

No. 2014-199

AN ACT

HB 1773

Amending the act of July 10, 1987 (P.L.246, No.47), entitled "An act empowering the Department of Community Affairs to declare certain municipalities as financially distressed; providing for the restructuring of debt of financially distressed municipalities; limiting the ability of financially distressed municipalities to obtain government funding; authorizing municipalities to participate in Federal debt adjustment actions and bankruptcy actions under certain circumstances; and providing for consolidation or merger of contiguous municipalities to relieve financial distress," further providing for title of act; providing for declaration of fiscal emergencies and receivership in municipalities; authorizing certain taxes; providing for disincorporation of municipalities and the establishment of unincorporated service districts; establishing the Unincorporated Service District Trust Fund; and making extensive amendments, additions and editorial changes.

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

Section 1. The title of the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act, is amended to read:

AN ACT

Empowering the Department of Community [Affairs] *and Economic Development* to *assist municipalities in avoiding financial distress*; 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; *authorizing certain taxes*; and providing for [consolidation or merger of contiguous municipalities to relieve financial distress] *the disincorporation of municipalities and the establishment of unincorporated service districts*.

Section 2. Section 102 of the act, amended October 20, 2011 (P.L.318, No.79), is amended to read:

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 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.—The General Assembly finds and declares as follows:

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

(i) Enact procedures to provide municipalities showing early indicators of financial distress with training and technical and financial assistance.

~~[(i)]~~ *(ii)* 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)]~~ *(iii)* Enact procedures for the adjustment of municipal debt by negotiated agreement with creditors.

~~[(iii)]~~ *(iv)* Provide for the exercise of the Commonwealth's sovereign and plenary police power in emergency fiscal conditions to protect the health, safety and welfare of a municipality's citizens when local officials are unwilling or unable to accept a solvency plan developed for the benefit of the ~~[community]~~ *municipality*.

(v) Provide for the exercise of the Commonwealth's sovereign and plenary power to establish and abolish local government units and provide essential services in areas of this Commonwealth in which the fiscal integrity of existing local government units cannot be sustained.

(2) Changing and deteriorating economic conditions, developing technologies and attendant unemployment erode local tax bases and threaten essential municipal services. Under such circumstances, such distressed governmental units may no longer be viable and that the citizens of those communities should be granted the opportunity *in accordance with law* 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.

(3) Policies of certain municipalities are so ineffective and the financial conditions so severe that the provision of vital and necessary services is threatened.

(4) Sustained failure of a municipality to enact or implement a fiscal plan to adequately address or prevent insolvency after repeated opportunities to do so:

(i) constitutes a fiscal emergency; and

(ii) signifies:

(A) a breakdown in the function of municipal government;

(B) a dereliction of its elected officials' paramount public duty to safeguard the health, safety and welfare of its citizens; and

(C) a threat to the fiscal stability of neighboring communities.

(5) Pursuant to the Commonwealth's paramount right and duty to maintain law and order and protect and preserve the health, safety and welfare of its citizens and ensure compliance with this act under Article IX of the Constitution of Pennsylvania, the Governor is authorized to act in the face of a fiscal emergency under paragraph (4)(i) and dereliction of official duty under paragraph (4)(ii)(B).

(6) Municipalities may face such deteriorated economic conditions that all reasonable efforts to restore economic viability have failed and merger or consolidation cannot occur through any means provided by law. It is the intent of the General Assembly that, for municipalities incapable of continuing to function as general purpose units of local government, procedures exist to ensure the provision of essential and vital public services to the residents of those areas absent a functioning municipal government.

Section 3. Section 103 of the act, repealed in part October 13, 1994 (P.L.596, No.90) and added July 5, 2012 (P.L.1104, No.133), is amended to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Arbitration settlement." An adjustment or settlement of a collective bargaining agreement or dispute. The term includes a final or binding arbitration award or other determination.

"Authority." A municipal authority, parking authority or any other authority or corporate entity that is directly or indirectly controlled by a distressed municipality or to which a distressed municipality has power of appointment.

"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 *former* 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

¹"the act of" in enrolled bill.

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.

"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 **[Affairs] and Economic Development** of the Commonwealth.

"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.

"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] or** document of a municipality or of **[an authority incorporated by a municipality, excluding confidential] an authority or other corporate entity which directly or indirectly performs a governmental function on behalf of the municipality, is directly or indirectly controlled by the municipality or to which the municipality has direct or indirect power of appointment or has directly or indirectly pledged or designated the municipality's revenues or the municipality's credit. The term does not include:**

(1) Confidential information relating to personnel matters and matters relating to the initiation and conduct of investigations of violations of law. To the extent such information is included in a financial record or document otherwise subject to this definition, it shall be redacted and the remainder subject to disclosure as otherwise provided by this act.

(2) A financial record or document in the custody or control of an entity other than a municipality, municipal authority or other authority, except if the document relates to services or governmental functions performed by the municipality, municipal authority or on behalf of the municipality or municipal authority, or the revenues or credit of the municipality or a municipal authority.

