
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 974 Session of
2015

INTRODUCED BY PETRI, COX, MCGINNIS, MURT AND ZIMMERMAN,
APRIL 15, 2015

REFERRED TO COMMITTEE ON URBAN AFFAIRS, APRIL 15, 2015

AN ACT

1 Amending the act of December 18, 1984 (P.L.1005, No.205),
2 entitled, as amended, "An act mandating actuarial funding
3 standards for all municipal pension systems; establishing a
4 recovery program for municipal pension systems determined to
5 be financially distressed; providing for the distribution of
6 the tax on the premiums of foreign fire insurance companies;
7 and making repeals," in financially distressed municipal
8 pension system recovery program, providing for municipal
9 pension recovery plan program; in standards for municipal
10 pension systems, further providing for definitions and for
11 procurement for professional services contracts; and adding
12 provisions relating to financially distressed municipal
13 pension recovery plans and trusteeship of distressed pension
14 program.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The act of December 18, 1984 (P.L.1005, No.205),
18 known as the Municipal Pension Plan Funding Standard and
19 Recovery Act, is amended by adding a section to read:

20 Section 607.1. Municipal pension recovery plan program.

21 (a) General rule.--In addition to the recovery program
22 available under section 606, all municipalities that have a
23 pension plan classified as severely distressed shall develop and
24 carry out a pension recovery plan in accordance with chapter 12.

1 (b) Expansion.--At such a time that all severely distressed
2 pension plans have paid down sufficient unfunded liability and
3 are classified as moderately distressed, chapter 12 shall apply
4 to all municipalities that are subject to section 605.

5 Section 2. The definition of "professional service contract"
6 in section 701-A of the act, added September 18, 2008 (P.L.396,
7 No.44), is amended to read:

8 Section 701-A. Definitions.

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

12 * * *

13 "Professional services contract." A contract to which [the]
14 a municipal pension system having 100 or more active members is
15 a party and that is:

16 (1) for the purchase or provision of professional services,
17 including investment services, legal services, real estate
18 services and other consulting services; and

19 (2) not subject to a requirement that the lowest bid be
20 accepted.

21 Section 3. Section 702-A(a) of the act, added September 18,
22 2008 (P.L.396, No.44), is amended to read:

23 Section 702-A. Procurement for professional services contracts.

24 (a) Procedures.--Each municipal pension system having 100 or
25 more active members, including the Pennsylvania Municipal
26 Retirement System, shall develop procedures to select the most
27 qualified person to enter into a professional services contract.
28 The procedures shall ensure that the availability of a
29 professional services contract is advertised to potential
30 participants in a timely and efficient manner. Procedures shall

1 include applications and disclosure forms to be used to submit a
2 proposal for review and to receive the award of a professional
3 services contract.

4 * * *

5 Section 4. The act is amended by adding a chapter to read:

6 CHAPTER 12
7 FINANCIALLY DISTRESSED MUNICIPAL PENSION RECOVERY PLANS AND
8 TRUSTEESHIP OF DISTRESSED PENSION PROGRAM

9 Section 1201. Definitions.--

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

13 "Plan." A pension recovery plan is established in accordance
14 with this chapter.

15 "Program." The Financially Distressed Municipal Pension
16 Recovery Plans and Trusteeship of Distressed Pension Program
17 established by this chapter.

18 Section 1202. Legislative findings.

19 The General Assembly finds that:

20 (1) Municipal pension debt is an issue across this
21 Commonwealth and can severely cripple municipalities.

22 (2) It is necessary for municipalities to take firm
23 action in order to move their pension plans out of distressed
24 status and into better funding situations.

25 (3) Therefore, municipal pension plans that have a
26 severely distressed designation in accordance with Chapter 5
27 for two consecutive biennial actuarial rating periods should
28 be required to enter into the Financially Distressed
29 Municipal Pension Recovery Plans and Trusteeship of
30 Distressed Pension Program and comply with the requirements

1 of this chapter.

2 (4) After a second consecutive severely distressed
3 classification the municipality should enter into an
4 agreement with the commission to begin making supplemental
5 payments of a sufficient amount to pay down the unfunded
6 liability with the goal of advancing to a moderately
7 distressed classification.

