

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1151 Session of 2011

INTRODUCED BY PICCOLA, PILEGGI, EARLL, VANCE, GORDNER, WAUGH, ALLOWAY, BAKER, ERICKSON, ORIE, BROWNE AND TOMLINSON, JUNE 17, 2011

AS AMENDED ON THIRD CONSIDERATION, JUNE 27, 2011

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 purpose and legislative intent and for
12 Commonwealth agency payments or assistance; providing for
13 review of coordinator, for the establishment of a management
14 board for distressed third class cities and for powers of
15 management boards; prohibiting distressed third class cities
16 from filing Federal bankruptcy petitions; and making
17 editorial changes.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Section 102(b)(1) of the act of July 10, 1987
21 (P.L.246, No.47), known as the Municipalities Financial Recovery
22 Act, is amended and the subsection is amended by adding a
23 paragraph to read:

24 Section 102. Purpose and legislative intent.

25 * * *

1 (b) Legislative intent.--

2 (1) It is the intent of the General Assembly to:

3 (i) Enact procedures and provide powers and
4 guidelines to ensure fiscal integrity of municipalities
5 while leaving principal responsibility for conducting the
6 governmental affairs of a municipality, including
7 choosing the priorities for and manner of expenditures
8 based on available revenues, to the charge of its elected
9 officials, consistent with the public policy set forth in
10 this section.

11 (ii) Enact procedures for the adjustment of
12 municipal debt by negotiated agreement with creditors.

13 (iii) Provide for the exercise of the Commonwealth's
14 sovereign and plenary police power in emergency fiscal
15 conditions to protect the health, safety and welfare of a
16 municipality's citizens when local officials are
17 unwilling or unable to accept a solvency plan developed
18 for the benefit of the community.

19 * * *

20 (3) The General Assembly recognizes that the financial
21 conditions of certain distressed municipalities are so severe
22 and the policies of those municipalities so ineffective that
23 the nonviability of those municipalities threatens the fiscal
24 condition and credit stability of other communities. In such
25 cases, additional methods of protecting citizens must be
26 implemented, including:

27 (i) Instituting more direct Commonwealth oversight
28 pursuant to the Commonwealth's power to provide for local
29 government under Article IX of the Constitution of
30 Pennsylvania and through the creation of public

1 authorities as instrumentalities of the Commonwealth.

2 (ii) Judicial intervention when necessary to ensure
3 the compliance of the distressed municipality with the
4 provisions of this act.

5 Section 1.1. Section 251(a) of the act is amended and the
6 section is amended by adding a subsection to read:

7 Section 251. Commonwealth agency payments or assistance.

8 (a) Withholding of certain Commonwealth funds.--Except as
9 provided in section 302(b), upon certification by the
10 [secretary] department that a financially distressed
11 municipality has failed to adopt a plan or implement an adopted
12 plan as proposed under this act or has adopted a plan which is
13 inadequate to address the municipality's financial distress, the
14 municipality shall not receive a grant, loan, entitlement or
15 payment from the Commonwealth or any of its agencies. Moneys
16 withheld shall be held in escrow by the Commonwealth until the
17 [secretary] department has rescinded the certification.

18 (a.1) Disposition of assets.--Subsection (a) shall apply to
19 the failure of a distressed city or a management board
20 established under section 603(a) if the city or management board
21 fails to identify, sell, lease or otherwise dispose of assets in
22 accordance with section 605.

23 * * *

24 Section 1.2. The act is amended by adding a section to read:
25 Section 254. Review and investigation of coordinators.

26 (a) Initial review.--The department shall conduct a review
27 of all coordinators appointed or serving during 2010. The review
28 under this subsection shall be conducted by October 1, 2011.
29 Within 30 days of the completed review, the department shall
30 determine if the coordinator has failed to develop an adequate

1 plan or to implement the plan in an appropriate or adequate
2 manner. If the coordinator has failed to develop or implement
3 the plan in an appropriate or adequate manner, the department
4 shall remove the coordinator and appoint a new coordinator.

5 (b) Additional reviews.--The department shall conduct a
6 review of all coordinators appointed for service or serving
7 during 2011 and each year thereafter. The review under this
8 subsection shall be conducted by June 30. Within 30 days of the
9 completed review, the department shall determine if the
10 coordinator has failed to develop an adequate plan or to
11 implement the plan in an appropriate manner. If the coordinator
12 has failed to develop an adequate plan or to implement the plan
13 in an appropriate manner, the department shall remove the
14 coordinator and appoint a new coordinator.

