

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

SENATOR EARLL, COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
AS AMENDED, JUNE 22, 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 REVIEW OF COORDINATOR, FOR the
13 establishment of a management board for distressed third
14 class cities and for powers of management boards; prohibiting
15 distressed third class cities from filing Federal bankruptcy
16 petitions; and making 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

provided in section 302(b), upon certification by the [secretary] department 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 Moneys withheld shall be held in escrow by the Commonwealth until the [secretary] department has rescinded the certification.

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

* * *

SECTION 1.1. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
SECTION 254. REVIEW AND INVESTIGATION OF COORDINATORS.

(A) INITIAL REVIEW.--THE DEPARTMENT SHALL CONDUCT A REVIEW OF ALL COORDINATORS APPOINTED OR SERVING DURING 2010. THE REVIEW UNDER THIS SUBSECTION SHALL BE CONDUCTED BY OCTOBER 1, 2011. WITHIN 30 DAYS OF THE COMPLETED REVIEW, THE DEPARTMENT SHALL DETERMINE IF THE COORDINATOR HAS FAILED TO DEVELOP AN ADEQUATE PLAN OR TO IMPLEMENT THE PLAN IN AN APPROPRIATE OR ADEQUATE MANNER. IF THE COORDINATOR HAS FAILED TO DEVELOP OR IMPLEMENT THE PLAN IN AN APPROPRIATE OR ADEQUATE MANNER, THE DEPARTMENT SHALL REMOVE THE COORDINATOR AND APPOINT A NEW COORDINATOR.

(B) ADDITIONAL REVIEWS.--THE DEPARTMENT SHALL CONDUCT A REVIEW OF ALL COORDINATORS APPOINTED FOR SERVICE OR SERVING DURING 2011 AND EACH YEAR THEREAFTER. THE REVIEW UNDER THIS SUBSECTION SHALL BE CONDUCTED BY JUNE 30. WITHIN 30 DAYS OF THE

1 COMPLETED REVIEW, THE DEPARTMENT SHALL DETERMINE IF THE
2 COORDINATOR HAS FAILED TO DEVELOP AN ADEQUATE PLAN OR TO
3 IMPLEMENT THE PLAN IN AN APPROPRIATE MANNER. IF THE COORDINATOR
4 HAS FAILED TO DEVELOP AN ADEQUATE PLAN OR TO IMPLEMENT THE PLAN
5 IN AN APPROPRIATE MANNER, THE DEPARTMENT SHALL REMOVE THE
6 COORDINATOR AND APPOINT A NEW COORDINATOR.

7 (C) INVESTIGATIONS.--IN ADDITION TO THE REVIEW UNDER
8 SUBSECTION (A) OR (B), THE DEPARTMENT SHALL INVESTIGATE A
9 COMPLAINT AS TO THE FAILURE OF THE COORDINATOR TO DEVELOP AN
10 ADEQUATE PLAN OR TO IMPLEMENT THE PLAN IN AN APPROPRIATE OR
11 ADEQUATE MANNER. THE COMPLAINT MUST BE BROUGHT BY:

12 (1) A PETITION FROM AT LEAST TWO MEMBERS OF THE
13 GOVERNING BODY OF THE MUNICIPALITY; OR

14 (2) A PETITION SIGNED BY 30 RESIDENTS OF THE
15 MUNICIPALITY.

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 "CITY." A CITY OF THE THIRD CLASS WHICH:

22 (1) HAS OPTED TO BE GOVERNED BY A MAYOR-COUNCIL FORM OF
23 GOVERNMENT UNDER:

24 (I) THE ACT OF JULY 15, 1957 (P.L.901, NO.399),
25 KNOWN AS THE OPTIONAL THIRD CLASS CITY CHARTER LAW; OR

26 (II) 53 PA.C.S. PT. III SUBPT. E (RELATING TO HOME
27 RULE AND OPTIONAL PLAN GOVERNMENT); AND

28 (2) HAS A POPULATION IN EXCESS OF 45,000.

29 "Controlled authority." A municipal authority, parking
30 authority or other authority OR CORPORATE ENTITY which is

directly or indirectly controlled by a distressed city or to which a distressed city has powers of appointment.

