

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1321 Session of
2011INTRODUCED BY EARLL, SCHWANK, EICHELBERGER, YAW, VANCE, SMUCKER,
BLAKE, FOLMER, PICCOLA, ROBBINS AND FONTANA, OCTOBER 31, 2011SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MAY 22,
2012

AN ACT

~~Amending the act of July 10, 1987 (P.L.246, No.47), entitled "An
act empowering the Department of Community Affairs to declare
certain municipalities as financially distressed; providing
for the restructuring of debt of financially distressed
municipalities; limiting the ability of financially
distressed municipalities to obtain government funding;
authorizing municipalities to participate in Federal debt
adjustment actions and bankruptcy actions under certain
circumstances; and providing for consolidation or merger of
contiguous municipalities to relieve financial distress," in
coordination plans, further providing for collective
bargaining; in consolidation and merger, further providing
for collective bargaining; in financial distress for third
class cities, further providing for consent decrees; and, in
receivership for third class cities, further providing for
confirmation.~~

AMENDING THE ACT OF JULY 10, 1987 (P.L.246, NO.47), ENTITLED "AN
ACT EMPOWERING THE DEPARTMENT OF COMMUNITY AFFAIRS TO DECLARE
CERTAIN MUNICIPALITIES AS FINANCIALLY DISTRESSED; PROVIDING
FOR THE RESTRUCTURING OF DEBT OF FINANCIALLY DISTRESSED
MUNICIPALITIES; LIMITING THE ABILITY OF FINANCIALLY
DISTRESSED MUNICIPALITIES TO OBTAIN GOVERNMENT FUNDING;
AUTHORIZING MUNICIPALITIES TO PARTICIPATE IN FEDERAL DEBT
ADJUSTMENT ACTIONS AND BANKRUPTCY ACTIONS UNDER CERTAIN
CIRCUMSTANCES; AND PROVIDING FOR CONSOLIDATION OR MERGER OF
CONTIGUOUS MUNICIPALITIES TO RELIEVE FINANCIAL DISTRESS,"
FURTHER PROVIDING FOR DEFINITIONS, FOR CONTENTS, FOR PLAN NOT
AFFECTED BY CERTAIN COLLECTIVE BARGAINING AGREEMENTS OR
SETTLEMENTS, FOR FILING MUNICIPAL DEBT ADJUSTMENT UNDER
FEDERAL LAW AND FOR COLLECTIVE BARGAINING AGREEMENTS,
FURLOUGH OF EMPLOYEES AND DISPUTES.

The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 ~~Section 1. Sections 252 and 408 of the act of July 10, 1987~~ ←
3 ~~(P.L.246, No.47), known as the Municipalities Financial Recovery~~
4 ~~Act, are amended to read:~~

5 ~~Section 252. Plan not affected by certain collective bargaining~~
6 ~~[agreements or settlements] matters.~~

7 ~~A collective bargaining agreement, contract or [arbitration]~~
8 ~~settlement executed, and a collective bargaining arbitration~~
9 ~~award rendered, after the adoption of a plan shall not in any~~
10 ~~manner violate, expand or diminish its provisions.~~

11 ~~Section 408. Collective bargaining [agreements] matters;~~
12 ~~furlough of employees; disputes.~~

13 ~~(a) Collective bargaining agreements, contracts,~~
14 ~~[agreements] settlements or arbitration awards. A collective~~
15 ~~bargaining agreement [or], contract or settlement in existence~~
16 ~~in a municipality or an arbitration award in effect in a~~
17 ~~municipality prior to a consolidation or merger shall remain~~
18 ~~effective after consolidation or merger until [the contract,~~
19 ~~agreements or awards expire. After the expiration of the~~
20 ~~contracts, agreements or awards, a] it expires. A subsequent~~
21 ~~collective bargaining agreement, settlement, contract or~~
22 ~~arbitration award shall not [impair the implementation] in any~~
23 ~~manner violate, expand or diminish the provisions of a plan~~
24 ~~adopted pursuant to this act.~~

25 ~~(b) Reduction in existing work force. Subsequent to~~
26 ~~consolidation or merger, the consolidated or merged municipality~~
27 ~~may, in accordance with existing collective bargaining~~
28 ~~agreements, contracts, settlements or arbitration award~~
29 ~~provisions, and consistent with applicable laws, reduce the~~
30 ~~number of uniformed and nonuniformed employees to avoid~~

