

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1151 Session of 2011

INTRODUCED BY PICCOLA, PILEGGI, EARLL, VANCE, FOLMER, GORDNER, WAUGH, ALLOWAY, BAKER, ERICKSON, ORIE, BROWNE AND TOMLINSON, JUNE 17, 2011

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT, JUNE 17, 2011

AN ACT

1 Amending the act of July 10, 1987 (P.L.246, No.47), entitled "An
 2 act empowering the Department of Community Affairs to declare
 3 certain municipalities as financially distressed; providing
 4 for the restructuring of debt of financially distressed
 5 municipalities; limiting the ability of financially
 6 distressed municipalities to obtain government funding;
 7 authorizing municipalities to participate in Federal debt
 8 adjustment actions and bankruptcy actions under certain
 9 circumstances; and providing for consolidation or merger of
 10 contiguous municipalities to relieve financial distress,"
 11 further providing for Commonwealth agency payments or
 12 assistance; providing for the establishment of a management
 13 board for distressed third class cities and for powers of
 14 management boards; prohibiting distressed third class cities
 15 from filing Federal bankruptcy petitions; and making
 16 editorial changes.

17 The General Assembly of the Commonwealth of Pennsylvania
 18 hereby enacts as follows:

19 Section 1. Section 251(a) of the act of July 10, 1987
 20 (P.L.246, No.47), known as the Municipalities Financial Recovery
 21 Act, is amended and the section is amended by adding a
 22 subsection to read:

23 Section 251. Commonwealth agency payments or assistance.

24 (a) Withholding of certain Commonwealth funds.--Except as

1 provided in section 302(b), upon certification by the
2 [secretary] department that a financially distressed
3 municipality has failed to adopt a plan or implement an adopted
4 plan as proposed under this act or has adopted a plan which is
5 inadequate to address the municipality's financial distress, the
6 municipality shall not receive a grant, loan, entitlement or
7 payment from the Commonwealth or any of its agencies. Moneys
8 withheld shall be held in escrow by the Commonwealth until the
9 [secretary] department has rescinded the certification.

10 (a.1) Disposition of assets.--Subsection (a) shall apply to
11 the failure of a distressed city or a management board
12 established under section 603(a) if the city or management board
13 fails to identify, sell, lease or otherwise dispose of assets in
14 accordance with section 605.

15 * * *

16 Section 2. The act is amended by adding a chapter to read:

17 CHAPTER 6

18 CITIES OF THE THIRD CLASS

19 Section 601. Definitions.

20 "City." A city of the third class.

21 "Controlled authority." A municipal authority, parking
22 authority or other authority which is directly or indirectly
23 controlled by a distressed city or to which a distressed city
24 has powers of appointment.

25 "County." The county in which a distressed city is located.

26 "Distressed city." A city which has been determined to be
27 financially distressed under section 203(f). The term includes
28 any authority or other corporate entity which directly performs
29 a governmental function on behalf of the city and which is
30 directly or indirectly controlled by the city or to which the

1 city has direct or indirect power of appointment or has pledged
2 or designated the city's revenues or the city's credit.

3 "Management board." The city management board.

4 Section 602. Applicability.

5 A distressed city shall be subject to the provisions of this
6 chapter and Chapters 2 and 3. If a conflict between this chapter
7 and any other provision of this act occurs, the provisions of
8 this chapter shall prevail.

9 Section 603. Management board.

10 (a) Establishment.--A management board shall be established
11 if a distressed city fails to adopt or implement the
12 coordinator's plan in accordance with sections 245 and 247(a). A
13 distressed city shall be deemed to have failed to adopt and
14 implement the coordinator's plan if it takes any action to
15 approve an alternative plan under section 246.

16 (b) Composition.--A management board established under
17 subsection (a) shall be comprised of the following:

18 (1) Two members appointed by the Governor.

19 (2) One member appointed by the board of commissioners
20 of the county.

21 (c) Experience.--All members and their designees shall:

22 (1) Have experience in finance or management.

23 (2) Be residents of this Commonwealth.

24 (d) Term.--Members shall be appointed within seven days of
25 the determination by the department that the requirements of
26 subsection (a) have occurred. Members shall select a chairperson
27 who shall serve for a term of two years. Members appointed by
28 the Governor shall have a term coterminous with the appointing
29 authority. A member appointed by the county commissioners shall
30 have a term coterminous with the chairman of the board of

1 commissioners. If a vacancy occurs, the appointing authority who
2 originally appointed the management board member whose seat has
3 become vacant shall appoint a successor member within 30 days of
4 the vacancy. A member appointed to fill a vacancy occurring
5 prior to the expiration of a term shall serve the unexpired
6 term.