8 Section 1203. Pension recovery plan guidelines.

9 (a) Notice to municipalities.--

10 (1) After two consecutive severely distressed
11 determinations the executive director of the commission shall
12 notify the municipality responsible for the unfunded
13 liability that they are being placed in the program and that
14 the municipality shall submit to the commission a pension
15 recovery plan within six months from the date of
16 notification.

17 (2) While developing the plan and before submitting it
18 to the commission, the municipality shall hold two public
19 meetings.

20 (b) Requirements for plan.--In order for the plan to be
21 approved by the commission, plan implementation shall be
22 scheduled as follows:

23 (1) The plan shall reasonably provide for a reduction
24 from severe distress to moderate distress in a period of no
25 more than 10 years.

26 (2) The municipality shall pay a minimum of 1% of the
27 total unfunded liability each year.

28 (3) The municipality shall demonstrate the means by
29 which the municipality will make any payments required by the
30 plan.

1 (c) Additional provisions for plan.--The plan may include:

2 (1) The lease or sale of assets to generate additional
3 revenue, provided that:

4 (i) the property was not acquired under the act of
5 January 19, 1967 (1968, P.L.992, No.442), entitled "An
6 act authorizing the Commonwealth of Pennsylvania and the
7 local government units thereof to preserve, acquire or
8 hold land for open space uses," or the act of December
9 15, 1959 (P.L.1772, No.670), entitled "An act providing
10 for the orderly disposition of properties situate within
11 political subdivisions and donated, or otherwise
12 dedicated or offered for dedication, where no formal
13 record appears as to acceptance by the political
14 subdivision, as public parks, squares or similar uses and
15 public buildings, and no longer necessary or practicable
16 for such purposes, and granting orphans' courts
17 jurisdiction with respect thereto;" and

18 (ii) before considering the outright sale of an
19 asset as part of the plan, the municipality considers
20 leasing the asset.

21 (2) Issuance of bonds in accordance with 53 Pa.C.S. Pt.
22 VII Subpt. B (relating to indebtedness and borrowing) for the
23 purpose of paying down the unfunded liability.

24 (3) Any other remedy provided under this act.

25 (d) Review of plan by commission.--After receipt of the
26 plan, the commission shall review the proposed plan and, within
27 90 days, do one of the following:

28 (1) If the commission recommends changes to the proposed
29 plan, the municipality shall have 30 days to review the
30 proposed changes and work with the commission to achieve a

1 plan that is acceptable to the commission.

2 (2) (i) If the municipality fails to achieve a plan
3 that is acceptable to the commission within 30 days, the
4 plan shall be deemed approved with the inclusion of the
5 commission's recommended changes.

6 (ii) A plan is considered a failure if the
7 commission determines any of the following applies:

8 (A) The plan does not demonstrate that it can
9 reasonably be paid for.

10 (B) The plan does not move the pension into a
11 more stable fiscal position.

12 (C) The plan does not explore all reasonable
13 funding options.

14 (D) Any other deficiency found by the
15 commission.

16 (e) Time period to implement.--The municipality shall have
17 90 days from approval by the commission to implement the plan by
18 ordinance.

19 Section 1204. Yearly reporting.

20 (a) Duty to submit.--At the end of every fiscal year, a
21 municipality subject to this act shall submit to the commission
22 financial documentation proving that the municipality is
23 complying with the provisions of the approved plan.

24 (b) Commission to recommend action.--If, after reviewing the
25 yearly report on the plan, the commission determines that the
26 plan is not performing to expectations, the commission can
27 recommend action under section 1205.

28 Section 1205. Compliance.

29 (a) Remedies of commission.--If a municipality subject to
30 this act fails to comply with the provisions in section 1203 or

1 1204, the commission may exercise any of the following remedies:

2 (1) Work with the municipality to bring the plan into
3 compliance.

4 (2) Develop possible amendments to the approved plan.

5 (3) Petition the Office of the Auditor General to begin
6 proceedings to place the pension in question into trusteeship
7 in accordance with section 1206.

