY."** The Governor and the departments, boards, commissions, authorities and other officers and agencies of this Commonwealth, whether or not subject to the policy supervision and control of the Governor.

**"CREDITOR."** An individual, partnership, corporation, association, estate, trust, governmental unit or the governing board of a pension fund of a municipality that has a claim against a municipality.

**"DEFICIT."** The excess of expenditures over revenues, stated as a percentage of revenue, during an accounting period. This calculation shall include all governmental fund types and all proprietary fund types, but shall exclude all fiduciary fund types of the municipality.

**"DEPARTMENT."** The Department of Community Affairs of the Commonwealth.

**"EXPENDITURES."** Reductions in fund equity, including current operating expenses that require the use of fund equity, debt service and capital outlays. The term shall not include interfund transfers.

**"FUND EQUITY."** Excess of assets of a fund over its liabilities.

**"GOVERNING BODY."** The council in cities, boroughs and incorporated towns; the board of commissioners in counties; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; or the legislative policy-making body in home rule municipalities.

**"MATURED CLAIM."** A claim that has been reduced to judgment or liquidated in amount by agreement for a period of 90 days prior to the filing of a petition to commence fiscal distress proceedings under this act.

**"MUNICIPAL RECORD."** A financial record and document of a municipality or of an authority incorporated by a municipality, excluding confidential information relating to personnel matters and matters relating to the initiation and conduct of investigations of violations of law.

**"MUNICIPALITY."** Every county, city, borough, incorporated town, township and home rule municipality.

**"PLAN" or "RECOVERY PLAN."** A recovery plan developed under this act.

**"REVENUES."** Additions to fund equity other than from interfund transfers, proceeds of debt and proceeds of disposition of general fixed assets.

**"SECRETARY."** The Secretary of Community Affairs of the Commonwealth.

## Section 121. Powers and duties of department

### (a) **COMPILE FINANCIAL DATA.--**

- (1) A power and duty of the department shall be to maintain accurate and current information and data on the fiscal status of municipalities to determine if criteria set forth in section 201 exist and, if so, whether the existence of those factors validly indicates fiscal distress.
- (2) In compiling the information and data, the department shall mail, before January 1 of each year, a Survey of Financial Condition form to each municipality applicable to the municipality's prior fiscal year.
  - (i) The survey shall seek information necessary to determine the fiscal status of a municipality, shall be concise to facilitate prompt response and shall contain an attestation clause to be signed by the presiding officer of the municipality's governing body. The actual survey form shall not exceed two pages in length.
  - (ii) The survey shall be provided to the municipal clerk or municipal secretary along with tax information forms in accordance with law.
  - (iii) The survey shall include information based on the criteria specified in section 201.
  - (iv) The survey shall include information relating to the basis of accounting utilized by municipalities.

(b) **ASSESS DATA.--** A power and duty of the department shall be to apply the criteria of section 201 to data and information on the fiscal status of municipalities to assess the validity and applicability of an indication of municipal financial distress. In assessing validity and applicability, the department shall undertake a review process, including, but not limited to, consultation, correspondence and visits with a municipality which appears to be financially distressed, notwithstanding the provisions of section 2501-C(e) and (f) of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, which limits department intervention to incidences when such is requested by the municipality. If the department assesses that a municipality needs assistance to correct minor fiscal problems, the department shall offer appropriate recommendations. If the municipality adopts those recommendations, the department need take no further action.

(c) **NOTIFY AGENCIES OF DETERMINATION.--** Upon the making of a determination by the secretary that a municipality is distressed pursuant to section 203(f), the department shall immediately notify the heads of all Commonwealth agencies of the determination.

(d) **ACT AS ANALYZER OF MUNICIPAL REPORTS.--** A power and duty of the department shall be to act as the Commonwealth analyzer for relevant reports, data and information required by law to be filed by municipalities with any Commonwealth agency when such reports, data and information directly relate to the financial conditions of



municipalities. The department shall, in consultation with every Commonwealth agency, determine which reports, data and information relate to the fiscal condition of municipalities. Upon an indication of distress in a municipality through information available to the department, the department shall request data, reports and information from all Commonwealth agencies to assist the department to substantiate a possible distress status of a municipality.

- (e) **FURNISH PROGRAM DATA TO MUNICIPALITY.--** Upon receipt of information forwarded to the department by each Commonwealth agency pursuant to section 122(a), the department shall furnish this information to the distressed municipality coordinator for possible inclusion of such information into the plan developed by the coordinator in accordance with Subchapter C of Chapter 2.
- (f) **DEVELOP EARLY WARNING SYSTEM.--** In conjunction with assessing a municipality's current fiscal stability under subsections (a) and (b) and section 201, the department shall develop an early warning system utilizing necessary fiscal and socioeconomic variables to identify municipal financial emergencies before they reach crisis proportions and to notify an affected municipality appropriately. The department shall be responsible for testing the validity and reliability of these variables and shall continuously monitor them to assure their effectiveness. In developing an early warning system, the department may employ or contract with municipal fiscal consultants as deemed necessary to execute the provisions of this subsection. Notice shall be published in the Pennsylvania Bulletin that the early warning system has been developed and the system may not become operational until the publication of the notice.
- (g) **DISTRIBUTE GRANTS AND LOANS.--** The department shall distribute grants and loans to financially distressed municipalities in accordance with Chapter 3.
- (h) **PROMULGATE RULES AND REGULATIONS.--** The department shall promulgate rules and regulations necessary to implement the provisions of this act.

**Section 122. Duties of Commonwealth agencies**

- (a) **REVIEW PROGRAMS.--** After the secretary makes a determination that a municipality is distressed and the department notifies Commonwealth agencies of the secretary's determination pursuant to section 121(c), each agency shall review all matters and programs pending, underway or about to be commenced or possible programs concerning the distressed municipality. A recommended action which is within the authority and budget of a Commonwealth agency and which, in the judgment of the head of the agency, will help to improve the distressed municipality's financial situation shall be reported to the department.
- (b) **TRANSFER DOCUMENTED INFORMATION.--** Upon request of the department, each Commonwealth agency shall forward to the department all documented reports, data and other information referred to in section 121(d) within 30 days of receipt.

**Section 123. Powers and duties of municipalities**

- (a) **FILE COMPLETED SURVEY.--** On or before March 15 of each year, every municipality shall return to the department a completed Survey of Financial Conditions referred to in section 121(a). No municipality shall receive its allotted payments pursuant to the act of June 1, 1956 (1955, P.L.1944, No. 655), referred to as the Liquid Fuels Tax Municipal Allocation Law, unless it complies with the provisions of this section, notwithstanding a provision of law to the contrary, and the Department of Transportation may not disburse funds to a municipality pursuant to the Liquid Fuels Tax Municipal Allocation Law until notified by the department that the municipality has complied with the provisions of this section.
- (b) **FILE APPLICATIONS FOR GRANTS AND LOANS.--** A financially distressed municipality may apply to the secretary for emergency financial aid in the form of a grant or loan pursuant to Chapter 3.
- (c) **RIGHT TO PETITION COURT FOR TAX INCREASE.--**
  - (1) After a municipality has adopted a plan under Subchapter C of Chapter 2, it may petition the court of common pleas of the county in which the municipality is located to increase its rates of taxation for earned income, real property, or both, beyond maximum rates provided by law.

- (2) If a tax increase above existing limits is granted by the courts, the increase shall be effective for a period of one year. The one-year increase shall run from the date specified in the petition filed with the court or, if no such date is specified, from the beginning of the current fiscal year of the municipality. Subsequent increases in rates of taxation may be granted by the court upon annual petition of the municipality. The additional amount of taxes resulting from the petition shall not be subject to sharing with a school district.
- (3) A petition filed by a city of the second class A under this subsection may not include an increase in a tax on nonresident income unless the municipality certifies to the court, with regard to those provisions of the plan having a measurable fiscal impact, that:
  - (i) the municipality has substantially implemented the provisions which are within the authority of the chief executive officer or governing body, including, but not limited to, provisions of the plan that call for increasing existing tax rates levied on residents and increasing fees charged by the municipality;
  - (ii) the municipality has taken those actions required to obtain the approval of other parties for those provisions which may not be implemented without such approval, including, but not limited to, the approval of a court, local electors or any collective bargaining unit; and
  - (iii) the additional income from the aforementioned actions is insufficient to balance the municipal budget, necessitating additional revenue from an increase in the tax on nonresident income.

## Section 141. Jurisdiction of court of common pleas

- (a) **INCREASES IN TAX RATES.--** The court of common pleas of each county shall have jurisdiction to hear a petition filed by a municipality which has adopted a final plan pursuant to Subchapter C of Chapter 2 to increase rates of taxation for earned income, real property, or both, beyond maximum rates provided by law. The court may extend annually the increased taxing powers of the municipality until the termination date of the plan adopted by the municipality pursuant to Chapter 2.
- (b) **INVOLUNTARY COMPROMISES OF DELINQUENT TAXES.--** The court of common pleas of each county may hear a petition filed by at least two taxing authorities having taxing power over the properties within a municipality which has adopted a final plan pursuant to Subchapter C of Chapter 2 if the petition requests a compromise of delinquent taxes due on a property in that municipality. The court may order the property to be sold at a sheriff's sale and the proceeds to be divided among all authorities which are owed taxes for the property sold. If the property is sold at sheriff's sale and if the proceeds are insufficient to satisfy tax liens on the property, the court shall order a proration of the sale proceeds among the taxing authorities which fixed the liens.

