



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1773

PRINTERS NO. 4312

PRIME SPONSOR: Ross

COST / (SAVINGS)

FUND	FY 2014/15	FY 2015/16
General Fund	See "Fiscal Impact"	See "Fiscal Impact"
Municipalities Financial Recovery Revolving Aid Fund	See "Fiscal Impact"	See "Fiscal Impact"
Municipal Funds	\$0	\$0
Unincorporated Service District Trust Fund	See "Fiscal Impact"	See "Fiscal Impact"

SUMMARY: Amends the Municipalities Financial Recovery Act (Act 47 of 1987), providing options to assist financially distressed municipalities and to help them return to fiscal stability. This legislation would take effect in 60 days.

ANALYSIS: This legislation comprehensively amends the Municipalities Financial Recovery Act (Act 47 of 1987), which provides procedures and options to assist financially distressed municipalities and to help them return to fiscal stability. The legislation also provides for the disincorporation of non-viable municipalities and for state administration of these unincorporated districts. The following outlines the significant changes to Act 47 of 1987:

Chapter 1. General Provisions

Subchapter A. Preliminary Provisions

Section 102. Purpose and legislative intent: The Early Intervention Program is being codified in Chapter 1-A. The legislation also adds that some municipalities after many years of participation in Act 47 are not viable and may be subject to new disincorporation procedures provided in Chapter 4, Subchapter C (Disincorporation of non-viable municipalities).

Subchapter B. Administrative Provisions

Section 121. Powers and duties of DCED: A reference in Section 121(a) relating to the two page length of the Survey of Financial Condition (SFC) that is submitted annually by municipalities to DCED is removed. Based on the evaluation of the data submitted by a municipality, Section 121(b) is amended to provide that DCED may recommend that a municipality enter into the Early Intervention Program (EIP). In concert with requirements that distressed municipalities be given

priority in community and economic development funding under Section 282, Section 121(c) is amended to require DCED to notify all state departments by January 1 of each year of the priority funding status.

Section 122. Duties of Commonwealth agencies: Section 122(c) is added to the act to provide a limited waiver of regulatory mandates by state departments on financially distressed municipalities if requested by the coordinator or receiver. The waiver may not include a regulatory requirement that: (1) is expressly provided in federal law or regulation or state statute or is related to rights or terms of conditions of employment by the municipality, and (2) is likely to affect public health or safety. This waiver will apply to all state rules and regulations in effect on or after the effective date of the section.

Section 123. Powers and duties of municipalities: Subsection (a) is amended to provide that, notwithstanding the provisions of Act 42 of 2013, which requires PennDOT to distribute liquid fuels monies to municipalities by March 1 of each year, the SFC must still be filed with DCED by March 15 before these funds may be distributed.

Subsection (c) is amended as follows:

- In clause (1), reference is made to new provisions of the 5-year/3-year exit plan from Act 47 provided by Subchapters C (Coordinator's plan) and C.1 (Exit plan). A municipality must adopt, as the case may be, one of these plans to be eligible to apply to the court for a tax rate increase or approval of a newly authorized tax as provided in clause (1.1). In addition, consonant with case law, residents and nonresidents will be subject to a higher rate of earned income tax if the tax is a component of the coordinator's plan developed under Chapter 2 and is approved by the court on an annual basis. The legislation provides that any additional earned income tax on residents must equal or be greater than the tax on residents.
- Clause 1.1 is added to permit distressed municipalities to petition the court to levy a local payroll preparation tax as limited by subsection (d)(2).
- Clause 1.2 is added to clarify that a distressed municipality may petition the court for either an increase in the Local Services Tax or the Earned Income Tax (EIT)
- Increases in or enactment of the taxes provided in the above provisions are in effect for one year and require the submission of an annual petition to the court for renewal of the taxing power (subsection (c)(2)).
- In regard to current requirements imposed on the City of Scranton when petitioning the court for an annual increase in tax rates, Scranton will be limited to petitioning for an increase in an EIT on residents that is at least as high or higher than that of non-residents, these requirements will continue in effect notwithstanding a potential change in the municipal classification of the city.