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

"Distressed city." A city which has been determined to be financially distressed under section 203(f). The term includes any CONTROLLED authority ~~or other corporate entity which directly performs a governmental function on behalf of the city and~~ which is directly or indirectly controlled by the city or to which the city has direct or indirect power of appointment or has pledged or designated the city's revenues or the city's credit.

"Management board." The city management board.

Section 602. Applicability.

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

Section 603. Management board.

(a) Establishment.--A management board shall be established if a distressed city fails to adopt or ~~implement~~ THE SECRETARY DETERMINES THAT THE DISTRESSED CITY HAS NOT IMPLEMENTED the coordinator's plan in accordance with sections 245 and 247(a). A distressed city shall be deemed to have failed to adopt ~~and implement~~ the coordinator's plan if it takes any action to approve an alternative plan under section 246.

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

(1) Two members appointed by the Governor.

(2) One member appointed by the board of commissioners of the county WHO SHALL BE A RESIDENT OF THE COUNTY AT THE

1 TIME OF APPOINTMENT AND SHALL MAINTAIN COUNTY RESIDENCE WHILE
2 A MEMBER OF THE BOARD.

3 (B.1) PUBLIC OFFICIALS, PARTY OFFICERS; CONFLICTS OF
4 INTEREST PROHIBITED.--

5 (1) MEMBERS OF THE BOARD SHALL NOT:

6 (I) SEEK OR HOLD A POSITION AS ANY OTHER PUBLIC
7 OFFICIAL WITHIN THIS COMMONWEALTH OR AS A PARTY OFFICER
8 WHILE IN THE SERVICE OF THE MANAGEMENT BOARD.

9 (II) SEEK ELECTION AS PUBLIC OFFICIALS OR PARTY
10 OFFICERS FOR ONE YEAR AFTER THEIR SERVICE WITH THE
11 MANAGEMENT BOARD.

12 (2) MEMBERS OF THE BOARD MAY SERVE AS APPOINTIVE PUBLIC
13 OFFICIALS ANY TIME AFTER THEIR PERIODS OF SERVICE WITH THE
14 MANAGEMENT BOARD.

15 (3) (I) NO MEMBER OF THE BOARD MAY:

16 (A) DIRECTLY OR INDIRECTLY BE A PARTY TO OR HAVE
17 AN INTEREST IN ANY CONTRACT OR AGREEMENT WITH THE
18 AUTHORITY OR WITH THE DISTRESSED CITY.

19 (B) USE HIS OFFICE OR ANY CONFIDENTIAL
20 INFORMATION RECEIVED THROUGH HIS OFFICE FOR THE
21 PRIVATE PECUNIARY BENEFIT OF HIMSELF, A MEMBER OF HIS
22 IMMEDIATE FAMILY OR A BUSINESS WITH WHICH HE OR A
23 MEMBER OF HIS IMMEDIATE FAMILY IS ASSOCIATED.

24 (II) ANY MEMBER WHO WILLFULLY VIOLATES THIS
25 PARAGRAPH SHALL FORFEIT HIS OFFICE AND SHALL BE SUBJECT
26 TO ANY OTHER CRIMINAL AND CIVIL SANCTIONS AS MAY BE
27 IMPOSED BY LAW. ANY CONTRACT OR AGREEMENT KNOWINGLY MADE
28 IN CONTRAVENTION OF THIS PARAGRAPH SHALL BE VOID.

29 ~~(c) Experience. All members and their designees shall:~~

30 ~~(1) Have experience in finance or management.~~

~~(2) Be residents of this Commonwealth.~~

(C) EXPERIENCE AND RESIDENCE.--

(1) ALL MEMBERS AND THEIR DESIGNEES SHALL HAVE
EXPERIENCE IN FINANCE OR MANAGEMENT.

(2) ALL MEMBERS AND THEIR DESIGNEES SHALL BE RESIDENTS
OF THIS COMMONWEALTH.

(3) AT LEAST ONE MEMBER UNDER SUBSECTION (B) (1) SHALL BE
A RESIDENT OF THE DISTRESSED CITY FOR WHICH THE BOARD IS
BEING APPOINTED.

