



# Municipalities Financial Recovery Act

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# Financially Distressed Municipalities Act

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**Act of 1987, P.L. 246, No. 47**

## **AN ACT**

Empowering the Department of Community and Economic Development 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.

*(Note: Section 708 of Act 1991, June 5, P.L. 9, No 6 suspended most provisions of this Act as to cities of the first class until the termination of the authority established by said act - the Pennsylvania Intergovernmental Cooperation Act.)*



# Chapter 1. General Provisions

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## Subchapter A. Preliminary Provisions

### Section 101. Short title.

This act shall be known and may be cited as the Financially Distressed Municipalities Act.

(As amended 1992 P.L. 336, No. 69).

### Section 102. Purpose and legislative intent.

- (a) **Policy.** – It is hereby declared to be a public policy of the Commonwealth to foster fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay due principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices. The failure of a municipality to do so is hereby determined to affect adversely the health, safety and welfare not only of the citizens of the municipality but also of other citizens in this Commonwealth.
- (b) **Legislative intent.** –
- (1) It is the intent of the General Assembly to:
    - (i) Enact procedures and provide powers and guidelines to ensure fiscal integrity of municipalities while leaving principal responsibility for conducting the governmental affairs of a municipality, including choosing the priorities for and manner of expenditures based on available revenues, to the charge of its elected officials, consistent with the public policy set forth in this section.
    - (ii) Enact procedures for the adjustment of municipal debt by negotiated agreement with creditors.
  - (2) The General Assembly further recognizes that changing and deteriorating economic conditions, developing technologies and attendant unemployment erode local tax bases and threaten essential municipal services. Under such circumstances, the General Assembly believes that such distressed governmental units may no longer be viable and that the citizens of those communities should be granted the opportunity to voluntarily consolidate or merge their municipalities with other municipalities in an effort to allow municipal boundaries to reflect the geographic and economic realities of a distressed area, to merge a common community of interest, to take advantage of economies of scale in providing services and to create an expanded revenue base to provide necessary public services to the citizens of financially distressed municipalities.

### 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:

**Basis of accounting.** Revenues and expenditures may be recognized on the cash, modified accrual or full accrual basis of accounting, provided that basis is applied consistently throughout the fiscal periods reported for evaluation purposes.



**Chief executive officer.** Mayor in a mayor-council form of government or manager in a council-manager form of government of a city operating under an optional form of government pursuant to the act of July 15, 1957 (P.L.901, No.399), known as the Optional Third Class City Charter Law; a mayor of a city of the first class under the act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act; or an individual serving in such capacity as designated by a home rule charter or optional plan pursuant to the act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law.

**Claim.** Right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or right to an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**Commonwealth agency.** The Governor and the departments, boards, commissions, authorities and other officers and agencies of this Commonwealth, whether or not subject to the policy supervision and control of the Governor.

**Consolidated or merged municipality.** *(Repealed see 53 Pa.C.S.A. 732)*

**Consolidation or merger.** *(Repealed see 53 Pa.C.S.A. 732)*

**Contiguous territory.** *(Repealed see 53 Pa.C.S.A. 732)*

**Creditor.** An individual, partnership, corporation, association, estate, trust, governmental unit or the governing board of a pension fund of a municipality that has a claim against a municipality.

**Deficit.** The excess of expenditures over revenues, stated as a percentage of revenue, during an accounting period. This calculation shall include all governmental fund types and all proprietary fund types, but shall exclude all fiduciary fund types of the municipality.

**Department.** The Department of Community and Economic Development of the Commonwealth.

**Election officials.** *(Repealed see 53 Pa.C.S.A. 732)*

**Expenditures.** Reductions in fund equity, including current operating expenses that require the use of fund equity, debt service and capital outlays. The term shall not include interfund transfers.

**Fund equity.** Excess of assets of a fund over its liabilities.

**Governing body.** The council in cities, boroughs and incorporated towns; the board of commissioners in counties; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; or the legislative policy-making body in home rule municipalities.

**Initiative.** *(Repealed see 53 Pa.C.S.A. 732)*

**Matured claim.** A claim that has been reduced to judgment or liquidated in amount by agreement for a period of 90 days prior to the filing of a petition to commence fiscal distress proceedings under this act.

**Municipal record.** A financial record and document of a municipality or of an authority incorporated by a municipality, excluding confidential information relating to personnel matters and matters relating to the initiation and conduct of investigations of violations of law.

**Municipality.** Every county, city, borough, incorporated town, township and home rule municipality.

**Referendum.** *(Repealed see 53 Pa.C.S.A. 732)*

**Revenues.** Additions to fund equity other than from interfund transfers, proceeds of debt and proceeds of disposition of general fixed assets.

**Secretary.** The Secretary of Community and Economic Development of the Commonwealth.

The definitions for “Consolidated or merged municipality,” “Consolidation or merger,” “Contiguous territory,” “Election officials”, “Initiative,” and “Referendum” were repealed with the passage of the Municipal Consolidation and Merger Act. For subject matter on the repealed sections please see 53 Pa.C.S.A. 731 - 741.

## **Subchapter B. Administrative Provisions**

### **Section 121. Powers and duties of department.**

- (a) **Compile financial data.** –
- (1) A power and duty of the department shall be to maintain accurate and current information and data on the fiscal status of municipalities to determine if criteria set forth in section 201 exist and, if so, whether the existence of those factors validly indicates fiscal distress.
  - (2) In compiling the information and data, the department shall mail, before January 1 of each year, a Survey of Financial Condition form to each municipality applicable to the municipality’s prior fiscal year.
    - (i) The survey shall seek information necessary to determine the fiscal status of a municipality, shall be concise to facilitate prompt response and shall contain an attestation clause to be signed by the presiding officer of the municipality’s governing body. The actual survey form shall not exceed two pages in length.
    - (ii) The survey shall be provided to the municipal clerk or municipal secretary along with tax information forms in accordance with law.
    - (iii) The survey shall include information based on the criteria specified in section 201.
    - (iv) The survey shall include information relating to the basis of accounting utilized by municipalities.
- (b) **Assess data.** – A power and duty of the department shall be to apply the criteria of section 201 to data and information on the fiscal status of municipalities to assess the validity and applicability of an indication of municipal financial distress. In assessing validity and applicability, the department shall undertake a review process, including, but not limited to, consultation, correspondence and visits with a municipality which appears to be financially distressed, notwithstanding the provisions of section 2501-C(e) and (f) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, which limits department intervention to incidences when such is requested by the municipality. If the department assesses that a municipality needs assistance to correct minor fiscal problems, the department shall offer appropriate recommendations. If the municipality adopts those recommendations, the department need take no further action.
- (c) **Notify agencies of determination.** – Upon the making of a determination by the secretary that a municipality is distressed pursuant to section 203(f), the department shall immediately notify the heads of all Commonwealth agencies of the determination.
- (d) **Act as analyzer of municipal reports.** – A power and duty of the department shall be to act as the Commonwealth analyzer for relevant reports, data and information required by law to be filed by municipalities with any Commonwealth agency when such reports, data and information directly relate to the financial conditions of municipalities. The department shall, in consultation with every Commonwealth agency, determine which reports, data and information relate to the fiscal condition of

municipalities. Upon an indication of distress in a municipality through information available to the department, the department shall request data, reports and information from all Commonwealth agencies to assist the department to substantiate a possible distress status of a municipality.