Subsection (d) is added to provide alternative taxing powers to assist in the alleviation of a municipality's fiscal distress and to give the coordinator another revenue option when analyzing current revenue and expenditure. These tax options include:

- Subsection (1) provides for a local services tax pursuant to Chapter 3 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, at a rate not to exceed \$156. A municipality adopting an ordinance under this paragraph shall be

prohibited from imposing any additional tax on earned income pursuant to subsection (c). A municipality levying the local services tax at a rate in excess of \$52 shall, by ordinance, exempt any person from the local services tax whose total earned income and net profits from all sources within the municipality is less than \$15,600 for the calendar year in which the local services tax is levied. This paragraph does not apply to a municipality which, on the effective date of this subsection, is not authorized to petition the court of common pleas for the imposition of an earned income tax on nonresidents.

- Subsection (1.1) is added to provide for the levy of a higher LST for those distressed municipalities that also have distressed pension systems under Act 205 of 1984 pending court approval. An increase of the LST will be limited to \$104 if the municipality continues to levy an enhanced EIT under Act 205.
- Subsection (2) provides an optional payroll preparation tax (provided for in Section 303 of the Local Tax Enabling Act) not in excess of the amount of revenue raised from the municipality's mercantile or business privilege tax under Chapter 3 of The Local Tax Enabling Act from the previous year. A municipality levying a payroll preparation tax under this section will be required to permanently terminate the levy of the business privilege/mercantile tax, but it will be able to continue the levy of the payroll preparation tax, even after leaving distressed status at a rate not to exceed the rate originally established by this section. The mercantile or business privilege tax may not be levied as long as the payroll preparation tax is in effect, but may resume upon expiration of the levy of the payroll preparation tax. This authority will be limited to those municipalities imposing a business privilege or mercantile tax in the year of the petition.

Chapter 1-A. Early Intervention Program (EIP)

Chapter 1-A is added to codify an existing program that assists municipalities experiencing financial difficulties to develop multiyear fiscal plans and establish both short-term and long-term objectives.

Subchapter A. Preliminary Provisions

Section 101-A. Definitions: For purposes of this Chapter, the definitions of "Center" (Governor's Center for Local Government Services), "Keystone Principles" and "Program" (EIP) are added.

Section 102-A. Program objectives: This section delineates the objectives of the EIP including: providing resource assistance to aid a municipality in identifying, prioritizing and addressing financial difficulties; engaging in a review of management operations and service delivery; implementing a multiyear financial management plan; implementing financial trend analysis; promoting multi-municipal and regional planning and strategies, including cost sharing; adopting best management practices; and integrating sound community and economic development strategies.

Subchapter B. Administrative Provisions

Section 103-A. Authorization: This section establishes the authority for the Center to provide assistance through grants to a municipality to insure fiscal stability by developing and implementing long-term financial, managerial and economic development strategies.

Section 104-A. Grants: This section provides that the Center may award grants not exceeding \$200,000 in the initial fiscal year to one or more municipalities. The grant amount is to be adjusted annually by an increase in the Consumer Price Index. To be eligible for a grant, a municipality must meet the basic training requirements established in the guidelines. The grant amount is subject to a municipal match of 50% unless the Center determines that a match of lesser amount, but not less than 10%, is warranted. The municipality's matching amount may be offset by an undefined, in-kind match. Eligible activities for a grant are enumerated within the legislation.

Section 105-A. Application: Contents of the application form for an EIP grant are specified. An application submitted by a municipality is to be on a form prescribed by DCED utilizing the electronic single application format.

Section 106-A. Evaluation Criteria: Applications are to be evaluated on the basis of municipal financial characteristics and the quality of the proposed program. Factors to be considered include: (1) current and projected financial condition of the municipality; (2) economic and demographic conditions; (3) proactive measures the municipality has taken regarding its finances, including adherence to generally accepted financial management, budget and reporting standards; (4) intergovernmental cooperation efforts; (5) commitment to improve the municipality's financial and managerial operations; (6) past performance relating funding assistance granted by DCED to the municipality; (7) where applicable, inclusion of the Keystone Principles as part of the evaluation process; and (8) any other factors the Center considers relevant.

Section 107-A. Award: Awarding of grants is subject to the availability of funds. Successful applicants will be announced by letter from the Secretary of DCED.

Section 108-A. Guidelines: DCED is to establish operational guidelines for the EIP. The program must include a requirement of a financial audit of the municipality, prepared by an independent auditor or firm for the fiscal year immediately preceding the application for funds by a municipality. DCED may accept any previous audit prepared in accordance with the guidelines.