*Lexis Editor's Notes.--Section 6.1 of Act 2004-222 provides that "[s]ection 141 of the act of July 10, 1987 (P.L. 246, No. 47), known as the Municipalities Financial Recovery Act, shall not apply to a city of the second class insofar as the section confers authority upon the city to petition for the imposition of an earned income tax on nonresidents. This section shall not be construed to limit any other provision in the Municipalities Financial Recovery Act. This section shall expire upon termination of the authority established under the act of February 12, 2004 (P.L. 73, No. 11), known as the Intergovernmental Cooperation Authority Act for Cities of the Second Class."*

## Section 201. Criteria

The evaluation of a municipality's financial stability by the department under section 121 shall include each of the following criteria. If at least one criterion is present and the department assesses pursuant to section 121(b) that it is a valid indication of municipal financial distress, then the department shall exercise its powers and duties pursuant to section 121.

- (1) The municipality has maintained a deficit over a three-year period, with a deficit of 1% or more in each of the previous fiscal years.

- (2) The municipality's expenditures have exceeded revenues for a period of three years or more.
- (3) The municipality has defaulted in payment of principal or interest on any of its bonds or notes or in payment of rentals due any authority.
- (4) The municipality has missed a payroll for 30 days.
- (5) The municipality has failed to make required payments to judgment creditors for 30 days beyond the date of the recording of the judgment.
- (6) The municipality, for a period of at least 30 days beyond the due date, has failed to forward taxes withheld on the income of employees or has failed to transfer employer or employee contributions for Social Security.
- (7) The municipality has accumulated and has operated for each of two successive years a deficit equal to 5% or more of its revenues.
- (8) The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments.
- (9) A municipality has sought to negotiate resolution or adjustment of a claim in excess of 30% against a fund or budget and has failed to reach an agreement with creditors.
- (10) A municipality has filed a municipal debt readjustment plan pursuant to Chapter 9 of the Bankruptcy Code (11 U.S.C. § 901 et seq.).
- (11) The municipality has experienced a decrease in a quantified level of municipal service from the preceding fiscal year which has resulted from the municipality reaching its legal limit in levying real estate taxes for general purposes. For determining levels of municipal service for the year 1987, the department shall utilize annual statistical data since the year 1982 to determine a pattern of decrease in delivery of municipal services since 1982.

## **Section 202. Standing to request a determination**

The following have standing to request a determination of municipal financial distress from the secretary:

- (1) The department itself, if, subsequent to its review and analysis under sections 121 and 201, it concludes that a municipality is substantially in a condition of financial distress.
- (2) The governing body of the municipality upon passing a resolution by a majority vote of the governing body after a special public meeting duly advertised as provided by law.
- (3) A creditor with a matured claim to whom the municipality owes \$10,000 or more, if the creditor agrees in writing to suspend pending actions and to forbear from bringing an alternate or additional legal action against the municipality to collect the debt or part of it for a period of nine months or until the municipality adopts a plan under this act, whichever occurs first. The filing of a Federal debt adjustment action by a municipality pursuant to Subchapter D of Chapter 2 during the nine-month period cancels the forbearance obligation.
- (4) Ten percent of the number of electors of the municipality that voted at the last municipal election, by petition to the department alleging the municipality is fiscally distressed.
- (5) Ten percent or more of the beneficiaries of a pension fund upon petition to the department, provided that a municipality has not timely deposited its minimum obligation payment as required by section 302 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act.
- (6) Ten percent of the employees of the municipality who have not been paid for over 30 days from the time of a missed payroll, upon signing collectively the petition to the department.
- (7) Trustees or paying agents of a municipal bond indenture.

- (8) The elected auditors, appointed independent auditors or elected controllers of a municipality if they have reason to believe a municipality is in a state of financial distress pursuant to section 201.
- (9) A trustee or actuary of a municipal pension fund, if the municipality has not made a timely deposit of its minimum obligation payment as required by section 302 of the Municipal Pension Plan Funding Standard and Recovery Act.
- (10) The chief executive officer of any city.

### **Section 203. Procedure for determination**

- (a) **REQUEST.--** A party with standing under section 202 may request the secretary, on a form supplied by the department, to determine that the municipality involved is a financially distressed municipality. The request shall be signed by the requesting party, and it shall be sealed and duly notarized. The request shall:
  - (1) Allege the requesting party has standing to bring a determination of the distress.
  - (2) State why the requesting party believes the municipality is distressed under section 201.
  - (3) Include a listing of judgments recorded against the municipality.
  - (4) Include any other material allegation justifying the relief afforded by this act.
  - (5) If the requesting party is a municipality, the request may include a statement indicating why the requesting party believes manifestation of section 201 criteria is imminent and inevitable. This statement may be in lieu of the statement required under paragraph (2).
- (A.1) **PETITIONS.--** If a request is made under section 202(4), (5) or (6), the following procedure shall be used:
  - (1) The procedure set forth in subsection (a).
  - (2) Evidence that the required number of persons in the class concurs with the requesting party shall be obtained by circulating a petition or petitions to get the signatures and addresses of those in concurrence.
    - (i) A party who requests the determination of financial distress of a municipality shall be responsible for circulating this petition.
    - (ii) If the petition must be longer than one page in order to obtain the requisite number of signatures and addresses, the requesting party may enlist petition circulators to assist; however, each circulator shall attest in writing to the accuracy of the signatures and addresses obtained and the method used to obtain them. This attestation shall be affixed to the sheet or sheets circulated by that person and returned to the requesting party.
    - (iii) The requesting party shall staple all attestations and petition sheets together into a single packet, making sure that the attestation sheet and its respective petition sheets are placed together. Each packet shall clearly indicate whether the petition is filed under section 202(4), (5) or (6). The requesting party shall file this packet with the determination request.
    - (iv) Those who may sign a petition are limited to the members of the class seeking the request.
    - (v) A petition or separate sheet of a multiple-sheet petition may not be circulated unless it clearly states on its face that the signatories concur in the request for a determination.
- (b) **HEARING.--** Within ten days of receiving a request, the secretary shall set a time and place for a public hearing which shall be scheduled to be held on a date at least two weeks but not more than 30 days later within the county of the subject municipality.
- (c) **INVESTIGATION.--** After receiving the request but before the public hearing, the secretary may make an investigation into the financial affairs of the municipality. The results of the investigation or any study previously conducted by the department under section 121 shall be placed in the record of the public hearing.

- (d) **NOTICE.--** The secretary shall publish notice of the hearing in accordance with the act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act, at least once in a newspaper with general circulation in the subject municipality and shall give written notice by certified mail, with return receipt requested, upon the municipal clerk or municipal secretary, the mayor, the municipal solicitor, each member of the governing body of the municipality and the petitioner.
- (e) **HEARING OFFICER.--** The secretary or an official of the department designated by the secretary shall conduct the public hearing to hear testimony of the requesting party and other interested persons.
- (f) **DETERMINATION.--** Within 30 days after the hearing, the secretary shall issue an administrative determination of whether the municipality is financially distressed and reasons for the determination.
- (g) **APPEAL.--** A determination by the secretary under this act is appealable pursuant to Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

*Lexis Editor's Notes.--Section 4 of Act 2011-79 renumbers Section 602 of the act of July 10, 1987 (P.L. 246, No. 47) as Section 2002, and provides that "Section 203(a)(5) shall expire upon publication in the Pennsylvania Bulletin of the notice required under section 121(f)."*

*Section 602 of Act 1987-47 provides that "[s]ection 203(a)(5) shall expire upon publication in the Pennsylvania Bulletin of the notice required under section 121(G)."*

## **Section 204. Commonwealth funds**

No municipality shall be deemed to be distressed by reason of circumstances arising as a result of the failure of the Commonwealth to make any payment of money, including any Federal money which passes through the Commonwealth, due the municipality at the time such payment is due.

## **Section 221. Designation**

- (a) **APPOINTMENT.--** No later than 30 days following a determination of municipal financial distress under section 203, the secretary shall appoint a coordinator who shall prepare a plan addressing the municipality's financial problems.
- (b) **QUALIFICATIONS.--** The coordinator may be an employee of the department, furnished with additional staff or consultant assistance, if needed, or may be a consultant or consulting firm. No elected or appointed official or employee of the municipality shall be eligible for serving as coordinator. The coordinator shall be experienced in municipal administration and finance.
- (c) **COMPENSATION.--** The department shall be responsible for compensating the coordinator appointed by the secretary for reasonable salary and expenses. Notwithstanding any law to the contrary, the appointment of a plan coordinator shall not be subject to contractual competitive bidding procedures.
- (d) **DUTIES.--** The coordinator shall prepare and administer a plan designed to relieve the financial distress of the municipality which he has been appointed to serve.
- (e) **POWERS.--** The coordinator may apply for grants and loans pursuant to Chapter 3, as he deems necessary.

## **Section 222. Access to information**

The coordinator shall have full access to all municipal records. If the coordinator believes that an official or employee of the municipality is not answering questions accurately or completely or is not furnishing information requested, the coordinator may notify the official or employee in writing to furnish answers to questions or to furnish documents or records, or both. If the official or employee refuses, the coordinator may seek a subpoena in the court of common pleas to compel testimony and furnish records and documents. An action in mandamus shall lie to enforce the provisions of this section.

## Section 223. Public and private meetings

- (a) **PUBLIC MEETINGS AUTHORIZED.**-- The coordinator may hold public meetings as defined in the act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act, in connection with plan preparation.
- (b) **PRIVATE MEETINGS AUTHORIZED.**-- Notwithstanding the provisions of the Sunshine Act, private negotiation sessions may be conducted by the coordinator between the municipality and the individual creditors in an effort to obtain the consent of each creditor to the proposed adjustment and handling of specific claims against the municipality.

## Section 224. Coordinator barred from elective office

The coordinator may not run for an elected office of the municipality or its coterminous political subdivisions within two years after the final adoption of a plan pursuant to this act.

