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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL  
No. 136

Session of  
1987

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INTRODUCED BY RHOADES, SINGEL, CORMAN, WENGER AND STOUT,  
JANUARY 15, 1987

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 14, 1988

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AN ACT

1 ~~Empowering the Department of Community Affairs to declare~~ <—  
2 ~~certain municipalities as financially distressed; providing~~  
3 ~~for the restructuring of debt of financially distressed~~  
4 ~~municipalities; limiting the ability of financially~~  
5 ~~distressed municipalities to obtain government funding;~~  
6 ~~authorizing municipalities to participate in Federal debt~~  
7 ~~adjustment actions and bankruptcy actions under certain~~  
8 ~~circumstances; and providing for consolidation or merger of~~  
9 ~~contiguous municipalities to relieve financial distress.~~

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4 AMENDING THE ACT OF JULY 10, 1987 (P.L.246, NO.47), ENTITLED "AN <—

5 ACT EMPOWERING THE DEPARTMENT OF COMMUNITY AFFAIRS TO DECLARE

6 CERTAIN MUNICIPALITIES AS FINANCIALLY DISTRESSED; PROVIDING

7 FOR THE RESTRUCTURING OF DEBT OF FINANCIALLY DISTRESSED

8 MUNICIPALITIES; LIMITING THE ABILITY OF FINANCIALLY

9 DISTRESSED MUNICIPALITIES TO OBTAIN GOVERNMENT FUNDING;

10 AUTHORIZING MUNICIPALITIES TO PARTICIPATE IN FEDERAL DEBT

11 ADJUSTMENT ACTIONS AND BANKRUPTCY ACTIONS UNDER CERTAIN

12 CIRCUMSTANCES; AND PROVIDING FOR CONSOLIDATION OR MERGER OF

13 CONTIGUOUS MUNICIPALITIES TO RELIEVE FINANCIAL DISTRESS,"

14 PROVIDING FOR THE ESTABLISHMENT OF A REVOLVING FUND; FURTHER

15 PROVIDING FOR CRITERIA TO DECLARE A MUNICIPALITY DISTRESSED

16 AND FOR THE PUBLICATION OF CERTAIN NOTICES; ESTABLISHING A

17 REVOLVING LOAN FUND; PROVIDING FOR REVISION AND ADOPTION OF

18 PLANS BY MUNICIPALITIES; FURTHER PROVIDING FOR EXPIRATION OF

19 THE ACT; AND MAKING A REPEAL.

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 ~~CHAPTER 1~~ <—

23 ~~GENERAL PROVISIONS~~

24 ~~SUBCHAPTER A~~

25 ~~PRELIMINARY PROVISIONS~~

26 ~~Section 101. Short title.~~

27 ~~This act shall be known and may be cited as the Financially~~

28 ~~Distressed Municipalities Act.~~

29 ~~Section 102. Purpose and legislative intent.~~

30 ~~(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 due 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.—~~

~~(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.~~

~~(2) The General Assembly further recognizes that changing and deteriorating economic conditions, developing technologies and attendant unemployment erode local tax bases and threaten essential municipal services. Under such circumstances, the General Assembly believes that 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.~~

~~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:~~

~~"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; 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~~

1 ~~reduced to judgment, fixed, contingent, matured, unmatured,~~  
2 ~~disputed, undisputed, secured or unsecured.~~

3 ~~"Commonwealth agency."—The Governor and the departments,~~  
4 ~~boards, commissions, authorities and other officers and agencies~~  
5 ~~of this Commonwealth, whether or not subject to the policy~~  
6 ~~supervision and control of the Governor.~~

7 ~~"Consolidated or merged municipality."—A municipal entity~~  
8 ~~resulting from successful consolidation or merger proceedings~~  
9 ~~under Subchapter A of Chapter 4.~~

10 ~~"Consolidation or merger."—The combination of two or more~~  
11 ~~municipalities into one municipality.~~

12 ~~"Contiguous territory."—A territory of which a portion abuts~~  
13 ~~the boundary of another municipality, including territory~~  
14 ~~separated from the exact boundary of another municipality by a~~  
15 ~~street, road, railroad or highway, or by a river or other~~  
16 ~~natural or artificial stream of water.~~

17 ~~"Creditor."—An individual, partnership, corporation,~~  
18 ~~association, estate, trust, governmental unit or the governing~~  
19 ~~board of a pension fund of a municipality that has a claim~~  
20 ~~against a municipality.~~

21 ~~"Deficit."—The excess of expenditures over revenues, stated~~  
22 ~~as a percentage of revenue, during an accounting period. This~~  
23 ~~calculation shall include all governmental fund types and all~~  
24 ~~proprietary fund types, but shall exclude all fiduciary fund~~  
25 ~~types of the municipality.~~

26 ~~"Department."—The Department of Community Affairs of this~~  
27 ~~Commonwealth.~~

28 ~~"Election officials."—The county boards of election, except~~  
29 ~~in a city of the first class where "election officials" means~~  
30 ~~the city board of elections.~~

1       ~~"Expenditures." Reductions in fund equity, including current~~  
2 ~~operating expenses that require the use of fund equity, debt~~  
3 ~~service and capital outlays. The term shall not include~~  
4 ~~interfund transfers.~~

5       ~~"Fund equity." Excess of assets of a fund over its~~  
6 ~~liabilities.~~

7       ~~"Governing body." The council in cities, boroughs and~~  
8 ~~incorporated towns; the board of commissioners in counties; the~~  
9 ~~board of commissioners in townships of the first class; the~~  
10 ~~board of supervisors in townships of the second class, or the~~  
11 ~~legislative policy making body in home rule municipalities.~~

12       ~~"Initiative." The filing with applicable election officials~~  
13 ~~of a petition containing a proposal for a referendum to be~~  
14 ~~placed on the ballot of the next election. The petition shall~~  
15 ~~be:~~

16               ~~(1) Filed not later than the 13th Tuesday prior to the~~  
17 ~~next election in which it will appear on the ballot.~~