Chapter 2. Municipal Financial Distress

Subchapter B. Coordinator

Section 221. Designation: Subsection (d) is amended to require the coordinator, within 45 days of the execution of a contract with DCED, to issue a list of preliminary findings on the fiscal condition of the municipality including projected operating deficits for the current fiscal year and projections of revenues and operating expenses for the next three fiscal years, all outstanding debt obligations, the cost and term of outstanding contracts, and other relevant information. The coordinator will also be required to solicit comments from those who may have participated in

the EIP, consultants who provided assistance to the municipality on issues related to distress, elected officials and employees, and members of collective bargaining units. The coordinator will also be empowered to investigate the tax-exempt status of property within the municipality and solicit and negotiate payment in lieu of taxes from institutions of purely public charity and other tax-exempt property owners.

Section 222. Access to information: Failure on the part of these officials or employees to cooperate or provide records may lead to the coordinator seeking a subpoena to compel testimony or to obtain records. Similarly, subsection (c) is added to provide parallel provisions for other entities that possess municipal records.

Section 224.1. Performance of Coordinator: The Secretary of DCED, or his designee, must conduct, commencing July 1, 2015, an annual performance evaluation of each coordinator to ensure that each coordinator is performing in compliance with the provisions of the act and the coordinator's contract. Should the Secretary find that a coordinator is failing to perform according to those requirements, an unfavorable review will provide sufficient grounds to terminate a coordinator's contract for cause.

Subchapter C. Coordinator's Plan

Section 241. Contents: Areas to be examined by the coordinator when formulating a solvency plan are the following:

- Subsection 7.1 - An analysis of whether economic conditions are so severe that the municipality should be disincorporated under new provisions provided in Chapter 4;
- Subsection 10.1 - Recommendations for enhanced cooperation and changes in land use planning, including regional approaches that will promote economic development;
- Subsection 12 - An analysis of current revenue sources and modification of revenue sources, including subjects and rates of taxation provided in Section 123 and Section 124. Elements of the analysis, with consideration given to economic development, employment and tax burden, will include: examination of the tax bases of current and recommended revenue sources from both within and outside the municipality; collection rates and proposed revenue sources; current fees, charges, penalties and fine provisions in municipal enactments; and revenue as defined in Section 103.

Section 242. Publication: The period of time a coordinator possesses to complete a solvency plan once a contract is executed with DCED is extended from 90 to 120 days. The coordinator shall solicit comments on a proposed plan from those who have participated in the EIP, consultants acting on behalf of the municipality on issues associated with the municipality's distress, and employees and members of a collective bargaining unit.

Section 245. Adoption by Municipality: For consistency, the provision of this section relating to adoption of plans by home rule and optional plan municipalities is amended to provide that a chief executive officer "shall" issue an order directing implementation of the plan.

Section 246. Preparation and action on alternate plan: When the Secretary of DCED reviews an alternate plan prepared by a municipal governing body or chief executive officer, and if the

Secretary believes that the alternate plan will not overcome the municipality's financial problems, an added subsection (d)(3)(iv) provides that the Secretary shall notify the municipality of the application of the procedures in Chapter 6 (Fiscal Emergencies in Municipalities) and Chapter 7 (Receivership).

Section 247.1. Annual Budget: This new section will require a distressed municipality to begin forming its annual budget at least 120 days before the end of its fiscal year. At least 75 days before the end of the fiscal year, the governing body or the chief executive officer shall submit a proposed budget to the coordinator for the coordinator's review. The coordinator then will review the proposed budget to determine whether the proposal is consistent with the adopted recovery plan and return the proposed budget, together with any modifications that the coordinator deems necessary, at least 45 days before the end of the fiscal year. The municipality will then be required to adopt an annual budget according to existing law; however, if the coordinator determines that the adopted budget fails to be consistent with the provisions of the recovery plan, the coordinator shall notify the Secretary, and the Secretary may take remedial actions as provided by Act 47, which may include the withholding of state funding or the implementation of chapters 6 and 7.

Section 248. Failure to adopt or implement plan: Section 248 is amended to specify that upon recommendation of the coordinator, the Secretary may request a declaration of a financial emergency from the Governor under Chapter 6 if no plan is adopted by the municipality pursuant to Act 47.

Subchapter C.1. Duration of Distressed Status

A new Subchapter C.1 was inserted into this legislation and is intended to provide a timetable of events leading to financial recovery or disincorporation.