- (e) **Furnish program data to municipality.** – Upon receipt of information forwarded to the department by each Commonwealth agency pursuant to section 122(a), the department shall furnish this information to the distressed municipality coordinator for possible inclusion of such information into the plan developed by the coordinator in accordance with Subchapter C of Chapter 2.
- (f) **Develop early warning system.** – In conjunction with assessing a municipality’s current fiscal stability under subsections (a) and (b) and section 201, the department shall develop an early warning system utilizing necessary fiscal and socioeconomic variables to identify municipal financial emergencies before they reach crisis proportions and to notify an affected municipality appropriately. The department shall be responsible for testing the validity and reliability of these variables and shall continuously monitor them to assure their effectiveness. In developing an early warning system, the department may employ or contract with municipal fiscal consultants as deemed necessary to execute the provisions of this subsection. Notice shall be published in the Pennsylvania Bulletin that the early warning system has been developed and the system may not become operational until the publication of the notice.
- (g) **Distribute grants and loans.** – The department shall distribute grants and loans to financially distressed municipalities in accordance with Chapter 3.
- (h) **Promulgate rules and regulations.** – The department shall promulgate rules and regulations necessary to implement the provisions of this act.

## **Section 122. Duties of Commonwealth agencies.**

- (a) **Review programs.** – After the secretary makes a determination that a municipality is distressed and the department notifies Commonwealth agencies of the secretary’s determination pursuant to section 121(c), each agency shall review all matters and programs pending, underway or about to be commenced or possible programs concerning the distressed municipality. A recommended action which is within the authority and budget of a Commonwealth agency and which, in the judgment of the head of the agency, will help to improve the distressed municipality’s financial situation shall be reported to the department.
- (b) **Transfer documented information.** – Upon request of the department, each Commonwealth agency shall forward to the department all documented reports, data and other information referred to in section 121(d) within 30 days of receipt.

## **Section 123. Powers and duties of municipalities.**

- (a) **File completed survey.** – On or before March 15 of each year, every municipality shall return to the department a completed Survey of Financial Conditions referred to in section 121(a). No municipality shall receive its allotted payments pursuant to the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law, unless it complies with the provisions of this section, notwithstanding a provision of law to the contrary, and the Department of Transportation may not disburse funds to a municipality pursuant to the Liquid Fuels Tax Municipal Allocation Law until notified by the department that the municipality has complied with the provisions of this section.
- (b) **File applications for grants and loans.** – A financially distressed municipality may apply to the secretary for emergency financial aid in the form of a grant or loan pursuant to Chapter 3.

(c) **Right to petition court for tax increase.** –

- (1) After a municipality has adopted a plan under Subsection C of Chapter 2, it may petition the court of common pleas of the county in which the municipality is located to increase its rates of taxation for earned income, real property, or both, beyond maximum rates provided by law.
- (2) If a tax increase above existing limits is granted by the courts, the increase shall be effective for a period of one year. The one-year increase shall run from the date specified in the petition filed with the court or, if no such date is specified, from the beginning of the current fiscal year of the municipality. Subsequent increases in rates of taxation may be granted by the court upon annual petition of the municipality. The additional amount of taxes resulting from the petition shall not be subject to sharing with a school district.
- (3) A petition filed by a city of the second class A under this subsection may not include an increase in a tax on nonresident income unless the municipality certifies to the court, with regard to those provisions of the plan having a measurable fiscal impact, that:
  - (i) the municipality has substantially implemented the provisions which are within the authority of the chief executive officer or governing body, including, but not limited to, provisions of the plan that call for increasing existing tax rates levied on residents and increasing fees charged by the municipality;
  - (ii) the municipality has taken those actions required to obtain the approval of other parties for those provisions which may not be implemented without such approval, including, but not limited to, the approval of a court, local electors or any collective bargaining unit; and
  - (iii) the additional income from the aforementioned actions is insufficient to balance the municipal budget, necessitating additional revenue from an increase in the tax on nonresident income.

*(Amended 1996, P.L. 645, No. 108.)*

## **Subchapter C. Judicial Provisions**

### **Section 141. Jurisdiction of court of common pleas.**

- (a) **Increase in tax rates.** – The court of common pleas of each county shall have jurisdiction to hear a petition filed by a municipality which has adopted a final plan pursuant to Subchapter C of Chapter 2 to increase rates of taxation for earned income, real property, or both, beyond maximum rates provided by law. The court may extend annually the increased taxing powers of the municipality until the termination date of the plan adopted by the municipality pursuant to Chapter 2.
- (b) **Involuntary compromises of delinquent taxes.** – The court of common pleas of each county may hear a petition filed by at least two taxing authorities having power over the properties within a municipality which has adopted a final plan pursuant to Subchapter C of Chapter 2 if the petition requests a compromise of delinquent taxes due on a property in that municipality. The court may order the property to be sold at a sheriff's sale and the proceeds to be divided among all authorities which are owed taxes for the property sold. If the property is sold at sheriff's sale and if the proceeds are insufficient to satisfy tax liens on the property, the court shall order the pro-ration of the sale proceeds among the taxing authorities which fixed the liens.

*(Amended 1996, P.L. 645, No. 108.)*

*(Note: Section 2 of Act of 1996, P.L. 645, No. 108 rewrote the provisions related to petitions to court for higher taxing powers and stated: The provisions relating to petitions to increase rates of taxation shall apply to tax years beginning after the effective date of this Act (1996).)*

# Chapter 2. Municipal Financial Distress

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## Subchapter A. Determination of Municipal Financial Distress

### Section 201. Criteria.

The evaluation of a municipality's financial stability by the department under section 121 shall include each of the following criteria. If at least one criterion is present and the department assesses pursuant to section 121(b) that it is a valid indication of municipal financial distress, then the department shall exercise its powers and duties pursuant to section 121.

- (1) The municipality has maintained a deficit over a three-year period, with a deficit of 1% or more in each of the previous fiscal years.
- (2) The municipality's expenditures have exceeded revenues for a period of three years or more.
- (3) The municipality has defaulted in payment of principal or interest on any of its bonds or notes or in payment of rentals due any authority.
- (4) The municipality has missed a payroll for 30 days.
- (5) The municipality has failed to make required payments to judgment creditors for 30 days beyond the date of the recording of the judgment.
- (6) The municipality, for a period of at least 30 days beyond the due date, has failed to forward taxes withheld on the income of employees or has failed to transfer employer or employee contributions for Social Security.
- (7) The municipality has accumulated and has operated for each of two successive years a deficit equal to 5% or more of its revenues.
- (8) The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments. ((8) amended Dec. 19, 1988, P.L.1272, No.157)
- (9) A municipality has sought to negotiate resolution or adjustment of a claim in excess of 30% against a fund or budget and has failed to reach an agreement with creditors.
- (10) A municipality has filed a municipal debt readjustment plan pursuant to Chapter 9 of the Bankruptcy Code (11 U.S.C. 901 *et seq.*).
- (11) The municipality has experienced a decrease in a quantified level of municipal service from the preceding fiscal year which has resulted from the municipality reaching its legal limit in levying real estate taxes for general purposes. For determining levels of municipal service for the year 1987, the department shall utilize annual statistical data since the year 1982 to determine a pattern of decrease in delivery of municipal services since 1982.

