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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1379** Session of  
1991

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INTRODUCED BY BAKER, CORMAN, PECORA, BORTNER AND STOUT,  
OCTOBER 21, 1991

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AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 10, 1992

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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 changing the short title of the act; further providing for  
12 standing to request a determination, for determination  
13 procedure, for contents of the coordinator's plan, for plan  
14 implementation, for termination of status ~~and~~, for economic <—  
15 and community development ~~grant priority; and making repeals~~ <—  
16 ASSISTANCE PRIORITY AND FOR EMERGENCY FINANCIAL AID FOR <—  
17 DISTRESSED MUNICIPALITIES.

18 The General Assembly of the Commonwealth of Pennsylvania

19 hereby enacts as follows:

20 Section 1. Sections 101, 202, 203, 241, 247(a) and 253 of  
21 the act of July 10, 1987 (P.L.246, No.47), known as the  
22 Financially Distressed Municipalities Act, are amended to read:

23 Section 101. Short title.

1 This act shall be known and may be cited as the [Financially  
2 Distressed] Municipalities Financial Recovery Act.

3 Section 202. Standing to [petition for] request a  
4 determination.

5 The following have standing to [seek] request a determination  
6 of municipal financial distress from the secretary:

7 (1) The department itself, if, subsequent to its review  
8 and analysis under sections 121 and 201, it concludes that a  
9 municipality is substantially in a condition of financial  
10 distress.

11 (2) The governing body of the municipality upon passing  
12 a resolution by a majority vote of the governing body after a  
13 special public meeting duly advertised as provided by law.

14 (3) A creditor with a matured claim to whom the  
15 municipality owes \$10,000 or more, if the creditor agrees in  
16 writing to suspend pending actions and to forbear from  
17 bringing an alternate or additional legal action against the  
18 municipality to collect the debt or part of it for a period  
19 of nine months or until the municipality adopts a plan under  
20 this act, whichever occurs first. The filing of a Federal  
21 debt adjustment action by a municipality pursuant to  
22 Subchapter D of Chapter 2 during the nine-month period  
23 cancels the forbearance obligation.

24 (4) Ten percent of the number of electors of the  
25 municipality that voted at the last municipal election, by  
26 petition to the department alleging the municipality is  
27 fiscally distressed.

28 (5) [Trustee of a municipal pension fund; an actuary for  
29 a pension fund; or 10%] Ten percent or more of the  
30 beneficiaries of a pension fund upon petition to the

1 department, provided that a municipality has not timely  
2 deposited its minimum obligation payment as required by  
3 section 302 of the act of December 18, 1984 (P.L.1005,  
4 No.205), known as the Municipal Pension Plan Funding Standard  
5 and Recovery Act.

6 (6) Ten percent of the employees of the municipality who  
7 have not been paid for over 30 days from the time of a missed  
8 payroll, upon signing collectively the petition to the  
9 department.

10 (7) Trustees or paying agents of a municipal bond  
11 indenture.

12 (8) The elected auditors, appointed independent auditors  
13 or elected controllers of a municipality if they have reason  
14 to believe a municipality is in a state of financial distress  
15 pursuant to section 201.

16 (9) A trustee or actuary of a municipal pension fund, if  
17 the municipality has not made a timely deposit of its minimum  
18 obligation payment as required by section 302 of the  
19 Municipal Pension Plan Funding Standard and Recovery Act.

20 (10) The chief executive officer of any city.

21 Section 203. Procedure for determination.

22 (a) [Petition] Request.--A party with standing [to petition  
23 under section 202 may petition the secretary seeking a  
24 determination] under section 202 may request the secretary, on a  
25 form supplied by the department, to determine that the  
26 municipality involved is a financially distressed municipality.  
27 The [petition] request shall be signed by [a party with  
28 standing] the requesting party, and it shall be sealed and duly  
29 notarized. The [petition] request shall:

30 (1) Allege the [petitioner] requesting party has

1 standing to bring a determination of the distress.

2 (2) State why the [petitioner] requesting party believes  
3 the municipality is distressed under section 201.

4 (3) Include a listing of judgments recorded against the  
5 municipality.

6 (4) Include any other material allegation justifying the  
7 relief afforded by this act.

8 (5) If the [petitioner] requesting party is a  
9 municipality, the [petition may state] request may include a  
10 statement indicating why the [petitioner] requesting party  
11 believes manifestation of section 201 criteria is imminent  
12 and inevitable. This statement may be in lieu of the  
13 statement required under paragraph (2).

14 (a.1) Petitions.--If a request is made under section 202(4),  
15 (5) or (6), the following procedure shall be used:

16 (1) The procedure set forth in subsection (a).

