

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, 2011

AMENDED ON THIRD CONSIDERATION, JUNE 4, 2012

AN ACT

1 Amending the act of July 10, 1987 (P.L.246, No.47), entitled "An
2 act empowering the Department of Community Affairs to declare
3 certain municipalities as financially distressed; providing
4 for the restructuring of debt of financially distressed
5 municipalities; limiting the ability of financially
6 distressed municipalities to obtain government funding;
7 authorizing municipalities to participate in Federal debt
8 adjustment actions and bankruptcy actions under certain
9 circumstances; and providing for consolidation or merger of
10 contiguous municipalities to relieve financial distress,"
11 further providing for definitions, for contents, for plan not
12 affected by certain collective bargaining agreements or
13 settlements, for filing municipal debt adjustment under
14 Federal law and for collective bargaining agreements,
15 furlough of employees and disputes.

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

18 Section 1. Section 103 of the act of July 10, 1987 (P.L.246,
19 No.47), known as the Municipalities Financial Recovery Act, is
20 amended by adding definitions to read:

21 Section 103. Definitions.

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

1 "Arbitration settlement." An adjustment or settlement of a
2 collective bargaining agreement or dispute. The term includes a
3 final or binding arbitration award or other determination.

4 * * *

5 "Plan" or "recovery plan." A recovery plan developed under
6 this act.

7 * * *

8 Section 2. Section 241(1) of the act, amended June 30, 1992
9 (P.L.336, No.69), is amended and the section is amended by
10 adding a paragraph to read:

11 Section 241. Contents.

12 A plan formulated by the appointed coordinator shall be
13 consistent with applicable law and shall include any of the
14 following factors which are relevant to alleviating the
15 financially distressed status of the municipality:

16 (1) Projections of revenues and expenditures for the
17 current year and the next [two] three years, both assuming
18 the continuation of present operations and as impacted by the
19 measures in the plan. The projections must include an
20 itemization of the following:

21 (i) Projected revenues, including:

22 (A) Local taxes.

23 (B) Licenses, permits and fines.

24 (C) Sales and rentals.

25 (D) Federal, State and county grants and loans.

26 (E) Any other sources of projected revenue.

27 (ii) Projected expenditures, including:

28 (A) Debt service.

29 (B) Workforce.

30 (C) Elected and executive officials.

1 (D) Financial management.

2 (E) Infrastructure costs including highways,
3 roads and wastewater systems.

4 (F) Maintenance costs, including recycling and
5 trash collection, disposal and removal.

6 (G) Other professional services.

7 (H) Public safety.

8 (I) Community and economic development.

9 (J) Any other applicable expenditures.

10 * * *

11 (11) Notwithstanding any other provision of law, limits
12 on projected expenditures for individual collective
13 bargaining units that may not be exceeded by the distressed
14 municipality, giving due consideration to the projection of
15 revenue and expenses under paragraph (1).

16 Section 3. Sections 252, 261 and 408(a) and (b) of the act
17 are amended to read:

18 Section 252. Plan not affected by certain collective bargaining
19 agreements or settlements.

20 [A] (a) General rule.--Except as provided in subsection (b),
21 a collective bargaining agreement or arbitration settlement
22 executed after the adoption of a plan shall not in any manner
23 violate, expand or diminish its provisions.

24 (b) Arbitration settlements for policemen and firemen.--An
25 arbitration settlement rendered under the act of June 24, 1968
26 (P.L.237, No.111), referred to as the Policemen and Firemen
27 Collective Bargaining Act, may deviate from the plan, but only
28 if the arbitration settlement:

29 (1) except as set forth in subsection (b.1), will not
30 cause the distressed municipality to exceed any limits on

expenditures for individual collective bargaining units
imposed under the plan;

(2) will not further jeopardize the financial stability
of the distressed municipality, as measured by the criteria
set forth in section 201; and

(3) is not inconsistent with the policy objectives set
forth in section 102(a) to relieve the financial distress of
the distressed municipality.

(b.1) Exception.--Subsection (b)(1) shall not apply to a
limit on expenditures for an individual bargaining unit that is
determined to be arbitrary, capricious or established in bad
faith.