## Section 202. Standing to petition for a determination.

The following have standing to request a determination of municipal financial distress from the secretary:

- (1) The department itself, if, subsequent to its review and analysis under sections 121 and 201, it concludes that a municipality is substantially in a condition of financial distress.
- (2) The governing body of the municipality upon passing a resolution by a majority vote of the governing body after a special public meeting duly advertised as provided by law.
- (3) A creditor with a matured claim to whom the municipality owes \$10,000 or more, if the creditor agrees in writing to suspend pending actions and to forbear from bringing an alternate or additional legal action against the municipality to collect the debt or part of it for a period of nine months or until the municipality adopts a plan under this act, whichever occurs first. The filing of a Federal debt adjustment action by a municipality pursuant to Subchapter D of Chapter 2 during the nine-month period cancels the forbearance obligation.
- (4) Ten percent of the number of electors of the municipality that voted at the last municipal election, by petition to the department alleging the municipality is fiscally distressed.
- (5) Ten percent or more of the beneficiaries of a pension fund upon petition to the department, provided that a municipality has not timely deposited its minimum obligation payment as required by section 302 of the act of December 18, 1984 (P.L.1005), No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act.
- (6) Ten percent of the employees of the municipality who have not been paid for over 30 days from the time of a missed payroll, upon signing collectively the petition to the department.
- (7) Trustees or paying agents of a municipal bond indenture.
- (8) The elected auditors, appointed independent auditors or elected controllers of a municipality if they have reason to believe a municipality is in a state of financial distress pursuant to section 201.
- (9) A trustee or actuary of a municipal pension fund, if the municipality has not made timely deposit of its minimum obligation payment as required by section 302 the Municipal Pension Plan Funding Standard and Recovery Act.
- (10) The chief executive of any city.

*(As amended 1992 P.L. 336, No 69)*

## Section 203. Procedure for determination.

- (a) **Request** – A party with standing to petition under section 202 may request the secretary, on a form supplied by the department, to determine that the municipality involved is a financially distressed municipality. The request shall be signed by the requesting party, and it shall be sealed and duly notarized. The request shall:
  - (1) Allege the requesting party has standing to bring a determination of the distress.
  - (2) State why the requesting party believes the municipality is distressed under section 201.
  - (3) Include a listing of judgments recorded against the municipality.
  - (4) Include any other material allegation justifying the relief afforded by this act.
  - (5) If the requesting party is a municipality, the request may include a statement indicating why the requesting party believes manifestation of section 201 criteria is imminent and inevitable. This statement may be in lieu of the statement required under paragraph (2).

- (a.1) Petitions – - If a request is made under section 202 (4), (5) or (6), the following procedure shall be used:
- (1) The procedure set forth in subsection (a).
  - (2) Evidence that the required number of persons in the class concurs with the requesting party shall be obtained by circulating a petition or petitions to get the signatures and addresses of those in concurrence.
  - (3) A party who requests the determination of financial distress of a municipality shall be responsible for circulating this petition.
  - (4) If the petition must be longer than one page in order to obtain the requisite number of signatures and addresses, the requesting party may enlist petition circulators to assist; however, each circulator shall attest in writing to the accuracy of the signatures and addresses obtained and the method used to obtain them. This attestation shall be affixed to the sheet or sheets circulated by that person and returned to the requesting party.
  - (5) The requesting party shall staple all attestations and petition sheets together into a single packet, making sure that the attestation sheet and its respective petition sheets are placed together. Each packet shall clearly indicate whether the petition is filed under section 202 (4), (5) or (6). The requesting party shall file this packet with the determination request.
  - (6) Those who may sign a petition are limited to the members of the class seeking the request.
  - (7) A petition or separate sheet of a multiple-sheet petition may not be circulated unless it clearly states on its face that the signatories concur in the request for a determination.
- (b) **Hearing.** – Within ten days of receiving a request, the secretary shall set a time and place for a public hearing which shall be scheduled to be held on a date at least two weeks but not more than 30 days later within the county of the subject municipality.
- (c) **Investigation.** – After receiving the request but before the public hearing, the secretary may make an investigation into the financial affairs of the municipality. The results of the investigation or any study previously conducted by the department under section 121 shall be placed in the record of the public hearing.
- (d) **Notice.** – The secretary shall publish notice of the hearing in accordance with the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, at least once in a newspaper with general circulation in the subject municipality and shall give written notice by certified mail, with return receipt requested, upon the municipal clerk or municipal secretary, the mayor, the municipal solicitor, each member of the governing body of the municipality and the petitioner.
- (e) **Hearing officer.** – The secretary or an official of the department designated by the secretary shall conduct the public hearing to hear testimony of the petitioners and other interested persons.
- (f) **Determination.** – Within 30 days after the hearing, the secretary shall issue an administrative determination of whether the municipality is financially distressed and reasons for the determination.
- (g) **Appeal.** – A determination by the secretary under this act is appealable pursuant to Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

*(As amended 1992 P.L.336, No. 69.)*

#### **Section 204. Commonwealth funds.**

No municipality shall be deemed to be distressed by reason of circumstances arising as a result of the failure of the Commonwealth to make any payment of money, including any Federal money which passes through the Commonwealth, due the municipality at the time such payment is due.

## Subchapter B. Coordinator

### Section 221. Designation.

- (a) **Appointment.** – No later than 30 days following a determination of municipal financial distress under section 203, the secretary shall appoint a coordinator who shall prepare a plan addressing the municipality’s financial problems.
- (b) **Qualifications.** – The coordinator may be an employee of the department, furnished with additional staff or consultant assistance, if needed, or may be a consultant or consulting firm. No elected or appointed official or employee of the municipality shall be eligible for serving as coordinator. The coordinator shall be experienced in municipal administration and finance.
- (c) **Compensation.** – The department shall be responsible for compensating the coordinator appointed by the secretary for reasonable salary and expenses. Notwithstanding any law to the contrary, the appointment of a plan coordinator shall not be subject to contractual competitive bidding procedures.
- (d) **Duties.** – The coordinator shall prepare and administer a plan designed to relieve the financial distress of the municipality which he has been appointed to serve.
- (e) **Powers.** – The coordinator may apply for grants and loans pursuant to Chapter 3, as he deems necessary.

### Section 222. Access to information.

The coordinator shall have full access to all municipal records. If the coordinator believes that an official or employee of the municipality is not answering questions accurately or completely or is not furnishing information requested, the coordinator may notify the official or employee in writing to furnish answers to questions or to furnish documents or records, or both. If the official or employee refuses, the coordinator may seek a subpoena in the court of common pleas to compel testimony and furnish records and documents. An action in mandamus shall lie to enforce the provisions of this section.

### Section 223. Public and private meetings.

- (a) **Public meetings authorized.** – The coordinator may hold public meetings as defined in the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, in connection with plan preparation.
- (b) **Private meetings authorized.** – Notwithstanding the provisions of the Sunshine Act, private negotiation sessions may be conducted by the coordinator between the municipality and the individual creditors in an effort to obtain the consent of each creditor to the proposed adjustment and handling of specific claims against the municipality.

### Section 224. Coordinator barred from elective office.

The coordinator may not run for an elected office of the municipality or its coterminous political subdivisions within two years after the final adoption of a plan pursuant to this act.



