

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1249 Session of
1985

INTRODUCED BY ZEMPRELLI, SINGEL, SHAFFER, ROSS, ROMANELLI AND
ANDREZESKI, DECEMBER 4, 1985

REFERRED TO FINANCE, DECEMBER 4, 1985

AN ACT

1 Declaring that it is the policy of the Commonwealth of
2 Pennsylvania to discourage defaults in municipal obligations,
3 the reduction or elimination of essential municipal programs,
4 and the deterioration and nonconstruction of needed municipal
5 capital improvements; providing for a definition and
6 standards for municipal financial distress; providing for
7 certain parties with standing to seek a distressed
8 determination for a municipality; providing a process for a
9 distressed status determination and removal of said status;
10 providing for the development and adoption of plans to
11 overcome financial problems within distressed municipalities
12 and for enforcement of adopted plans; and authorizing
13 rulemaking.

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4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 CHAPTER 1

7 SHORT TITLE

8 Section 101. Short title.

9 This act shall be known and may be cited as the Distressed
10 Municipalities Act.

11 CHAPTER 2

12 DEFINITIONS AND STANDARDS

13 Section 201. Distressed municipality.

14 A distressed municipality is a city, county, borough, town,
15 township or general purpose municipality if one or more of the
16 following conditions exists:

17 (1) The general fund financial obligations of that
18 municipality are forecast or are reasonably expected to
19 exceed its revenues for the forthcoming fiscal year next
20 following two immediate fiscal years which, in the case of
21 the prior year, the general fund expenses have exceeded
22 revenues, and in the case of the current year in which the
23 determination is made, it is reasonable to expect that
24 financial obligations will exceed revenues by such an amount
25 or to such a degree that municipal services or facilities
26 have been or will be affected adversely.

27 (2) The municipality has experienced a sudden decline in
28 revenues which have been fairly and reasonably estimated or a
29 sudden unforeseen increase in expenditures, or both, which
30 are of such magnitude that public services have suffered in

1 the current year and it is reasonable to anticipate that, in
2 the ensuing fiscal year, the expenditures of the municipality
3 will significantly exceed revenues unless drastic measures
4 are taken to balance the budget.

5 (3) The salaries of any public employees concerning
6 which there is no dispute have remained unpaid for a period
7 of 30 days.

8 (4) The municipality has defaulted in payment of
9 principal or interest on any of its bonds or notes or in
10 payment of rentals due any authority or in payment of its
11 budgeted contribution to any pension fund during the fiscal
12 year for which the amount was budgeted and no action has been
13 initiated by the municipality within that period of time to
14 make payment.

15 (5) The municipality has accumulated and has operated
16 with a deficit equal to .05% or more of the assessed
17 valuation of the taxable real estate within the municipality
18 for two successive years.

19 (6) The municipality, for a period of at least 30 days
20 beyond the date due, has failed to transfer to the
21 appropriate agency:

22 (i) taxes withheld on the income of any employees;

23 or

24 (ii) employer or employee contributions for Federal
25 social security.

26 Section 202. Definitions.

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

30 "Auditor General." The Auditor General of the Commonwealth.

1 "Council." The municipal legislative body, whether a
2 council, board of commissioners or board of supervisors.

3 "Department." The Department of Community Affairs of the
4 Commonwealth.

5 "Distressed municipality coordinator" or "coordinator." The
6 official appointed by the secretary with the powers and duties
7 as prescribed in Chapters 5, 6, 7 and 8.

8 "Mayor." The chief executive officer of the municipality.

9 "Municipal clerk." The city clerk, chief clerk, municipal
10 secretary or custodian of the official records of the
11 municipality.

12 "Municipality." Any county, city, borough, incorporated
13 town, township or any similar general purpose unit of government
14 which shall hereafter be created, including any municipality
15 operating under the provisions of a Home Rule Charter, or a
16 municipal authority as defined in 1 Pa.C.S. § 1991 (relating to
17 definitions).

18 "Revenues." All taxes, fees, charges, gifts, grants,
19 interest earnings, surpluses from prior years and the proceeds
20 from the sale of municipal property. In this instance, revenues
21 shall not include the proceeds from the sale of "tax
22 anticipation notes" or from the sale of bonds, notes or other
23 obligations pursuant to the act of July 12, 1972 (P.L.781,
24 No.185), known as the Local Government Unit Debt Act, or
25 temporary transfers or interfund borrowing from one fund to
26 another to meet an operating deficit in a specific time period.