18               ~~(2) Signed by voters comprising 5% of the persons voting~~  
19 ~~for the office of Governor in the last gubernatorial general~~  
20 ~~election in the municipality where the proposal will appear~~  
21 ~~on the ballot.~~

22               ~~(3) Placed on the ballot by election officials in a~~  
23 ~~manner fairly representing the content of the petition for~~  
24 ~~decision by referendum at said election.~~

25               ~~(4) Submitted not more than once in five years.~~

26       ~~"Matured claim." A claim that has been reduced to judgment~~  
27 ~~or liquidated in amount by agreement for a period of 90 days~~  
28 ~~prior to the filing of a petition to commence fiscal distress~~  
29 ~~proceedings under this act.~~

30       ~~"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.~~

~~"Referendum." Placement of a question inserted on the  
ballot, by initiative or otherwise, by a majority vote of the  
electors voting thereon.~~

~~"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.~~

#### ~~SUBCHAPTER B~~

#### ~~ADMINISTRATIVE PROVISIONS~~

~~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.~~

~~(ii) The survey shall be a supplement to and shall be included with the annual audit reports submitted to the department 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(c) 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~~

1 determination.

2 ~~(d) Act as analyzer of municipal reports. A power and duty~~  
3 ~~of the department shall be to act as the Commonwealth analyzer~~  
4 ~~for relevant reports, data and information required by law to be~~  
5 ~~filed by municipalities with any Commonwealth agency when such~~  
6 ~~reports, data and information directly relate to the financial~~  
7 ~~conditions of municipalities. The department shall, in~~  
8 ~~consultation with every Commonwealth agency, determine which~~  
9 ~~reports, data and information relate to the fiscal condition of~~  
10 ~~municipalities. Upon an indication of distress in a municipality~~  
11 ~~through information available to the department, the department~~  
12 ~~shall request data, reports and information from all~~  
13 ~~Commonwealth agencies to assist the department to substantiate a~~  
14 ~~possible distress status of a municipality.~~

15 ~~(e) Furnish program data to municipality. Upon receipt of~~  
16 ~~information forwarded to the department by each Commonwealth~~  
17 ~~agency pursuant to section 122(a), the department shall furnish~~  
18 ~~this information to the distressed municipality coordinator for~~  
19 ~~possible inclusion of such information into the plan developed~~  
20 ~~by the coordinator in accordance with Subchapter C of Chapter 2.~~

21 ~~(f) Develop early warning system. In conjunction with~~  
22 ~~assessing a municipality's current fiscal stability under~~  
23 ~~subsections (a) and (b) and section 201, the department shall~~  
24 ~~develop an early warning system utilizing necessary fiscal and~~  
25 ~~socioeconomic variables to identify municipal financial~~  
26 ~~emergencies before they reach crisis proportions and to notify~~  
27 ~~an affected municipality appropriately. The department shall be~~  
28 ~~responsible for testing the validity and reliability of these~~  
29 ~~variables and shall continuously monitor them to assure their~~  
30 ~~effectiveness. In developing an early warning system, the~~

1 ~~department may employ or contract with municipal fiscal~~  
2 ~~consultants as deemed necessary to execute the provisions of~~  
3 ~~this subsection. Notice shall be published in the Pennsylvania~~  
4 ~~Bulletin that the early warning system has been developed and~~  
5 ~~the system may not become operational until the publication of~~  
6 ~~the notice.~~

7 ~~(g) Distribute grants and loans. The department shall~~  
8 ~~distribute grants and loans to financially distressed~~  
9 ~~municipalities in accordance with Chapter 3.~~

10 ~~(h) Promulgate rules and regulations. The department shall~~  
11 ~~promulgate rules and regulations necessary to implement the~~  
12 ~~provisions of this act.~~

13 ~~Section 122. Duties of Commonwealth agencies.~~

14 ~~(a) Review programs. After the secretary makes a~~  
15 ~~determination that a municipality is distressed and the~~  
16 ~~department notifies Commonwealth agencies of the secretary's~~  
17 ~~determination pursuant to section 121(c), each agency shall~~  
18 ~~review all matters and programs pending, underway or about to be~~  
19 ~~commenced or possible programs concerning the distressed~~  
20 ~~municipality. An action which is within the authority and budget~~  
21 ~~of a Commonwealth agency and which, in the judgment of the head~~  
22 ~~of the agency, will help to improve the distressed~~  
23 ~~municipality's financial situation shall be reported to the~~  
24 ~~department.~~

25 ~~(b) Transfer documented information. Upon request of the~~  
26 ~~department, each Commonwealth agency shall forward to the~~  
27 ~~department all documented reports, data and other information~~  
28 ~~referred to in section 121(d) within 30 days of receipt.~~

29 ~~Section 123. Powers and duties of municipalities.~~

30 ~~(a) File completed survey. On or before March 15 of each~~

1 ~~year, every municipality shall return to the department a~~  
2 ~~completed Survey of Financial Conditions referred to in section~~  
3 ~~121(a). No municipality shall receive its allotted payments~~  
4 ~~pursuant to the act of June 1, 1956 (1955 P.L.1944, No.655),~~  
5 ~~referred to as the Liquid Fuels Tax Municipal Allocation Law,~~  
6 ~~unless it complies with the provisions of this section,~~  
7 ~~notwithstanding a provision of law to the contrary, and the~~  
8 ~~Department of Transportation may not disburse funds to a~~  
9 ~~municipality pursuant to the Liquid Fuels Tax Municipal~~  
10 ~~Allocation Law until notified by the department that the~~  
11 ~~municipality has complied with the provisions of this section.~~

12 ~~(b) File applications for grants and loans. A financially~~  
13 ~~distressed municipality may apply to the secretary for emergency~~  
14 ~~financial aid in the form of a grant or loan pursuant to Chapter~~  
15 ~~3.~~