17 (2) Evidence that the required number of persons in the  
18 class concurs with the requesting party shall be obtained by  
19 circulating a petition or petitions to get the signatures and  
20 addresses of those in concurrence.

21 (i) A party who requests the determination of  
22 financial distress of a municipality shall be responsible  
23 for circulating this petition.

24 (ii) If the petition must be longer than one page in  
25 order to obtain the requisite number of signatures and  
26 addresses, the requesting party may enlist petition  
27 circulators to assist; however, each circulator shall  
28 attest in writing to the accuracy of the signatures and  
29 addresses obtained and the method used to obtain them.

30 This attestation shall be affixed to the sheet or sheets

1 circulated by that person and returned to the requesting  
2 party.

3 (iii) The requesting party shall staple all  
4 attestations and petition sheets together into a single  
5 packet, making sure that the attestation sheet and its  
6 respective petition sheets are placed together. Each  
7 packet shall clearly indicate whether the petition is  
8 filed under section 202(4), (5) or (6). The requesting  
9 party shall file this packet with the determination  
10 request.

11 (iv) Those who may sign a petition are limited to  
12 the members of the class seeking the request.

13 (v) A petition or separate sheet of a multiple-sheet  
14 petition may not be circulated unless it clearly states  
15 on its face that the signatories concur in the request  
16 for a determination.

17 (b) Hearing.--Within ten days of receiving a [petition]  
18 request, the secretary shall set a time and place for a public  
19 hearing which shall be scheduled to be held on a date at least  
20 two weeks but not more than 30 days later within the county of  
21 the subject municipality.

22 (c) Investigation.--After receiving the [petition] request  
23 but before the public hearing, the secretary may make an  
24 investigation into the financial affairs of the municipality.  
25 The results of the investigation or any study previously  
26 conducted by the department under section 121 shall be placed in  
27 the record of the public hearing.

28 (d) Notice.--The secretary shall publish notice of the  
29 hearing in accordance with the act of July 3, 1986 (P.L.388,  
30 No.84), known as the Sunshine Act, at least once in a newspaper

1 with general circulation in the subject municipality and shall  
2 give written notice by certified mail, with return receipt  
3 requested, upon the municipal clerk or municipal secretary, the  
4 mayor, the municipal solicitor, each member of the governing  
5 body of the municipality and the petitioner.

6 (e) Hearing officer.--The secretary or an official of the  
7 department designated by the secretary shall conduct the public  
8 hearing to hear testimony of the [petitioners] requesting party  
9 and other interested persons.

10 (f) Determination.--Within 30 days after the hearing, the  
11 secretary shall issue an administrative determination of whether  
12 the municipality is financially distressed and reasons for the  
13 determination.

14 (g) Appeal.--A determination by the secretary under this act  
15 is appealable pursuant to Title 2 of the Pennsylvania  
16 Consolidated Statutes (relating to administrative law and  
17 procedure).

18 Section 241. Contents.

19 A plan formulated by the appointed coordinator shall be  
20 consistent with applicable law and shall include any of the  
21 following factors which are relevant to alleviating the  
22 financially distressed status of the municipality:

23 (1) Projections of revenues and expenditures for the  
24 current year and the next two years, both assuming the  
25 continuation of present operations and as impacted by the  
26 measures in the plan.

27 (2) Recommendations which will:

28 (i) Satisfy judgments, past due accounts payable,  
29 and past due and payable payroll and fringe benefits.

30 (ii) Eliminate deficits and deficit funds.

1 (iii) Restore to special fund accounts money from  
2 those accounts that was used for purposes other than  
3 those specifically authorized.

4 (iv) Balance the budget, avoid future deficits in  
5 funds and maintain current payments of payroll, fringe  
6 benefits and accounts through possible revenue  
7 enhancement recommendations, including tax or fee  
8 changes.

9 (v) Avoid a fiscal emergency condition in the  
10 future.

11 (vi) Enhance the ability of the municipality to  
12 negotiate new general obligation bonds, lease rental  
13 debt, funded debt and tax and revenue anticipation  
14 borrowing.

15 (vii) Consider changes in accounting and automation  
16 procedures for the financial benefit of the municipality.

17 (viii) Propose a reduction of debt due on specific  
18 claims by an amortized or lump-sum payment considered to  
19 be the most reasonable disposition of each claim possible  
20 for the municipality considering the totality of  
21 circumstances.

22 (3) Possible changes in collective bargaining agreements  
23 and permanent and temporary staffing level changes or changes  
24 in organization.

25 (4) Recommended changes in municipal ordinances or  
26 rules.

27 (5) Recommendations for special audits or further  
28 studies.