7 (e) Organization.--The Governor shall set a date, time and
8 place for the initial organization meeting of the management
9 board within five days of the appointment of the members of the
10 management board. The initial organizational meeting shall be
11 held within 15 days of the appointment under subsection (d).
12 Members shall elect other officers as they deem necessary.

13 (f) Meetings.--Following the initial organizational meeting,
14 the management board shall meet as frequently as it deems
15 appropriate but at least once during each quarter of the fiscal
16 year. A meeting of the management board shall be called by the
17 chairperson if a request for a meeting is submitted by the other
18 two members of the management board. A majority of the
19 management board shall constitute a quorum. All actions of the
20 management board shall be taken by a majority of the management
21 board. The following statutes shall apply to the management
22 board:

23 (1) 65 Pa.C.S. Chs. 7 (relating to open meetings) and 11
24 (relating to ethics standards and financial disclosure).

25 (2) The act of July 19, 1957 (P.L.1017, No.451), known
26 as the State Adverse Interest Act.

27 (3) The act of February 14, 2008 (P.L.6, No.3), known as
28 the Right-to-Know Law.

29 (g) Expenses.--A member shall not receive compensation or
30 remuneration but shall be entitled to reimbursement for all

1 reasonable and necessary expenses.

2 (h) Employees.--The department shall provide administrative
3 and other support to the management board. The management board
4 may contract for or receive the loan of services of other
5 individuals employed by other government agencies.

6 (i) Commonwealth agency.--A management board established
7 under this chapter shall constitute a public authority and
8 instrumentality of the Commonwealth, exercising the powers of
9 the Commonwealth. The exercise of the powers of the management
10 board shall be deemed to be an essential government function.

11 Section 604. Powers and duties.

12 The management board shall have the following powers and
13 duties:

14 (1) To implement the coordinator's plan.

15 (2) To make changes to the coordinator's plan as
16 necessary to achieve financial stability of the distressed
17 city.

18 (3) To negotiate intergovernmental cooperation
19 agreements with distressed cities and other political
20 subdivisions in order to eliminate and avoid deficits,
21 maintain sound budgetary practices and avoid interruption of
22 municipal services.

23 (4) To make annual reports for submission to the
24 department within 120 days after the close of the distressed
25 city's fiscal year.

26 (5) To have all powers necessary or appropriate to cause
27 the sale, lease or other disposition of the distressed city's
28 assets under section 605.

29 Section 605. Sale of assets.

30 (a) Authority.--The management board shall have the

1 authority to determine by a majority vote that it is in the best
2 financial interests of the distressed city to sell, lease or
3 dispose of assets determined by the management board to be
4 nonessential and owned by the distressed city or by an
5 authority, including a controlled authority.

6 (b) Sale, lease or other disposition.--The management board
7 shall:

8 (1) Identify appropriate assets for sale, lease or other
9 disposition and direct the appropriate officials of the
10 distressed city or controlled authority to take all action
11 necessary or appropriate for the consummation of the sale,
12 lease or other disposition of assets.

13 (2) Direct the sale, lease or other disposal of assets
14 in conformity with all applicable competitive bidding
15 requirements.

16 (3) Undertake a competitive bidding process, determine
17 the winning bidder and enter into an agreement of sale, lease
18 or other disposition with the winning bidder.

19 (4) Take all action necessary to complete the sale,
20 lease or disposition of the assets.

21 (c) Approval.--The approval of the governing body or chief
22 executive officer of the distressed city shall not be required
23 to complete a sale, lease or other disposition under this
24 section.

25 (d) Proceeds.--The proceeds of the sale, lease or other
26 disposition of assets of a distressed city shall be applied to
27 the payment of any unpaid debt obligations owed by the
28 distressed city, as determined by the management board. Any
29 proceeds remaining after the payment of these obligations shall
30 be applied at the discretion of the management board to

1 restructure or to provide escrow for the payment of the
2 distressed city's future debt obligations.

3 (e) Enforcement.--The powers and authority of a management
4 board under this chapter shall be enforceable by a suit brought
5 by the management board in the court of common pleas. The court
6 may direct the appropriate officials of a distressed city or
7 controlled authority by order of mandamus to perform any act
8 necessary to consummate the sale, lease or other disposition of
9 assets as required under this chapter.

10 (f) Removal.--If a management board determines that a
11 controlled authority is not taking the action necessary to sell,
12 lease or dispose of assets, the management board may remove the
13 management board members of the authority and appoint new
14 management board members.