16 ~~(c) Right to petition court for tax increase. After a~~  
17 ~~municipality has adopted a plan under Subchapter C of Chapter 2,~~  
18 ~~it may petition the court of common pleas of the county in which~~  
19 ~~the municipality is located to increase its rates of taxation~~  
20 ~~for earned income, real property, or both, beyond maximum rates~~  
21 ~~provided by law. If a tax increase above existing limits is~~  
22 ~~granted by the courts, the increase shall be effective for a~~  
23 ~~period of one year from the date a final plan is adopted by the~~  
24 ~~governing body pursuant to section 245. Subsequent increases in~~  
25 ~~rates of taxation may be granted by the court upon annual~~  
26 ~~petition of the municipality. The additional amount of taxes~~  
27 ~~resulting from the petition shall not be subject to sharing with~~  
28 ~~a school district.~~

29 ~~SUBCHAPTER C~~

30 ~~JUDICIAL PROVISIONS~~

~~Section 141. Jurisdiction of court of common pleas.~~

~~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.~~

## ~~CHAPTER 2~~

### ~~MUNICIPAL FINANCIAL DISTRESS~~

#### ~~SUBCHAPTER A~~

##### ~~DETERMINATION OF MUNICIPAL FINANCIAL DISTRESS~~

~~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.~~

1       ~~(5) The municipality has failed to make required~~  
2       ~~payments to judgment creditors for 30 days beyond the date of~~  
3       ~~the recording of the judgment.~~

4       ~~(6) The municipality, for a period of at least 30 days~~  
5       ~~beyond the due date, has failed to forward taxes withheld on~~  
6       ~~the income of employees or has failed to transfer employer or~~  
7       ~~employee contributions for Social Security.~~

8       ~~(7) The municipality has accumulated and has operated~~  
9       ~~for each of two successive years a deficit equal to 5% or~~  
10       ~~more of its revenues.~~

11       ~~(8) The municipality has failed to make the budgeted~~  
12       ~~payment of its minimum municipal obligation as required by~~  
13       ~~section 302 of the act of December 18, 1984 (P.L.1005,~~  
14       ~~No.205), known as the Municipal Pension Plan Funding Standard~~  
15       ~~and Recovery Act, with respect to a pension fund during the~~  
16       ~~fiscal year for which the payment was budgeted and has failed~~  
17       ~~to take action within that time period to make required~~  
18       ~~payments.~~

19       ~~(9) A municipality has sought to negotiate resolution or~~  
20       ~~adjustment of a claim in excess of 30% against a fund or~~  
21       ~~budget and has failed to reach an agreement with creditors.~~

22       ~~(10) A municipality has filed a municipal debt~~  
23       ~~readjustment plan pursuant to Chapter 9 of the Bankruptcy~~  
24       ~~Code (11 U.S.C. § 901 et seq.).~~

25       ~~(11) The municipality has experienced a decrease in a~~  
26       ~~quantified level of municipal service from the preceding~~  
27       ~~fiscal year which has resulted from the municipality reaching~~  
28       ~~its legal limit in levying real estate taxes for general~~  
29       ~~purposes. For determining levels of municipal service for the~~  
30       ~~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 petition for a determination.~~

~~The following have standing to seek 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) Trustee of a municipal pension fund; an actuary for a pension fund; or 10% 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~~



1 ~~payment as required by section 302 of the act of December 18,~~  
2 ~~1984 (P.L.1005, No.205), known as the Municipal Pension Plan~~  
3 ~~Funding Standard and Recovery Act.~~

4 ~~(6) Ten percent of the employees of the municipality who~~  
5 ~~have not been paid for over 30 days from the time of a missed~~  
6 ~~payroll, upon signing collectively the petition to the~~  
7 ~~department.~~

8 ~~(7) Trustees or paying agents of a municipal bond~~  
9 ~~indenture.~~

10 ~~(8) The elected auditors, appointed independent auditors~~  
11 ~~or elected controllers of a municipality if they have reason~~  
12 ~~to believe a municipality is in a state of financial distress~~  
13 ~~pursuant to section 201.~~

14 ~~Section 203. Procedure for determination.~~

15 ~~(a) Petition. A party with standing to petition under~~  
16 ~~section 202 may petition the secretary seeking a determination~~  
17 ~~that the municipality involved is a financially distressed~~  
18 ~~municipality. The petition shall:~~

19 ~~(1) Allege the petitioner has standing to bring a~~  
20 ~~determination of the distress.~~

21 ~~(2) State why the petitioner believes the municipality~~  
22 ~~is distressed under section 201.~~

23 ~~(3) Include a listing of judgments recorded against the~~  
24 ~~municipality.~~

25 ~~(4) Include any other material allegation justifying the~~  
26 ~~relief afforded by this act.~~

27 ~~(5) If the petitioner is a municipality, the petition~~  
28 ~~may state why the petitioner believes manifestation of~~  
29 ~~section 201 criteria is imminent and inevitable. This~~  
30 ~~statement may be in lieu of the statement required under~~

1 ~~paragraph (2).~~

2 ~~(b) Hearing. Within ten days of receiving a petition, the~~  
3 ~~secretary shall set a time and place for a public hearing which~~  
4 ~~shall be scheduled to be held on a date at least two weeks but~~  
5 ~~not more than 30 days later within the county of the subject~~  
6 ~~municipality.~~

7 ~~(c) Investigation. After receiving the petition but before~~  
8 ~~the public hearing, the secretary may make an investigation into~~  
9 ~~the financial affairs of the municipality. The results of the~~  
10 ~~investigation or any study previously conducted by the~~  
11 ~~department under section 121 shall be placed in the record of~~  
12 ~~the public hearing.~~

13 ~~(d) Notice. The secretary shall publish notice of the~~  
14 ~~hearing in accordance with the act of July 3, 1986 (P.L.388,~~  
15 ~~No.84), known as the Sunshine Act, at least once in a newspaper~~  
16 ~~with general circulation in the subject municipality and shall~~  
17 ~~give written notice by certified mail, with return receipt~~  
18 ~~requested, upon the municipal clerk or municipal secretary, the~~  
19 ~~mayor, the municipal solicitor, each member of the governing~~  
20 ~~body of the municipality and the petitioner.~~