## Subchapter C. Coordinator's Plan

### 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 years, both assuming the continuation of present operations and as impacted by the measures in the plan.
- (2) Recommendations which will:
  - (i) Satisfy judgments, past due accounts payable, and past due and payable payroll and fringe benefits.
  - (ii) Eliminate deficits and deficit funds.
  - (iii) Restore to special fund accounts money from those accounts that was used for purposes other than those specifically authorized.
  - (iv) Balance the budget, avoid future deficits in funds and maintain current payments of payroll, fringe benefits and accounts through possible revenue enhancement recommendations, including tax or fee changes.
  - (v) Avoid a fiscal emergency condition in the future.
  - (vi) Enhance the ability of the municipality to negotiate new general obligation bonds, lease rental debt, funded debt and tax and revenue anticipation borrowing.
  - (vii) Consider changes in accounting and automation procedures for the financial benefit of the municipality.
  - (viii) Propose a reduction of debt due on specific claims by an amortized or lump-sum payment considered to be the most reasonable disposition of each claim possible for the municipality considering the totality of circumstances.
- (3) Possible changes in collective bargaining agreements and permanent and temporary staffing level changes or changes in organization.
- (4) Recommended changes in municipal ordinances or rules.
- (5) Recommendations for special audits or further studies.
- (6) An analysis of whether conditions set forth in section 261 exist, whether specific exclusive Federal remedies could help relieve the municipality's financial distress and whether filing a Federal debt adjustment action under Subchapter D is deemed to be appropriate.
- (7) An analysis of whether the economic conditions of the municipality are so severe that it is reasonable to conclude that the municipality is no longer viable and should consolidate or merge with an adjacent municipality or municipalities pursuant to Chapter 4.
- (8) An analysis of whether functional consolidation of or privatization of existing municipal services is appropriate and feasible and recommendations for where and how this could be done.
- (9) A capital budget which addresses infrastructure deficiencies.
- (10) Recommendations for greater use of Commonwealth economic and community development programs.

*(As amended 1992 P.L.336, No. 69.)*

## Section 242. Publication.

- (a) **Filing.** – Within 90 days of an executed contract between the department and the coordinator, the coordinator shall formulate a plan for relieving the municipality’s financial distress and shall deliver true and correct copies of it to:
- (1) The municipal clerk or municipal secretary, who shall immediately place the copy on file for public inspection in the municipal office.
  - (2) The secretary.
  - (3) Each member of the municipal governing body.
  - (4) The mayor.
  - (5) The chief financial officer of the municipality.
  - (6) The solicitor of the municipal governing body.
  - (7) All parties who have petitioned the secretary under section 203.

*(As amended Dec. 19, 1988, P.L. 272, No. 157)*

- (b) **Date of filing.** – For purposes of this section, the date of filing the plan shall be the date on which the municipal clerk or municipal secretary places a true and correct copy of the plan on file for public inspection in the municipal office.
- (c) **Notices of plan.** –
- (1) On the date of filing, notice that a plan has been filed and is open for public inspection in the municipal office shall be published by the coordinator in the county legal reporter and in one or more newspapers with general circulation serving the area in which the municipality is located. The cost for publishing the notice shall be borne by the department. The notice shall set forth the following information:
    - (i) That a plan regarding the coordination and relief of the municipality’s financial distress was filed pursuant to this act.
    - (ii) The date and place of filing.
    - (iii) That the public has 15 days from the date of filing in which to file written comments on the plan.
    - (iv) The name and address of the coordinator to whom written comments should be sent.
    - (v) Summary of the plan.
  - (2) Notice of a coordinator’s public meeting on the plan shall be published by the coordinator in the county legal reporter and in one or more newspapers with general circulation serving the area in which the municipality is located. The department shall bear the cost for publishing the notice. The notice shall contain the following information:
    - (i) That the purpose of the coordinator’s public meeting is to receive public comments on the plan.
    - (ii) The date and place of the meeting.
  - (3) The coordinator may combine the publication of the notice that a plan has been filed with the publication of the notice of the public meeting.
- (d) **Comment period.** – Written comments on the plan may be filed with the coordinator. Written comments shall be made no later than 15 days after the date of filing. Written comments judged by the coordinator to have value to the plan may be used to develop a revised plan.
- (e) **Coordinator’s public meeting.** – A meeting conducted by the coordinator in the municipality shall be set for a date not later than 20 days after the date of filing the plan. The coordinator shall request in

writing that the chief executive officer, each member of the municipal governing body and the chief financial officer of the municipality be present at the coordinator's meeting. Comments on the plan shall be received by the coordinator at that time.

*(As amended 1988 P.L. 1272, No. 157.)*

### **Section 243. Review of plan.**

- (a) **General rule.** – The coordinator, in his discretion, shall consider comments made on the plan. Creditors who do not consent to the handling of their claim by the plan shall notify the coordinator of their rejection of the plan not later than ten days before the public meeting scheduled by the governing body under section 245.
- (b) **Rejected claims.** – If a creditor has rejected the plan, the coordinator shall make a written report to the governing body stating whether the timing and amount of payment or proposed resolution of the claim is the best disposition the municipality can make.
- (c) **Additional negotiations authorized.** – Additional negotiations between the municipality and creditors rejecting the plan shall be encouraged and presided over by the coordinator.
- (d) **Governing body proposals.** – The governing body of the municipality may propose to the coordinator resolutions of claims which have been the reason for rejection of the proposed plan, and the coordinator may revise the plan accordingly.
- (e) **Revision on own initiative.** – Nothing in this section shall preclude the coordinator from revising a plan of his own initiative.

### **Section 244. Revision.**

Neither the secretary nor the chief executive officer or the governing body, as appropriate, may revise the coordinator's plan. However, if the coordinator decides to revise the plan, the coordinator shall consult with the secretary and either the chief executive officer or the governing body throughout the revision of the plan and shall give consideration to comments they may propose. A revised plan shall be completed and delivered to each party cited in section 242(a)(1) through (7) within 10 days from the date of the coordinator's public meeting on the original plan.

*(As amended 1988 P.L. 1272, No. 157.)*

### **Section 245. Adoption by municipality.**

Not later than 25 days following the coordinator's public meeting, the municipal governing body shall either enact an ordinance approving the implementation of the plan, including enactment of necessary related ordinances and revisions to ordinances, or shall reject the plan and proceed under section 246. If the ordinance takes effect in a municipality operating under an optional plan form of government or a home rule charter, the chief executive officer may issue an order directing the implementation of the plan no later than seven days from the enactment of the ordinance by the governing body.

*(As amended 1988 P.L. 1272, No. 157.)*

### **Section 246. Preparation and action on alternate plan.**

- (a) **Chief executive officer's plan.** – If the governing body of a municipality that operates under an optional plan form of government or a home rule charter enacts an ordinance directing implementation of the coordinator's plan and the chief executive officer refuses or fails to issue an order as provided in

section 245, or if the governing body refuses to enact an ordinance approving the coordinator's plan, then the chief executive officer, within 14 days of the action or refusal to act on the ordinance by the governing body, shall develop a plan, including a signed order implementing it, which shall be the subject of a public meeting no later than ten days following its completion.