Section 254. Five-year limitation: As of the effective date of Section 254, municipalities will be subject to a five-year limitation on distressed status, subject to a possible three-year exit plan extension. For municipalities in distressed status as of the effective date of the section, the five-year period will begin to run from the effective date of the most recent recovery plan or amendment. For municipalities in their last year of a recovery plan on the effective date of the section, the date for the termination of distressed status will be three years from the termination date of the current plan. For municipalities emerging from receivership, the five-year period will begin to run from the termination of the receivership. Amendments to the plan shall not affect the termination date as provided in the section, and the ability to emerge from distressed status prior to the termination date is expressly preserved.

Section 255. Coordinator's report: Section 255 requires a coordinator to prepare a report in the first 180 days of the last year of distressed status. The report may recommend:

- That the distressed status of the municipality be rescinded.
- That the municipality be disincorporated.
- That the municipality, because of noncompliance with recovery recommendations, be declared in a fiscal emergency and proceed with a receivership process.
- That a three-year exit plan be adopted.

The report shall be filed, open for public inspection, subject to public comment and a public meeting in a manner similar to that found in Subchapter C of Chapter 2 (relating to the formulation of a recovery plan). The coordinator is authorized to amend the report after conducting the meeting and receiving comment.

Section 255.1: Section 253 (relating to termination of status) is removed from the act and replaces it with section 255.1. Under section 255.1, the Secretary of DCED must consider specific factors relating to operating deficits, debt obligations, any outstanding judgments, and sufficient revenue projections. The legislation clarifies that a labor organization, party to a collective bargaining agreement, may appeal a termination of distress status. Any decision shall be suspended until a final decision is issued regarding the appeal by a delineated list of parties which include the parties with standing to petition for a determination of distress under Section 202 (other than DCED) and a collective bargaining unit which is a party to a contract with the municipality.

Section 256. Exit plan: If the coordinator's report prepared in accordance with the new Section 255 recommends a three-year exit plan, the coordinator shall prepare an exit plan within 90 days of the public meeting referred to in Section 255. The exit plan will be subject to the same notice, comment and meeting requirements as the report. Subsection (c) requires the governing body to adopt the exit plan as an ordinance or the Secretary shall, upon a recommendation of the coordinator, seek the appointment of a receiver in accordance with Chapter 7. Paragraph (4) under Subsection (c) specifies that a recommendation for the appointment of a receiver upon the failure of a municipality to enact or implement a 3-year exit plan will not apply in a case where the coordinator has made a recommendation for disincorporation of the distressed municipality to the Secretary.

Section 257. Post report procedures: Section 257 establishes the duties of the Secretary as a result of the coordinator's report in Section 255, as well as duties related to the exit plan. Depending on the recommendations of the coordinator's report, the Secretary shall do one of the following:

- Terminate the distressed status of the municipality.
- Initiate disincorporation proceedings.
- Declare a fiscal emergency and proceed with a receivership process.

In the case of an implemented exit plan, the Secretary, at any time during the plan, may:

- Terminate the distressed status of the municipality, or
- Declare a fiscal emergency and proceed with a receivership process.

At the end of the exit plan the Secretary shall either:

- Terminate the distressed status of the municipality upon disincorporation.
- Declare a fiscal emergency and proceed with a receivership process.

Subchapter E. Economic Assistance

Section 282. Priority: Under this section, distressed municipalities are to be given priority in all community and economic development funding. Section 282(b.1) is added to comport with Section 441 providing unincorporated districts created under Chapter 4 the same priority funding.

Chapter 4 - Collective Bargaining in Merged or Consolidated Municipalities and Economically Nonviable Municipalities

Subchapter C. Disincorporation of Nonviable Municipalities

Section 431. Definitions: Section 431 provides the definitions of “administrator,” “district,” “municipality,” “restricted account” and “governing standards” as they are used throughout this chapter.

Section 431.1. Determination of nonviability: This section requires the Secretary of DCED to determine whether a municipality is nonviable after receiving a recommendation of nonviability from a coordinator or receiver. To make a determination that the municipality is nonviable, the Secretary is required by this section to find that all of the following are true:

- 1) the municipality is unable to provide essential services to its residents and property owners and otherwise function as a municipality;
- 2) the municipality has experienced a collapse of its economy and tax base such that all reasonable efforts to restore economic vitality have failed; and
- 3) merging or consolidating with a neighboring municipality is either unachievable or will not solve the problem of nonviability. If the Secretary makes a determination that the municipality is nonviable, he/she is required to provide notice to the governing body of the municipality and recommend that the municipality be disincorporated under this chapter.