15 Section 606. Effect on contracts.

16 (a) Contracts and collective bargaining agreements.--

17 (1) A contract or collective bargaining agreement in
18 existence in a distressed city prior to the approval of a
19 coordinator's plan or the establishment of a management board
20 shall remain in effect after approval of the plan until the
21 contract or agreement expires.

22 (2) Following approval of the coordinator's plan, a
23 distressed city shall execute contracts and collective
24 bargaining agreements in compliance with the plan. If a
25 management board has been appointed, the distressed city
26 shall execute contracts and agreements only with the approval
27 of the management board.

28 (b) Arbitration.--Following approval of the coordinator's
29 plan or the appointment of a management board, a determination
30 of a board of arbitration established under the act of June 24,

1 1968 (P.L.237, No.111), referred to as the Policemen and Firemen
2 Collective Bargaining Act, providing for an increase in wages or
3 fringe benefits of any employee of a distressed city shall, in
4 addition to considering any standard or factor required to be
5 considered by law, take into consideration and accord
6 substantial weight to:

7 (1) The approved financial plan or the determination of
8 the management board.

9 (2) Relevant market factors, such as the financial
10 situation of the distressed city, inflation, productivity,
11 size of work force and pay and benefit levels in economically
12 and demographically comparable political subdivisions.

13 (c) Determination.--A determination shall be in writing and
14 a copy shall be forwarded to each party to the dispute and to
15 the board of arbitration. A determination of the board of
16 arbitration which provides for an increase in wages or fringe
17 benefits of an employee of an assisted city shall state with
18 specificity in writing all factors which the board of
19 arbitration took into account in considering and giving
20 substantial weight to the factors referred to under subsection
21 (b) (1).

22 (d) Parties.--A party to a proceeding before a board of
23 arbitration or the management board may appeal to the court of
24 common pleas to review:

25 (1) Consideration under subsection (b) (1).

26 (2) Failure of the board of arbitration to issue a
27 determination under subsection (c).

28 (e) Appeal.--An appeal under subsection (d) must be
29 commenced not later than 30 days after the issuance of a final
30 determination by the board of arbitration.

1 (f) Decision.--The decision of the board of arbitration
2 shall be vacated and remanded to the board of arbitration if the
3 court finds:

4 (1) That the board of arbitration failed to take into
5 consideration and accord substantial weight to the factors
6 referred to under subsection (b).

7 (2) That the board of arbitration has failed to issue a
8 determination under subsection (c).

9 (g) Proposed revision.--If, after exhaustion of all appeals,
10 the final arbitration award is not in compliance with the
11 approved financial plan or is unacceptable to the management
12 board, the award shall be void.

13 Section 607. Limitation on bankruptcy.

14 Notwithstanding any other provision of law, including section
15 261, no distressed city may file a petition for relief under 11
16 U.S.C. Ch. 9 (relating to adjustment of debts of a municipality)
17 or any other Federal bankruptcy law, and no government agency
18 may authorize the distressed city to become a debtor under 11
19 U.S.C. Ch. 9 or any other Federal bankruptcy law.

20 Section 3. The heading of Chapter 6 and section 601 of the
21 act are renumbered to read:

22 CHAPTER [6] 20

23 TECHNICAL PROVISIONS

24 Section [601] 2001. Repeals.

25 Section 2501-C(e) and (f) of the act of April 9, 1929
26 (P.L.177, No.175), known as The Administrative Code of 1929, are
27 repealed insofar as they are inconsistent with this act.

28 The act of June 11, 1935 (P.L.323, No.146), entitled "An act
29 designating the Department of Internal Affairs as the agency of
30 the Commonwealth to approve or disapprove petitions to courts,

1 and plans for the readjustment of debts of political
2 subdivisions, under the act of Congress relating to the
3 bankruptcy of political subdivisions; and defining the powers
4 and duties of said department in relation thereto," is repealed
5 insofar as it relates to a municipality as defined in section
6 103 of this act.

7 Section 4. Section 602 of the act, amended December 19, 1988
8 (P.L.1272, No.157), is renumbered to read:

9 Section [602] 2002. Expiration.

10 Section 203(a)(5) shall expire upon publication in the
11 Pennsylvania Bulletin of the notice required under section
12 121(f).

13 Section 5. Section 603 of the act is renumbered to read:
14 Section [603] 2003. Effective date.

15 This act shall take effect in 60 days.

16 Section 6. The provisions of this act are severable. If any
17 provision of this act or its application to any person or
18 circumstance is held invalid, the invalidity shall not affect
19 other provisions or applications of this act which can be given
20 effect without the invalid provision or application.

21 Section 7. This act shall take effect immediately.