8 (b) Appeal to commission.--A municipality that has been
9 found to be not in compliance may appeal the issue of
10 noncompliance to the commission.

11 Section 1206. Trusteeship of distressed pension.

12 (a) Petition to be filed by Auditor General.--

13 (1) Following determination of noncompliance under
14 section 1205 or having completed a plan under section 1203
15 but failing to achieve moderately distressed status, the
16 commission may direct the Office of the Auditor General to
17 file a petition in Commonwealth Court to appoint the
18 individual named in the petition as a receiver for the
19 severely distressed pension plan. The court may not appoint
20 any person other than the individual named in the petition as
21 the receiver.

22 (2) This section shall apply only after all other
23 options under section 1204 have been exhausted.

24 (3) The Office of the Auditor General shall determine
25 who shall be named on the petition

26 (4) The Auditor General shall serve the petition upon:

27 (i) the governing body of the municipality that is
28 responsible for the severely distressed pension; and

29 (ii) the administrator of the severely distressed
30 pension plan.

1 (5) The Auditor General shall publish notice of the
2 filing of the petition once in a newspaper of general
3 circulation.

4 (b) Hearing.--

5 (1) Upon notification by the commission and the Auditor
6 General of the failure of the municipality to comply with any
7 of the provisions found in sections 1203, 1204 and 1205, the
8 Commonwealth Court shall conduct a hearing within 15 days of
9 notification of the petition.

10 (2) At a minimum, any person given notice under
11 subsection (a) (4) shall be at the hearing.

12 (3) Representatives from the commission and the Office
13 of the Auditor General may attend the hearing.

14 (c) Determination.--No later than 60 days following the
15 filing of a petition under this section, the Commonwealth Court
16 shall issue an order under subsection (e) if it finds by a
17 preponderance of the evidence that there has been a failure by:

18 (1) the governing body of the municipality to implement
19 a plan in accordance with section 1203;

20 (2) the governing body of the municipality fails to
21 properly report compliance in accordance with section 1204;
22 or

23 (3) the governing body fails to work with the commission
24 in accordance with section 1205.

25 (d) Order.--An order issued under this subsection shall
26 state the findings under subsection (c) and:

27 (1) grant the petition and declare the severely
28 distressed pension plan is to be placed in trusteeship;

29 (2) appoint the individual named in the petition to be
30 the receiver for a period not to exceed the duration of the

1 plan;

2 (3) direct the trustee to develop a plan within 90 days
3 in accordance with section 1203 and submit it to the Public
4 Employee Retirement Commission, the Auditor General, the
5 governing body and the administrator of the severely
6 distressed pension plan; or

7 (4) direct the trustee to bring the municipality into
8 compliance with a previously agreed to plan under section
9 1203.

10 (e) Effect of confirmation.--The confirmation of the plan
11 shall have the effect of:

12 (1) Imposing on the elected and appointed officials of
13 the municipality or an authority a mandatory duty to
14 undertake the acts stated in the plan.

15 (2) Suspending the authority of the elected and
16 appointed officials of the municipality or an authority to
17 exercise power on behalf of the municipality or authority
18 pursuant to law, charter, ordinance, rule or regulation to
19 the extent that the power would interfere with the powers
20 granted to the receiver or the goals of the plan.

21 (f) Liability.--The receiver shall not be liable personally
22 for any obligations of the municipality or authority. It is
23 declared to be the intent of the General Assembly that the
24 receiver shall enjoy sovereign and official immunity as provided
25 in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed;
26 specific waiver) and shall remain immune from suit except as
27 provided by and subject to the provisions of 42 Pa.C.S. Ch. 85
28 Subchs. A (relating to general provisions) and B (relating to
29 actions against Commonwealth parties).

30 (g) Powers and duties.--Notwithstanding any other provision

1 of law, the trustee shall have the following powers and duties:

2 (1) To require the municipality or authority to take
3 actions necessary to implement the plan under section 1203.

4 (2) To modify the plan as necessary to achieve financial
5 stability of the distressed pension plan in accordance with
6 section 1203. Any modification made to the plan shall be made
7 in consultation with the commission and the Office of the
8 Auditor General.