Section 432. Procedure for disincorporation: If the Secretary determines that the municipality is nonviable under Section 431, this section provides two methods by which the process of disincorporation may be initiated:

- A municipality may enact an ordinance initiating disincorporation within 45 days of the Secretary’s determination.
- A petition comprised of 51% of the electors who voted in the last gubernatorial election submitted to the court of common pleas within 60 days of the deadline for the municipality to adopt an ordinance (if the governing body does not enact an ordinance).

Section 433. Judicial review of ordinance or petition: After disincorporation is initiated by ordinance or petition by the electors of the municipality, the court is required to hold a hearing to decide whether to issue a decree approving disincorporation. This section establishes the procedure for the court’s review which provides for, among other things, a notification of the public by the prothonotary that a hearing will take place and that the governing body of the municipality and any taxpayer, creditor, bondholder, collective bargaining unit or contractor of the municipality may file exceptions with the court before the hearing.

At the hearing, the governing body of the municipality, individuals and entities who have filed exceptions and the Secretary, or the Secretary’s designee, have the opportunity to present testimony and other relevant evidence about whether the municipality is, in fact, nonviable, what effect disincorporation will have on the residents and taxpayers, whether other plans or strategies can be employed that will restore viability, and what effect disincorporation will have on debts

and obligations of the municipality. After taking evidence at the hearing, the court is charged to issue a decree upholding the municipality's ordinance for disincorporation or granting the electors' petition initiating disincorporation, unless it finds by clear and convincing evidence that the municipality should continue to be incorporated because of a reasonable expectation that the municipality is viable.

Section 433.1. Failure to Initiate Disincorporation: The Secretary shall issue a determination within 30 days of either the petition deadline under Section 432(b), if judicial review under Section 433 has not been initiated or if a final adjudication under Section 433 recommends a municipal is viable and should remain as a separate municipal corporation. The Secretary shall determine if:

- The municipality should continue to operate under its recovery plan if it has not run out of time by the limitations of Subchapter C.1 of Chapter 2;
- The elected and appointed officials of the municipality have failed to implement recovery measures and the municipality is an appropriate candidate for receivership and the application of chapters 6 and 7;
- The municipality's distressed status should be terminated under Section 255.1; or
- The municipality should initiate proceedings for a federal debt adjustment under bankruptcy.

Section 434. Service district administrator: This section establishes an administrator who will serve the Commonwealth during the municipality's disincorporation process to ensure that the residents' and taxpayers' needs for services are met, and then manage the day-to-day operations of the unincorporated area that results from the municipality's disincorporation, which is referred to in Chapter 4 as an "unincorporated service district." The administrator is appointed by the Secretary of DCED and must meet similar qualifications as a receiver appointed to administer Chapters 6 and 7. As discussed more fully in Section 436, the administrator will form a plan for the provision of essential services for the district after the municipality's disincorporation. This section sets out a list of powers and duties that enable the administrator to form and carry out that plan, including the power to negotiate contracts for the provision of services, administer monies from a restricted account of the Commonwealth, apply for grants, loans and payments on behalf of the district, and establish an assessment of fees necessary for the provision of services.

Section 435. Powers and duties of municipality: After the court issues a decree under Section 433, the municipality's powers are limited by this section to require that the municipality not act in any manner that is inconsistent with the administrator's plan. The municipality's modified duties under this section require it to enact a final budget providing for the municipality until the date that the municipality is disincorporated by operation of the administrator's plan, transfer any municipal pension to a public or private pension fund that maintains the pension benefits due to any current or past employee of the municipality, and appoint a service district advisory committee, established by Section 442, which will advise the administrator after the municipality's disincorporation. Finally, the municipality may opt, by the procedure established in this section, to recommend to the administrator by ordinance a set of governing standards to be included in the plan, which are detailed in Section 436.

Section 436. Essential services plan: Within 90 days of appointment, the administrator must formulate an essential services plan that will provide for vital and necessary services, emergency management, including the ability to contract with a regional police or fire department, payment of short-term and long-term debt obligations, disposal of municipal property, and the establishment and administration of the unincorporated service district. The administrator must establish an assessment on property, but cannot levy or collect taxes, incur debt other than for short-term cash flow, or terminate any debt obligations. This section also specifically provides that, notwithstanding the provisions of Section 443, the assessment in the first full year may not be greater than 5% more than the total taxes levied by the municipality in the municipality's final year.