## Section 241. Contents

A plan formulated by the appointed coordinator shall be consistent with applicable law and shall include any of the following factors which are relevant to alleviating the financially distressed status of the municipality:

- (1) Projections of revenues and expenditures for the current year and the next two years, both assuming the continuation of present operations and as impacted by the measures in the plan. The projections must include an itemization of the following:
  - (i) Projected revenues, including:
    - (A) Local taxes.
    - (B) Licenses, permits and fines.
    - (C) Sales and rentals.
    - (D) Federal, State and county grants and loans.
    - (E) Any other sources of projected revenue.
  - (ii) Projected expenditures, including:
    - (A) Debt service.
    - (B) Workforce.
    - (C) Elected and executive officials.
    - (D) Financial management.
    - (E) Infrastructure costs including highways, roads and wastewater systems.
    - (F) Maintenance costs, including recycling and trash collection, disposal and removal.
    - (G) Other professional services.
    - (H) Public safety.
    - (I) Community and economic development.
    - (J) Any other applicable expenditures.
- (2) Recommendations which will:
  - (i) Satisfy judgments, past due accounts payable, and past due and payable payroll and fringe benefits.
  - (ii) Eliminate deficits and deficit funds.
  - (iii) Restore to special fund accounts money from those accounts that was used for purposes other than those specifically authorized.

- (iv) Balance the budget, avoid future deficits in funds and maintain current payments of payroll, fringe benefits and accounts through possible revenue enhancement recommendations, including tax or fee changes.
  - (v) Avoid a fiscal emergency condition in the future.
  - (vi) Enhance the ability of the municipality to negotiate new general obligation bonds, lease rental debt, funded debt and tax and revenue anticipation borrowing.
  - (vii) Consider changes in accounting and automation procedures for the financial benefit of the municipality.
  - (viii) Propose a reduction of debt due on specific claims by an amortized or lump-sum payment considered to be the most reasonable disposition of each claim possible for the municipality considering the totality of circumstances.
- (3) Possible changes in collective bargaining agreements and permanent and temporary staffing level changes or changes in organization.
  - (4) Recommended changes in municipal ordinances or rules.
  - (5) Recommendations for special audits or further studies.
  - (6) An analysis of whether conditions set forth in section 261 exist, whether specific exclusive Federal remedies could help relieve the municipality's financial distress and whether filing a Federal debt adjustment action under Subchapter D is deemed to be appropriate.
  - (7) An analysis of whether the economic conditions of the municipality are so severe that it is reasonable to conclude that the municipality is no longer viable and should consolidate or merge with an adjacent municipality or municipalities.
  - (8) An analysis of whether functional consolidation of or privatization of existing municipal services is appropriate and feasible and recommendations for where and how this could be done.
  - (9) A capital budget which addresses infrastructure deficiencies.
  - (10) Recommendations for greater use of Commonwealth economic and community development programs.
  - (11) Notwithstanding any other provision of law, limits on projected expenditures for individual collective bargaining units that may not be exceeded by the distressed municipality, giving due consideration to the projection of revenue and expenses under paragraph (1).

## **Section 242. Publication**

- (a) **FILING.**-- Within 90 days of an executed contract between the department and the coordinator, the coordinator shall formulate a plan for relieving the municipality's financial distress and shall deliver true and correct copies of it to:
  - (1) The municipal clerk or municipal secretary, who shall immediately place the copy on file for public inspection in the municipal office.
  - (2) The secretary.
  - (3) Each member of the municipal governing body.
  - (4) The mayor.
  - (5) The chief financial officer of the municipality.
  - (6) The solicitor of the municipal governing body.
  - (7) All parties who have petitioned the secretary under section 203.

- (b) **DATE OF FILING.--** For purposes of this section, the date of filing the plan shall be the date on which the municipal clerk or municipal secretary places a true and correct copy of the plan on file for public inspection in the municipal office.
- (c) **NOTICES OF PLAN.--**
- (1) On the date of filing, notice that a plan has been filed and is open for public inspection in the municipal office shall be published by the coordinator in the county legal reporter and in one or more newspapers with general circulation serving the area in which the municipality is located. The cost for publishing the notice shall be borne by the department. The notice shall set forth the following information:
    - (i) That a plan regarding the coordination and relief of the municipality's financial distress was filed pursuant to this act.
    - (ii) The date and place of filing.
    - (iii) That the public has 15 days from the date of filing in which to file written comments on the plan.
    - (iv) The name and address of the coordinator to whom written comments should be sent.
    - (v) Summary of the plan.
  - (2) Notice of a coordinator's public meeting on the plan shall be published by the coordinator in the county legal reporter and in one or more newspapers with general circulation serving the area in which the municipality is located. The department shall bear the cost for publishing the notice. The notice shall contain the following information:
    - (i) That the purpose of the coordinator's public meeting is to receive public comments on the plan.
    - (ii) The date and place of the meeting.
  - (3) The coordinator may combine the publication of the notice that a plan has been filed with the publication of the notice of the public meeting.
- (d) **COMMENT PERIOD.--** Written comments on the plan may be filed with the coordinator. Written comments shall be made no later than 15 days after the date of filing. Written comments judged by the coordinator to have value to the plan may be used to develop a revised plan.
- (e) **COORDINATOR'S PUBLIC MEETING.--** A meeting conducted by the coordinator in the municipality shall be set for a date not later than 20 days after the date of filing the plan. The coordinator shall request in writing that the chief executive officer, each member of the municipal governing body and the chief financial officer of the municipality to be present at the coordinator's meeting. Comments on the plan shall be received by the coordinator at that time.

### Section 243. Review of plan

- (a) **GENERAL RULE.--** The coordinator, in his discretion, shall consider comments made on the plan. Creditors who do not consent to the handling of their claim by the plan shall notify the coordinator of their rejection of the plan not later than ten days before the public meeting scheduled by the governing body under section 245.
- (b) **REJECTED CLAIMS.--** If a creditor has rejected the plan, the coordinator shall make a written report to the governing body stating whether the timing and amount of payment or proposed resolution of the claim is the best disposition the municipality can make.
- (c) **ADDITIONAL NEGOTIATIONS AUTHORIZED.--** Additional negotiations between the municipality and creditors rejecting the plan shall be encouraged and presided over by the coordinator.



- (d) **GOVERNING BODY PROPOSALS.--** The governing body of the municipality may propose to the coordinator resolutions of claims which have been the reason for rejection of the proposed plan, and the coordinator may revise the plan accordingly.
- (e) **REVISION ON OWN INITIATIVE.--** Nothing in this section shall preclude the coordinator from revising a plan of his own initiative.

### **Section 244. Revision**

Neither the secretary nor the chief executive officer or the governing body, as appropriate, may revise the coordinator's plan. However, if the coordinator decides to revise the plan, the coordinator shall consult with the secretary and either the chief executive officer or the governing body throughout the revision of the plan and shall give consideration to comments they may propose. A revised plan shall be completed and delivered to each party cited in section 242(a)(1) through (7) within 10 days from the date of the coordinator's public meeting on the original plan.

### **Section 245. Adoption by municipality**

Not later than 25 days following the coordinator's public meeting, the municipal governing body shall either enact an ordinance approving the implementation of the plan, including enactment of necessary related ordinances and revisions to ordinances, or shall reject the plan and proceed under section 246. If the ordinance takes effect in a municipality operating under an optional plan form of government or a home rule charter, the chief executive officer may issue an order directing the implementation of the plan no later than seven days from the enactment of the ordinance by the governing body.

### **Section 246. Preparation and action on alternate plan**

- (a) **CHIEF EXECUTIVE OFFICER'S PLAN.--** If the governing body of a municipality that operates under an optional plan form of government or a home rule charter enacts an ordinance directing implementation of the coordinator's plan and the chief executive officer refuses or fails to issue an order as provided in section 245, or if the governing body refuses to enact an ordinance approving the coordinator's plan, then the chief executive officer, within 14 days of the action or refusal to act on the ordinance by the governing body, shall develop a plan, including a signed order implementing it, which shall be the subject of a public meeting no later than ten days following its completion.
  - (1) The chief executive officer may conduct private sessions before the public meeting with individual creditors in an effort to obtain the consent of each creditor to proposed adjustment and handling of specific claims against the municipality. An agreement reached as a result of these private sessions shall become a matter of record and part of the proceedings of the public meeting conducted pursuant to this subsection.
  - (2) The chief executive officer shall be responsible for placing notice that a public meeting will be held on his plan. Notice shall be published in the same manner as provided in section 242(c). The coordinator shall attend the public meeting and furnish written and oral comments on the chief executive officer's plan.
- (b) **GOVERNING BODY'S PLAN.--** In the case of a municipality operating under a form of government other than an optional plan form of government or a home rule charter, if the governing body by majority vote refuses to enact an ordinance approving and implementing the coordinator's plan as provided in section 245, then within 14 days of its refusal the governing body shall develop a plan which shall be the subject of a public meeting held not later than ten days following plan completion.
  - (1) The governing body may conduct private sessions before the public meeting with individual creditors in an effort to obtain consent of each creditor to proposed adjustment and handling of specific claims against the municipality. An agreement reached as a result of these private sessions shall become a matter of record and part of the proceedings of the public meeting conducted pursuant to this subsection.
  - (2) The governing body shall be responsible for placing notice that a public meeting will be held on its plan. Notice shall be published in the same manner as provided in section 242(c). The coordinator shall attend the public meeting and furnish written and oral comments on the governing body's plan.