15 (c) Investigations.--In addition to the review under
16 subsection (a) or (b), the department shall investigate a
17 complaint as to the failure of the coordinator to develop an
18 adequate plan or to implement the plan in an appropriate or
19 adequate manner. The complaint must be brought by:

20 (1) a petition from at least two members of the
21 governing body of the municipality; or

22 (2) a petition signed by 30 residents of the
23 municipality.

24 Section 2. The act is amended by adding a chapter to read:

25 CHAPTER 6

26 CITIES OF THE THIRD CLASS

27 Section 601. Definitions.

28 "Business with which he is associated." The term shall have
29 the same meaning as defined in 65 Pa.C.S. § 1102 (relating to
30 definitions).



1 "City." A city of the third class which has opted to be
2 governed by a mayor council form of government under the act of
3 July 15, 1957 (P.L.901, No.399), known as the Optional Third
4 Class City Charter Law, and has a population in excess of
5 45,000.

6 "Controlled authority." A municipal authority, parking
7 authority or other authority or corporate entity which is
8 directly or indirectly controlled by a distressed city or to
9 which a distressed city has powers of appointment.

10 "County." The county in which a distressed city is located.

11 "Distressed city." A city which has been determined to be
12 financially distressed under section 203(f). The term includes
13 any controlled authority which is directly or indirectly
14 controlled by the city or to which the city has direct or
15 indirect power of appointment or has pledged or designated the
16 city's revenues or the city's credit.

17 "Immediate family." The term shall have the same meaning as
18 defined in 65 Pa.C.S. § 1102 (relating to definitions).

19 "Management board." The city management board.

20 Section 602. Applicability.

21 A distressed city shall be subject to the provisions of this
22 chapter and Chapters 2 and 3. If a conflict between this chapter
23 and any other provision of this act occurs, the provisions of
24 this chapter shall prevail.

25 Section 603. Management board.

26 (a) Establishment.--A management board shall be established
27 if the secretary determines that a distressed city has either
28 failed to adopt or has not implemented the coordinator's plan in
29 accordance with sections 245 and 247(a). A distressed city shall
30 be deemed to have failed to adopt the coordinator's plan if it

1 takes any action to approve an alternative plan under section
2 246.

3 (b) Composition.--A management board established under
4 subsection (a) shall be comprised of the following:

5 (1) Two members appointed by the Governor, one of whom
6 must be a resident of the distressed city for which the board
7 is being appointed.

8 (2) One member appointed by the board of commissioners
9 of the county who shall be a resident of the county at the
10 time of appointment and shall maintain county residence while
11 a member of the board.

12 (b.1) Public officials, political party officers; conflicts
13 of interest prohibited.--

14 (1) Members of the management board shall not:

15 (i) Seek or hold a position as any other elected or
16 appointed public official within this Commonwealth or as
17 a political party officer while in the service of the
18 management board.

19 (ii) Seek election as public officials or political
20 party officers for one year after their service with the
21 management board.

22 (2) The following apply:

23 (i) No member of the management board may:

24 (A) Directly or indirectly be a party to or have
25 an interest in any contract or agreement with the
26 distressed city. The prohibition under this clause
27 shall extend to a member's immediate family or a
28 business with which he or a member of his immediate
29 family is associated.

30 (B) Use his office or any confidential

1 information received through his office for the
2 private pecuniary benefit of himself, a member of his
3 immediate family or a business with which he or a
4 member of his immediate family is associated.

5 (ii) Any member who willfully violates this
6 paragraph shall forfeit his office and shall be subject
7 to any other criminal and civil sanctions as may be
8 imposed by law. Any contract or agreement knowingly made
9 in contravention of this paragraph shall be void.

10 (c) Experience and residence.--

11 (1) All members and their designees shall have
12 experience in finance or management.

13 (2) All members and their designees shall be residents
14 of this Commonwealth.

15 (d) Term.--Members shall be appointed within seven days of
16 a determination by the secretary under subsection (a). Members
17 shall select a chairperson who shall serve for a term of two
18 years. Members appointed by the Governor shall have a term
19 coterminous with the appointing authority. A member appointed by
20 the county commissioners shall have a term coterminous with the
21 chairman of the board of commissioners. If a vacancy occurs, the
22 appointing authority who originally appointed the management
23 board member whose seat has become vacant shall appoint a
24 successor member within 30 days of the vacancy. A member
25 appointed to fill a vacancy occurring prior to the expiration of
26 a term shall serve the unexpired term.