(d) Term.--Members shall be appointed within seven days of
the determination by the department that the requirements of
subsection (a) have occurred. Members shall select a chairperson
who shall serve for a term of two years. Members appointed by
the Governor shall have a term coterminous with the appointing
authority. A member appointed by the county commissioners shall
have a term coterminous with the chairman of the board of
commissioners. If a vacancy occurs, the appointing authority who
originally appointed the management board member whose seat has
become vacant shall appoint a successor member within 30 days of
the vacancy. A member appointed to fill a vacancy occurring
prior to the expiration of a term shall serve the unexpired
term.

~~(e) Organization. The Governor shall set a date, time and~~

(E) ORGANIZATION.--

(1) THE GOVERNOR SHALL SET A DATE, TIME AND place for
the initial organization meeting of the management board
within five days of the appointment of the members of the
management board. The initial organizational meeting shall be
held within 15 days of the appointment under subsection (d).
Members shall elect other officers as they deem necessary.

(2) MEMBERS SHALL ELECT OTHER OFFICERS AS THEY DEEM
NECESSARY.

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

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

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

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

(g) Expenses.--A member shall not receive compensation or
remuneration but shall be entitled to reimbursement for all
reasonable and necessary expenses.

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

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

1 (J) SOVEREIGN IMMUNITY.--MEMBERS OF THE BOARD SHALL NOT BE
2 LIABLE PERSONALLY FOR ANY OBLIGATIONS OF THE MANAGEMENT BOARD.
3 IT IS DECLARED TO BE THE INTENT OF THE GENERAL ASSEMBLY THAT THE
4 BOARD AND ITS MEMBERS SHALL ENJOY SOVEREIGN AND OFFICIAL
5 IMMUNITY AS PROVIDED IN 1 PA.C.S. § 2310 (RELATING TO SOVEREIGN
6 IMMUNITY REAFFIRMED; SPECIFIC WAIVER) AND SHALL REMAIN IMMUNE
7 FROM SUIT EXCEPT AS PROVIDED BY AND SUBJECT TO THE PROVISIONS OF
8 42 PA.C.S. CH. 85 SUBCHS. A (RELATING TO GENERAL PROVISIONS) AND
9 B (RELATING TO ACTIONS AGAINST COMMONWEALTH PARTIES).

10 Section 604. Powers and duties.

11 The NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
12 management board shall have the following powers and duties:

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

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

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

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

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

28 (6) IF NECESSARY TO IMPLEMENT THE COORDINATOR'S PLAN, TO
29 EXERCISE ALL OF THE POWERS AND AUTHORITY OF THE DISTRESSED
30 CITY AND ITS ELECTED OFFICIALS IN THE MANAGEMENT OF THE

DISTRESSED CITY'S FINANCIAL AFFAIRS.

(7) TO APPROVE OR DISAPPROVE CONTRACTS AND AGREEMENTS IN
ACCORDANCE WITH SECTION 606(A)(2).

Section 605. Sale of assets.

(a) Authority.--The management board shall have the
authority to determine ~~by a majority vote~~ that it is in the best
financial interests of the distressed city to sell, lease or
dispose of assets determined by the management board to be
nonessential and owned by the distressed city or ~~by an~~
~~authority, including a controlled authority.~~

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

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

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

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

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

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

(d) Proceeds.--The proceeds of the sale, lease or other

disposition of assets of a distressed city OR CONTROLLED
AUTHORITY shall be applied to the payment of any unpaid debt
obligations owed by the distressed city, as determined by the
management board. Any proceeds remaining after the payment of
these obligations shall be applied at the discretion of the
management board to restructure or to provide escrow for the
payment of the distressed city's future debt obligations.