~~overstaffing and duplication of positions in the consolidated or merged municipality. If a consolidated or merged municipality determines in its discretion that it is necessary to increase the number of uniformed or nonuniformed employees, employees of 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 2. Sections 607(f) and 704 of the act, added October 20, 2011 (P.L.318, No.79), are amended to read:~~

~~Section 607. Consent agreement.~~

~~* * *~~

~~(f) Collective bargaining. A collective bargaining agreement, contract or [arbitration] settlement executed, and a collective bargaining arbitration award rendered, following enactment of an ordinance under this section may not in any manner violate, expand or diminish the provisions of the consent agreement.~~

1 ~~Section 704. Confirmation.~~

2 ~~(a) Effect of confirmation. The confirmation of the~~
3 ~~recovery plan and any modification to the receiver's plan under~~
4 ~~section 703 shall have the effect of:~~

5 ~~(1) imposing on the elected and appointed officials of~~
6 ~~the distressed city or an authority a mandatory duty to~~
7 ~~undertake the acts set forth in the recovery plan;~~

8 ~~(2) suspending the authority of the elected and~~
9 ~~appointed officials of the distressed city or an authority to~~
10 ~~exercise power on behalf of the distressed city or authority~~
11 ~~pursuant to law, charter, ordinance, rule or regulation to~~
12 ~~the extent that the power would interfere with the powers~~
13 ~~granted to the receiver or the goals of the recovery plan;~~
14 ~~and~~

15 ~~(3) superseding the emergency action plan developed by~~
16 ~~the secretary under section 602.~~

17 ~~(b) Form of government. Confirmation of the recovery plan~~
18 ~~and any modification to the plan under section 703 shall not be~~
19 ~~construed to:~~

20 ~~(1) change the form of government of the distressed city~~
21 ~~or an authority; or~~

22 ~~(2) except as set forth in subsection (a), affect powers~~
23 ~~and duties of elected and appointed officials of the~~
24 ~~distressed city or an authority.~~

25 ~~(c) Collective bargaining. A collective bargaining~~
26 ~~agreement, contract or [arbitration] settlement executed, and a~~
27 ~~collective bargaining arbitration award rendered, after~~
28 ~~confirmation of a recovery plan may not in any manner violate,~~
29 ~~expand or diminish the provisions of the recovery plan.~~

30 ~~Section 3. This act shall take effect in 60 days.~~



SECTION 1. SECTION 103 OF THE ACT OF JULY 10, 1987 (P.L.246, NO.47), KNOWN AS THE MUNICIPALITIES FINANCIAL RECOVERY ACT, IS AMENDED BY ADDING DEFINITIONS TO READ:

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:

"ARBITRATION SETTLEMENT." AN ADJUSTMENT OR SETTLEMENT OF A COLLECTIVE BARGAINING AGREEMENT OR DISPUTE. THE TERM INCLUDES A FINAL OR BINDING ARBITRATION AWARD OR OTHER DETERMINATION.

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"PLAN" OR "RECOVERY PLAN." A RECOVERY PLAN DEVELOPED UNDER THIS ACT.

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SECTION 2. SECTION 241(1) OF THE ACT, AMENDED JUNE 30, 1992 (P.L.336, NO.69), IS AMENDED AND THE SECTION IS AMENDED BY ADDING A PARAGRAPH TO READ:

SECTION 241. CONTENTS.

A PLAN FORMULATED BY THE APPOINTED COORDINATOR SHALL BE CONSISTENT WITH APPLICABLE LAW AND SHALL INCLUDE ANY OF THE FOLLOWING FACTORS WHICH ARE RELEVANT TO ALLEVIATING THE FINANCIALLY DISTRESSED STATUS OF THE MUNICIPALITY:

(1) PROJECTIONS OF REVENUES AND EXPENDITURES FOR THE CURRENT YEAR AND THE NEXT [TWO] THREE YEARS, BOTH ASSUMING THE CONTINUATION OF PRESENT OPERATIONS AND AS IMPACTED BY THE MEASURES IN THE PLAN. THE PROJECTIONS MUST INCLUDE AN ITEMIZATION OF THE FOLLOWING:

(I) PROJECTED REVENUES, INCLUDING:

(A) LOCAL TAXES.

(B) LICENSES, PERMITS AND FINES.

1 (C) SALES AND RENTALS.

2 (D) FEDERAL, STATE AND COUNTY GRANTS AND LOANS.

3 (E) ANY OTHER SOURCES OF PROJECTED REVENUE.

4 (II) PROJECTED EXPENDITURES, INCLUDING:

5 (A) DEBT SERVICE.

6 (B) WORKFORCE.

7 (C) ELECTED AND EXECUTIVE OFFICIALS.