- (c) **APPROVAL OR REJECTION OF PLAN.--** 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.
- (d) **REVIEW BY SECRETARY.--**
- (1) If an ordinance is enacted approving a plan under this section, it shall be forwarded to the secretary for determination that the plan, when implemented, will overcome the municipality's financial distress.
  - (2) If the secretary is of the opinion that the plan, when implemented, will overcome the municipality's financial distress, the secretary shall so inform the municipality.
  - (3) If the secretary is of the opinion that the plan, when implemented, will not overcome the municipality's financial problems, the secretary shall inform the municipality of the following:
    - (i) The secretary's determination.
    - (ii) The reasons for the determination.
    - (iii) The applicability of sections 251 and 264 to the municipality.

## Section 247. Plan implementation

- (a) **COORDINATOR'S PLAN.--** If the coordinator's plan is adopted by the municipal governing body, the coordinator shall be charged with implementing his plan and shall:
- (1) Give written notice of plan adoption to creditors, collective bargaining units and other parties who will be directly affected by plan implementation. In the notice he shall outline the provisions of the plan and specify how that person's claim or interest will be treated.
  - (2) Initiate plan implementation and continue its implementation for at least four months.
  - (3) Oversee completion of the plan either by directly controlling the implementation process or by turning the implementation process over to a person designated by the governing body or by the chief executive officer, as the case may be. The person designated shall supply the coordinator with monthly reports. The coordinator or the person designated by the governing body or by the chief executive officer, as the case may be, shall supply the department with monthly reports which shall contain the following information:
    - (i) Evidence of payments to creditors as required under the plan.
    - (ii) Evidence that the loan from the department is being repaid.
    - (iii) Monthly revenue and expenditure sheets which indicate the balances of each in relation to the other.
    - (iv) Evidence that the recommendations in the plan are being accomplished by the dates set in the plan where applicable.
  - (4) Terminate the plan upon its completion.
  - (5) Suggest amendments to the plan which may be necessary to implement or complete the plan.
- (b) **CHIEF EXECUTIVE OFFICER'S PLAN.--** If the plan adopted is the plan proposed by the chief executive officer in an optional plan form of government or home rule charter, the chief executive officer shall have the duties of the coordinator set forth in subsection (a).
- (c) **MUNICIPAL GOVERNING BODY'S PLAN.--** If the plan adopted is the plan proposed by the municipal governing body, a person designated by the governing body shall have the duties of the coordinator set forth in subsection (a).

## **Section 248. Failure to adopt or implement plan**

If no plan is adopted or implemented pursuant to this chapter, then sections 251 and 264 shall apply.

## **Section 249. Plan amendments**

An amendment to an adopted plan may be initiated by the coordinator, the chief executive officer or the governing body of a municipality, as the case may be. The adoption of an amendment shall be by ordinance.

## **Section 250. Debt provisions**

Adoption of a plan by ordinance is a condition precedent for the approval of long-term debt or funding debt under the act of July 12, 1972 (P.L. 781, No. 185), known as the Local Government Unit Debt Act. A debt financing provision of the plan may be waived by agreement of the lender and the municipality; but any such waiving must be expressly set forth in the indenture or contract securing the debt.

## **Section 251. Commonwealth agency payments or assistance**

- (a) **WITHHOLDING OF CERTAIN COMMONWEALTH FUNDS.--** Except as provided in section 302(b), upon certification by the secretary that a financially distressed municipality has failed to adopt a plan or implement an adopted plan as proposed under this act or has adopted a plan which is inadequate to address the municipality's financial distress, the municipality shall not receive a grant, loan, entitlement or payment from the Commonwealth or any of its agencies. Moneys withheld shall be held in escrow by the Commonwealth until the secretary has rescinded the certification.
- (b) **EXCEPTIONS TO THE WITHHOLDING OF COMMONWEALTH FUNDS.--** Notwithstanding the provisions of subsection (a), the following funds shall not be withheld from a municipality.
- (1) Capital projects under contract in progress.
  - (2) Moneys received by a municipality from an agency of the Commonwealth or the Federal Government subsequent to the declaration of a disaster resulting from a catastrophe.
  - (3) Pension fund disbursements made pursuant to State law.

## **Section 252. Plan not affected by certain collective bargaining agreements or settlements**

- (a) **General rule.** Except as provided in subsection (b), a collective bargaining agreement or arbitration settlement executed after the adoption of a plan shall not in any manner violate, expand or diminish its provisions.
- (b) **Arbitration settlements for policemen and firemen.** An arbitration settlement rendered under the act of June 24, 1968 (P.L.237, No.111), referred to as the Policemen and Firemen Collective Bargaining Act, may deviate from the plan, but only if the arbitration settlement:
- (1) except as set forth in subsection (b.1), will not cause the distressed municipality to exceed any limits on expenditures for individual collective bargaining units imposed under the plan;
  - (2) will not further jeopardize the financial stability of the distressed municipality, as measured by the criteria set forth in section 201; and
  - (3) is not inconsistent with the policy objectives set forth in section 102(a) to relieve the financial distress of the distressed municipality.
- (b.1) **Exception.** Subsection (b)(1) shall not apply to a limit on expenditures for an individual bargaining unit that is determined to be arbitrary, capricious or established in bad faith.

- (c) **Hearing before board of arbitration and expert testimony.** The issue of whether an arbitration settlement deviating from the plan satisfies the criteria under subsection (b) and any exception under subsection (b.1) must be determined by a board of arbitration appointed under the Policemen and Firemen Collective Bargaining Act and reflected in findings of fact that are supported by substantial evidence and consistent with this section. During the hearing, the testimony of experts in municipal finance, called by the distressed municipality or the collective bargaining organization, is admissible as evidence before the board. An arbitration settlement deviating from the plan must be supported by the credible testimony of an expert in municipal finance that the arbitration settlement satisfies the criteria in subsection (b) and any exception under subsection (b.1). For purposes of this subsection, the term "expert in municipal finance" means an individual holding an advanced degree who has at least eight years of experience in issues relating to municipal finance.
- (d) **Review by coordinator.** An arbitration settlement deviating from the plan under subsection (b) must be provided to the coordinator by the chairman of the board of arbitration within 48 hours of issuance. The coordinator shall review the arbitration settlement to determine whether it violates this section.
- (e) **Appeal.** The distressed municipality, collective bargaining organization and the coordinator or secretary have the right to appeal to Commonwealth Court from an arbitration settlement which deviates from the plan under subsection (b).
- (1) An appeal must be commenced not later than 30 days after issuance of the arbitration settlement.
  - (2) The record of the arbitration settlement becomes part of the record on appeal. The court may also supplement the record.
  - (3) To the extent an appeal alleges that an arbitration settlement violates this section, the standard of review governing an appeal from an arbitration settlement governed by this section shall be de novo. The court shall not be bound by the factual or legal conclusions of the board of arbitration. Nothing in this subsection shall be construed to otherwise affect the scope or standard of review applicable to certiorari review of arbitration awards.
  - (4) The coordinator's decision setting a limit on expenditures for an individual collective bargaining unit under section 241(11) shall not be disturbed on appeal unless the limit is determined to be arbitrary, capricious or established in bad faith.

## Section 253. Termination of status

- (a) **DETERMINATION BY SECRETARY.--** Following a duly advertised public hearing with notices given as provided in section 203, the secretary may issue a determination that the conditions which led to the earlier determination of municipal financial distress are no longer present. The determination shall rescind the status of municipal financial distress and shall include a statement of facts as part of the final order.
- (b) **DETERMINATION UPON PETITION BY A MUNICIPALITY.--** A financially distressed municipality may petition the secretary to make a determination that the conditions which led to the earlier determination of municipal financial distress are no longer present. Upon receiving the petition, the secretary may issue a determination to rescind following a duly advertised public hearing with notices given as provided in section 203.
- (c) **FACTORS TO CONSIDER.--** In determining whether the conditions which led to the earlier determination of municipal financial distress are no longer present, the secretary shall consider that:
- (1) Monthly reports submitted by the coordinator to the department under section 247(a)(3) indicate that termination of the status of municipal financial distress is appropriate.
  - (2) Accrued deficits in the municipality have been eliminated.
  - (3) Obligations issued to finance all or part of the municipality's deficit have been retired.
  - (4) The municipality has operated, for a period of at least one year, under a positive current operating fund balance or equity, as evidenced by the municipality's audited financial statements prepared in accordance with generally accepted accounting principles.

## Section 261. Filing municipal debt adjustment under Federal law

- (a) **Authorization.** In the event one of the following conditions is present, a municipality is hereby authorized to apply to the department to file a municipal debt adjustment action pursuant to the Bankruptcy Code (11 U.S.C. § 101 et seq.):
- (1) Imminent jeopardy of an action by a creditor, claimant or supplier of goods or services which is likely to substantially interrupt or restrict the continued ability of the municipality to provide health or safety services to its citizens.
  - (2) One or more creditors of the municipality have rejected the proposed or adopted plan, and efforts to negotiate resolution of their claims have been unsuccessful for a ten-day period.
  - (3) A condition substantially affecting the municipality's financial distress is potentially solvable only by utilizing a remedy exclusively available to the municipality through the Federal Municipal Debt Readjustment Act (48 Stat. 798).
  - (4) A majority of the current or immediately preceding governing body of a municipality determined to be financially distressed has failed to adopt a plan or to carry out the recommendations of the coordinator pursuant to this act.
- (b) **Majority vote.** This authority may be exercised only upon the vote by a majority of the municipality's governing body.
- (c) **Secretary.** Upon application under subsection (a), the secretary shall, within 30 days, determine whether to approve OR DENY the application. Failure to act within the time period under this subsection shall be deemed A DENIAL of the application.

## Section 262. Significance and duty on filing Federal action

- (a) **STATUS.--** A municipality which files a municipal debt adjustment action under Federal law shall be deemed to be a financially distressed municipality under this act.
- (b) **NOTICE.--** The municipality shall immediately notify the secretary and the plan coordinator, if one has been assigned, of the Federal filing.
- (c) **APPOINTMENT OF COORDINATOR.--** Upon receipt of notice of filing of the Federal action by a municipality, the secretary shall appoint a plan coordinator under section 221, if none had yet been appointed. The coordinator shall formulate a plan approvable by the Federal court.