27 "Secretary." The Secretary of Community Affairs of the
28 Commonwealth.

29 CHAPTER 3

30 STANDING

1 Section 301. Determination of distressed municipality.

2 (a) General rule.--The following have standing to seek a
3 determination of distressed municipality:

4 (1) Either the mayor or executive of a municipality
5 operating under the strong-mayor or executive form, or the
6 municipal council of any municipality by resolution passed by
7 a majority of a quorum following a duly advertised public
8 hearing.

9 (2) A creditor or creditors of the municipality to whom
10 or to which firm, partnership or corporation is owed the sum
11 of \$2,000 or more, the payment of which is at least six
12 months in arrears because of the financial condition of the
13 municipality and not because of a dispute involving the
14 obligation. Creditors may include the governing board of a
15 pension fund of the municipality.

16 (3) Ten percent of the number of electors of the
17 municipality that voted at the last municipal election by
18 petition to the department alleging that the municipality is
19 distressed.

20 (b) Determination of Auditor General.--The Auditor General
21 shall make determinations that a municipality is distressed
22 based upon the Auditor General's review and evaluation of a
23 municipality's annual budget. The Auditor General's review of a
24 municipality's budget shall be conducted within six months of
25 the municipality's adoption of an annual budget. If the Auditor
26 General determines that a municipality is distressed, the
27 Auditor General shall notify the secretary. If the municipality
28 disagrees with the Auditor General's determination, the
29 municipality may petition the secretary, within 30 days of the
30 Auditor General's determination, as provided under Chapter 4. If

1 the municipality does not challenge the Auditor General's
2 determination, within 30 days from the date of the Auditor
3 General's determination, the secretary shall appoint a
4 distressed municipality coordinator, as provided in section 501.

5 (c) Scope of review.--The Auditor General shall also review
6 a municipality's capital expenditures in relation to the
7 municipality's operating expenditures, the municipality's debt
8 to revenue ratio, the municipality's revenue estimates and
9 prospective revenues, and other fiscal budget items the Auditor
10 General deems appropriate.

11 CHAPTER 4

12 DETERMINATION OF MUNICIPAL DISTRESS

13 Section 401. Procedure for petition for a declaration of
14 municipal distress.

15 (a) Petition.--A party with standing to petition, as defined
16 in Chapter 3, may petition the secretary seeking a determination
17 that the municipality involved is a distressed municipality. The
18 petition shall include a statement of facts which suggests that
19 the municipality is distressed. In the event a municipality
20 wants to challenge the determination of the Auditor General that
21 it is a distressed municipality, the municipality shall follow
22 the procedures provided under this chapter, except that its
23 petition shall include a statement of facts that shows that it
24 is not a distressed municipality.

25 (b) Hearing.--Within ten days of the receipt of a petition,
26 the secretary shall set the time and place for a public hearing,
27 which shall be scheduled within or near the subject
28 municipality.

29 (c) Investigation.--After receiving the petition but prior
30 to the public hearing, the secretary may make a study or

1 investigation into the affairs of the municipality. The results
2 of such investigation shall be placed in the record of the
3 public hearing.

4 (d) Notice.--The hearing shall be held no sooner than two
5 weeks nor later than 30 days from the date the hearing is set.
6 The secretary shall publish notice of the hearing beforehand at
7 least once in a newspaper of general circulation in the
8 municipality in question and shall give written notice by
9 registered mail to or direct service upon the municipal clerk,
10 the mayor or executive, the municipal solicitor and each council
11 member of the municipality. The municipal clerk shall
12 immediately give written notice by registered mail or direct
13 service upon the president of each collective bargaining unit
14 representing any employees of the municipality and the president
15 of any bank or lending institution that is trustee for the
16 owners of any of the municipality's bonds or tax anticipation
17 notes.

18 (e) Hearing officer.--The secretary or an official of the
19 department designated by the secretary, or a hearing officer
20 appointed by the secretary, shall conduct the public hearing to
21 hear the opinions of interested persons, organizations and
22 public officials.

23 (f) Determination.--Within 20 days of the hearing, the
24 secretary shall issue an administrative determination of whether
25 the municipality is a distressed municipality and the reasons
26 therefor. If a hearing officer has been used to conduct the
27 hearing, the hearing officer shall present a recommended
28 determination to the secretary within 20 days following the
29 hearing and the secretary shall affirm or reject the recommended
30 determination within five calendar days of its presentation by

1 the hearing officer.