8 (D) FINANCIAL MANAGEMENT.

9 (E) INFRASTRUCTURE COSTS INCLUDING HIGHWAYS,
10 ROADS AND WASTEWATER SYSTEMS.

11 (F) MAINTENANCE COSTS, INCLUDING RECYCLING AND
12 TRASH COLLECTION, DISPOSAL AND REMOVAL.

13 (G) OTHER PROFESSIONAL SERVICES.

14 (H) PUBLIC SAFETY.

15 (I) COMMUNITY AND ECONOMIC DEVELOPMENT.

16 (J) ANY OTHER APPLICABLE EXPENDITURES.

17 * * *

18 (11) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, LIMITS
19 ON PROJECTED EXPENDITURES FOR INDIVIDUAL COLLECTIVE
20 BARGAINING UNITS THAT MAY NOT BE EXCEEDED BY THE DISTRESSED
21 MUNICIPALITY, GIVING DUE CONSIDERATION TO THE PROJECTION OF
22 REVENUE AND EXPENSES UNDER PARAGRAPH (1).

23 SECTION 3. SECTIONS 252, 261 AND 408(A) AND (B) OF THE ACT
24 ARE AMENDED TO READ:

25 SECTION 252. PLAN NOT AFFECTED BY CERTAIN COLLECTIVE BARGAINING
26 AGREEMENTS OR SETTLEMENTS.

27 [A] (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B),
28 A COLLECTIVE BARGAINING AGREEMENT OR ARBITRATION SETTLEMENT
29 EXECUTED AFTER THE ADOPTION OF A PLAN SHALL NOT IN ANY MANNER
30 VIOLATE, EXPAND OR DIMINISH ITS PROVISIONS.

1 (B) ARBITRATION SETTLEMENTS FOR POLICEMEN AND FIREMEN.--AN
2 ARBITRATION SETTLEMENT RENDERED UNDER THE ACT OF JUNE 24, 1968
3 (P.L.237, NO.111), REFERRED TO AS THE POLICEMEN AND FIREMEN
4 COLLECTIVE BARGAINING ACT, MAY DEVIATE FROM THE PLAN, BUT ONLY
5 IF THE ARBITRATION SETTLEMENT:

6 (1) EXCEPT AS SET FORTH IN SUBSECTION (B.1), WILL NOT
7 CAUSE THE DISTRESSED MUNICIPALITY TO EXCEED ANY LIMITS ON
8 EXPENDITURES FOR INDIVIDUAL COLLECTIVE BARGAINING UNITS
9 IMPOSED UNDER THE PLAN;

10 (2) WILL NOT FURTHER JEOPARDIZE THE FINANCIAL STABILITY
11 OF THE DISTRESSED MUNICIPALITY, AS MEASURED BY THE CRITERIA
12 SET FORTH IN SECTION 201; AND

13 (3) IS NOT INCONSISTENT WITH THE POLICY OBJECTIVES SET
14 FORTH IN SECTION 102(A) TO RELIEVE THE FINANCIAL DISTRESS OF
15 THE DISTRESSED MUNICIPALITY.

16 (B.1) EXCEPTION.--SUBSECTION (B) (1) SHALL NOT APPLY TO A
17 LIMIT ON EXPENDITURES FOR AN INDIVIDUAL BARGAINING UNIT THAT IS
18 DETERMINED TO BE ARBITRARY, CAPRICIOUS OR ESTABLISHED IN BAD
19 FAITH.

20 (C) HEARING BEFORE BOARD OF ARBITRATION AND EXPERT
21 TESTIMONY.--THE ISSUE OF WHETHER AN ARBITRATION SETTLEMENT
22 DEVIATING FROM THE PLAN SATISFIES THE CRITERIA UNDER SUBSECTION
23 (B) AND ANY EXCEPTION UNDER SUBSECTION (B.1) MUST BE DETERMINED
24 BY A BOARD OF ARBITRATION APPOINTED UNDER THE POLICEMEN AND
25 FIREMEN COLLECTIVE BARGAINING ACT AND REFLECTED IN FINDINGS OF
26 FACT THAT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND CONSISTENT
27 WITH THIS SECTION. DURING THE HEARING, THE TESTIMONY OF EXPERTS
28 IN MUNICIPAL FINANCE, CALLED BY THE DISTRESSED MUNICIPALITY OR
29 THE COLLECTIVE BARGAINING ORGANIZATION, IS ADMISSIBLE AS
30 EVIDENCE BEFORE THE BOARD. AN ARBITRATION SETTLEMENT DEVIATING