## Section 263. Application of this act during Federal action

- (a) **EXISTING PLAN.--** After filing a Federal municipal debt adjustment action, if there is a plan in process under the terms of this act, the municipality shall utilize the plan and the expertise of the plan coordinator, among others available to it, to work out a revised plan to be proposed through the Federal action, adapting it to incorporate Federal remedies which are appropriate in the circumstances.
- (b) **NECESSARY PLAN DEVELOPMENT.--** A municipality which files a municipal debt adjustment action under Federal law, whether or not a proceeding under this act had been commenced as of the date of such filing, shall utilize the procedures set up by this act concurrently with the processing of the Federal action, so as to efficiently expedite the formulation of a plan, its timely confirmation by the Federal court having jurisdiction of the Federal action and its adoption by ordinance.
- (c) **PLAN IMPLEMENTATION.--** After adoption of a plan by the municipality as an ordinance and confirmation of the plan by the Federal court, implementation of the plan shall be coordinated through this act and in accordance with requirements set by the Federal court.

## Section 264. Suspension of Commonwealth funding

- (a) **GENERAL RULE.--** A municipality which remains classified as financially distressed by the department and has failed to adopt or implement a plan within a period set by the Federal court, or has failed or refused to follow a recommendation by a coordinator, shall be notified in writing by the coordinator that he is requesting the secretary to issue a suspension of Commonwealth funding to the municipality for its failure to take the steps enumerated in the notice.
- (b) **MUNICIPALITY'S RESPONSE.--** The municipality shall have ten days from the date of the coordinator's notice in which to show cause to the secretary and the coordinator why Commonwealth funding to the municipality should not be suspended.
- (c) **CERTIFICATION.--** If the municipality has not adequately shown cause to the secretary and coordinator why such action should not be taken, the secretary, within 20 days of the coordinator's request, shall certify to the municipality in writing that each grant, loan, entitlement or payment by the Commonwealth or any of its agencies shall be suspended pending adoption of a plan calculated to fully resolve the municipality's financial distress. Suspended funds shall be held in escrow by the Commonwealth until the secretary has rescinded the certification.
- (d) **EXCEPTION.--** Notwithstanding the provisions of subsection (c), the following funds shall not be withheld from a municipality:
  - (1) Capital projects under contract in progress.
  - (2) Moneys received by a municipality from an agency of the Commonwealth or the Federal Government subsequent to the declaration of a disaster resulting from a catastrophe.
  - (3) Pension fund disbursements made pursuant to State law.
  - (4) A grant or loan made pursuant to section 302(b) of this act.

## Section 281. Eligibility

If a municipality has been determined to be distressed under section 203(f) and is not subject to funding restrictions under section 251 or 264, it shall be eligible for economic and community development assistance as provided in section 282. Merger or consolidation under Chapter 4 of a distressed municipality with a municipality may not be deemed to diminish the successor municipality's eligibility or priority status for economic assistance under this chapter.

*Lexis Editor's Notes.--Section 2 of Act 1992-69 enacted new Subchapter E, "Economic Assistance."*

## Section 282. Priority

- (a) **GENERAL RULE.--** An eligible municipality shall receive priority in all economic and community development programs funded by the Commonwealth.
- (b) **RELEASES OF FUNDS.--** Funds granted to a distressed municipality shall only be released upon concurrence by the coordinator that the program to be funded is consistent with efforts to alleviate the financially distressed status of the municipality as provided in this act.
- (c) **NOTIFICATION.--** The secretary, upon making a determination of distress, shall notify all Commonwealth agencies about the municipality's priority status in order to facilitate providing moneys to the municipality. Priority status of more than one eligible municipality shall be based on the date the secretary notifies the agencies.
- (d) **PREEXISTING PRIORITY.--** Nothing in this subchapter shall be construed to alter the priority of economic and community development assistance already approved and encumbered by the Commonwealth or its agencies.

## **Section 301. Program**

- (a) **ESTABLISHMENT.--** There is hereby established within the department a program to provide emergency grants and loans to municipalities declared to be distressed in accordance with this act and to provide for contracts for plan coordinators.
- (b) **NATURE OF LOANS.--** All loans granted by the department shall be free from interest and repayable according to a covenant setting forth a schedule for repayment in amounts and on dates specified in the covenant, which schedule shall conform with a plan adopted and implemented under this act.
- (c) **REVOLVING FUND.--** There is hereby created in the State Treasury the Municipalities Financial Recovery Revolving Aid Fund. Repayment of principal on all loans made under this act shall be deposited in the fund. Any interest earned on moneys in this fund shall be deposited in the fund. All moneys in the fund may be used to make loans and grants for the purposes of this act.

## **Section 302. Grant, loan and contract procedure**

- (a) **GENERAL PROVISIONS.--** A financially distressed municipality or the coordinator may apply to the secretary for a grant or loan subsequent to the adoption of a plan by a municipality pursuant to Chapter 2. In cases where the plan finally adopted has been formulated by the chief executive officer or governing body, the chief executive officer or a person designated by the governing body may apply to the secretary for a grant or loan. The department may contract for plan coordinators' salaries from the fund.
- (b) **IMMEDIATE EMERGENCIES.--** In cases where a municipality has been declared distressed but prior to final adoption of a plan, the municipality or the coordinator appointed may apply to the department for an expedited loan or grant to immediately assist the distressed municipality if either of the following conditions exists:
  - (1) The applicant verifies that he believes the municipality is in imminent danger of insolvency.
  - (2) The applicant verifies that he believes there is a clear and present danger to the health and safety of residents of the municipality.
- (c) **APPROVAL.--**
  - (1) Upon receipt of an application under subsection (a), the secretary shall set a date for a hearing to be held not sooner than ten days nor later than 30 days from the date of receipt of the application. At the hearing the secretary shall receive evidence which sets forth the necessity for the moneys requested. The hearing shall be conducted at an acceptable location within the municipality to accommodate all interested parties. If satisfied that sufficient evidence exists to warrant a grant or loan, the secretary shall approve the application and order the department to distribute moneys requested subject to the limitations set forth in section 303(c).
  - (2) Upon receipt of an application under subsection (b), the secretary shall review all data immediately available and shall determine whether emergency funds are warranted. If warranted, the secretary shall approve the application and order the department to distribute moneys requested. The secretary or the applicant may request a hearing to provide additional evidence of emergency need, but if requested, the hearing shall be held not later than 15 days from the date the application is received.

Either determination is appealable under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

## **Section 303. Limitations**

- (a) **USE.--** A loan or grant given to a financially distressed municipality under this act shall be used solely for the payment of current expenses of the municipality. Current expenses so paid shall not constitute "debt" or "unfunded debt" as defined in the act of July 12, 1972 (P.L. 781, No. 185), known as the Local Government Unit Debt Act, and shall not be subject to the provisions of that act. A consultant contract shall be issued from the fund only to employ plan coordinators or consultants to supply plan coordinators.

- (b) **ELIGIBILITY.**-- Cities of the first and second class and counties may not apply for a grant or loan under this act.
- (c) **AMOUNT.**-- The secretary shall not approve an application to any one municipality for an amount which will substantially impair the department's ability to distribute the remaining sum fairly and equitably to other applicants or potential applicants.

### **Section 304. Repealed by 1992, June 30, P.L. 336, No. 69, § 5, imd. effective**

*Lexis Editor's Notes.--Section 5 of Act 1992-69 repealed sections 304, 421, 422 and 423 of the act of July 10, 1987 (P.L.246, No.47) on June 30, 1992, effective immediately.*

### **Section 401 to Section 407.**

Repealed by 1994, Oct. 13, P.L. 596, No. 90, § 2, effective in 90 days

### **Section 408. Collective bargaining agreements; furlough of employees; disputes**

- (a) **COLLECTIVE BARGAINING CONTRACTS, AGREEMENTS OR ARBITRATION SETTLEMENTS.**-- A collective bargaining agreement or contract in existence in a municipality or an arbitration settlement in effect in a municipality prior to a consolidation or merger shall remain effective after consolidation or merger until the contract, agreements or settlements expire. After the expiration of the contracts, agreements or settlements, a subsequent collective bargaining agreement, contract or settlement shall not impair the implementation of a plan adopted pursuant to this act.
- (b) **REDUCTION IN EXISTING WORK FORCE.**-- Subsequent to consolidation or merger, the consolidated or merged municipality may, in accordance with existing contracts or arbitration settlement provisions and consistent with applicable laws, reduce the number of uniformed and nonuniformed employees to avoid overstaffing and duplication of positions in the consolidated or merged municipality. If a consolidated or merged municipality determines in its discretion that it is necessary to increase the number of uniformed or nonuniformed employees, employees of the constituent municipalities shall be reinstated in the order of their seniority if they had been previously furloughed.
- (c) **DISPUTES.**-- The Pennsylvania Labor Relations Board shall have jurisdiction to determine labor disputes or controversies, except those arising out of interpretation or construction of a collective bargaining agreement containing provision for binding arbitration, between the consolidated or merged municipality and its employees.
- (d) **EFFECT ON EXISTING LAW.**-- Nothing in this section shall prohibit a consolidated or merged municipality from exercising its powers and responsibilities pursuant to provisions of law related to collective bargaining, including, but not limited to, the act of June 24, 1968 (P.L. 237, No. 111), referred to as the Policemen and Firemen Collective Bargaining Act, and the act of July 23, 1970 (P.L. 563, No. 195), known as the Public Employee Relations Act.