27 (e) Organization.--

28 (1) The Governor shall set a date, time and place for
29 the initial organizational meeting of the management board
30 within five days of the appointment of the members of the

1 management board. The initial organizational meeting shall be
2 held within 15 days of the appointment under subsection (d).

3 (2) Members shall elect other officers as they deem
4 necessary.

5 (f) Meetings.--Following the initial organizational meeting,
6 the management board shall meet as frequently as it deems
7 appropriate but at least once during each quarter of the fiscal
8 year. A meeting of the management board shall be called by the
9 chairperson if a request for a meeting is submitted by the other
10 two members of the management board. A majority of the
11 management board shall constitute a quorum. All actions of the
12 management board shall be taken by a majority of the management
13 board. The following statutes shall apply to the management
14 board:

15 (1) 65 Pa.C.S. Chs. 7 (relating to open meetings) and 11
16 (relating to ethics standards and financial disclosure).

17 (2) The act of July 19, 1957 (P.L.1017, No.451), known
18 as the State Adverse Interest Act.

19 (3) The act of February 14, 2008 (P.L.6, No.3), known as
20 the Right-to-Know Law.

21 (g) Expenses.--A member shall not receive compensation or
22 remuneration but shall be entitled to reimbursement for all
23 reasonable and necessary expenses.

24 (h) Employees.--The department shall provide administrative
25 and other support to the management board. The management board
26 may contract for or receive the loan of services of other
27 individuals employed by other government agencies.

28 (i) Commonwealth agency.--A management board established
29 under this chapter shall constitute a public authority and
30 instrumentality of the Commonwealth, exercising the powers of

1 the Commonwealth. The exercise of the powers of the management
2 board shall be deemed to be an essential government function.

3 (j) Sovereign immunity.--Members of the management board
4 shall not be liable personally for any obligations of the
5 management board. It is declared to be the intent of the General
6 Assembly that the management board and its members shall enjoy
7 sovereign and official immunity as provided in 1 Pa.C.S. § 2310
8 (relating to sovereign immunity reaffirmed; specific waiver) and
9 shall remain immune from suit except as provided by and subject
10 to the provisions of 42 Pa.C.S. Ch. 85 Subchs. A (relating to
11 general provisions) and B (relating to actions against
12 Commonwealth parties).

13 (k) Term of existence.--

14 (1) The management board shall exist for an initial term
15 of at least seven years. The management board shall be
16 renewed for seven-year terms by the department unless:

17 (i) the city has maintained a surplus over a three-
18 year period and the city's revenues have exceeded
19 expenditures for a period of at least three-years; or

20 (ii) the department determines that the city has
21 implemented the coordinator's plan.

22 (2) Upon termination of the management board, records
23 and documents of the board shall be transferred to the
24 director of finance of the city. Within 60 days of
25 termination, the management board shall submit a final report
26 on its activities and the city's fiscal condition to the
27 Governor, the Secretary of the Senate and the Chief Clerk of
28 the House of Representatives.

29 Section 604. Powers and duties.

30 Notwithstanding any other provision of law, the management

1 board shall have the following powers and duties:

2 (1) To require the distressed city to implement the
3 coordinator's plan.

4 (2) To require the coordinator to make changes to the
5 coordinator's plan as necessary to achieve financial
6 stability of the distressed city.

7 (3) To require the distressed city to negotiate
8 intergovernmental cooperation agreements between the
9 distressed city and other political subdivisions in order to
10 eliminate and avoid deficits, maintain sound budgetary
11 practices and avoid interruption of municipal services.

12 (4) To make annual reports for submission to the
13 department within 120 days after the close of the distressed
14 city's fiscal year.

15 (5) To require the distressed city to cause the sale,
16 lease or other disposition of the distressed city's assets
17 under section 605.

18 (6) To approve or disapprove the execution of contracts
19 and agreements by the distressed city ~~in accordance with~~ ←
20 ~~section 606(a)(2).~~

21 (7) To direct the distressed city to take any other
22 action to implement the coordinator's plan.