1 FROM THE PLAN MUST BE SUPPORTED BY THE CREDIBLE TESTIMONY OF AN
2 EXPERT IN MUNICIPAL FINANCE THAT THE ARBITRATION SETTLEMENT
3 SATISFIES THE CRITERIA IN SUBSECTION (B) AND ANY EXCEPTION UNDER
4 SUBSECTION (B.1). FOR PURPOSES OF THIS SUBSECTION, THE TERM
5 "EXPERT IN MUNICIPAL FINANCE" MEANS AN INDIVIDUAL HOLDING AN
6 ADVANCED DEGREE WHO HAS AT LEAST EIGHT YEARS OF EXPERIENCE IN
7 ISSUES RELATING TO MUNICIPAL FINANCE.

8 (D) REVIEW BY COORDINATOR.--AN ARBITRATION SETTLEMENT
9 DEVIATING FROM THE PLAN UNDER SUBSECTION (B) MUST BE PROVIDED TO
10 THE COORDINATOR BY THE CHAIRMAN OF THE BOARD OF ARBITRATION
11 WITHIN 48 HOURS OF ISSUANCE. THE COORDINATOR SHALL REVIEW THE
12 ARBITRATION SETTLEMENT TO DETERMINE WHETHER IT VIOLATES THIS
13 SECTION.

14 (E) APPEAL.--THE DISTRESSED MUNICIPALITY, COLLECTIVE
15 BARGAINING ORGANIZATION AND THE COORDINATOR OR SECRETARY HAVE
16 THE RIGHT TO APPEAL TO COMMONWEALTH COURT FROM AN ARBITRATION
17 SETTLEMENT WHICH DEVIATES FROM THE PLAN UNDER SUBSECTION (B).

18 (1) AN APPEAL MUST BE COMMENCED NOT LATER THAN 30 DAYS
19 AFTER ISSUANCE OF THE ARBITRATION SETTLEMENT.

20 (2) THE RECORD OF THE ARBITRATION SETTLEMENT BECOMES
21 PART OF THE RECORD ON APPEAL. THE COURT MAY ALSO SUPPLEMENT
22 THE RECORD.

23 (3) TO THE EXTENT AN APPEAL ALLEGES THAT AN ARBITRATION
24 SETTLEMENT VIOLATES THIS SECTION, THE STANDARD OF REVIEW
25 GOVERNING AN APPEAL FROM AN ARBITRATION SETTLEMENT GOVERNED
26 BY THIS SECTION SHALL BE DE NOVO. THE COURT SHALL NOT BE
27 BOUND BY THE FACTUAL OR LEGAL CONCLUSIONS OF THE BOARD OF
28 ARBITRATION. NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO
29 OTHERWISE AFFECT THE SCOPE OR STANDARD OF REVIEW APPLICABLE
30 TO CERTIORARI REVIEW OF ARBITRATION AWARDS.

1 (4) THE COORDINATOR'S DECISION SETTING A LIMIT ON
2 EXPENDITURES FOR AN INDIVIDUAL COLLECTIVE BARGAINING UNIT
3 UNDER SECTION 241(11) SHALL NOT BE DISTURBED ON APPEAL UNLESS
4 THE LIMIT IS DETERMINED TO BE ARBITRARY, CAPRICIOUS OR
5 ESTABLISHED IN BAD FAITH.

6 SECTION 261. FILING MUNICIPAL DEBT ADJUSTMENT UNDER FEDERAL
7 LAW.

8 (A) AUTHORIZATION.--IN THE EVENT ONE OF THE FOLLOWING
9 CONDITIONS IS PRESENT, A MUNICIPALITY [IS HEREBY AUTHORIZED]
10 MUST APPLY TO THE DEPARTMENT TO FILE A MUNICIPAL DEBT
11 ADJUSTMENT ACTION PURSUANT TO THE BANKRUPTCY CODE (11 U.S.C. §
12 101 ET SEQ.):

13 (1) AFTER RECOMMENDATION BY THE PLAN COORDINATOR
14 PURSUANT TO SECTION 241(6).

15 (2) IMMINENT JEOPARDY OF AN ACTION BY A CREDITOR,
16 CLAIMANT OR SUPPLIER OF GOODS OR SERVICES WHICH IS LIKELY TO
17 SUBSTANTIALLY INTERRUPT OR RESTRICT THE CONTINUED ABILITY OF
18 THE MUNICIPALITY TO PROVIDE HEALTH OR SAFETY SERVICES TO ITS
19 CITIZENS.