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

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

"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 **[Affairs] and Economic Development** of the Commonwealth.

Section 4. Section 121(a), (b) and (c) of the act are amended to read:

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] determines** that a municipality needs assistance to correct minor fiscal problems, the department shall offer appropriate recommendations, **including a recommendation that the municipality submit an application as provided in Chapter 1-A.** 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. **The department shall, by January 1 of each year thereafter, notify the heads of all Commonwealth agencies of the priority funding requirement for distressed municipalities as provided in section 282.**

* * *

Section 5. Section 122 of the act is amended by adding a subsection to read:

Section 122. Duties of Commonwealth agencies.

* * *

(c) *Waiver of certain administrative mandates.—*

(1) Notwithstanding any provision of law and at the request of the coordinator or receiver, a Commonwealth agency may exempt a distressed municipality from the application of a regulatory requirement if the following conditions are satisfied:

(i) The regulatory requirement is not expressly required by Federal law or regulation, or an act of the Commonwealth, and is not related to the rights or terms and conditions of employment by the municipality.

(ii) The waiver of the regulatory mandate will not likely affect public health and safety.

(2) It is the intent of this subsection that distressed municipalities be considered for relief from regulatory mandates that, due to financial distress or the implementation of recovery measures, are unduly burdensome on the municipality and would not undermine the regulatory purposes of the agency if waived.

Section 6. Sections 123 and 141 of the act, amended July 11, 1996 (P.L.645, No.108), are amended to read:

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, *including any provisions which require payment prior to March 15*, 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 [Subchapter C] Subchapters C and C.1 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] on the earned income, real property, or both, beyond maximum rates provided by law. No increase in the rate of taxation on nonresidents shall be authorized unless an equal or greater increase in the rate of taxation on resident income over the highest rate levied in the previous fiscal year is authorized in the same tax year.

(1.1) A municipality may petition the court to levy a payroll preparation tax as provided in subsection (d)(2).

(1.2) A municipality may petition the court for an increase in the municipality's rate of taxation for earned income under paragraph (1) or may petition the court for an increase of the local services tax as provided under subsection (d)(1) or (1.1).

(2) If a tax increase above existing limits is granted by the courts ***or a tax is approved as provided in subsection (d)***, 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 ***or the imposition of a tax under subsection (d)*** may be granted by the court upon annual petition of the municipality ***until the termination date of the plan adopted by the municipality under Chapter 2***. 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] ***No increase in the rate of taxation on the income of nonresidents shall be authorized in a city of the second class A, or a home rule municipality that was previously a city of the second class A, unless an equal or greater increase in the rate of taxation on resident income over the highest rate levied in the previous fiscal year is authorized in the same tax year. In addition, a petition shall not include an increase in a rate of taxation 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.

(d) Additional tax options and limitations.—After a municipality has adopted a plan under Subchapter C or C.1 of Chapter 2 and with the approval of the court, it may adopt an ordinance imposing the following:

(1) A local services tax pursuant to Chapter 3 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, at a rate not to exceed \$156. A municipality adopting an ordinance under this paragraph shall be prohibited from imposing any additional tax on earned income pursuant to subsection (c). A municipality levying the local services tax at a rate in excess of \$52 shall, by ordinance, exempt any person from the local services tax

whose total earned income and net profits from all sources within the municipality is less than \$15,600 for the calendar year in which the local services tax is levied. This paragraph does not apply to a municipality which, on the effective date of this subsection, is not authorized to petition the court of common pleas for the imposition of an earned income tax on nonresidents.

(1.1) In the case of a financially distressed municipality that has also received a determination that it has a level II or level III financially distressed pension system under Chapter 6 of the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, a petition for a local services tax under paragraph (1) shall not be authorized at a rate in excess of \$104 in any fiscal year during which the municipality levies a tax under section 607(f) of the Municipal Pension Plan Funding Standard and Recovery Act on earned income.

(2) A payroll preparation tax pursuant to section 303 of The Local Tax Enabling Act. A municipality imposing a tax under this paragraph may levy a tax at a rate as provided in this section and as certified by the coordinator and approved by the court. When imposing a tax under this paragraph, the municipality may impose the tax not to exceed a rate that is sufficient to produce revenues equal to revenues collected as a result of a business privilege tax and a mercantile tax under Chapter 3 of The Local Tax Enabling Act in the preceding fiscal year. After approval by the court of the tax at the rate as provided in this section, the municipality may levy the tax in any subsequent year without additional court approval, including any year after the termination of the municipality's distressed status, at a rate not to exceed that initially approved by the court. A municipality adopting a payroll preparation tax under this paragraph may not levy a business privilege tax or mercantile tax. The authority provided by this paragraph is limited to those municipalities levying a business privilege or mercantile tax, on a flat-rate or millage basis, in the year of the filing of a petition as provided in subsection (c).

Section 141. Jurisdiction of court of common pleas.

(a) Increases 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 or C.1 of Chapter 2 to increase rates of taxation for earned income *on residents and nonresidents*, real property, or both, beyond maximum rates provided by law *in accordance with section 123*. 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.