- (1) The chief executive officer may conduct private sessions before the public meeting with individual creditors in an effort to obtain the consent of each creditor to proposed adjustment and handling of specific claims against the municipality. An agreement reached as a result of these private sessions shall become a matter of record and part of the proceedings of the public meeting conducted pursuant to this subsection.
  - (2) The chief executive officer shall be responsible for placing notice that a public meeting will be held on his plan. Notice shall be published in the same manner as provided in section 242(c). The coordinator shall attend the public meeting and furnish written and oral comments on the chief executive officer's plan.
- (b) **Governing body's plan.** – In the case of a municipality operating under a form of government other than an optional plan form of government or a home rule charter, if the governing body by majority vote refuses to enact an ordinance approving and implementing the coordinator's plan as provided in section 245, then within 14 days of its refusal the governing body shall develop a plan which shall be the subject of a public meeting held not later than ten days following plan completion.
- (1) The governing body may conduct private sessions before the public meeting with individual creditors in an effort to obtain consent of each creditor to proposed adjustment and handling of specific claims against the municipality. An agreement reached as a result of these private sessions shall become a matter of record and part of the proceedings of the public meeting conducted pursuant to this subsection.
  - (2) The governing body shall be responsible for placing notice that a public meeting will be held on its plan. Notice shall be published in the same manner as provided in section 242(c). The coordinator shall attend the public meeting and furnish written and oral comments on the governing body's plan.
- (c) **Approval or rejection of plan.** – Following the public meeting on the chief executive officer's plan or the governing body's plan, the governing body may enact an ordinance, including necessary related implementing ordinances or revisions to ordinances, approving the plan.
- (d) **Review by secretary.** –
- (1) If an ordinance is enacted approving a plan under this section, it shall be forwarded to the secretary for determination that the plan, when implemented, will overcome the municipality's financial distress.
  - (2) If the secretary is of the opinion that the plan, when implemented, will overcome the municipality's financial distress, the secretary shall so inform the municipality.
  - (3) If the secretary is of the opinion that the plan, when implemented, will not overcome the municipality's financial problems, the secretary shall inform the municipality of the following:
    - (i) The secretary's determination.
    - (ii) The reasons for the determination.
    - (iii) The applicability of sections 251 and 264 to the municipality.

## Section 247. Plan implementation.

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

- (1) Give written notice of plan adoption to creditors, collective bargaining units and other parties who will be directly affected by plan implementation. In the notice he shall outline the provisions of the plan and specify how that person's claim or interest will be treated.
  - (2) Initiate plan implementation and continue its implementation for at least four months.
  - (3) Oversee completion of the plan either by directly controlling the implementation process or by turning the implementation process over to a person designated by the governing body or by the chief executive officer, as the case may be. The person designated shall supply the coordinator with monthly reports. The coordinator or the person designated by the governing body or by the chief executive officer, as the case may be, shall supply the department with monthly reports which shall contain the following information:
    - (i) Evidence of payment to creditors as required under the plan.
    - (ii) Evidence that the loan from the department is being repaid.
    - (iii) Monthly revenue and expenditure sheets which indicate the balances of each in relation to the other.
    - (iv) Evidence that the recommendations in the plan are being accomplished by the dates set in the plan where applicable.
  - (4) Terminate the plan upon its completion.
  - (5) Suggest amendments to the plan which may be necessary to implement or complete the plan.
- (b) **Chief executive officer's plan.** – If the plan adopted is the plan proposed by the chief executive officer in an optional plan form of government or home rule charter, the chief executive officer shall have the duties of the coordinator set forth in subsection (a).
- (c) **Municipal governing body's plan.** – If the plan adopted is the plan proposed by the municipal governing body, a person designated by the governing body shall have the duties of the coordinator set forth in subsection (a).

*(As amended 1992 P.L.336, No. 69.)*

## **Section 248. Failure to adopt or implement plan.**

If no plan is adopted or implemented pursuant to this chapter, then sections 251 and 264 shall apply.

## **Section 249. Plan amendments.**

An amendment to an adopted plan may be initiated by the coordinator, the chief executive officer or the governing body of a municipality, as the case may be. The adoption of an amendment shall be by ordinance.

## **Section 250. Debt provisions.**

Adoption of a plan by ordinance is a condition precedent for the approval of long-term debt or funding debt under the act of July 12, 1972 (P.L. 781, No. 185), known as the Local Government Unit Debt Act. A debt financing provision of the plan may be waived by agreement of the lender and the municipality; but any such waiving must be expressly set forth in the indenture or contract securing the debt.

## **Section 251. Commonwealth agency payments or assistance.**

- (a) **Withholding of certain Commonwealth funds.** – Except as provided in section 302(b), upon certification by the secretary that a financially distressed municipality has failed to adopt a plan or implement an adopted plan as proposed under this act or has adopted a plan which is inadequate to address the municipality's financial distress, the municipality shall not receive a grant, loan, entitlement

or payment from the Commonwealth or any of its agencies. Moneys withheld shall be held in escrow by the Commonwealth until the secretary has rescinded the certification.

- (b) **Exceptions to the withholding of Commonwealth funds.** – Notwithstanding the provisions of subsection (a), the following funds shall not be withheld from a municipality.
  - (1) Capital projects under contract in progress.
  - (2) Moneys received by a municipality from an agency of the Commonwealth or the Federal Government subsequent to the declaration of a disaster resulting from a catastrophe.
  - (3) Pension fund disbursements made pursuant to State law.

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

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.

## **Section 253. Termination of status.**

- (a) **Determination by secretary.** – Following a duly advertised public hearing with notices given as provided in section 203, the secretary may issue a determination that the conditions which led to the earlier determination of municipal financial distress municipality are no longer applicable. The determination shall rescind the status of municipal financial distress and shall include a statement of facts as part of the final order.
- (b) **Determination upon petition by a municipality.** – A financially distressed municipality may petition the secretary to make a determination that the conditions which led to the earlier determination of municipal financial distress are no longer present. Upon receiving the petition, the secretary may issue a determination to rescind following a duly advertised public hearing with notices given as provided in section 203.
- (c) **Factors to consider.** – In determining whether the conditions which led to the earlier determination of municipal financial distress are no longer present, the secretary shall consider that:
  - (1) Monthly reports submitted by the coordinator to the department under section 247(a)(3) indicate that termination of the status of municipal financial distress is appropriate.
  - (2) Accrued deficits in the municipality have been eliminated.
  - (3) Obligations issued to finance all or part of the municipality's deficit have been retired.
  - (4) The municipality has operated, for a period of at least one year, under a positive current operating fund balance or equity, as evidenced by the municipality's audited financial statements prepared in accordance with generally accepted accounting principles.

*(As amended 1992, P.L 336, No. 69.)*

## **Subchapter D. Application of Federal Law**

### **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 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) 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) 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) 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.

### **Section 262. Significance and duty on filing Federal action.**

- (a) **Status.** – A municipality which files a municipal debt adjustment action under Federal law shall be deemed to be a financially distressed municipality under this act.
- (b) **Notice.** – The municipality shall immediately notify the secretary and the plan coordinator, if one has been assigned, of the Federal filing.
- (c) **Appointment of coordinator.** – Upon receipt of notice of filing of the Federal action by a municipality, the secretary shall appoint a plan coordinator under section 221, if none had yet been appointed. The coordinator shall formulate a plan approvable by the Federal court.