21 ~~(e) Hearing officer. The secretary or an official of the~~  
22 ~~department designated by the secretary shall conduct the public~~  
23 ~~hearing to hear testimony of the petitioners and other~~  
24 ~~interested persons.~~

25 ~~(f) Determination. Within 30 days after the hearing, the~~  
26 ~~secretary shall issue an administrative determination of whether~~  
27 ~~the municipality is financially distressed and reasons for the~~  
28 ~~determination.~~

29 ~~(g) Appeal. A determination by the secretary under this act~~  
30 ~~is appealable pursuant to Title 2 of the Pennsylvania~~

1 ~~Consolidated Statutes (relating to administrative law and~~  
2 ~~procedure).~~

3 ~~Section 204. Commonwealth funds.~~

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

9 ~~SUBCHAPTER B~~

10 ~~COORDINATOR~~

11 ~~Section 221. Designation.~~

12 ~~(a) Appointment. No later than 30 days following a~~  
13 ~~determination of municipal financial distress under section 203,~~  
14 ~~the secretary shall appoint a coordinator who shall prepare a~~  
15 ~~plan addressing the municipality's financial problems.~~

16 ~~(b) Qualifications. The coordinator may be an employee of~~  
17 ~~the department, furnished with additional staff or consultant~~  
18 ~~assistance, if needed, or may be a consultant or consulting~~  
19 ~~firm. No elected or appointed official or employee of the~~  
20 ~~municipality shall be eligible for serving as coordinator. The~~  
21 ~~coordinator shall be experienced in municipal administration and~~  
22 ~~finance.~~

23 ~~(c) Compensation. The department shall be responsible for~~  
24 ~~compensating the coordinator appointed by the secretary for~~  
25 ~~reasonable salary and expenses. Notwithstanding any law to the~~  
26 ~~contrary, the appointment of a plan coordinator shall not be~~  
27 ~~subject to contractual competitive bidding procedures.~~

28 ~~(d) Duties. The coordinator shall prepare and administer a~~  
29 ~~plan designed to relieve the financial distress of the~~  
30 ~~municipality which he has been appointed to serve.~~

~~(c) 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 is 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.~~

1 SUBCHAPTER C

2 COORDINATOR'S PLAN

3 ~~Section 241. Contents.~~

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

8 ~~(1) Projections 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) Recommendations which will:~~

13 ~~(i) Satisfy judgments, past due accounts payable,~~  
14 ~~and past due and payable payroll and fringe benefits.~~

15 ~~(ii) Eliminate deficits and deficit funds.~~

16 ~~(iii) Restore to special fund accounts money from~~  
17 ~~those accounts that was used for purposes other than~~  
18 ~~those specifically authorized.~~

19 ~~(iv) Balance the budget, avoid future deficits in~~  
20 ~~funds and maintain current payments of payroll, fringe~~  
21 ~~benefits and accounts through possible revenue~~  
22 ~~enhancement recommendations, including tax or fee~~  
23 ~~changes.~~

24 ~~(v) Avoid a fiscal emergency condition in the~~  
25 ~~future.~~

26 ~~(vi) Enhance the ability of the municipality to~~  
27 ~~negotiate new general obligation bonds, lease rental~~  
28 ~~debt, funded debt and tax and revenue anticipation~~  
29 ~~borrowing.~~

30 ~~(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 pursuant to Chapter 4.~~

~~Section 242. Publication.~~

~~(a) Filing. Within 90 days of being named, 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 newspaper 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, 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.~~

~~Section 245. Adoption by municipality.~~

~~Not later than 15 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~~

1 ~~plan. Notice shall be published in the same manner as~~  
2 ~~provided in section 242(c). The coordinator shall attend the~~  
3 ~~public meeting and furnish written and oral comments on the~~  
4 ~~chief executive officer's plan.~~

5 ~~(b) Governing body's plan. In the case of a municipality~~  
6 ~~operating under a form of government other than an optional plan~~  
7 ~~form of government or a home rule charter, if the governing body~~  
8 ~~by majority vote refuses to enact an ordinance approving and~~  
9 ~~implementing the coordinator's plan as provided in section 245,~~  
10 ~~then within 14 days of its refusal the governing body shall~~  
11 ~~develop a plan which shall be the subject of a public meeting~~  
12 ~~held not later than ten days following plan completion.~~

13 ~~(1) The governing body may conduct private sessions~~  
14 ~~before the public meeting with individual creditors in an~~  
15 ~~effort to obtain consent of each creditor to proposed~~  
16 ~~adjustment and handling of specific claims against the~~  
17 ~~municipality. An agreement reached as a result of these~~  
18 ~~private sessions shall become a matter of record and part of~~  
19 ~~the proceedings of the public meeting conducted pursuant to~~  
20 ~~this subsection.~~

21 ~~(2) The governing body shall be responsible for placing~~  
22 ~~notice that a public meeting will be held on its plan. Notice~~  
23 ~~shall be published in the same manner as provided in section~~  
24 ~~242(c). The coordinator shall attend the public meeting and~~  
25 ~~furnish written and oral comments on the governing body's~~  
26 ~~plan.~~

27 ~~(c) Approval or rejection of plan. Following the public~~  
28 ~~meeting on the chief executive officer's plan or the governing~~  
29 ~~body's plan, the governing body may enact an ordinance,~~  
30 ~~including necessary related implementing ordinances or revisions~~

1 ~~to ordinances, approving the plan.~~

2 ~~(d) Review by secretary.~~

3 ~~(1) If an ordinance is enacted approving a plan under~~  
4 ~~this section, it shall be forwarded to the secretary for~~  
5 ~~determination that the plan, when implemented, will overcome~~  
6 ~~the municipality's financial distress.~~