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

(E) ENFORCEMENT.--NOTWITHSTANDING ANY OTHER PROVISION OF
LAW, THE MANAGEMENT BOARD MAY, IF NECESSARY TO IMPLEMENT THE
COORDINATOR'S PLAN, EXERCISE ALL THE POWERS AND AUTHORITY OF THE
DISTRESSED CITY AND ITS ELECTED OFFICIALS IN THE MANAGEMENT OF
THE DISTRESSED CITY'S FINANCIAL AFFAIRS AND THE IMPLEMENTATION
OF THE COORDINATOR'S PLAN, INCLUDING THE POWER AND AUTHORITY TO
SELL, LEASE OR OTHERWISE DISPOSE OF THE DISTRESSED CITY'S ASSETS
UNDER THIS SECTION. THE MANAGEMENT BOARD MAY DIRECT THE
OFFICIALS OF THE DISTRESSED CITY OR CONTROLLED AUTHORITY TO
PERFORM ANY ACT DEEMED NECESSARY BY THE BOARD TO PROPERLY MANAGE
THE DISTRESSED CITY'S FINANCIAL AFFAIRS AND IMPLEMENT THE
COORDINATOR'S PLAN. THE MANAGEMENT BOARD'S DIRECTIVES MAY BE
ENFORCED BY ORDER OF MANDAMUS IN THE COURT OF COMMON PLEAS WHERE
THE DISTRESSED CITY IS SITUATED.

(f) Removal.--If a management board determines that a
controlled authority is not taking the action necessary to sell,

1 lease or dispose of assets, the management board may remove the
2 management board members of the CONTROLLED authority and appoint
3 new management board members.

4 Section 606. Effect on contracts.

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

6 (1) A contract or collective bargaining agreement in
7 existence in a distressed city prior to the approval of a
8 coordinator's plan or the establishment of a management board
9 shall remain in effect after approval of the plan until the
10 contract or agreement expires.

11 (2) Following approval of the coordinator's plan, a
12 distressed city shall execute contracts and collective
13 bargaining agreements in compliance with the plan. If a
14 management board has been appointed, the distressed city
15 shall execute contracts and agreements only with the approval
16 of the management board.

17 (b) Arbitration.--Following approval of the coordinator's
18 plan or the appointment of a management board, a determination
19 of a board of arbitration established under the act of June 24,
20 1968 (P.L.237, No.111), referred to as the Policemen and Firemen
21 Collective Bargaining Act, providing for an increase in wages or
22 fringe benefits of any employee of a distressed city shall, in
23 addition to considering any standard or factor required to be
24 considered by law, take into consideration and accord
25 substantial weight to:

26 (1) The ~~approved financial~~ COORDINATOR'S plan or the
27 determination of the management board.

28 (2) Relevant market factors, such as the financial
29 situation of the distressed city, inflation, productivity,
30 size of work force and pay and benefit levels in economically

and demographically comparable political subdivisions.

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

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

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

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

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

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

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

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

(g) Proposed revision.--If, after exhaustion of all appeals, the final arbitration award is not in compliance with the approved ~~financial~~ COORDINATOR'S plan or is unacceptable to the



1 management board, the award shall be void.

2 Section 607. Limitation on bankruptcy.

3 Notwithstanding any other provision of law, including section
4 261, no distressed city may file a petition for relief under 11
5 U.S.C. Ch. 9 (relating to adjustment of debts of a municipality)
6 or any other Federal bankruptcy law, and no government agency
7 may authorize the distressed city to become a debtor under 11
8 U.S.C. Ch. 9 or any other Federal bankruptcy law.

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

11 CHAPTER [6] 20

12 TECHNICAL PROVISIONS

13 Section [601] 2001. Repeals.

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

17 The act of June 11, 1935 (P.L.323, No.146), entitled "An act
18 designating the Department of Internal Affairs as the agency of
19 the Commonwealth to approve or disapprove petitions to courts,
20 and plans for the readjustment of debts of political
21 subdivisions, under the act of Congress relating to the
22 bankruptcy of political subdivisions; and defining the powers
23 and duties of said department in relation thereto," is repealed
24 insofar as it relates to a municipality as defined in section
25 103 of this act.

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

28 Section [602] 2002. Expiration.

29 Section 203(a)(5) shall expire upon publication in the
30 Pennsylvania Bulletin of the notice required under section

1 121(f).

2 Section 5. Section 603 of the act is renumbered to read:

3 Section [603] 2003. Effective date.

4 This act shall take effect in 60 days.

5 Section 6. The provisions of this act are severable. If any

6 provision of this act or its application to any person or

7 circumstance is held invalid, the invalidity shall not affect

8 other provisions or applications of this act which can be given

9 effect without the invalid provision or application.

10 Section 7. This act shall take effect immediately.