### **Section 263. Application of this act during Federal action.**

- (a) **Existing plan.** – After filing a Federal municipal debt adjustment action, if there is a plan in process under the terms of this act, the municipality shall utilize the plan and the expertise of the plan coordinator, among others available to it, to work out a revised plan to be proposed through the Federal action, adapting it to incorporate Federal remedies which are appropriate in the circumstances.
- (b) **Necessary plan development.** – A municipality which files a municipal debt adjustment action under Federal law, whether or not a proceeding under this act had been commenced as of the date of such filing, shall utilize the procedures set up by this act concurrently with the processing of the Federal action, so as to efficiently expedite the formulation of a plan, its timely confirmation by the Federal court having jurisdiction of the Federal action and its adoption by ordinance.
- (c) **Plan implementation.** – After adoption of a plan by the municipality as an ordinance and confirmation of the plan by the Federal court, implementation of the plan shall be coordinated through this act and in accordance with requirements set by the Federal court.

### **Section 264. Suspension of Commonwealth funding.**

- (a) **General rule.** – A municipality which remains classified as financially distressed by the department and has failed to adopt or implement a plan within a period set by the Federal court, or has failed or refused to follow a recommendation by a coordinator, shall be notified in writing by the coordinator that he is requesting the secretary to issue a suspension of Commonwealth funding to the municipality for its failure to take the steps enumerated in the notice.

- (b) **Municipality's response.** – The municipality shall have ten days from the date of the coordinator's notice in which to show cause to the secretary and the coordinator why Commonwealth funding to the municipality should not be suspended.
- (c) **Certification.** – If the municipality has not adequately shown cause to the secretary and coordinator why such action should not be taken, the secretary, within 20 days of the coordinator's request, shall certify to the municipality in writing that each grant, loan, entitlement or payment by the Commonwealth or any of its agencies shall be suspended pending adoption of a plan calculated to fully resolve the municipality's financial distress. Suspended funds shall be held in escrow by the Commonwealth until the secretary has rescinded the certification.
- (d) **Exception.** – Notwithstanding the provisions of subsection (c), the following funds shall not be withheld from a municipality:
  - (1) Capital projects under contract in progress.
  - (2) Moneys received by a municipality from an agency of the Commonwealth or the Federal Government subsequent to the declaration of a disaster resulting from a catastrophe.
  - (3) Pension fund disbursements made pursuant to State law.
  - (4) A grant or loan made pursuant to section 302(b) of this act.

## Subchapter E. Economic Assistance

### Section 281. Eligibility.

If a municipality has been determined to be distressed under section 203(f) and is not subject to funding restrictions under section 251 or 264, it shall be eligible for economic and community development assistance as provided in section 282. Merger or consolidation under Chapter 4 of a distressed municipality with a municipality may not be deemed to diminish the successor municipality's eligibility or priority status for economic assistance under this chapter.

*(Added 1992 P.L.336, No. 69.)*

### Section 282. Priority.

- (a) **General rule.** – An eligible municipality shall receive priority in all economic and community development programs funded by the Commonwealth.
- (b) **Release of funds.** – Funds granted to a distressed municipality shall only be released upon concurrence by the coordinator that the program to be funded is consistent with efforts to alleviate the financially distressed status of the municipality as provided in this Act.
- (c) **Notification.** – The secretary, upon making a determination of distress, shall notify all Commonwealth agencies about the municipality's priority status in order to facilitate providing moneys to the municipality. Priority status of more than one eligible municipality shall be based on the date the secretary notifies the agencies.
- (d) **Preexisting priority.** – Nothing in this subchapter shall be construed to alter the priority of economic and community development assistance already approved and encumbered by the Commonwealth or its agencies.

*(Added 1992 P.L.336, No. 69.)*



# Chapter 3. Emergency Financial Aid for Distressed Municipalities

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## 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.
- (b) **Nature of loans.** – All loans granted by the department shall be free from interest and repayable according to a covenant setting forth a schedule for repayment in amounts and on dates specified in the covenant, which schedule shall conform with a plan adopted and implemented under this act.
- (c) **Revolving fund.** – There is hereby created in the State Treasury the 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.

*(Amended 1988 P.L. 1272, No. 157 and 1992 P.L.336, No. 69.)*

## Section 302. Grant, 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.
- (b) **Immediate emergencies.** – In cases where a municipality has been declared distressed but prior to final adoption of a plan, the municipality or the coordinator appointed may apply to the department for an expedited loan or grant to immediately assist the distressed municipality if either of the following conditions exists:
  - (1) The applicant verifies that he believes the municipality is in imminent danger of insolvency.
  - (2) The applicant verifies that he believes there is a clear and present danger to the health and safety of residents of the municipality.
- (c) **Approval.** –
  - (1) Upon receipt of an application under subsection (a), the secretary shall set a date for a hearing to be held not sooner than ten days nor later than 30 days from the date of receipt of the application. At the hearing the secretary shall receive evidence which sets forth the necessity for the moneys requested. The hearing shall be conducted at an acceptable location within the municipality to accommodate all interested parties. If satisfied that sufficient evidence exists to warrant a grant or loan, the secretary shall approve the application and order the department to distribute moneys requested subject to the limitations set forth in section 303(c).
  - (2) Upon receipt of an application under subsection (b), the secretary shall review all data immediately available and shall determine whether emergency funds are warranted. If warranted, the secretary shall approve the application and order the department to distribute moneys requested.

The secretary or the applicant may request a hearing to provide additional evidence of emergency need, but if requested, the hearing shall be held not later than 15 days from the date the application is received.

Either determination is appealable under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

*(Amended 1992 P.L.336, No. 69.)*

### **Section 303. Limitations.**

- (a) **Use.** – A loan or grant given to a financially distressed municipality under this act shall be used solely for the payment of current expenses of the municipality. Current expenses so paid shall not constitute “debt” or “unfunded debt” as defined in the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act, and shall not be subject to the provisions of that act.
- (b) **Eligibility.** – Cities of the first and second class and counties may not apply for a grant or loan under this act.
- (c) **Amount.** – The secretary shall not approve an application to any one municipality for an amount which will substantially impair the department’s ability to distribute the remaining sum fairly and equitably to other applicants or potential applicants.

*(Amended 1992 P.L.336, No. 69.)*

### **Section 304. Expiration.**

*(Repealed 1992 P.L. 336, No. 69.)*

# Chapter 4. Consolidation or Merger of Economically Nonviable Municipalities

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## Subchapter A. General Provisions

### Section 401. Determination. -

*(Repealed 1994 P.L.596, No 90)*

### Section 402. Procedure for consolidation or merger. -

*(Repealed 1994 P.L.596, No 90)*

### Section 403. Joint agreement of governing bodies. -

*(Repealed 1994 P.L.596, No 90)*

### Section 404. Initiative of electors. -

*(Repealed 1994 P.L.596, No 90)*

### Section 405. Conduct of referenda. -

*(Repealed 1994 P.L.596, No 90)*

### Section 406. Consolidation or merger agreement. -

*(Repealed 1994 P.L.596, No 90)*

### Section 407. Effectuation of consolidation or merger. -

*(Repealed 1994 P.L.596, No 90)*

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

- (a) **Collective bargaining contracts, agreements or arbitration awards.** – A collective bargaining agreement or contract in existence in a municipality or an arbitration award in effect in a municipality prior to a consolidation or merger shall remain effective after consolidation or merger until the contract, agreements or awards expire. After the expiration of the contracts, agreements or awards, a subsequent collective bargaining agreement, contract or award 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 provisions and consistent with applicable laws, reduce the number of uniformed and non-uniformed 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 non-uniformed employees, employees of the constituent municipalities shall be reinstated in the order of their seniority if they had been previously furloughed.