7 ~~(2) If the secretary is of the opinion that the plan,~~  
8 ~~when implemented, will overcome the municipality's financial~~  
9 ~~distress, the secretary shall so inform the municipality.~~

10 ~~(3) If the secretary is of the opinion that the plan,~~  
11 ~~when implemented, will not overcome the municipality's~~  
12 ~~financial problems, the secretary shall inform the~~  
13 ~~municipality of the following:~~

14 ~~(i) The secretary's determination.~~

15 ~~(ii) The reasons for the determination.~~

16 ~~(iii) The applicability of sections 251 and 264 to~~  
17 ~~the municipality.~~

18 ~~Section 247. Plan implementation.~~

19 ~~(a) Coordinator's plan. If the coordinator's plan is~~  
20 ~~adopted by the municipal governing body, the coordinator shall~~  
21 ~~be charged with implementing his plan and shall:~~

22 ~~(1) Give written notice of plan adoption to creditors,~~  
23 ~~collective bargaining units and other parties who will be~~  
24 ~~directly affected by plan implementation. In the notice he~~  
25 ~~shall outline the provisions of the plan and specify how that~~  
26 ~~person's claim or interest will be treated.~~

27 ~~(2) Initiate plan implementation and continue its~~  
28 ~~implementation for at least four months.~~

29 ~~(3) Oversee completion of the plan either by directly~~  
30 ~~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.~~

~~(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 collective bargaining agreement or arbitration settlement executed after the adoption of a plan shall not in any manner violate, expand or diminish its provisions.~~

~~Section 253. Termination of status.~~

~~(a) Determination by secretary. Following a duly advertised public hearing with notices given as provided in section 203,~~

1 ~~the secretary may issue a determination that the conditions~~  
2 ~~which led to the earlier determination of municipal financial~~  
3 ~~distress municipality are no longer applicable. The~~  
4 ~~determination shall rescind the status of municipal financial~~  
5 ~~distress and shall include a statement of facts as part of the~~  
6 ~~final order.~~

7 ~~(b) Determination upon petition by a municipality. A~~  
8 ~~financially distressed municipality may petition the secretary~~  
9 ~~to make a determination that the conditions which led to the~~  
10 ~~earlier determination of municipal financial distress are no~~  
11 ~~longer present. Upon receiving the petition, the secretary may~~  
12 ~~issue a determination to rescind following a duly advertised~~  
13 ~~public hearing with notices given as provided in section 203.~~

#### 14 ~~SUBCHAPTER D~~

#### 15 ~~APPLICATION OF FEDERAL LAW~~

16 ~~Section 261. Filing municipal debt adjustment under Federal~~  
17 ~~law.~~

18 ~~(a) Authorization. In the event one of the following~~  
19 ~~conditions is present, a municipality is hereby authorized to~~  
20 ~~file a municipal debt adjustment action pursuant to the~~  
21 ~~Bankruptcy Code (11 U.S.C. § 101 et seq.):~~

22 ~~(1) After recommendation by the plan coordinator~~  
23 ~~pursuant to section 241(6).~~

24 ~~(2) Imminent jeopardy of an action by a creditor,~~  
25 ~~claimant or supplier of goods or services which is likely to~~  
26 ~~substantially interrupt or restrict the continued ability of~~  
27 ~~the municipality to provide health or safety services to its~~  
28 ~~citizens.~~

29 ~~(3) One or more creditors of the municipality have~~  
30 ~~rejected the proposed or adopted plan, and efforts to~~

~~negotiate resolution of their claims have been unsuccessful  
for a ten day period.~~

~~(4) 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).~~

~~(5) 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.~~

~~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.~~

### ~~CHAPTER 3~~

#### ~~EMERGENCY FINANCIAL AID FOR DISTRESSED MUNICIPALITIES~~

##### ~~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.~~

~~(b) Nature of loans. All loans granted by the department shall be free from interest and repayable according to a~~

~~schedule which will not hinder the satisfactory completion of a plan adopted and implemented under this act.~~

~~Section 302. Grant and loan 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.~~

~~(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~~

1 ~~all interested parties. If satisfied that sufficient evidence~~  
2 ~~exists to warrant a grant or loan, the secretary shall~~  
3 ~~approve the application and order the department to~~  
4 ~~distribute moneys requested subject to the limitations set~~  
5 ~~forth in section 303(c).~~

6 ~~(2) Upon receipt of an application under subsection (b),~~  
7 ~~the secretary shall review all data immediately available and~~  
8 ~~shall determine whether emergency funds are warranted. If~~  
9 ~~warranted, the secretary shall approve the application and~~  
10 ~~order the department to distribute moneys requested. The~~  
11 ~~secretary or the applicant may request a hearing to provide~~  
12 ~~additional evidence of emergency need, but if requested, the~~  
13 ~~hearing shall be held not later than 15 days from the date~~  
14 ~~the application is received.~~

15 ~~Either determination is appealable under Title 2 of the~~  
16 ~~Pennsylvania Consolidated Statutes (relating to administrative~~  
17 ~~law and procedures).~~

18 ~~Section 303. Limitations.~~

19 ~~(a) Use. No loan or grant given to a financially distressed~~  
20 ~~municipality by the department shall be used by the municipality~~  
21 ~~to pay debts incurred by the municipality prior to the~~  
22 ~~determination by the secretary that the municipality is~~  
23 ~~financially distressed.~~

24 ~~(b) Eligibility. Cities of the first and second class and~~  
25 ~~counties may not apply for a grant or loan under this act.~~

26 ~~(c) Amount. The secretary shall not approve an application~~  
27 ~~to any one municipality for an amount which will substantially~~  
28 ~~impair the department's ability to distribute the remaining sum~~  
29 ~~fairly and equitably to other applicants or potential~~  
30 ~~applicants.~~