2 Section 402. Failure of Commonwealth to provide funds no basis
3 for distressed determination.

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

10 Section 403. Cessation of municipal financial distress status.

11 (a) Automatic revocation.--The determination of financial
12 distress in a municipality shall be automatically revoked
13 whenever two fiscal years elapse during which the conditions
14 which led to the determination of distressed municipality by the
15 secretary no longer exist.

16 (b) Determination by secretary.--Following a duly advertised
17 public hearing with notices given as in section 401, the
18 secretary may issue a determination that the conditions which
19 led to the earlier determination of distressed municipality are
20 no longer applicable, thereby eliminating the status of
21 distressed municipality. Such a finding shall include a
22 statement of facts as part of the final order.

23 CHAPTER 5

24 DISTRESSED MUNICIPAL COORDINATOR AND PLAN

25 Section 501. Coordinator and plan.

26 (a) Appointment.--No later than 30 days following a
27 designation of a municipality as being distressed, the secretary
28 shall appoint a distressed municipality coordinator who shall
29 prepare a plan for solving the municipality's financial
30 problems. The coordinator may be furnished additional staff or

1 consultant assistance, if needed, or may be a consultant or
2 consulting firm. No elected or appointed employee of the
3 municipality shall be eligible for serving as coordinator. The
4 coordinator shall be an expert in municipal administration and
5 finance.

6 (b) Contents of plan.--Such a plan shall include, but not be
7 limited to:

8 (1) Projection of revenues and expenditures for the
9 current year and the next two years, both assuming the
10 continuation of present operations and as impacted by the
11 measures in the plan.

12 (2) Efficiency and productivity recommendations.

13 (3) Cost-cutting recommendations.

14 (4) Revenues enhancement recommendations, including tax
15 or fee changes.

16 (5) Accounting recommendations.

17 (6) Automation recommendations.

18 (7) Collective bargaining agreement change
19 recommendations.

20 (8) Permanent and temporary personnel staffing level
21 changes or changes in organization.

22 (9) Recommended changes in municipal ordinances or
23 rules.

24 (10) Recommendations to seek the funding of debt or tax
25 anticipation note financing pursuant to the act of July 12,
26 1972 (P.L.781, No.185), known as the Local Government Unit
27 Debt Act.

28 (11) Recommendations for special audits or further
29 studies.

30 (12) Recommendation to file or not to file for

1 bankruptcy pursuant to Federal law.

2 (13) Recommendations for changing the current or next
3 year's operating or special fund budgets.

4 (c) Authority of coordinator.--The distressed municipality
5 coordinator shall have full access to all municipal records and
6 the cooperation from all officials and employees. If in the
7 course of his or her work the coordinator believes that any
8 official or employee of the municipality is not answering
9 questions accurately or completely or furnishing information
10 requested, the coordinator may notify the employee, in writing,
11 to furnish answers to questions or to furnish documents or
12 records, or both. Failure to respond to the written request for
13 bona fide information, as determined by the coordinator, shall
14 be treated as insubordination punishable in the same manner as
15 would be the case if either the mayor or the municipal council
16 had requested the same information from the said official or
17 employee.

18 Section 502. Hearings authorized.

19 The coordinator may hold public meetings in connection with
20 plan preparation.

21 Section 503. Coordinator barred from elective office.

22 The coordinator may not run for an elected office of the
23 municipality within two years of the final adoption of any plan
24 pursuant to Chapter 7.

25 CHAPTER 6

26 STATE AGENCY COOPERATION

27 Section 601. Secretary to notify State agencies.

28 Immediately upon making a determination that a municipality
29 is distressed, the secretary shall notify the heads of all State
30 agencies of the determination. Each State agency shall then

1 cause a review to be undertaken of all matters and programs
2 pending, underway or about to be commenced or possible programs
3 concerning the distressed municipality. Any action which is
4 within the authority and budget of any State agency which in the
5 judgment of the head of the agency will help to improve the
6 municipality's financial situation and sound operations shall be
7 reported to the secretary and to the coordinator and, if
8 feasible and consistent with the plan as furnished or in
9 preparation, shall be implemented.