- (c) **Disputes.** – The Pennsylvania Labor Relations Board shall have jurisdiction to determine labor disputes or controversies, except those arising out of interpretation or construction of a collective bargaining agreement containing provision for binding arbitration, between the consolidated or merged municipality and its employees.
- (d) **Effect on existing law.** – Nothing in this section shall prohibit a consolidated or merged municipality from exercising its powers and responsibilities pursuant to provisions of law related to collective bargaining, including, but not limited to, the act of June 24, 1968 (P.L.237, No.111), referred to as the Policemen and Firemen Collective Bargaining Act, and the act of July 23, 1970 (P.L.563, No.195), known as the Public Employee Relations Act.

## **Section 409. Procedures.**

- (a) **Ordinance book.** – After consolidation or merger becomes effective, a new ordinance book shall be used by the municipality, and the first document to be recorded in it shall be the consolidation or merger agreement.
- (b) **Ordinance codification.** – No later than two years after consolidation or merger goes into effect, codification of all the ordinances of the municipality shall be completed. This shall include tabulation or indexing of those ordinances of the component municipalities that are of permanent effect in the consolidated or merged municipality.
- (c) **Vesting of rights, privileges, property and obligations.** – All rights, privileges and franchises of each component municipality and all property belonging to each component municipality shall be vested in the consolidated or merged municipality. The title to real estate vested in any of those municipalities shall not revert or be in any way impaired by reason of the consolidation or merger. All liens and rights of creditors shall be preserved. Agreements and contracts shall remain in force. Debts, liabilities and duties of each of the municipalities shall be attached to the consolidated or merged municipality and may be enforced against it.

*Sections 401 through 407 were repealed with the passage of the Municipal Consolidation and Merger Act. For subject matter on the repealed sections please see 53 Pa.C.S.A. 731 - 741.*

## **Subchapter B. Economic Assistance**

### **Section 421.**

*(Repealed 1992 P.L. 336, No. 69.)*

### **Section 422.**

*(Repealed 1992 P.L.336, No. 69.)*

### **Section 423.**

*(Repealed 1992 P.L.336, No. 69.)*

## Chapter 5. Funding

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### Section 501. Appropriation.

The sum of \$5,000,000, appropriated under section 210 of the act of July 1, 1986 (P.L.1776, No.5A), known as the General Appropriation Act of 1986, shall be used to carry out the provisions of this act. The appropriation shall be distributed as follows:

- (1) \$500,000 shall be used by the department for administrative expenses necessary to carry out the provisions of this act.
- (2) \$4,500,000 shall be used to provide grants and loans to municipalities determined to be financially distressed pursuant to this act.

## Chapter 6. Technical Provisions

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### **Section 601. Repeals.**

Section 2501-C(e) and (f) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, are repealed insofar as they are inconsistent with this act.

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

### **Section 602. Expiration.**

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

*(602 amended Dec. 19, 1988, P.L.1272, No.157)*

### **Section 603. Effective date.**

This act shall take effect in 60 days.

# 16 Pennsylvania Code

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## §36.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the content clearly indicates otherwise:

*Act* – The Financially Distressed Municipalities Act (53 P. S. §11701.101-11701.501).

*Secretary* – The Secretary of the Department.

## §36.2. Annual survey of financial condition.

By March 15 of each year, each municipality within this Commonwealth shall file with the Department a completed survey of its financial condition covering the preceding year. A municipality which has failed to file its annual survey of financial condition is prohibited from receiving payments to which the municipality may otherwise be entitled to receive under The Liquid Fuels Tax Act (72 P. S. §2611a-2611z).

## §36.3. Determination of municipal financial distress.

- (a) The criteria used in the determination of municipal financial distress will be the criteria in section 201 of the act (53 P. S. §11701.201). The criteria are:
- (1) The municipality has maintained a deficit over a 3-year period, with a deficit of at least 1% in each of the previous fiscal years.
  - (2) The municipality's expenditures have exceeded revenues for a period of at least 3 years.
  - (3) The municipality has defaulted in payment of principal or interest on a bond or note, or in payment of rentals due an authority.
  - (4) The municipality has missed a payroll for 30 days.
  - (5) The municipality has failed to make required payments to judgment creditors for 30 days beyond the date of the recording of the judgment.
  - (6) The municipality, for a period of at least 30 days beyond the due date, has failed to forward taxes withheld on the income of employees, or has failed to transfer employer or employee contributions for Social Security.
  - (7) The municipality has accumulated and has operated for each of 2 successive years a deficit equal to at least 5% of its revenues.
  - (8) The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302 of the Municipal Pension Plan Funding Standard and Recovery Act (53 P. S. §895.302), with respect to a pension fund during the fiscal year for which the payment was budgeted, and has failed to take action within that time period to make required payments.
  - (9) A municipality has sought to negotiate resolution or adjustment of a claim in excess of 30% against a fund or budget, and has failed to reach an agreement with creditors.
  - (10) A municipality has filed a Municipal Debt Readjustment Plan, under 11 U.S.C.A. §§901-946 (relating to adjustment of debts of a municipality).
  - (11) The municipality has experienced a decrease in a quantified level of municipal service from the preceding fiscal year, which has resulted from the municipality reaching its legal limit in levying real estate taxes for general purposes. For determining levels of municipal service for the year 1987, the Department will utilize annual statistical data since the year 1982 to determine a pattern of decrease in delivery of municipal services since 1982.

- (b) The Department may review and assess relevant information on the municipality's financial condition to determine whether the existence of section 201 factors validly indicate the fiscal distress of the municipality.
- (c) The procedures for securing municipal distress determination are as follows:
  - (1) A municipal financial distress determination may be initiated by one or more of the following:
    - (i) The Department, under section 202(1) of the act.
    - (ii) A creditor with matured claim to whom the municipality owes at least \$10,000 if the creditor agrees to forbear legal action under section 202(3) of the act.
    - (iii) Ten percent of the number of electors of the municipality who voted at the last municipal election, under section 202(4) of the act (53 P. S. §11701.202(4))
    - (iv) A trustee of a municipal pension fund, an actuary for a pension fund or at least 10% of the beneficiaries of a pension fund, under section 202(5) of the act.
    - (v) Ten percent of the employes of the municipality who have not been paid in over 30 days from the time of a missed payroll, under section 202(6) of the act.
    - (vi) The trustees or paying agents of a municipal bond indenture.
    - (vii) The elected auditors, appointed independent auditors or elected controllers of a municipality, under section 202(8) of the act.
    - (viii) The governing body of the municipality, upon passing a resolution by a majority vote of the governing body after special public meeting advertised as provided by law.
  - (2) A party with standing may petition the Secretary for a determination that the municipality involved is a financially distressed municipality. The petition shall be signed by a party with standing, and it shall be sealed and notarized. The petition shall:
    - (i) Allege the petitioner has standing.
    - (ii) State why the petitioner believes the municipality is distressed under section 201 of the act. If the petitioner is a municipality, the petition may state why manifestation of section 201 criteria is imminent and inevitable, instead of why the petitioner believes the municipality is distressed under section 201 of the act.
    - (iii) Include a listing of judgments recorded against the municipality.
    - (iv) Include material allegations justifying the relief afforded by the act.
- (d) The Department will use a standardized form reflecting criteria in section 201 of the act to allow filing for a determination of distress by those parties with standing to seek the determination.
- (e) The Department may conduct a consultative investigation and hold public hearings to determine whether a municipality meets the criteria for a determination of distress under the act.
- (f) A municipality will not be deemed to be distressed for circumstances from the Commonwealth's failure to make a payment of money due the municipality, including Federal money which passes through the Commonwealth, due the municipality when the payment is due.
- (g) If a determination of distress is made, the Department will appoint a coordinator within 30 days of the determination.
- (h) A distress determination will remain in effect until rescinded by the Secretary.
- (i) If a municipal debt adjustment under 11 U.S.C.A. 901-946 has occurred, the municipality will be deemed to be distressed under the act and a coordinator will be appointed.
- (j) It is the policy of the Department to encourage the development of recovery plans and to provide emergency grants and loans to restore basic municipal services to minimal levels consistent with public health and safety.