### **Section 409.**

Repealed by 1994, Oct. 13, P.L. 596, No. 90, § 2, effective in 90 days

### **Section 421 to 423.**

Repealed by 1992, June 30, P.L. 336, No. 69, § 5, imd. effective

*Editor's Notes.--Section 5 of Act 1992-69 repealed sections 304, 421, 422 and 423 of the act of July 10, 1987 (P.L.246, No.47) on June 30, 1992, effective immediately.*

### **Section 501. Appropriation**

The sum of \$ 5,000,000, appropriated under section 210 of the act of July 1, 1986 (P.L. 1776, No. 5A), known as the General Appropriation Act of 1986, shall be used to carry out the provisions of this act. The appropriation shall be distributed as follows:



- (1) \$ 500,000 shall be used by the department for administrative expenses necessary to carry out the provisions of this act.
- (2) \$ 4,500,000 shall be used to provide grants and loans to municipalities determined to be financially distressed pursuant to this act.

## **Section 601. Definitions**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"AUTHORITY."** A MUNICIPAL AUTHORITY, PARKING AUTHORITY OR ANY OTHER AUTHORITY OR CORPORATE ENTITY THAT IS DIRECTLY OR INDIRECTLY CONTROLLED BY A DISTRESSED CITY OR TO WHICH A DISTRESSED CITY HAS POWER OF APPOINTMENT. THE TERM SHALL NOT INCLUDE A JOINT MUNICIPAL AUTHORITY.

**"CITY."** A CITY OF THE THIRD CLASS.

**"DEBT OBLIGATIONS."** ANY OBLIGATION TO PAY MONEY, INCLUDING AMOUNTS OWED FOR PAYMENTS RELATING TO LEASE RENTAL DEBT, DEBT SERVICE, BONDS, NOTES, GUARANTEES FOR BONDS OR NOTES, TRUST INDENTURES, CONTRACTS OR OTHER AGREEMENTS.

**"DISTRESSED CITY."** A CITY WHICH HAS BEEN DETERMINED TO BE FINANCIALLY DISTRESSED UNDER SECTION 203(F).

**"FISCAL EMERGENCY."** A DETERMINATION MADE BY THE GOVERNOR UNDER SECTION 602(B).

**"INSOLVENT."** UNABLE TO MEET ALL FINANCIAL OBLIGATIONS AS THEY BECOME DUE, INCLUDING PAYMENT OF DEBT OBLIGATIONS.

**"VITAL AND NECESSARY SERVICES."** BASIC AND FUNDAMENTAL MUNICIPAL SERVICES, INCLUDING ANY OF THE FOLLOWING:

- (1) Police and fire services.
- (2) Ambulance and rescue services.
- (3) Water supply and distribution.
- (4) Wastewater services.
- (5) Refuse collection and disposal.
- (6) Snow removal.
- (7) Payroll and pension obligations.
- (8) Fulfillment of payment of debt obligations or any other financial obligations.

*Lexis Editor's Notes.--Section 2 of Act 2011-79 added new Chapter 6, "Fiscal Emergencies in Cities of the Third Class." Section 6 of Act 2011-79 provides that, "[t]he provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application."*

## Section 602. Declaration of fiscal emergency

- (a) **FISCAL EMERGENCY.**-- The Governor determines a fiscal emergency exists if the distressed city:
- (1)(i) is insolvent or is projected to be insolvent within 180 days or less; or
  - (ii) is unable to ensure the continued provision of vital and necessary services; and
  - (2)(i) has failed to adopt or implement the coordinator's plan; or
  - (ii) has failed to adopt or implement an alternative plan that the secretary has approved under section 246.
- (b) **GOVERNOR.**-- Upon making a determination that a state of fiscal emergency exists, the Governor may declare a state of fiscal emergency within the distressed city. Immediately upon making the declaration, the Governor shall:
- (1) Provide written notice of the declaration to the governing body and chief executive officer of the distressed city along with a concise statement of facts supporting the determination.
  - (2) Direct the secretary to, within ten days of the Governor's declaration, develop an emergency action plan to ensure that vital and necessary services are maintained within the city during the state of fiscal emergency.
- (c) **SECRETARY.**-- In developing the emergency action plan, the secretary shall consider the financial plan prepared by the coordinator under Subchapter C of Chapter 2 and any other available plan or information the secretary deems appropriate and may employ financial or legal experts to assist in addressing the fiscal emergency. Notwithstanding any law to the contrary, the employment of such experts shall not be subject to contractual competitive bidding procedures.

## Section 603. Notification by the secretary

- (a) **NOTICE.**-- Upon completion of the emergency action plan, the secretary shall cause the plan to be posted on the department's Internet website and shall provide written notice of the emergency action plan by overnight delivery service, providing proof of receipt, to all members of the governing body and the chief executive officer of the distressed city.
- (b) **PUBLICATION.**-- The secretary shall publish once in a newspaper of general circulation notice that the emergency action plan has been completed. The notice shall specify the Internet address of the department's website where the plan is posted.

## Section 604. Powers of the Governor

- (a) **POWERS.**-- During the state of fiscal emergency, the Governor may exercise the authority of the elected or appointed officials of the distressed city or authority as necessary to ensure the provision of vital and necessary services and may delegate the authority to the secretary or a designee of the secretary. The emergency powers of the Governor shall include the following:
- (1) The power to collect funds payable to the distressed city and authority and use those funds to pay for vital and necessary services.
  - (2) The power to obtain emergency financial aid for the distressed city and authority under Chapter 3 to pay for vital and necessary services.
  - (3) The power to enter into contracts and agreements on behalf of the distressed city and authority to pay for vital and necessary services.
  - (4) The power to modify the emergency action plan as necessary to ensure the provision of vital and necessary services.
  - (5) Any other power of the elected or appointed officials of the distressed city or authority to ensure the provision of vital and necessary services.

- (b) **ORDERS.--** The Governor may issue an order to an elected or appointed official of the distressed city or an authority to implement any provision of the emergency action plan or refrain from taking any action that would interfere with the powers granted to the Governor or the goals of the plan. An order issued under this subsection shall be enforceable under section 606.
- (c) **AUTHORIZATION PROHIBITED.--** Neither this chapter nor the emergency action plan shall be interpreted to authorize the Governor to:
  - (1) Unilaterally levy taxes.
  - (2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:
    - (i) held by a holder of a debt obligation of a distressed city; and
    - (ii) granted by the contract, law, rule or regulation governing the debt obligation.
  - (3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed city or authority, except as otherwise ordered by a court of competent jurisdiction.
  - (4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authorities in a manner contrary to section 707.
  - (5) Pledge the full faith and credit of the Commonwealth.

### **Section 605. Elected and appointed officials**

During a fiscal emergency, the authorities and appointed and elected officials of the distressed city shall continue to carry out the duties of their respective offices, except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor under section 604.

### **Section 606. Mandamus**

The Governor may petition Commonwealth Court to issue a writ of mandamus upon any elected or appointed official of the distressed city or authority to secure compliance with an order issued under section 604(b). The court shall grant the relief requested within 14 days of the filing of the petition if it determines that the order was issued in compliance with this chapter.

### **Section 607. Consent agreement**

- (a) **NEGOTIATIONS.--** Within eight days of the declaration of a fiscal emergency, the governing body and chief executive officer of the distressed city shall convene a special public meeting to negotiate a consent agreement. The meeting shall be attended by the secretary or secretary's designee. Negotiations among creditors and any of the parties in this subsection shall be conducted in accordance with section 223(b).
- (b) **CONTENTS.--**
  - (1) The consent agreement shall incorporate a plan setting forth measures designed to provide long-term financial stability to the distressed city after the termination of the fiscal emergency.
  - (2) The consent agreement shall include all of the following:
    - (i) Continued provision of vital and necessary services.
    - (ii) Payment of the lawful financial obligations of the distressed city and authority. This subparagraph includes debt obligations, municipal securities, lease rental obligations, legal obligations and consensual modifications of existing obligations, except as otherwise ordered by a court of competent jurisdiction.

- (iii) Timely deposit of required payments to the pension fund for the distressed city and each authority or the fund in which the distressed city and each authority participates.
  - (iv) Legislative and administrative actions to be taken by the elected or appointed officials of the distressed city during the term of the consent agreement.
- (3) The consent agreement may include:
- (i) The sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority.
  - (ii) Approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed city or authorities.
  - (iii) Execution of new contracts or agreements.
- (4) The consent agreement may not include any of the following:
- (i) Projections of revenue from a tax or tax rate not currently authorized by law.
  - (ii) Provisions that unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority, that is:
    - (A) held by a holder of a debt obligation of a distressed city; and
    - (B) granted by the contract, law, rule or regulation governing the debt obligation.
  - (iii) Provisions that unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed city or authority, except as otherwise ordered by a court of competent jurisdiction.
  - (iv) Provisions that authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authorities in a manner contrary to section 707.
  - (v) Any increase in the rate of an earned income tax imposed on nonresident workers.
- (c) **ORDINANCE.--** Notwithstanding any law to the contrary, the following shall apply:
- (1) Upon approval by a majority vote of the governing body of the distressed city, the consent agreement shall be presented to the secretary within 20 days of the declaration of fiscal emergency.
  - (2) The secretary shall approve or disapprove the consent agreement within three days.
  - (3) If the secretary determines that the consent agreement is sufficient to overcome the distressed city's financial distress and approves the agreement, the governing body shall enact the consent agreement in the form of an ordinance within seven days of approval by the secretary.
  - (4) The ordinance shall provide that, in the event of a breach or unilateral modification of the consent decree by the governing body or an elected or appointed official, the Governor may institute or reinstitute proceedings under Chapter 7.
- (d) **CONSENT TO PROCEEDINGS UNDER CHAPTER 7.--** In addition to breach or modification of the consent agreement under subsection (c), the following shall be deemed consent to proceedings under Chapter 7:
- (1) Failure of the governing body of the distressed city to convene or the failure of a quorum of the governing body to participate in a special public meeting required by subsection (a).
  - (2) Failure of the governing body or chief executive officer to enact a valid ordinance under subsection (c).