~~Section 304.— Expiration.~~

~~This chapter shall expire June 30, 1990.~~

#### ~~CHAPTER 4~~

### ~~CONSOLIDATION OR MERGER OF ECONOMICALLY NONVIABLE~~

### ~~MUNICIPALITIES~~

#### ~~SUBCHAPTER A~~

#### ~~GENERAL PROVISIONS~~

~~Section 401.— Determination.~~

~~If a municipality has been determined to be financially distressed pursuant to this act and the coordinator has further determined under section 241 that consolidation or merger of the municipality with an adjacent municipality or municipalities is in the public interest, then the municipality may utilize the provisions of this chapter.~~

~~Section 402.— Procedure for consolidation or merger.~~

~~Two or more municipalities may be consolidated or merged into a single municipality, whether within the same or different counties, if each of the municipalities is contiguous to at least one of the other consolidating or merging municipalities, and if together such municipalities would form a consolidated or merged municipality. Consolidation or merger may be commenced by one of the following:~~

~~(1) Joint agreement of the governing bodies of the municipalities proposed for consolidation or merger approved by ordinance.~~

~~(2) Initiative of electors.~~

~~Section 403.— Joint agreement of governing bodies.~~

~~(a) General rule.— The governing body of each municipality to be consolidated or merged shall enter into a joint agreement under the official seal of each municipality to consolidate or~~

~~merge into one municipality.~~

~~(b) Elements. The joint agreement shall set forth:~~

~~(1) The name of each municipality that is a party to the agreement.~~

~~(2) The name and the territorial boundaries of the consolidated or merged municipality.~~

~~(3) The type and class of the consolidated or merged municipality.~~

~~(4) Whether the consolidated or merged municipality shall be governed solely by the code and other general laws applicable to the kind and class of the consolidated or merged municipality or whether it shall be governed by a home rule charter or an optional plan of government previously adopted by one of the consolidating or merging municipalities.~~

~~(5) The number of wards, if any, into which the consolidated or merged municipality will be divided for the purpose of electing all or some members of its governing body.~~

~~(6) Terms for:~~

~~(i) The disposition of existing assets of each municipality.~~

~~(ii) The liquidation of existing indebtedness of each municipality.~~

~~(iii) The assumption, assignment or disposition of existing liabilities of each municipality, either jointly, separately or in certain defined proportions, by separate rates of taxation within each of the constituent municipalities until consolidation or merger becomes effective pursuant to section 407.~~

~~(iv) The implementation of a legally consistent uniform tax system throughout the consolidated or merged municipality which provides the revenue necessary to fund required municipal services.~~

~~(7) The governmental organization of the consolidated or merged municipality insofar as it concerns elected officers.~~

~~(8) A transitional plan and schedule applicable to elected officers. The transitional plan shall provide for the abolition of the elected offices of each component municipality and the termination of the terms of office of the elected officials of each municipality and for the election of the first officers of the consolidated or merged municipality so that election and tenure shall conform to those in other municipalities of the same kind and class in the Commonwealth with properly staggered terms where required or desired.~~

~~(9) The common administration and enforcement of ordinances enforced uniformly within the consolidated or merged municipality.~~

~~Section 404. Initiative of electors.~~

~~(a) General rule. In order for consolidation or merger proceedings to be initiated by petition of electors, petitions containing signatures of at least 5% of the electors voting for the Office of Governor in the last gubernatorial general election in each municipality proposed to be consolidated or merged shall be filed with the county board of elections of the county in which the municipality, or the greater portion of its territory, is located.~~

~~(b) Notice to governing bodies affected. When election officials find that a petition is in proper order, they shall~~

~~send copies of the initiative petition without the signatures thereon to the governing bodies of each of the municipalities affected by the proposed consolidation or merger.~~

~~(c) Contents. A petition shall set forth:~~

~~(1) The name of the municipality from which the signers of the petition were obtained.~~

~~(2) The names of the municipalities proposed to be consolidated or merged.~~

~~(3) The name of the consolidated or merged municipality.~~

~~(4) The type and class of the consolidated or merged municipality.~~

~~(5) Whether the consolidated or merged municipality shall be governed solely by the code and other general laws applicable to the kind and class of the consolidated or merged municipality, or whether it shall be governed by a home rule charter or an optional plan of government previously adopted by one of the consolidating or merging municipalities.~~

~~(6) The number of wards, if any, into which the consolidated or merged municipality will be divided for the purpose of electing all or some members of its governing body.~~

~~(d) Filing of petition. The consolidation or merger petition shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. The petition and proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as such provisions are applicable, except that no referendum petition shall be signed or circulated~~



~~prior to the 20th Tuesday before the election, nor later than the 13th Tuesday before the election.~~

~~Section 405.—Conduct of referenda.~~

~~(a) Duty to place on ballot.—Following initiation of proceedings for consolidation or merger by the procedures set forth either in section 403 or 404, the question of consolidation or merger shall be placed before the electors of each of the municipalities proposed to be consolidated or merged. A referendum shall be held at the first primary, municipal or general election after either:~~

~~(1) the date of the general agreement entered into under the provisions of section 403; or~~

~~(2) the date of filing of the petition filed under the provisions of section 404.~~

~~(b) Approval.—Consolidation or merger shall not be effective unless the referendum question is approved by a majority of the electors voting in each of the municipalities in which the referendum is held. If in any one of the municipalities in which the referendum is held a majority in favor of consolidation or merger does not result, the referendum shall fail and consolidation or merger shall not take place. The question described in the consolidation or merger proposal shall not be voted on again for a period of five years.~~

~~Section 406.—Consolidation or merger agreement.~~

~~(a) Form.—Upon favorable action by the electorate on consolidation or merger, in cases where consolidation or merger was initiated otherwise than by joint agreement of municipal governing bodies under section 403, the governing bodies of the municipalities to be consolidated or merged shall meet within 60 days after the certification of the favorable vote and shall~~

1 ~~make a consolidation or merger agreement, as follows:~~

2 ~~(1) If the governing body, or part of the governing~~  
3 ~~body, of the consolidated or merged municipality is to be~~  
4 ~~elected on a ward basis, the agreement shall set forth the~~  
5 ~~ward boundaries and the ward designation, by number, and the~~  
6 ~~number of members of the municipal governing body to be~~  
7 ~~elected from each ward.~~

