

**MUNICIPALITIES FINANCIAL RECOVERY ACT - CONTENTS, PLAN NOT  
AFFECTED BY CERTAIN COLLECTIVE BARGAINING AGREEMENTS OR  
SETTLEMENTS, FILING MUNICIPAL DEBT ADJUSTMENT UNDER FEDERAL  
LAW, COLLECTIVE BARGAINING AGREEMENTS, FURLOUGH OF EMPLOYEES  
AND DISPUTES**

**Act of Jul. 5, 2012, P.L. 1104, No. 133**

**Cl. 53**

Session of 2012

No. 2012-133

SB 1321

**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," 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 hereby enacts as follows:

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.**

\* \* \*

**"Plan" or "recovery plan." A recovery plan developed under this act.**

\* \* \*

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.
- (C) Sales and rentals.
- (D) Federal, State and county grants and loans.
- (E) Any other sources of projected revenue.
- (ii) Projected expenditures, including:
  - (A) Debt service.
  - (B) Workforce.
  - (C) Elected and executive officials.
  - (D) Financial management.
  - (E) Infrastructure costs including highways, roads and wastewater systems.
  - (F) Maintenance costs, including recycling and trash collection, disposal and removal.
  - (G) Other professional services.
  - (H) Public safety.
  - (I) Community and economic development.
  - (J) Any other applicable expenditures.

\* \* \*

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

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

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

[A] (a) **General rule.--**Except as provided in subsection (b), 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.

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

(1) except as set forth in subsection (b.1), will not 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.

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

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

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

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

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

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

Section 261. Filing municipal debt adjustment under Federal law.

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

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

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

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

[(4)] (3) 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)] (4) 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.

(c) **Secretary.**--Upon application under subsection (a), the secretary shall, within 30 days, determine whether to approve or deny the application . Failure to act within the time period under this subsection shall be deemed a denial of the application.

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

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

(b) Reduction in existing work force.--Subsequent to consolidation or merger, the consolidated or merged municipality may, in accordance with existing contracts or arbitration [award] **settlement** provisions and consistent with applicable laws, reduce the 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.

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

APPROVED--The 5th day of July, A.D. 2012.

TOM CORBETT