23 Section 605. Sale of assets.

24 (a) Authority.--The management board shall have the
25 authority to determine that it is in the best financial
26 interests of the distressed city to sell, lease or dispose of
27 assets determined by the management board to be nonessential and
28 owned by the distressed city.

29 (b) Sale, lease or other disposition.--The management board
30 shall:

1 (1) Identify appropriate assets for sale, lease or other
2 disposition and direct the appropriate officials of the
3 distressed city to take all action necessary or appropriate
4 for the consummation of the sale, lease or other disposition
5 of assets.

6 (2) Direct the distressed city to sell, lease or
7 otherwise dispose of assets in conformity with all applicable
8 competitive bidding requirements.

9 (3) Direct the distressed city to undertake a
10 competitive bidding process, determine the winning bidder and
11 enter into an agreement of sale, lease or other disposition
12 with the winning bidder.

13 (4) Direct the distressed city to take all action
14 necessary to complete the sale, lease or disposition of the
15 assets.

16 (5) Direct the distressed city to take all action
17 necessary to complete any pending agreement for the sale,
18 lease or disposition of the assets, subject to approval by
19 the management board.

20 (c) Proceeds.--The proceeds of the sale, lease or other
21 disposition of assets of a distressed city shall be applied to
22 the payment of any unpaid debt obligations owed by the
23 distressed city, as determined by the management board. Any
24 proceeds remaining after the payment of these obligations shall
25 be applied at the discretion of the management board to
26 restructure or to provide escrow for the payment of the
27 distressed city's future debt obligations.

28 (d) Enforcement.--Notwithstanding any other provision of
29 law, if the distressed city fails to implement the coordinator's
30 plan as directed by the management board, the management board

1 may take any action necessary to implement the coordinator's
2 plan. The management board may issue written directives to the
3 officials of the distressed city requiring them to perform any
4 act deemed necessary by the management board to properly manage
5 the distressed city's financial affairs and to implement the
6 coordinator's plan. The management board may bring an action in
7 mandamus in the court of common pleas where the distressed city
8 is situated to compel compliance with its directives. The court
9 shall grant the petition for mandamus if the court finds that
10 the distressed city has failed to abide by any of the written
11 directives of the management board.

12 (e) Removal.--If a management board determines that a
13 controlled authority is not taking the action necessary to sell,
14 lease or dispose of assets, the management board may remove the
15 board members of the controlled authority and appoint new board
16 members of the controlled authority.

17 Section 606. Limitation on bankruptcy.

18 Notwithstanding any other provision of law, including section
19 261, no distressed city may file a petition for relief under 11
20 U.S.C. Ch. 9 (relating to adjustment of debts of a municipality)
21 or any other Federal bankruptcy law, and no government agency
22 may authorize the distressed city to become a debtor under 11
23 U.S.C. Ch. 9 or any other Federal bankruptcy law.

24 Section 3. The heading of Chapter 6 and section 601 of the
25 act are renumbered to read:

26 CHAPTER [6] 20

27 TECHNICAL PROVISIONS

28 Section [601] 2001. Repeals.

29 Section 2501-C(e) and (f) of the act of April 9, 1929
30 (P.L.177, No.175), known as The Administrative Code of 1929, are

1 repealed insofar as they are inconsistent with this act.

2 The act of June 11, 1935 (P.L.323, No.146), entitled "An act
3 designating the Department of Internal Affairs as the agency of
4 the Commonwealth to approve or disapprove petitions to courts,
5 and plans for the readjustment of debts of political
6 subdivisions, under the act of Congress relating to the
7 bankruptcy of political subdivisions; and defining the powers
8 and duties of said department in relation thereto," is repealed
9 insofar as it relates to a municipality as defined in section
10 103 of this act.

11 Section 4. Section 602 of the act, amended December 19, 1988
12 (P.L.1272, No.157), is renumbered to read:

13 Section [602] 2002. Expiration.

14 Section 203(a) (5) shall expire upon publication in the
15 Pennsylvania Bulletin of the notice required under section
16 121(f).

17 Section 5. Section 603 of the act is renumbered to read:

18 Section [603] 2003. Effective date.

19 This act shall take effect in 60 days.

20 Section 6. The provisions of this act are severable. If any
21 provision of this act or its application to any person or
22 circumstance is held invalid, the invalidity shall not affect
23 other provisions or applications of this act which can be given
24 effect without the invalid provision or application.

25 Section 7. This act shall take effect immediately.