- (3) Failure of the distressed city to comply with the consent agreement or provision of an ordinance enacted under subsection (c).
- (4) Enactment by the distressed city of an amendment to the ordinance enacted in subsection (c) in violation of subsection (e).

(e) **AMENDMENT.**-- The ordinance may be amended upon the approval of the secretary.

(f) **COLLECTIVE BARGAINING.**-- A collective bargaining agreement or arbitration settlement executed following the enactment of an ordinance under this section may not in any manner violate, expand or diminish the provisions of the consent agreement.

## **Section 608. Termination of fiscal emergency and suspension of powers**

- (a) **FINANCIAL EMERGENCY.**-- A fiscal emergency shall end upon certification by the secretary that the city is no longer financially distressed.
- (b) **GOVERNOR'S POWERS.**-- The emergency powers of the Governor under this chapter shall be suspended upon the enactment and continued implementation of an ordinance under section 607 or entry of a judicial order appointing a receiver under section 702.

## **Section 609. Restrictions**

- (a) **EARNED INCOME TAX ON NONRESIDENTS.**-- A distressed city subject to this chapter or Chapter 7 may not petition a court of common pleas for an increase in the rate of an earned income tax imposed on nonresident workers under section 123(c) until the secretary terminates the distress status of the city under section 253.
- (b) **MUNICIPAL DEBT ADJUSTMENT.**-- A distressed city subject to this chapter or Chapter 7 may not file a municipal debt adjustment action under the Bankruptcy Code (11 U.S.C. § 101 et seq.) except to the extent authorized under Chapter 7.

## **Section 610. Applicability**

- (a) **STATEMENT.**--
  - (1) This chapter shall apply only to distressed cities.
  - (2) Except as set forth in subsection (b), nothing in this chapter is intended to limit or otherwise abrogate the applicability of any other part of this act.
- (b) **CONFLICT.**-- If there is a conflict between a provision of this chapter and any other provision of this act, the provision of this chapter shall prevail.

## **Section 701. Definitions**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"AUTHORITY."** A MUNICIPAL AUTHORITY, PARKING AUTHORITY OR ANY OTHER AUTHORITY OR CORPORATE ENTITY THAT IS DIRECTLY OR INDIRECTLY CONTROLLED BY A DISTRESSED CITY OR TO WHICH A DISTRESSED CITY HAS POWER OF APPOINTMENT. THE TERM SHALL NOT INCLUDE A JOINT MUNICIPAL AUTHORITY.

**"CITY."** A CITY OF THE THIRD CLASS.

**"DEBT OBLIGATIONS."** ANY OBLIGATION TO PAY MONEY, INCLUDING AMOUNTS OWED FOR PAYMENTS RELATING TO LEASE RENTAL DEBT, DEBT SERVICE, BONDS, NOTES, GUARANTEES FOR BONDS OR NOTES, TRUST INDENTURES, CONTRACTS OR OTHER AGREEMENTS.

**"DISTRESSED CITY."** A CITY WHICH HAS BEEN DETERMINED TO BE FINANCIALLY DISTRESSED UNDER SECTION 203(F).

**"FISCAL EMERGENCY."** A DETERMINATION MADE BY THE GOVERNOR UNDER SECTION 602(B).

**"INSOLVENT."** UNABLE TO MEET ALL FINANCIAL OBLIGATIONS AS THEY BECOME DUE, INCLUDING PAYMENT OF DEBT OBLIGATIONS.

**"VITAL AND NECESSARY SERVICES."** BASIC AND FUNDAMENTAL MUNICIPAL SERVICES, INCLUDING ANY OF THE FOLLOWING:

- (1) Police and fire services.
- (2) Ambulance and rescue services.
- (3) Water supply and distribution.
- (4) Wastewater services.
- (5) Refuse collection and disposal.
- (6) Snow removal.
- (7) Payroll and pension obligations.
- (8) Fulfillment of payment of debt obligations or any other financial obligations.

*Lexis Editor's Notes.--Section 2 of Act 2011-79 added new Chapter 7, "Receivership in Cities of the Third Class."*

## Section 702. Receivership

- (a) **RECEIVER.--** Following the issuance of a declaration of fiscal emergency under section 602(b), the Governor may direct the secretary to file a petition in Commonwealth Court to appoint the individual named in the petition as a receiver for the distressed city. The court shall have no authority to appoint anyone other than the individual named in the petition as the receiver.
- (b) **SERVICE AND NOTICE.--**
  - (1) The secretary shall serve the petition upon:
    - (i) the governing body of the distressed city;
    - (ii) the chief executive officer of the distressed city; and
    - (iii) the governing body of each authority.
  - (2) The secretary must publish notice of the filing of the petition once in a newspaper of general circulation.
- (c) **HEARING.--** Upon notification of the Governor of the failure of the distressed city to adopt a valid ordinance under section 607, Commonwealth Court shall conduct a hearing within 15 days on the petition.
- (d) **DETERMINATION.--** No later than 60 days following the filing of a petition under this section, the court shall issue an order under subsection (e) if it finds by a preponderance of the evidence that all of the following apply:
  - (1) Thirty days have passed since the declaration of a fiscal emergency.
  - (2) There has been a failure by:
    - (i) the governing body of the distressed city to adopt an ordinance under section 607;

- (ii) the governing body of the distressed city to implement an ordinance under section 607; or
  - (iii) an elected or appointed official of the distressed city or authority to strictly comply with an order issued by the Governor under section 604.
- (3) A fiscal emergency under section 602(a) continues to exist.
- (e) **ORDER.--** An order issued under this subsection shall:
- (1) set forth the findings under subsection (d);
  - (2) grant the petition and declare the distressed city to be in receivership;
  - (3) appoint the individual named in the petition to be the receiver for a period not to exceed two years, subject to extension under section 710(b);
  - (4) direct the receiver to develop a recovery plan within 30 days under section 703 and submit it to the court, the secretary, the governing body and the chief executive officer of the distressed city; and
  - (5) require and empower the receiver to implement the emergency action plan developed by the secretary under section 602 until a recovery plan developed by the receiver is approved by the court under section 703.
- (f) **ADDITIONAL ACTIONS.--**
- (1) The Governor may direct the secretary to file a petition in Commonwealth Court to appoint an individual named in the petition as a receiver for the distressed city if the distressed city fails to comply with or has amended the ordinance without the approval of the secretary under section 607(d)(3) or (4).
  - (2) The court shall conduct a hearing on the petition under paragraph
  - (1) within 15 days of the filing of the petition.
  - (3) No later than 60 days following the filing of the petition under paragraph (1), the court shall issue an order under subsection (e) if it finds by a preponderance of the evidence that the distressed city has failed to comply with section 607(d)(3) or (4).

### **Section 703. Recovery plan**

- (a) **ISSUANCE.--** Within 30 days of the appointment of the receiver, the recovery plan required under section 702(e)(4) shall be furnished to Commonwealth Court, the secretary and the governing body and the chief executive officer of the distressed city.
- (b) **CONTENTS.--** The receiver shall consider the plan prepared by the coordinator under section 241 and any other existing alternate plans in the development of the recovery plan. The following shall apply:
- (1) The recovery plan shall provide for all of the following:
    - (i) Continued provision of vital and necessary services.
    - (ii) Payment of the lawful financial obligations of the distressed city and authorities. This subparagraph includes debt obligations, municipal securities, lease rental obligations, legal obligations and consensual modifications of existing obligations.
    - (iii) Timely deposit of required payments to the pension fund in which the distressed city and each authority participates.
  - (2) The recovery plan may include:
    - (i) the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority;

- (ii) the approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed city or authorities, except to the extent prohibited by the Constitutions of the United States and Pennsylvania;
  - (iii) the execution of new contracts or agreements; and
  - (iv) other information the receiver deems appropriate.
- (c) **RESTRICTIONS.--** The recovery plan may not do any of the following:
- (1) Unilaterally levy taxes.
  - (2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:
    - (i) held by a holder of a debt obligation of a distressed city; and
    - (ii) granted by the contract, law, rule or regulation governing the debt obligation.
  - (3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed city or authority, except as otherwise ordered by a court of competent jurisdiction.
  - (4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority in a manner contrary to section 707.
- (d) **CONFIRMATION.--** Commonwealth Court shall conduct a hearing on the recovery plan within 30 days of the receipt of the plan from the receiver. The court shall confirm the plan within 60 days of the receipt of the plan unless it finds clear and convincing evidence that the plan is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency in the distressed city.
- (e) **MODIFICATION OF PLAN.--** The receiver shall notify the Commonwealth Court of any modification to the plan. The court may conduct a hearing on the modification within 30 days of its receipt. The court shall confirm the modification within 60 days of receipt of notification of the modification unless it finds clear and convincing evidence that the recovery plan as modified is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency in the distressed city.

## Section 704. Confirmation

- (a) **EFFECT OF CONFIRMATION.--** The confirmation of the recovery plan and any modification to the receiver's plan under section 703 shall have the effect of:
- (1) imposing on the elected and appointed officials of the distressed city or an authority a mandatory duty to undertake the acts set forth in the recovery plan;
  - (2) suspending the authority of the elected and appointed officials of the distressed city or an authority to exercise power on behalf of the distressed city or authority pursuant to law, charter, ordinance, rule or regulation to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan; and
  - (3) superseding the emergency action plan developed by the secretary under section 602.
- (b) **FORM OF GOVERNMENT.--** Confirmation of the recovery plan and any modification to the plan under section 703 shall not be construed to:
- (1) change the form of government of the distressed city or an authority; or
  - (2) except as set forth in subsection (a), affect powers and duties of elected and appointed officials of the distressed city or an authority.