29 (6) An analysis of whether conditions set forth in  
30 section 261 exist, whether specific exclusive Federal

1 remedies could help relieve the municipality's financial  
2 distress and whether filing a Federal debt adjustment action  
3 under Subchapter D is deemed to be appropriate.

4 (7) An analysis of whether the economic conditions of  
5 the municipality are so severe that it is reasonable to  
6 conclude that the municipality is no longer viable and should  
7 consolidate or merge with an adjacent municipality or  
8 municipalities pursuant to Chapter 4.

9 (8) An analysis of whether functional consolidation of  
10 or privatization of existing municipal services is  
11 appropriate and feasible and recommendations for where and  
12 how this could be done.

13 (9) A capital budget which addresses infrastructure  
14 deficiencies.

15 (10) RECOMMENDATIONS FOR GREATER USE OF COMMONWEALTH ←  
16 ECONOMIC AND COMMUNITY DEVELOPMENT PROGRAMS.

17 Section 247. Plan implementation.

18 (a) Coordinator's plan.--If the coordinator's plan is  
19 adopted by the municipal governing body, the coordinator shall  
20 be charged with implementing his plan and shall:

21 (1) Give written notice of plan adoption to creditors,  
22 collective bargaining units and other parties who will be  
23 directly affected by plan implementation. In the notice he  
24 shall outline the provisions of the plan and specify how that  
25 person's claim or interest will be treated.

26 (2) Initiate plan implementation and continue its  
27 implementation for at least four months.

28 (3) Oversee completion of the plan either by directly  
29 controlling the implementation process or by turning the  
30 implementation process over to a person designated by the

1 governing body or by the chief executive officer, as the case  
2 may be. The person designated shall supply the coordinator  
3 with monthly reports. The coordinator or the person  
4 designated by the governing body or by the chief executive  
5 officer, as the case may be, shall supply the department with  
6 monthly reports which shall contain the following  
7 information:

8 (i) Evidence of payments to creditors as required  
9 under the plan.

10 (ii) Evidence that the loan from the department is  
11 being repaid.

12 (iii) Monthly revenue and expenditure sheets which  
13 indicate the balances of each in relation to the other.

14 (iv) Evidence that the recommendations in the plan  
15 are being accomplished by the dates set in the plan where  
16 applicable.

17 (4) Terminate the plan upon its completion.

18 (5) Suggest amendments to the plan which may be  
19 necessary to implement or complete the plan.

20 \* \* \*

21 Section 253. Termination of status.

22 (a) Determination by secretary.--Following a duly advertised  
23 public hearing with notices given as provided in section 203,  
24 the secretary may issue a determination that the conditions  
25 which led to the earlier determination of municipal financial  
26 distress [municipality] are no longer [applicable] present. The  
27 determination shall rescind the status of municipal financial  
28 distress and shall include a statement of facts as part of the  
29 final order.

30 (b) Determination upon petition by a municipality.--A

1 financially distressed municipality may petition the secretary  
2 to make a determination that the conditions which led to the  
3 earlier determination of municipal financial distress are no  
4 longer present. Upon receiving the petition, the secretary may  
5 issue a determination to rescind following a duly advertised  
6 public hearing with notices given as provided in section 203.

7 (c) Factors to consider.--In determining whether the  
8 conditions which led to the earlier determination of municipal  
9 financial distress are no longer present, the secretary shall  
10 consider that:

11 (1) Monthly reports submitted by the coordinator to the  
12 department under section 247(a)(3) indicate that termination  
13 of the status of municipal financial distress is appropriate.

14 (2) Accrued deficits in the municipality have been  
15 eliminated.

16 (3) Obligations issued to finance all or part of the  
17 municipality's deficit have been retired.

18 (4) The municipality has operated, for a period of at  
19 least one year, under a positive current operating fund  
20 balance or equity, as evidenced by the municipality's audited  
21 financial statements ~~presented~~ PREPARED in accordance with <—  
22 generally accepted accounting principles.

23 Section 2. Chapter 2 of the act is amended by adding a  
24 subchapter to read:

25 CHAPTER 2

26 MUNICIPAL FINANCIAL DISTRESS

27 \* \* \*

28 SUBCHAPTER E

29 ECONOMIC ASSISTANCE

30 Section 281. Eligibility.

1 If a municipality has been determined to be distressed under  
2 section 203(f) AND IS NOT SUBJECT TO FUNDING RESTRICTIONS UNDER <—  
3 SECTION 251 OR 264, it shall be eligible for economic and  
4 community development assistance as provided in section 282.  
5 Merger or consolidation under Chapter 4 of a distressed  
6 municipality with a municipality may not be deemed to diminish  
7 the successor municipality's eligibility or priority status for  
8 economic assistance under this chapter.