20 (3) ONE OR MORE CREDITORS OF THE MUNICIPALITY HAVE
21 REJECTED THE PROPOSED OR ADOPTED PLAN, AND EFFORTS TO
22 NEGOTIATE RESOLUTION OF THEIR CLAIMS HAVE BEEN UNSUCCESSFUL
23 FOR A TEN-DAY PERIOD.

24 (4) A CONDITION SUBSTANTIALLY AFFECTING THE
25 MUNICIPALITY'S FINANCIAL DISTRESS IS POTENTIALLY SOLVABLE
26 ONLY BY UTILIZING A REMEDY EXCLUSIVELY AVAILABLE TO THE
27 MUNICIPALITY THROUGH THE FEDERAL MUNICIPAL DEBT READJUSTMENT
28 ACT (48 STAT. 798).

29 (5) A MAJORITY OF THE CURRENT OR IMMEDIATELY PRECEDING
30 GOVERNING BODY OF A MUNICIPALITY DETERMINED TO BE FINANCIALLY

1 DISTRESSED HAS FAILED TO ADOPT A PLAN OR TO CARRY OUT THE
2 RECOMMENDATIONS OF THE COORDINATOR PURSUANT TO THIS ACT.

3 (B) MAJORITY VOTE.--THIS AUTHORITY MAY BE EXERCISED ONLY
4 UPON THE VOTE BY A MAJORITY OF THE MUNICIPALITY'S GOVERNING
5 BODY.

6 (C) SECRETARY.--UPON APPLICATION UNDER SUBSECTION (A), THE
7 SECRETARY SHALL, WITHIN 30 DAYS, DETERMINE WHETHER TO APPROVE
8 THE APPLICATION ON THE BASIS THAT ONE OF THE CRITERIA UNDER
9 SUBSECTION (A) HAS BEEN MET. FAILURE TO ACT WITHIN THE TIME
10 PERIOD UNDER THIS SUBSECTION SHALL BE DEEMED AN APPROVAL OF THE
11 APPLICATION.

12 SECTION 408. COLLECTIVE BARGAINING AGREEMENTS; FURLOUGH OF
13 EMPLOYEES; DISPUTES.

14 (A) COLLECTIVE BARGAINING CONTRACTS, AGREEMENTS OR
15 ARBITRATION [AWARDS] SETTLEMENTS.--A COLLECTIVE BARGAINING
16 AGREEMENT OR CONTRACT IN EXISTENCE IN A MUNICIPALITY OR AN
17 ARBITRATION [AWARD] SETTLEMENT IN EFFECT IN A MUNICIPALITY PRIOR
18 TO A CONSOLIDATION OR MERGER SHALL REMAIN EFFECTIVE AFTER
19 CONSOLIDATION OR MERGER UNTIL THE CONTRACT, AGREEMENTS OR
20 [AWARDS] SETTLEMENTS EXPIRE. AFTER THE EXPIRATION OF THE
21 CONTRACTS, AGREEMENTS OR [AWARDS] SETTLEMENTS, A SUBSEQUENT
22 COLLECTIVE BARGAINING AGREEMENT, CONTRACT OR [AWARD] SETTLEMENT
23 SHALL NOT IMPAIR THE IMPLEMENTATION OF A PLAN ADOPTED PURSUANT
24 TO THIS ACT.

25 (B) REDUCTION IN EXISTING WORK FORCE.--SUBSEQUENT TO
26 CONSOLIDATION OR MERGER, THE CONSOLIDATED OR MERGED MUNICIPALITY
27 MAY, IN ACCORDANCE WITH EXISTING CONTRACTS OR ARBITRATION
28 [AWARD] SETTLEMENT PROVISIONS AND CONSISTENT WITH APPLICABLE
29 LAWS, REDUCE THE NUMBER OF UNIFORMED AND NONUNIFORMED EMPLOYEES
30 TO AVOID OVERSTAFFING AND DUPLICATION OF POSITIONS IN THE

1 CONSOLIDATED OR MERGED MUNICIPALITY. IF A CONSOLIDATED OR MERGED
2 MUNICIPALITY DETERMINES IN ITS DISCRETION THAT IT IS NECESSARY
3 TO INCREASE THE NUMBER OF UNIFORMED OR NONUNIFORMED EMPLOYEES,
4 EMPLOYEES OF THE CONSTITUENT MUNICIPALITIES SHALL BE REINSTATED
5 IN THE ORDER OF THEIR SENIORITY IF THEY HAD BEEN PREVIOUSLY
6 FURLOUGHED.

7 * * *

8 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.