

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 1151

PRINTER'S NO. 1435

AMOUNT

\$500,000

FUND

General Fund

DATE INTRODUCED

June 17, 2011

PRIME SPONSOR

Senator Piccola

HISTORY OF BILL

Referred to COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
June 17, 2011

Reported as amended, June 22, 2011

First consideration, June 22, 2011

Second consideration, June 23, 2011

Re-referred to APPROPRIATIONS, June 23, 2011

Re-reported as amended, June 26, 2011

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 1151, as amended, amends the Municipalities Financial Recovery Act (Act of July 10, 1987, P.L. 246, No. 47), which enacts procedures and provides powers and guidelines to ensure fiscal integrity of municipalities while leaving principal responsibility for the conduct of financial affairs to its locally elected officials. Act 47 provides procedures for the adjustment of municipal debt by negotiated agreement with creditors.

The legislation amends section 102 of the act regarding legislative intent to provide for the exercise of the Commonwealth's sovereign and plenary police power in emergency fiscal conditions when local officials are unwilling or unable to accept a solvency plan.

Section 251 of the act, regarding withholding of certain Commonwealth funds, is amended to add a new subsection (a.1), providing that the provisions regarding the withholding of grants, loans entitlements or payment from the Commonwealth shall also apply to the disposition of assets. If a distressed city or a management board fails to identify, sell, lease or otherwise dispose of assets in accordance with new section 605 ("Sale of assets"), then the Commonwealth shall withhold certain funds.

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Senate Bill 1151 adds new section 254, which requires the Department of Community and Economic Development ("department") to conduct a review of all coordinators appointed or serving during 2010 and of all coordinators appointed or serving during 2011 and each year thereafter. Within 30 days of the completed review, the department shall determine if the coordinator has failed to develop an adequate plan or to implement the plan in an appropriate manner. If the coordinator has failed to develop or implement the plan in an appropriate manner, the department shall remove the coordinator and appoint a new coordinator. In addition to the review, the department shall investigate a complaint as to the failure of the coordinator to develop or implement the plan in an adequate and appropriate manner. Such a complaint must be brought by one of the following:

1. A petition from at least two members of the governing body of the municipality; or
2. A petition signed by 30 residents of the municipality.

The legislation adds new Chapter 6 to the act entitled "Cities of the Third Class". Section 601 defines a "business with which he is associated", "city", "controlled authority", "county", "distressed city", "immediate family" and "management board". A distressed city as defined in section 601 shall be subject to the provisions of existing Chapters 2 and 3, and if a conflict between chapters occurs, the provisions of Chapter 6 shall prevail.

Section 603 establishes a management board if the secretary determines that a distressed city has either failed to adopt or has not implemented the coordinator's plan. A distressed city shall be deemed to have failed to adopt the coordinator's plan if it takes any action to approve an alternative plan under section 246 of the act.

The management board shall be comprised of the following:

1. Two members appointed by the Governor, one of whom shall be a resident of the distressed city for which the board is being appointed.
2. One member appointed by the board of commissioners of the county who shall be a resident of the county at the time of appointment and shall maintain county residence while a member of the board.

Members of the board shall not seek or hold a position as any other elected or appointed public official or political party officer while serving and shall not seek election as a public official or political party officer for one year after serving with the board. Further restrictions are placed on management board members prohibiting them from using their position to benefit themselves, immediate family or related businesses.

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All members and their designees of the management board shall have experience in finance or management, and shall be residents of the Commonwealth. The legislation provides rules regarding the terms, organization, meetings, and expenses of the management board. The department shall provide administrative and other support to the management board.

A management board shall constitute a public authority and instrumentality of the Commonwealth, exercising the powers of the Commonwealth. Sovereign immunity is extended to members of the management board, and they shall not be liable personally for any obligations of the management board.

The management board shall have the following powers and duties:

1. To require the distressed city to implement the coordinator's plan.
2. To require the coordinator to make changes to the coordinator's plan as necessary to achieve financial stability of the distressed city.
3. To require the distressed city to negotiate intergovernmental cooperation agreements between the distressed city and other political subdivisions in order to eliminate deficits, maintain sound budgetary practices and avoid interruption of municipal services.
4. To make annual reports for submission to the department within 120 days after the close of the distressed city's fiscal year.
5. To require the distressed city to cause the sale, lease or other disposition of the distressed city's assets.
6. To approve or disapprove the execution of contracts and agreements by the distressed city.
7. To direct the distressed city to take any other action to implement the coordinator's plan.

Section 605 provides that the management board shall have the authority to determine that it is in the best financial interests of the distressed city to sell, lease or dispose of assets determined by the management board to be nonessential and owned by the distressed city. Section 605 further provides for rules governing the sale, lease or other disposition of assets by the management board. Approval of the governing body is not required, and the proceeds of the sale, lease or disposition shall be first applied to the payment of any unpaid debt obligations owed by the distressed city.

The management board may bring an action in mandamus in the court of common pleas where the distressed city is situated to compel compliance with its directives. The court shall grant a petition for mandamus if the court finds that the distressed city has failed to abide by any of the written directives of the management board.

If a management board determines that a controlled authority is not taking the action necessary to sell, lease or dispose of assets, the management board may remove the board members of the controlled authority and appoint new board members of the controlled authority.

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Section 607 provides that no distressed city may file a petition for relief under 11 U.S.C. Ch. 9 (relating to adjustment of debts of a municipality) or any other Federal bankruptcy law, and no government agency may authorize the distressed city to become a debtor under 11 U.S.C. Ch. 9 or any other Federal bankruptcy law.

Various technical changes and repeals are made in order to implement the legislation. The provisions of the legislation are severable.

This act shall take effect immediately.

FISCAL IMPACT:

Senate Bill 1151 charges the Department of Community and Economic Development with providing administrative support to the management board and authorizes the board to contract for services necessary to carry out its responsibilities.

According to the definition of "city", it is believed that very few cities currently fall under the scope of the legislation. In the case of one city, the department estimates that its responsibilities would cost approximately \$500,000 based upon their experience with other Act 47 municipalities, especially given the fact that the city or cities affected by this bill would require significant effort from the department.