9 Section 282. Priority.

10 (a) General rule.--An eligible municipality shall receive  
11 priority in all economic and community development programs  
12 funded by the Commonwealth.

13 (B) RELEASES OF FUNDS.--FUNDS GRANTED TO A DISTRESSED <—  
14 MUNICIPALITY SHALL ONLY BE RELEASED UPON CONCURRENCE BY THE  
15 COORDINATOR THAT THE PROGRAM TO BE FUNDED IS CONSISTENT WITH  
16 EFFORTS TO ALLEVIATE THE FINANCIALLY DISTRESSED STATUS OF THE  
17 MUNICIPALITY AS PROVIDED IN THIS ACT.

18 ~~(b)~~ (C) Notification.--The secretary, upon making a <—  
19 determination of distress, shall notify all Commonwealth  
20 agencies about the municipality's priority status in order to  
21 facilitate providing moneys to the municipality. Priority status  
22 of more than one eligible municipality shall be based on the  
23 date the secretary notifies the agencies.

24 ~~(e)~~ (D) Preexisting priority.--Nothing in this subchapter <—  
25 shall be construed to give priority over ALTER THE PRIORITY OF <—  
26 economic and community development assistance already approved  
27 and encumbered by the Commonwealth or its agencies to any of the <—  
28 following:

29 ~~(1) A municipality which is not determined to be~~  
30 ~~financially distressed under this act.~~

~~(2) A municipality which has been declared distressed under section 203(f) but has not been subjected to the funding restrictions under section 251 or 264.~~

Section 3. Section 301(A) AND (c) of the act, added December 19, 1988 (P.L.1272, No.157), ~~is~~ ARE amended to read:

Section 301. Program.

(A) ESTABLISHMENT.--THERE IS HEREBY ESTABLISHED WITHIN THE DEPARTMENT A PROGRAM TO PROVIDE EMERGENCY GRANTS AND LOANS TO MUNICIPALITIES DECLARED TO BE DISTRESSED IN ACCORDANCE WITH THIS ACT AND TO PROVIDE FOR CONTRACTS FOR PLAN COORDINATORS.

\* \* \*

(c) Revolving fund.--There is hereby created in the State Treasury the [Financially Distressed] Municipalities Financial Recovery Revolving Aid Fund. Repayment of principal on all loans made under this act shall be deposited in the fund. Any interest earned on moneys in this fund shall be deposited in the fund. All moneys in the fund may be used to make loans and grants for the purposes of this act.

SECTION 4. SECTIONS 302 HEADING AND (A) AND 303(A) OF THE ACT ARE AMENDED TO READ:

SECTION 302. GRANT [AND LOAN], LOAN AND CONTRACT PROCEDURE.

(A) GENERAL PROVISIONS.--A FINANCIALLY DISTRESSED MUNICIPALITY OR THE COORDINATOR MAY APPLY TO THE SECRETARY FOR A GRANT OR LOAN SUBSEQUENT TO THE ADOPTION OF A PLAN BY A MUNICIPALITY PURSUANT TO CHAPTER 2. IN CASES WHERE THE PLAN FINALLY ADOPTED HAS BEEN FORMULATED BY THE CHIEF EXECUTIVE OFFICER OR GOVERNING BODY, THE CHIEF EXECUTIVE OFFICER OR A PERSON DESIGNATED BY THE GOVERNING BODY MAY APPLY TO THE SECRETARY FOR A GRANT OR LOAN. THE DEPARTMENT MAY CONTRACT FOR PLAN COORDINATORS' SALARIES FROM THE FUND.

1 \* \* \*

2 SECTION 303. LIMITATIONS.

3 (A) USE.--A LOAN OR GRANT GIVEN TO A FINANCIALLY DISTRESSED  
4 MUNICIPALITY UNDER THIS ACT SHALL BE USED SOLELY FOR THE PAYMENT  
5 OF CURRENT EXPENSES OF THE MUNICIPALITY. CURRENT EXPENSES SO  
6 PAID SHALL NOT CONSTITUTE "DEBT" OR "UNFUNDED DEBT" AS DEFINED  
7 IN THE ACT OF JULY 12, 1972 (P.L.781, NO.185), KNOWN AS THE  
8 LOCAL GOVERNMENT UNIT DEBT ACT, AND SHALL NOT BE SUBJECT TO THE  
9 PROVISIONS OF THAT ACT. A CONSULTANT CONTRACT SHALL BE ISSUED  
10 FROM THE FUND ONLY TO EMPLOY PLAN COORDINATORS OR CONSULTANTS TO  
11 SUPPLY PLAN COORDINATORS.

12 \* \* \*

13 Section 4 5. Sections 304, 421, 422 and 423 of the act are <—  
14 repealed.

15 Section 5 6. This act shall take effect immediately. <—