10 CHAPTER 7

11 PLAN ADOPTION AND AMENDMENT

12 Section 701. Preliminary plan.

13 The coordinator shall present the preliminary plan to relieve
14 financial distress to the secretary within 120 calendar days of
15 being named. A copy shall go to the mayor, each council member
16 or supervisor, the solicitor, the chief finance officer of the
17 municipality and all other parties with standing to seek the
18 distressed municipality determination, except as in section 301.
19 A copy shall also be sent to the heads of all State agencies. A
20 copy shall also be on file in the municipal clerk's office.

21 Section 702. Review of preliminary plan; revision.

22 During a three-week period following the receipt by the
23 secretary of the preliminary plan to relieve financial distress,
24 comments may be made, in writing, directed to the coordinator,
25 with a copy to the secretary. If, after two weeks, the comments
26 are judged by the secretary to be significant, the secretary may
27 direct the coordinator to revise the plan. Said revision shall
28 be completed in no more than 30 days.

29 Section 703. Changes in coordinator's plan following hearing.

30 If the comments are judged by the secretary to be minor or

1 unsubstantiated, or if the plan has been revised following
2 comments, the secretary shall set a public hearing at a regular
3 or special meeting of the municipal legislative body at a time
4 no more than 30 days later. The hearing shall be advertised in
5 the same manner as in section 401. The coordinator, the mayor or
6 executive of a municipality operating under the strong-mayor or
7 executive form of government, any other chief executive officer
8 of the municipality, any business administrator, and any chief
9 finance officer of the municipality shall be present. The
10 coordinator may make changes in the plan immediately following
11 the hearing of views and concerns expressed during the public
12 hearing.

13 Section 704. Adoption of plan by municipality.

14 No later than two days following the public hearings, the
15 municipal legislative body may enact an ordinance approving the
16 directing and implementation of the plan, which shall include
17 enactment of other ordinances and revisions to ordinances.

18 Notwithstanding any other provision of law, the mayor shall not
19 have veto power over this ordinance. If the ordinance takes
20 effect in a municipality operating under the strong-mayor form
21 or executive form of government, the mayor or executive may
22 enact an executive order directing the implementation of the
23 plan no later than 14 calendar days from the enactment of the
24 ordinance by the council.

25 Section 705. Preparation of plan.

26 (a) Mayor's or executive's plan.--If the council enacts an
27 ordinance directing the implementation of the plan and the mayor
28 or executive of a municipality that operates under the strong-
29 mayor or executive form of government refuses to issue the
30 executive order as provided in section 704, or if the council

1 refuses to enact an ordinance approving the coordinator's plan,
2 then in the case of a municipality operating under the strong-
3 mayor or executive form of government, the mayor or executive,
4 within 14 calendar days of the action or refusal to act on the
5 ordinance by the council, shall develop a plan including a
6 signed executive order implementing the same, which shall be the
7 subject of a public hearing no later than ten days following its
8 completion. The coordinator shall attend the public hearing and
9 furnish written and oral comments on the mayor's or executive's
10 plan.

11 (b) Council's plan.--In the case of a municipality operating
12 under a form of government other than a strong-mayor or
13 executive form of government, if the council refuses to enact
14 the ordinance or ordinances approving and implementing the
15 coordinator's plan as provided in section 704, then the council
16 shall develop or cause to have been developed within 14 calendar
17 days of the public hearing, a plan which shall be the subject of
18 a public hearing no later than ten days following its
19 completion. The coordinator shall be furnished with a copy of
20 the council's plan immediately upon its completion. The
21 coordinator shall attend the public hearing and furnish written
22 and oral comments on the council's plan.

23 Section 706. Approval or rejection of plan.

24 (a) Submission to secretary.--Following the public hearing
25 on the mayor's or executive's plan or the council's plan as
26 provided in section 705, the council may enact an ordinance
27 including other implementing ordinances or revisions to
28 ordinances approving the said plan. If an ordinance is enacted
29 approving this plan, it shall be forwarded to the secretary for
30 adoption or rejection.

1 (b) Approval.--If the secretary is of the opinion that the
2 plan, when implemented, will overcome the municipality's
3 financial distress, the secretary shall approve the plan by
4 rule.

5 (c) Disapproval.--If the secretary is of the opinion that
6 the said plan, when implemented, will not overcome the
7 municipality's financial problems, the secretary shall, by
8 administrative adjudication, disapprove the plan, and the
9 municipal ordinance approving the said plan shall be rescinded;
10 however, the instrument disapproving the plan and ordinance
11 shall contain a complete statement of facts and conclusions in
12 explanation of the secretary's action.