- (k) This determination is subject to appeal by the municipality under 2 Pa.C.S. §101-754 (relating to administrative law and procedure).

## **Source**

The provisions of this §36.3 adopted July 7, 1989, effective July 8, 1989, 19 Pa.B. 2948; corrected July 21, 1989, effective July 8, 1989, 19 Pa.B. 3104.

### **§36.4. Municipal distress coordinator.**

- (a) The coordinator is responsible for developing and filing a plan for the financial recovery of the municipality.
- (b) The coordinator shall be an individual or firm experienced in municipal finance and administration.
- (c) The coordinator may be an employe of the Department, a consultant or a firm. The coordinator may not be an elected official or an employe of the municipality.
  - (1) A coordinator will be selected by the Secretary.
  - (2) The Secretary may consider the municipality's preference in the selection of the coordinator.
  - (3) The Department will maintain a list of eligible, qualified coordinators.
  - (4) The salary and expenses of the coordinator will be paid by the Department.
- (d) The coordinator may not seek elective office within the municipality for two years after final adoption of the distressed municipality's financial recovery plan.

### **§36.5. Municipal recovery plans.**

- (a) The coordinator's plan will be subject to a public hearing. The coordinator may revise the plan as necessary to address comments or meet objections.
- (b) The municipality may adopt or reject the coordinator's plan.
- (c) If the coordinator's plan is rejected by the municipality, the municipality shall develop its own plan which will be subject to approval by the Secretary.
- (d) If the Secretary rejects the municipal plan, Commonwealth funds will be withheld from the municipality under sections 251 and 264(d) of the act (53 P. S. §11701.251 and 11701.264(d)).
- (e) If the municipality's plan is adopted, a person designated by the governing body or by the chief executive officer in a home rule municipality, will assume the duties of plan coordinator.

### **§36.6. Emergency loans.**

- (a) After a determination of distress, but prior to the adoption of a recovery plan, the distressed municipality or the coordinator may apply for an interest-free short-term loan to assist with immediate cash shortfalls. Prior to issuing an emergency loan, the Department may conduct a consultative investigation to determine whether emergency funds are warranted and the amount of emergency funds needed. Short-term loans will be available if the applicant verifies that one of the following conditions exists:
  - (1) The municipality is in imminent danger of insolvency.
  - (2) There is a clear and present danger to the health and safety of the residents.

- (b) An emergency loan shall come due within 9 months from the date of the loan. Based upon a detailed analysis of the municipality's financial condition, the coordinator's recovery plan may recommend conversion of all or part of an emergency loan to long-term loan.
- (c) A distressed municipality or a coordinator on behalf of the municipality may apply to the Department for a long-term loan under the coordinator's or municipality's adopted recovery plan. An application for a long-term loan will be considered based upon the following criteria:
  - (1) The erosion of the municipal tax base measured over a 3-year period.
  - (2) A measurement of the change in locally generated municipal revenue over the 3-year period immediately preceding the filing of a financial distress petition.
  - (3) Measurable efforts of the municipality to raise revenue and cut expenditures prior to filing a petition for a determination of distress.
  - (4) Detailed financial analysis reported by the appointed municipal distress coordinator, that the municipality is clearly unable to repay a short-term loan.
- (d) When municipal distress can be traced to a particular event, such as a major plant closing or a natural disaster, the difference between locally generated revenues before and after the event will be measured.
- (e) When municipal distress cannot be traced to a particular event, locally generated revenues will be measured for a period of at least 3 years prior to the date of the petition for determination of distress was filed.
- (f) The revenue sources to be used for the measurement made in this section will include real estate tax revenues, total real estate assessments, earned income tax revenue and occupational privilege tax revenue and other measurements that reflect specific conditions and employment trends within the municipality. Measurements will be adjusted for changes in tax rates, assessment valuations, changes of accounting bases or other factors affecting tax valuation.
- (g) A public hearing will be held by the Department within 30 days after it receives an application for a long-term loan. The public hearing will provide a forum for considering the merits of the application and other relevant matters pertaining to the applicant's financial status.
- (h) If the Department determines that a long-term loan is in order, the maximum loan amount will be set and the applicant will be notified.
- (i) The following procedures apply to the receipt of loans:
  - (1) A loan will be awarded only under a fully executed loan agreement and note between the Department and the applying municipality.
  - (2) The application for emergency and long-term loans shall be made in accordance with a resolution properly adopted by the governing body of the applicant municipality.
  - (3) If the Department approves a loan application, it will notify the applying municipality of the amount which may be awarded. The municipality shall then enact an ordinance authorizing the governing body to incur the indebtedness specified therein. The ordinance shall be enacted in compliance with notice requirements in the municipal code governing the municipality at the time of enactment.
  - (4) The ordinance authorizing the incurrence of indebtedness shall pledge the municipality's full faith, credit and taxing power to satisfy the obligation incurred under the ordinance.
  - (5) The ordinance, along with the municipality's final application for the loan, shall be submitted to the Department for approval.
  - (6) Upon approval of the documents specified in paragraph (5), the municipality shall execute a loan agreement and note with the Department for the amount approved by the Department.

- (7) Upon execution of the loan agreement and note, the municipality shall file a financing statement for the loan amount, under 3 Pa.C.S. §1101-9507 (relating to the Uniform Commercial Code) further securing its indebtedness.
- (8) The financing statement shall be filed once in the Office of the Prothonotary of the county in which the municipality is located, and once in the Office of the Secretary of the Commonwealth.
- (j) The coordinator shall set forth a proposed payback schedule for long-term loans required to be addressed in the coordinator's recovery plan. The payback schedule is subject to approval by the Department. There should be a multi-year 'phase-in' process of loan repayment, and other adjustments as needed, such as tax increases, service cutbacks, employe reductions and negotiated creditor and debt adjustments.

### **§36.7. Grants.**

- (a) A grant will be awarded only after a complete financial analysis of the municipality has been performed. The Department will give priority to grant applications which include plans for activities which are intended to accomplish the following:
  - (1) Reduce municipal costs.
  - (2) Share municipal services.
  - (3) Improve municipal productivity.
  - (4) Increase municipal revenues.
  - (5) Ease and assist the municipality through consolidation or merger.
- (b) Grant eligibility and grant amounts will be determined using the set of criteria used for long-term loans-measured loss of revenue. In addition to the measured loss of revenue, the financial analysis will consider the following:
  - (1) The municipality's borrowing ability or capacity.
  - (2) The municipality's revenue raising capacity.
  - (3) The level of reduction of municipal services.
- (c) A municipality may apply for a grant under section 302 of the act (53 P. S. §11701.302) by adopting a resolution authorizing the governing body to apply for the grant.

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