8 ~~(2) The agreement shall set forth terms for:~~

9 ~~(i) The disposition of the existing assets of each~~  
10 ~~municipality.~~

11 ~~(ii) The liquidation of the existing indebtedness of~~  
12 ~~each municipality.~~

13 ~~(iii) The assumption, assignment, and disposition of~~  
14 ~~the existing liabilities of each municipality, either~~  
15 ~~jointly, separately or in certain defined proportions, by~~  
16 ~~separate rates of taxation within each of the constituent~~  
17 ~~municipalities until consolidation or merger becomes~~  
18 ~~effective pursuant to section 407.~~

19 ~~(3) The agreement shall set forth the governmental~~  
20 ~~organization of the consolidated or merged municipality,~~  
21 ~~insofar as it concerns elected officers, and shall contain a~~  
22 ~~transitional plan and schedule applicable to elected~~  
23 ~~officers. The agreement shall provide for the abolition of~~  
24 ~~elected offices and for the termination of the terms of~~  
25 ~~office of elected officers of each municipality being merged~~  
26 ~~or consolidated, and the election of the first officers of~~  
27 ~~the consolidated or merged municipality so that election and~~  
28 ~~tenure shall conform to those in other municipalities of the~~  
29 ~~same kind and class in the Commonwealth, with properly~~  
30 ~~staggered terms, where required or desired.~~

~~(4) The agreement shall provide for common  
administration and enforcement of ordinances to be enforced  
uniformly within the consolidated or merged municipality.~~

~~(5) The agreement shall also provide, consistent with  
existing law, for the implementation of an uniform tax system  
throughout the consolidated or merged municipality which  
shall provide the revenue necessary to fund required  
municipal services.~~

~~(b) Filing. A copy of the consolidation or merger agreement  
shall be filed with the Department of Community Affairs, the  
Department of Transportation, the Governor's Office of Policy  
Development or its successor, the Department of Education, State  
Tax Equalization Board, the Legislative Reapportionment  
Commission and the court of common pleas and the board of county  
commissioners of the county or counties in which municipalities  
affected are located.~~

~~Section 407. Effectuation of consolidation or merger.~~

~~Municipalities consolidated or merged shall continue to be  
governed as before consolidation or merger until the first  
Monday of January following the municipal election next  
succeeding the election at which consolidation or merger  
referenda were held. At that municipal election, the necessary  
officers of the consolidated or merged municipality shall be  
elected in accordance with the terms of the general law  
affecting municipalities of the kind or class of the  
consolidated or merged municipality, or, in case of a  
consolidated or merged municipality operating under a home rule  
charter or optional plan of government, in accordance with the  
charter or optional plan or with general law affecting home rule  
or optional plan municipalities, as applicable. The officers~~

~~1 elected at that municipal election shall be elected for terms of~~  
~~2 office under the plan and schedule set forth in the~~  
~~3 consolidation or merger agreement authorized by section 403 or~~  
~~4 406, as the case may be. They shall take office as officers of~~  
~~5 the consolidated or merged municipality on the first Monday of~~  
~~6 January following the municipal election at which they were~~  
~~7 elected, and thereupon, the consolidated or merged municipality~~  
~~8 shall begin to function and the former municipalities~~  
~~9 consolidated or merged into it shall be abolished.~~

~~10 Section 408.— Collective bargaining agreements; furlough of~~  
~~11 employees; disputes.~~

~~12 (a) Collective bargaining contracts, agreements or~~  
~~13 arbitration awards. A collective bargaining agreement or~~  
~~14 contract in existence in a municipality or an arbitration award~~  
~~15 in effect in a municipality prior to a consolidation or merger~~  
~~16 shall remain effective after consolidation or merger until the~~  
~~17 contract, agreements, or awards expire. After the expiration of~~  
~~18 the contracts, agreements or awards, a subsequent collective~~  
~~19 bargaining agreement, contract or award shall not impair the~~  
~~20 implementation of a plan adopted pursuant to this act.~~

~~21 (b) Reduction in existing work force.— Subsequent to~~  
~~22 consolidation or merger, the consolidated or merged municipality~~  
~~23 may, in accordance with existing contracts or arbitration award~~  
~~24 provisions and consistent with applicable laws, reduce the~~  
~~25 number of uniformed and nonuniformed employees to avoid~~  
~~26 overstaffing and duplication of positions in the consolidated or~~  
~~27 merged municipality. If a consolidated or merged municipality~~  
~~28 determines in its discretion that it is necessary to increase~~  
~~29 the number of uniformed or nonuniformed employees, employees of~~  
~~30 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. Procedures.~~

~~(a) Ordinance book. After consolidation or merger becomes effective, a new ordinance book shall be used by the municipality and the first document to be recorded in it shall be the consolidation or merger agreement.~~

~~(b) Ordinance codification. No later than two years after consolidation or merger goes into effect, codification of all the ordinances of the municipality shall be completed. This shall include tabulation or indexing of those ordinances of the component municipalities that are of permanent effect in the consolidated or merged municipality.~~

~~(c) Vesting of rights, privileges, property and obligations. All rights, privileges and franchises of each component municipality and all property belonging to each component municipality shall be vested in the consolidated or~~

~~merged municipality. The title to real estate vested in any of those municipalities shall not revert or be in any way impaired by reason of the consolidation or merger. All liens and rights of creditors shall be preserved. Agreements and contracts shall remain in force. Debts, liabilities and duties of each of the municipalities shall be attached to the consolidated or merged municipality and may be enforced against it.~~

## ~~SUBCHAPTER B~~

### ~~ECONOMIC ASSISTANCE~~

#### ~~Section 421. Eligibility.~~

~~In the event a municipality has been determined to be distressed pursuant to section 203(f) and has subsequently consolidated or merged under provisions of this chapter, the consolidated or merged municipality shall be eligible for economic and community development assistance as provided in section 422.~~