13 Section 707. Approval of coordinator's plan when other plans
14 not approved.

15 If the municipal legislative body refuses to enact an
16 ordinance approving a plan as provided in sections 704 and 706,
17 or if the secretary disapproves the plan developed pursuant to
18 section 705 and approved pursuant to section 706, then the
19 coordinator's plan, as may be amended, shall be approved by the
20 secretary by rule.

21 Section 708. Plan amendment.

22 The initiation of any amendment to an adopted plan may be
23 done by the coordinator, the mayor or executive of a
24 municipality operating under the strong-mayor or executive form
25 of government, or the council of a municipality operating under
26 any other form of government. The adoption process for an
27 amendment shall be the same as for the adoption of the original
28 plan.

29 CHAPTER 8

30 SANCTIONS AND IMPLEMENTATION

1 Section 801. Debt provisions.

2 Implementation of any approved plan shall become a condition
3 precedent for the approval of any long-term debt, tax
4 anticipation notes or debt funding pursuant to the act of July
5 12, 1972 (P.L.781, No.185), known as the Local Government Unit
6 Debt Act. If both the lender and the municipality jointly agree
7 to waive any and all of the provisions of the plan, then the
8 said provision or provisions may be waived, but any such waiving
9 must be expressly worded in the indenture or contract securing
10 the debt.

11 Section 802. State agency grants.

12 No grants shall be made to any distressed municipality with a
13 plan adopted by the secretary pursuant to section 707 unless the
14 contract securing the grant contains a stipulation that the
15 provisions of the plan will be implemented. The secretary, in
16 writing, may waive this requirement in the case of a specific
17 grant if, in the secretary's judgment, approval of the grant is
18 in the best interest of the Commonwealth.

19 Section 803. Effect on collective bargaining and binding
20 arbitration.

21 (a) Copies of plan.--Copies of any approved plan shall be
22 furnished to all collective bargaining negotiators and
23 arbitration boards created under the act of July 23, 1970
24 (P.L.563, No.195), known as the Public Employee Relations Act,
25 and the act of June 24, 1968 (P.L.237, No.111), referred to as
26 the Policemen and Firemen Collective Bargaining Act.

27 (b) Plan not affected by certain agreements or
28 settlements.--Any agreement or arbitration settlement agreed to
29 subsequent to the adoption of the plan shall not in any manner
30 violate, expand or diminish the provisions of the plan.

1 Section 804. Municipal bankruptcy.

2 A municipality may not file a petition for bankruptcy in any
3 United States court unless there is in effect a determination
4 that the said municipality is distressed and the action seeking
5 municipal bankruptcy is not precluded by an adopted plan.

6 Section 805. Loans or grants to a municipality.

7 (a) Guarantees and loans.--The secretary may provide a
8 guarantee to private lenders for the loans that a distressed
9 municipality might secure as a means to help it eliminate its
10 distressed fiscal condition. The secretary may also provide low-
11 interest loans to a distressed municipality for the purpose of
12 helping the distressed municipality to alleviate or eliminate
13 its distressed fiscal condition.

14 (b) Grants.--If the coordinator determines that a distressed
15 municipality would be financially unable to repay any loans, the
16 secretary is authorized to provide grants to such municipality
17 for the purpose of alleviating or eliminating the distressed
18 fiscal condition of the municipality.

19 CHAPTER 9

20 MISCELLANEOUS

21 Section 901. Rules.

22 The secretary shall adopt procedural rules no later than four
23 calendar months from the effective date of the act to facilitate
24 implementation of this act.

25 Section 902. Repeals.

26 All acts and parts of acts, and municipal charters, including
27 home rule charters or parts of municipal charters, are repealed
28 insofar as they are inconsistent with this act.

29 Section 903. Appeals.

30 The court of common pleas of the county in which the

1 municipality is situated shall be the court of appellate
2 jurisdiction in matters involving administrative adjudication
3 relating to the municipality as authorized by this act.

4 Section 904. Appropriations.

5 Any cost incurred in paying the salaries of the coordinator
6 or his staff, in paying any consultant's fees, in providing
7 supplies for the coordinator's office, in paying for the
8 conducting of public hearings or in incurring any other costs
9 resulting from this act shall be borne by the department. No
10 costs shall be borne by the affected municipality.

11 Section 905. Effective date.

12 This act shall take effect immediately.