Finally, the plan must contain governing standards for the district which establish rules and conduct for the maintenance of property, conduct in public places and parking of vehicles in public, as well as provide for fines or other relief which may be granted by a court for violations of these standards. If the governing body of the municipality recommends governing standards for inclusion in the plan, the administrator is required to incorporate the recommended governing standards unless the administrator finds that the recommendations would be unlawful or unconstitutional or would substantially impede the administration of the essential services plan.

Section 437. Proposed essential services plan: This section establishes the procedure for the administrator to present and provide public notice of a proposed essential services plan.

Section 438. Final essential services plan. The administrator must consider all timely comments and requests for revision of the plan before filing a final essential services plan within 45 days of the public meeting. Where the governing body of the municipality has presented its comments and requests that propose an amendment to the plan, the administrator is required to either amend the plan accordingly or explain in the final plan why the requested revisions were not feasible. Any party aggrieved by the final essential services plan may appeal the plan to the court of common pleas within 30 days. A court should only sustain the appeal where it finds that the plan is unlawful or unconstitutional or the conduct of the administrator is arbitrary or capricious.

Section 439. Disincorporation of municipality: Before disincorporation takes effect, the administrator is required to execute all contracts necessary to implement the essential services plan, provide notice of assessments under the plan to the property owners within the unincorporated service district, and provide notice to the Governor and all Commonwealth agencies of the municipality's disincorporation.

If the municipality has a zoning ordinance and/or an official map, the county must adopt the same, and if necessary, amend its comprehensive plan to be generally consistent with the zoning ordinance. The county must also adopt a subdivision and land development ordinance (SLDO) that may be the county's existing SLDO, which will apply to all unincorporated service districts within the county. After disincorporation of the municipality, the county will provide for the administration of the land use ordinances applicable to the district as required.

Finally, on the date that disincorporation is to take effect under the provisions of the essential services plan, the terms of office of the elected officials end, the ordinances are nullified, the corporate powers of the municipality terminate, and the municipality is deemed disincorporated. Upon disincorporation, an unincorporated service district is established containing the entire area that was formally within the municipality as provided by Subchapter D.

Subchapter D. Unincorporated Service District

Section 441. Establishment of unincorporated service district: An unincorporated service district established under this section is an entity of the Commonwealth that is established for the special purpose of providing essential services to the district until such time when the district is incorporated as a municipality or made a part of a merged or consolidated municipality under Section 447. The district is operated according to the provisions of the essential services plan, administered by the administrator, and funded primarily by assessments, which shall serve as a credit against any municipality's attempt to collect nonresident income taxes on residents of the district. The district is precluded under this section from exercising corporate powers granted to municipalities, including the power to tax and establish elected or appointed officers.

All property of the municipality becomes the Commonwealth's property in trust for the benefit of the residents and property owners. Similarly, the debts of the municipality are placed in the trust of the Commonwealth. Nothing in this section shall be construed to authorize the Commonwealth to guarantee any debt incurred with the full faith and credit of the Commonwealth. The district is specifically permitted to be eligible for financial assistance, including emergency grants and loans under Chapter 3 of the Act, as it would have been eligible to receive when it was a municipality including liquid fuels monies.

To the extent that residents of the district were served by an authority prior to disincorporation, this section authorizes the authority to continue its services, and future appointments to the authority will be made by the administrator. The governing standards adopted by the essential services plan become enforceable standards, which provide a cause of action for violations by aggrieved residents, property owners or the administrator, and also constitute a public nuisance. Separately, enforcement of the Uniform Construction Code is handled by the procedures for an 'opt-out' municipality under the PA Construction Code Act, which allows municipalities who do not adopt the code by ordinance for municipal enforcement to enforce the code privately and through certain approvals of the Department of Labor and Industry.

Section 442. Service district advisory committee: This section presents the composition, appointment, duties and powers of the service district advisory committee, which will serve the residents of the district as a body providing advice to the administrator on issues facing residents and property owners, the county and DCED on issues related to the district's conceivable reincorporation as a new municipality or merger or consolidation with another municipality. Committee meetings must comply with the Sunshine Act. The committee is made up of two resident property owners and one business owner (if any) of the district who are initially appointed by the governing body of the municipality before disincorporation. Subsequent vacancies, caused by expiration of terms or other reasons, are filled by the remaining members of the committee if there is one vacancy or the administrator if there are two or more vacancies.