9 (3) To submit annual reports to the governing body,
10 administrators of the pension plan and the Office of the
11 Auditor General. The reports shall be posted on a publicly
12 accessible Internet website maintained by the municipality or
13 authority.

14 (4) To require the municipality or authority to cause
15 the sale, lease, conveyance, assignment or other use or
16 disposition of the municipality's or authority's assets in
17 accordance with section 1203.

18 (5) To approve, disapprove, modify, reject, terminate or
19 renegotiate contracts and agreements with the municipality or
20 authority relating to the implementation of the plan in
21 section 1203, except to the extent prohibited by the
22 Constitution of the United States and the Constitution of
23 Pennsylvania.

24 (6) To direct the municipality or authority to take any
25 other action to implement the plan.

26 (7) To attend executive sessions of the governing body
27 of the municipality or authority and make reports to the
28 public on implementation of the plan.

29 (8) To meet and consult with the advisory committee
30 under subsection 1207 (a).

1 (9) To employ financial or legal experts deemed
2 necessary to develop and implement the plan. Notwithstanding
3 any law to the contrary, the employment of such experts shall
4 not be subject to contractual competitive bidding procedures.

5 (h) Authorization prohibited.--Neither this chapter nor the
6 plan shall be construed to authorize the receiver to do any of
7 the following:

8 (1) Unilaterally levy taxes.

9 (2) Unilaterally abrogate, alter or otherwise interfere
10 with a lien, charge, covenant or relative priority that is:

11 (i) Held by a holder of a debt obligation of a
12 municipality or authority.

13 (ii) Granted by the contract, law, rule or
14 regulation governing the debt obligation.

15 (3) Unilaterally impair or modify existing bonds, notes,
16 municipal securities or other lawful contractual or legal
17 obligations of the municipality or authority.

18 (4) Authorize the use of the proceeds of the sale,
19 lease, conveyance, assignment or other use or disposition of
20 the assets of the municipality or authority in a manner
21 contrary to the plan.

22 (i) Orders.--The receiver may issue an order to an elected
23 or appointed official of the distressed municipality or
24 authority to:

25 (1) Implement any provision of the recovery plan.

26 (2) Refrain from taking any action that would interfere
27 with the powers granted to the receiver or the goals of the
28 recovery plan.

29 (j) Enforcement.--An order issued under subsection (a) shall
30 be enforceable under subsection (k).

1 (k) Action by receiver.--

2 (1) The receiver may petition the Commonwealth Court to
3 issue a writ of mandamus upon any elected or appointed
4 official of the municipality or authority to secure
5 compliance with an order issued under subsection (i).

6 (2) The court shall grant or deny the relief within 14
7 days of the filing of the petition. The court shall grant the
8 relief requested if it determines that the order was issued
9 in compliance with this chapter.

10 (l) Action by elected or appointed officials.--Any elected
11 or appointed official of a municipality or authority may
12 petition the Commonwealth Court to enjoin any action of the
13 receiver that is contrary to this chapter.

14 (m) Time.--Receivership under this chapter shall expire at
15 the completion of the plan created under section 1203 or at such
16 time as the pension plan is classified as moderately distressed
17 for two consecutive determinations.

18 Section 1207. Municipal Pension Recovery Advisory Committee.

19 (a) Establishment.--A municipal pension recovery advisory
20 committee is established to meet and consult with a receiver in
21 carrying out the duties under this chapter. The sole function of
22 the advisory committee shall be to provide recommendations and
23 feedback to the receiver on the implementation of plans.

24 (b) Composition.--The advisory committee established under
25 subsection (a) shall be comprised of the following:

26 (1) The chief executive officer, if any, of the
27 applicable municipality or a designee.

28 (2) The president of the governing body of the
29 applicable municipality or a designee.

30 (3) One member appointed by the Public Employee

1 Retirement Commission.

2 Section 1208. Costs.

3 A municipality with a severely distressed pension shall be
4 responsible for the following costs:

5 (1) The costs to implement the provisions of this
6 chapter for the municipality.

7 (2) Cost to the commission for review of the plan.

8 (3) Any cost to the trustee if one is appointed.

9 Section 5. This act shall take effect in 60 days.