(c) Hearing before board of arbitration and expert
testimony.--The issue of whether an arbitration settlement
deviating from the plan satisfies the criteria under subsection
(b) and any exception under subsection (b.1) must be determined
by a board of arbitration appointed under the Policemen and
Firemen Collective Bargaining Act and reflected in findings of
fact that are supported by substantial evidence and consistent
with this section. During the hearing, the testimony of experts
in municipal finance, called by the distressed municipality or
the collective bargaining organization, is admissible as
evidence before the board. An arbitration settlement deviating
from the plan must be supported by the credible testimony of an
expert in municipal finance that the arbitration settlement
satisfies the criteria in subsection (b) and any exception under
subsection (b.1). For purposes of this subsection, the term
"expert in municipal finance" means an individual holding an
advanced degree who has at least eight years of experience in
issues relating to municipal finance.

1 (d) Review by coordinator.--An arbitration settlement
2 deviating from the plan under subsection (b) must be provided to
3 the coordinator by the chairman of the board of arbitration
4 within 48 hours of issuance. The coordinator shall review the
5 arbitration settlement to determine whether it violates this
6 section.

7 (e) Appeal.--The distressed municipality, collective
8 bargaining organization and the coordinator or secretary have
9 the right to appeal to Commonwealth Court from an arbitration
10 settlement which deviates from the plan under subsection (b).

11 (1) An appeal must be commenced not later than 30 days
12 after issuance of the arbitration settlement.

13 (2) The record of the arbitration settlement becomes
14 part of the record on appeal. The court may also supplement
15 the record.

16 (3) To the extent an appeal alleges that an arbitration
17 settlement violates this section, the standard of review
18 governing an appeal from an arbitration settlement governed
19 by this section shall be de novo. The court shall not be
20 bound by the factual or legal conclusions of the board of
21 arbitration. Nothing in this subsection shall be construed to
22 otherwise affect the scope or standard of review applicable
23 to certiorari review of arbitration awards.

24 (4) The coordinator's decision setting a limit on
25 expenditures for an individual collective bargaining unit
26 under section 241(11) shall not be disturbed on appeal unless
27 the limit is determined to be arbitrary, capricious or
28 established in bad faith.

29 Section 261. Filing municipal debt adjustment under Federal
30 law.

1 (a) Authorization.--In the event one of the following
2 conditions is present, a municipality ~~is hereby authorized~~
3 ~~must~~ TO apply to the department to file a municipal debt
4 adjustment action pursuant to the Bankruptcy Code (11 U.S.C. §
5 101 et seq.):

6 (1) [After recommendation by the plan coordinator
7 pursuant to section 241(6).

8 (2)] Imminent jeopardy of an action by a creditor,
9 claimant or supplier of goods or services which is likely to
10 substantially interrupt or restrict the continued ability of
11 the municipality to provide health or safety services to its
12 citizens.

13 [(3)] (2) One or more creditors of the municipality have
14 rejected the proposed or adopted plan, and efforts to
15 negotiate resolution of their claims have been unsuccessful
16 for a ten-day period.

17 [(4)] (3) A condition substantially affecting the
18 municipality's financial distress is potentially solvable
19 only by utilizing a remedy exclusively available to the
20 municipality through the Federal Municipal Debt Readjustment
21 Act (48 Stat. 798).

22 [(5)] (4) A majority of the current or immediately
23 preceding governing body of a municipality determined to be
24 financially distressed has failed to adopt a plan or to carry
25 out the recommendations of the coordinator pursuant to this
26 act.

27 (b) Majority vote.--This authority may be exercised only
28 upon the vote by a majority of the municipality's governing
29 body.

30 (c) Secretary.--Upon application under subsection (a), the

1 secretary shall, within 30 days, determine whether to approve OR ←
2 DENY the application on the basis that one of the criteria under ←
3 subsection (a) has been met. Failure to act within the time
4 period under this subsection shall be deemed an approval A ←
5 DENIAL of the application.

6 Section 408. Collective bargaining agreements; furlough of
7 employees; disputes.

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

19 (b) Reduction in existing work force.--Subsequent to
20 consolidation or merger, the consolidated or merged municipality
21 may, in accordance with existing contracts or arbitration
22 [award] settlement provisions and consistent with applicable
23 laws, reduce the number of uniformed and nonuniformed employees
24 to avoid overstaffing and duplication of positions in the
25 consolidated or merged municipality. If a consolidated or merged
26 municipality determines in its discretion that it is necessary
27 to increase the number of uniformed or nonuniformed employees,
28 employees of the constituent municipalities shall be reinstated
29 in the order of their seniority if they had been previously
30 furloughed.

1 * * *

2 Section 4. This act shall take effect in 60 days.