Although the committee does not have any powers on its own, its recommendations must be considered by the administrator. In the case of recommendations by the committee proposing amendment of the governing standards within the essential services plan, or recommendations proposed by a petition of 10% of the electors of the district who voted in the last gubernatorial election for amendment of the governing standards, the administrator is required to include those recommendations as a proposed plan amendment, discussed under Section 444, unless the administrator finds that the recommendations would be unlawful, unconstitutional or substantially impede the administration of the essential services plan.

Section 443. Assessments: Property owners shall be assessed annually, calculated on a front-foot or benefit conferred basis, or some combination, to provide services, service debts, provide necessary upkeep of public property, reimburse DCED for the expenses of the administrator, and maintain a reserve of up to 15% of the annual estimated cost of the essential services plan for unanticipated expenses. The administrator is authorized to establish a limited assessment for those properties held by governmental or other public entities, assessing only for services that are directly consumed by the property such as water, sewer, and solid waste services.

After the first assessment, which may be a partial year assessment depending upon the date of disincorporation, the administrator is required to provide notice of the annual assessment by October 1 of the year preceding the assessment with required payment due by March 1, unless the administrator allows collection on a quarterly or semiannual basis. Unpaid and delinquent assessments accrue interest, and may be enforced by the establishment of a lien under the procedures outlined in the Municipal Claim and Tax Lien Law.

Section 444. Amendment of essential services plan: The administrator is authorized to propose amendments to the essential services plan at any time and is required to receive written comments on the plan, and, if requested by the advisory committee, hold a public meeting on the amendment. If amendment of the plan is immediately necessary to protect public safety, health or the environment, the Secretary may waive the requirements for the consideration of a proposed plan amendment and issue a plan amendment that immediately takes effect. Any party aggrieved by the amendment may appeal the amendment to the court of common pleas within 30 days. The court should only sustain the appeal where it finds that the plan amendment is unlawful or unconstitutional or the conduct of the administrator is arbitrary or capricious.

Section 445. Unincorporated Service District Trust Fund: The Unincorporated Service District Trust Fund is created as a special fund in the State Treasury for the purpose of holding moneys and paying expenses and obligations of unincorporated services districts.

Section 445.1. Restricted accounts: A restricted account shall be created within the Unincorporated Service District Trust Fund for each unincorporated service district. The district administrator shall deposit all moneys into the account and pay expenses and obligations of the district from it. DCED may also pay for compensation and expenses of the administrator out of the restricted account.

Section 446. Audit: The PA Auditor General is required to conduct an annual audit of the services rendered, assessments, and transactions of the district.

Section 447. Merger and consolidation; incorporation of municipal corporation: A district may merge with another municipality or become a new independent municipality as provided under Title 53 (Municipalities) whereby the residents of the district first initiate the process by petition. After the residents' petition, the administrator, in consultation with the advisory committee, is granted the powers of a governing body of a municipality to enter into a merger or consolidation agreement with another municipality, provide for the transition of the district into a consolidated or merged municipality and expend district funds to the extent authorized by law to provide for incorporation.

DCED is authorized to issue any grant or loan authorized under Chapter 3 to provide transitional assistance. Once reincorporated, all assets and debts held by the Commonwealth in trust on behalf of the residents and property owners of the district are assumed by the municipality.

Chapter 6. Fiscal Emergencies in Municipalities

Chapter 6, like Chapter 7, is editorially and technically changed to provide that procedures found in both chapters will apply, with the exception of Philadelphia, to all municipalities instead of only cities of the third class.

Section 608. Termination of fiscal emergency and suspension of powers: Changes to this section establish the conditions under which the fiscal emergency status of a municipality subject to Chapter 6 can end, by specifying that a municipal fiscal emergency shall end upon the Secretary's determination that the municipality is solvent and able to provide vital and necessary services.

Section 609. Restrictions: This section is amended to provide a necessary technical change to conform to the provisions contained within Section 710.1(c) related to the imposition of an earned income tax on nonresidents after a municipality subject to Chapter 6 or 7 is deemed no longer in a state of fiscal emergency.

Chapter 7. Receivership in Municipalities

Chapter 7 is amended to provide that procedures found in both chapters will apply, with the exception of Philadelphia, to all municipalities instead of only cities of the third class.

Section 710. Termination of receivership: Subsection (c) is added to provide that the Secretary's termination of a fiscal emergency under Section 608 shall also constitute a termination of a receivership. The legislation clarifies that the receivership termination process does not apply to a municipality which has entered receivership prior to the effective date of this act.