- (c) **COLLECTIVE BARGAINING.--** A collective bargaining agreement or arbitration settlement executed after confirmation of a recovery plan may not, in any manner, violate, expand or diminish the provisions of the recovery plan.

## **Section 705. Receiver**

- (a) **APPOINTMENT.--** The court shall appoint the receiver as provided under section 702.
- (b) **QUALIFICATIONS.--** The receiver shall have the following qualifications:
- (1) Have a minimum of five years' experience and demonstrable expertise in business, financial or local or state budgetary matters.
  - (2) Be a resident of this Commonwealth for at least one year prior to the appointment.
- (c) **VACANCY.--** A vacancy in the office of the receiver shall be filled in the same manner as the original appointment.
- (d) **REVOCATION.--** Upon application to Commonwealth Court by the secretary, the appointment of the receiver shall be revoked, and the receiver shall be replaced by the individual named in the application. The court shall have no authority to appoint anyone other than the individual named in the application as the receiver.
- (e) **COMPENSATION AND EXPENSES.--** The receiver's compensation and reimbursement for actual and necessary expenses shall be paid by the Commonwealth. Compensation shall be established by the secretary.
- (f) **PROHIBITIONS.--** The receiver shall not:
- (1) Seek or hold a position as any other elected or appointed public official within this Commonwealth or as a political party officer during the term of the receivership.
  - (2) Seek election as a public official or political party officer for one year after the person's service as receiver has ended.
  - (3) Engage in any conduct prohibited by the act of July 19, 1957 (P.L. 1017, No. 451), known as the State Adverse Interest Act, or 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure).
- (g) **LIABILITY.--** The receiver shall not be liable personally for any obligations of the distressed city or authority. It is declared to be the intent of the General Assembly that the receiver shall enjoy sovereign and official immunity as provided in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) and shall remain immune from suit except as provided by and subject to the provisions of 42 Pa.C.S. Ch. 85 Subchs. A (relating to general provisions) and B (relating to actions against Commonwealth parties).

## **Section 706. Powers, duties and prohibited actions**

- (a) **POWERS AND DUTIES.--** Notwithstanding any other provision of law, the receiver shall have the following powers and duties:
- (1) To require the distressed city or authority to take actions necessary to implement the recovery plan under section 703.
  - (2) To modify the recovery plan as necessary to achieve financial stability of the distressed city and authorities in accordance with section 703.
  - (3) To require the distressed city or authority to negotiate intergovernmental cooperation agreements between the distressed city and other political subdivisions in order to eliminate and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services.
  - (4) To submit quarterly reports to the governing body and the chief executive officer of the distressed city and to the department. The reports shall be posted on the Internet website for the distressed city.

- (5) To require the distressed city or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed city's or authority's assets in accordance with section 707.
  - (6) To approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements with the distressed city or authority, except to the extent prohibited by the Constitutions of the United States and Pennsylvania.
  - (7) To direct the distressed city or authority to take any other action to implement the recovery plan.
  - (8) To attend executive sessions of the governing body of the distressed city or authority and make reports to the public on implementation of the recovery plan.
  - (9) After July 1, 2012, to file a municipal debt adjustment action under the Bankruptcy Code (11 U.S.C. § 101 et seq.) and to act on the city's behalf in the proceeding. The power under this paragraph shall only be exercised upon the written authorization of the secretary. The filing of a municipal debt adjustment action under this paragraph and any plan of the receiver accepted by the Federal court shall be considered a modification of the recovery plan, except that the modification shall not be subject to judicial review under section 709. A recovery plan submitted to and approved by the Federal court under a Federal municipal debt adjustment action may include Federal remedies not otherwise available under this chapter.
  - (10) To meet and consult with the advisory committee under section 711.
  - (11) To employ financial or legal experts deemed necessary to develop and implement the recovery plan. Notwithstanding any law to the contrary, the employment of such experts shall not be subject to contractual competitive bidding procedures.
- (b) **AUTHORIZATION PROHIBITED.**-- Neither this chapter nor the recovery plan shall be interpreted to authorize the receiver to do any of the following:
- (1) Unilaterally levy taxes.
  - (2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:
    - (i) held by a holder of a debt obligation of a distressed city; and
    - (ii) granted by the contract, law, rule or regulation governing the debt obligation.
  - (3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed city or authority, except as otherwise ordered by a court of competent jurisdiction.
  - (4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority in a manner contrary to section 707.

## Section 707. Use or disposition of assets

- (a) **USE OF PROCEEDS.**-- The proceeds from any sale, lease, conveyance, assignment or other use or disposition of assets of the distressed city or authority shall be applied to the payment of outstanding debt obligations owed by the distressed city or authority, subject to any lien, charge, covenant, restriction, contract, law, rule or regulation, that encumbers or is otherwise applicable to the assets. Proceeds remaining after payment of outstanding debt obligations owed by the distressed city or authority may be used by the receiver to restructure or provide escrow for the payment of future debt obligations or to meet operating and capital needs of the distressed city or authority.
- (b) **PROHIBITIONS.**-- Nothing under this section shall be construed to authorize the receiver to unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:
- (1) held by a holder of a debt obligation of a distressed city; and
  - (2) granted by the contract, law, rule or regulation governing the debt obligation.

## **Section 708. Elected and appointed officials**

- (a) **ORDERS.--** The receiver may issue an order to an elected or appointed official of the distressed city or an authority to:
- (1) implement any provision of the recovery plan; and
  - (2) refrain from taking any action that would interfere with the powers granted to the receiver or the goals of the recovery plan.
- (b) **ENFORCEMENT.--** An order issued under subsection (a) shall be enforceable under section 709.

## **Section 709. Judicial actions**

- (a) **ACTION BY RECEIVER.--** The receiver may petition Commonwealth Court to issue a writ of mandamus upon any elected or appointed official of the distressed city or authority to secure compliance with an order issued under section 708. The court shall grant or deny the relief within 14 days of the filing of the petition. The court shall grant the relief requested if it determines that the order was issued in compliance with this chapter.
- (b) **ACTION BY ELECTED OR APPOINTED OFFICIALS.--** Any elected or appointed official of a distressed city or authority may petition Commonwealth Court to enjoin any action of the receiver that is contrary to this chapter.

## **Section 710. Termination of receivership**

- (a) **TIME.--** Except as provided under subsection (b), the receivership under this chapter shall expire two years after the appointment of the receiver.
- (b) **EXTENSION.--** The secretary may petition Commonwealth Court for one or more extensions of the receivership. The court shall grant each extension for another two years if the secretary establishes by a preponderance of the evidence that further implementation of the recovery plan is necessary to end the fiscal emergency.

## **Section 711. Municipal financial recovery advisory committee**

- (a) **ESTABLISHMENT.--** There is established a Municipal financial recovery advisory committee to meet and consult with the receiver in carrying out the duties under this chapter. The sole function of the advisory committee shall be to provide recommendations and feedback to the receiver on the implementation of the recovery plan.
- (b) **COMPOSITION.--** The advisory committee established under subsection (a) shall be comprised of the following:
- (1) The chief executive officer of the distressed city or a designee.
  - (2) The president of the governing body of the distressed city or a designee.
  - (3) One member appointed by the county commissioners of the county where the distressed city is located.
  - (4) One member appointed by the Governor.
- (c) **COMPENSATION.--** Members of the advisory committee shall receive no compensation for their services.
- (d) **MEETINGS.--** The advisory committee shall meet with the receiver at least twice per month to discuss the recovery plan. Meetings of the advisory committee shall be in accordance with 65 Pa.C.S. Ch. 7 (relating to open meetings).
- (e) **DUTY TO CONSULT.--** The receiver shall consult with the advisory committee prior to exercising any of the powers under section 706(a)(1), (2), (3), (5), (6), (7) and (9).
- (f) **TERMINATION.--** The advisory committee shall terminate in conjunction with the expiration of the receivership as provided for under section 710.

## Section 712. Applicability

(a) **STATEMENT.--**

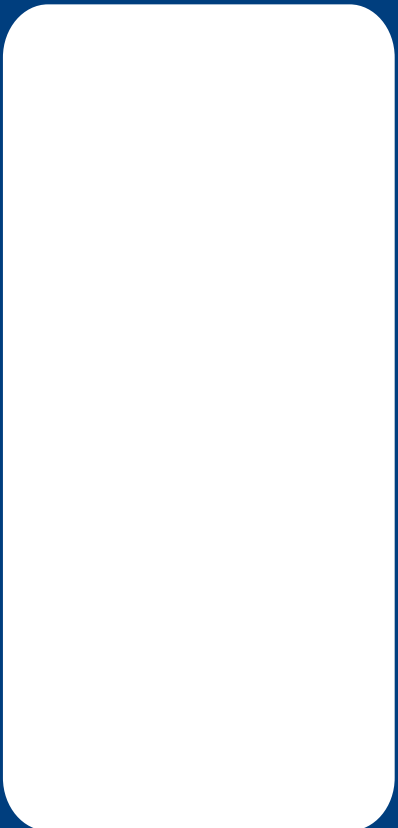
(1) This chapter shall apply only to distressed cities.

(2) Except as set forth in subsection (b), nothing in this chapter is intended to limit or otherwise abrogate the applicability of any other part of this act.

(b) **CONFLICT.--** If there is a conflict between a provision of this chapter and any other provision of this act, the provision of this chapter shall prevail.

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