#### ~~Section 422. Priority.~~

~~Notwithstanding law to the contrary, if the electors of two or more municipalities at least one of which has been determined to be distressed pursuant to section 203(f), have voted to approve the consolidation or merger of those municipalities, the consolidated or merged municipality shall receive priority in all economic and community development programs funded by the Commonwealth. The secretary, upon notification of consolidation or merger of such municipalities shall notify Commonwealth agencies that the consolidated or merged municipality shall receive priority in funding as provided in this subchapter. Nothing in this subchapter shall be construed to give priority over economic and community development assistance already approved and encumbered by the Commonwealth or its agencies to~~

1 ~~any of the following:~~

2 ~~(1) A municipality which is not financially distressed~~  
3 ~~under this act.~~

4 ~~(2) A municipality which has been declared distressed~~  
5 ~~under section 203(f) but has not been subjected to the~~  
6 ~~funding restrictions under section 251 or 264.~~

7 ~~Section 423. Listing of eligible municipalities.~~

8 ~~A consolidated or merged municipality which is given priority~~  
9 ~~as provided in this subchapter shall be given preference in~~  
10 ~~economic and community development assistance over other~~  
11 ~~potential eligible municipalities on the basis of the date of~~  
12 ~~notification by the secretary to Commonwealth agencies as~~  
13 ~~provided in section 422.~~

14 ~~CHAPTER 5~~

15 ~~FUNDING~~

16 ~~Section 501. Appropriation.~~

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

22 ~~(1) \$500,000 shall be used by the department for~~  
23 ~~administrative expenses necessary to carry out the provisions~~  
24 ~~of this act.~~

25 ~~(2) \$4,500,000 shall be used to provide grants and loans~~  
26 ~~to municipalities determined to be financially distressed~~  
27 ~~pursuant to this act.~~

28 ~~CHAPTER 6~~

29 ~~TECHNICAL PROVISIONS~~

30 ~~Section 601. Repeals.~~

~~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, are repealed insofar as they are inconsistent with this act.~~

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

~~Section 602. Expiration.~~

~~Section 203(a)(5) shall expire upon publication in the Pennsylvania Bulletin of the notice required under section 121(g).~~

~~Section 603. Effective date.~~

~~This act shall take effect in 60 days.~~

SECTION 1. SECTIONS 201(8), 242(A), 244 AND 245 OF THE ACT OF JULY 10, 1987 (P.L.246, NO.47), KNOWN AS THE FINANCIALLY DISTRESSED MUNICIPALITIES ACT, ARE AMENDED TO READ:

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.

\* \* \*



(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.

\* \* \*

SECTION 242. PUBLICATION.

(A) FILING.--WITHIN 90 DAYS OF [BEING NAMED] 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.

\* \* \*

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,

1 THE COORDINATOR SHALL CONSULT WITH THE SECRETARY AND EITHER THE  
2 CHIEF EXECUTIVE OFFICER OR THE GOVERNING BODY THROUGHOUT THE  
3 REVISION OF THE PLAN AND SHALL GIVE CONSIDERATION TO COMMENTS  
4 THEY MAY PROPOSE. A REVISED PLAN SHALL BE COMPLETED AND  
5 DELIVERED TO EACH PARTY CITED IN SECTION 242(A)(1) THROUGH (7)  
6 WITHIN 10 DAYS FROM THE DATE OF THE COORDINATOR'S PUBLIC MEETING  
7 ON THE ORIGINAL PLAN.

8 SECTION 245. ADOPTION BY MUNICIPALITY.

9 NOT LATER THAN [15] 25 DAYS FOLLOWING THE COORDINATOR'S  
10 PUBLIC MEETING, THE MUNICIPAL GOVERNING BODY SHALL EITHER ENACT  
11 AN ORDINANCE APPROVING THE IMPLEMENTATION OF THE PLAN, INCLUDING  
12 ENACTMENT OF NECESSARY RELATED ORDINANCES AND REVISIONS TO  
13 ORDINANCES, OR SHALL REJECT THE PLAN AND PROCEED UNDER SECTION  
14 246. IF THE ORDINANCE TAKES EFFECT IN A MUNICIPALITY OPERATING  
15 UNDER AN OPTIONAL PLAN FORM OF GOVERNMENT OR A HOME RULE  
16 CHARTER, THE CHIEF EXECUTIVE OFFICER MAY ISSUE AN ORDER  
17 DIRECTING THE IMPLEMENTATION OF THE PLAN NO LATER THAN SEVEN  
18 DAYS FROM THE ENACTMENT OF THE ORDINANCE BY THE GOVERNING BODY.

19 SECTION 2. SECTION 301 OF THE ACT IS AMENDED BY ADDING A  
20 SUBSECTION TO READ:

21 SECTION 301. PROGRAM.

22 \* \* \*

23 (C) REVOLVING FUND.--THERE IS HEREBY CREATED IN THE STATE  
24 TREASURY THE FINANCIALLY DISTRESSED MUNICIPALITIES REVOLVING AID  
25 FUND. REPAYMENT OF PRINCIPAL ON ALL LOANS MADE UNDER THIS ACT  
26 SHALL BE DEPOSITED IN THE FUND. ANY INTEREST EARNED ON MONEYS IN  
27 THIS FUND SHALL BE DEPOSITED IN THE FUND. ALL MONEYS IN THE FUND  
28 MAY BE USED TO MAKE LOANS FOR THE PURPOSES OF THIS ACT.

29 SECTION 3. SECTION 304 OF THE ACT IS REPEALED.

30 SECTION 4. SECTION 602 OF THE ACT IS AMENDED TO READ:

1 SECTION 602. EXPIRATION.

2 SECTION 203(A)(5) SHALL EXPIRE UPON PUBLICATION IN THE  
3 PENNSYLVANIA BULLETIN OF THE NOTICE REQUIRED UNDER SECTION  
4 [121(G)] 121(F).

5 SECTION 5. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.