Section 710.1. Continuation of recovery plan: Subsection (a) provides that upon a termination of a fiscal emergency as provided in Section 608, the Secretary shall issue an administrative determination that the municipality's distressed status should be terminated or the municipality should be subject to further Act 47 proceedings outside of receivership under Chapter 2. If continued proceedings outside of receivership are recommended, Subsection (b) provides that the Secretary shall appoint a coordinator, and the recovery plan established under the receivership shall continue in effect as the recovery plan of the municipality under Chapter 2. Plan amendments will occur by ordinance of the municipality's governing body after recommendation

by the coordinator in accordance with Chapter 2. The recovery plan of the municipality will be subject to the same duration of distressed status provisions as are contained in the underlying bill. The administration of the plan, however, will differ from that of other distressed municipalities as follows:

- The coordinator will retain powers and duties of a receiver with regard to enforcement of plan completion.
- The Commonwealth Court will retain jurisdiction to adjudicate disputes and enforce orders issued by the coordinator in accordance with the current plan.
- Under Subsection (c), the same restrictions that apply to Scranton for the imposition of nonresident earned income tax increases will apply to the municipality.

Technical Provisions

Section 33: The legislation clarifies that Section 122(c), relating to waiver of regulatory mandates, will apply to all state rules and regulations in effect on or after the effective date of the section.

An additional housekeeping provision clarifies that the additions and amendments to the receivership termination process do not apply to a municipality which has entered receivership prior to the effective date of this act.

Section 34: A technical provision is added to prevent a distressed municipality that has a distressed pension system under Act 205 of 1984 from using the authorization under Act 205 to increase the EIT on non-residents by more than an increase on residents.

Section 35: The legislation clarifies that any determination made by the Secretary regarding a municipality's termination of distress, or any appeals of any such decision, made prior to the enactment of this legislation shall not be subject to the provisions of Section 255.1.

FISCAL IMPACT: This legislation is expected to add minimal costs for DCED as the legislation adds some additional administrative duties for the department which could be absorbed within current available funding. In the event that a municipality becomes an unincorporated service district, DCED indicates that the aggregate cost of an unincorporated service district would not exceed \$500,000 for administrator expenses and reimbursements for courts of common plea proceedings. These costs could eventually be reimbursed through the liquidation of municipal assets, interest earned, as well as assessments from property owners. Expanding the receivership option to all municipalities may result in additional costs for the Commonwealth. The City of Harrisburg's receivership resulted in \$5 million in appropriations over the past 3 fiscal years.

In the event that a municipality becomes an unincorporated service district for a full year or more, the Auditor General would be required to perform an annual financial audit. According to the Department of the Auditor General, a normal financial audit covering transactions by the unincorporated service district would cost between \$30,000 and \$50,000 annually per district. The department indicates that they could not absorb those costs within available appropriations.

The legislation would provide the Commonwealth with an opportunity to realize savings in the longer term as municipalities would have a faster exit out of Act 47 “financially distressed” status. Disbursements are made through the Municipalities Financial Recovery Revolving Aid Fund after appropriation from the General Fund. Disbursements from this special fund were \$2.4 million in 2011-12, \$6 million in 2012-13 and \$2.3 million in 2013-14. The average of the 3 fiscal years is \$3.6 million per year. During those 3 fiscal years there were 21, 21, and 20 “financially distressed” municipalities, respectively. The average cost per “financially distressed” municipality was approximately \$172,000 annually over the past 3 completed fiscal years.

The legislation would provide additional revenue options for municipalities such as tripling the local services tax where municipalities choose to do so. The municipalities would lose the ability to levy an earned income tax on resident and nonresidents above and beyond what is permissible under the Local Tax Enabling Act. According to DCED, those 20 municipalities all levied a local services tax which aggregately totaled \$22.1 million in the last years available (2010, 2011, and 2012). DCED indicates that they do not possess the ability to break out the earned income tax in excess of what is permissible under the Local Tax Enabling Act; therefore, a net revenue calculation is impossible. This legislation also exempts the local services tax on earned incomes or net profits less than \$15,600, which varies from the \$12,000 provided under current law, thus complicating an estimate even further. According to DCED, the 20 “financially distressed” municipalities generated about \$12.9 million in business privilege/mercantile taxes in the last years available (2010, 2011, and 2012). These municipalities, currently levying a business privilege/mercantile tax, would have the ability to convert these taxes to a payroll preparation tax not to exceed the amount received from the aforementioned taxes in the prior calendar year.

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House Appropriations Committee (R)

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.