(a.1) Levy of payroll preparation tax.—The court of common pleas of each county shall have jurisdiction to hear a petition filed by a municipality which has adopted a plan pursuant to Subchapter C or C.1 of Chapter 2 to levy a payroll preparation tax authorized by section 123(c)(1.1).

(a.2) Increase in local services tax.—The court of common pleas of each county shall have jurisdiction to hear a petition filed by a

municipality which has adopted a plan pursuant to Subchapter C or C.1 of Chapter 2 to increase the rate of the local services tax in accordance with section 123(c)(1.2).

(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 taxing power over the properties within a municipality which has adopted a **[final]** plan pursuant to Subchapter C *or C.1* 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 a proration of the sale proceeds among the taxing authorities which fixed the liens.

Section 7. The act is amended by adding a chapter to read:

**CHAPTER 1-A
EARLY INTERVENTION PROGRAM**

**SUBCHAPTER A
PRELIMINARY PROVISIONS**

Section 101-A. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Center." The Governor's Center for Local Government Services in the Department of Community and Economic Development.

"Keystone Principles." The Keystone Principles and Criteria for Growth Investment and Resource Conservation adopted May 31, 2005, by the Economic Development Cabinet to foster and measure the effectiveness of sustainable economic development and conservation of resources through the investment of Commonwealth funds in its municipalities.

"Program." The Early Intervention Program established by this chapter.

Section 102-A. Program objectives.

The Early Intervention Program established by this chapter provides a municipality with a preemptive step for the purpose of seeking guidance and assistance from the Commonwealth to develop long-term financial management, administrative, service delivery and economic development strategies that the municipality can implement to avert a fiscal crisis and provide fiscal stability. The specific objectives of the Early Intervention Program include the following and are meant to:

(1) Provide the resources to assist a municipality in identifying, prioritizing and addressing the financial difficulties confronting it, while ensuring its short-term and long-term goals and objectives are adequately taken into account.

(2) *Engage in a management review of its operations and provide recommendations that will enhance financial administration, management and service delivery of a municipality.*

(3) *Strengthen the ability of a municipality to develop, adopt, implement and monitor multiyear financial management plans and to incorporate the process into its annual budget process.*

(4) *Implement a system of multiyear revenue and expenditure trend analysis, monitoring and forecasting so that a municipality can better anticipate and plan for future financial circumstances.*

(5) *Promote multimunicipal and regional planning, cooperation strategies and cost-sharing opportunities between two or more municipalities.*

(6) *Support the adoption by a municipality of best management practices and efficiency measures to increase the financial stability of a municipality.*

(7) *Further the integration of sound community and economic development strategies to encourage the economic growth of the tax base of a municipality over a multiyear period.*

SUBCHAPTER B ADMINISTRATIVE PROVISIONS

Section 103-A. Authorization.

The Early Intervention Program is established to authorize the center to provide guidance and assistance through grants to a municipality seeking to ensure fiscal stability by developing and implementing long-term financial, managerial and economic development strategies.

Section 104-A. Grants.

(a) *General rule.—A grant may be awarded by the center to a municipality or two or more municipalities cooperating together to ensure fiscal stability through the development and implementation of long-term financial, managerial and economic development strategies in an amount not exceeding \$200,000 during the first fiscal year that commences on the effective date of this section, adjusted for inflation in subsequent years by an amount not to exceed an annual cost-of-living adjustment calculated by applying the percentage change in the Consumer Price Index immediately prior to the date the adjustment is due to take effect. To be eligible for a grant for implementation funding, a municipality must meet the basic training requirements established in guidelines developed by the center.*

(b) *Match.—The grant amount is subject to a 50% financial match by the municipality to which the grant was provided, unless the center determines a match by the municipality of a lesser amount not less than 10% is warranted. The center may authorize any portion of the municipality's financial match to be offset by an in-kind match.*

(c) *Eligible activities.—A grant shall be used for the following eligible activities:*

(1) *The development of multiyear financial management plan for a municipality.*

(2) The development of multimunicipal or regional intergovernmental cooperation initiatives and cost-sharing strategies.

(3) A study to improve the management and operational practices and financial administration procedures of a municipality.

(4) A merger or consolidation feasibility study.

(5) The implementation of any of the eligible activities identified in paragraphs (1) through (4).

(6) Training and capacity-building activities that meet basic requirements established in guidelines developed by the center which assist the municipality in the implementation of plan recommendations.

(7) Contracts with professional consultants to develop and implement recommendations related to eligible activities.

(8) An audit, prepared by an independent accountant or firm, as required by section 108-A.

Section 105-A. Application.

A program application must be submitted by the applicant municipality on a form prescribed by the department utilizing the electronic single application format and include or demonstrate all of the following:

(1) The name and address of the municipality or, in the case of a multimunicipal application, the municipalities.

(2) The name of a contact person.

(3) The execution of a supporting resolution authorizing the submission of the application and committing the resources of the municipality or, in the case of a multimunicipal application, the municipalities.

(4) The single application shall be signed by the authorized officer of the municipality or, in the case of a multimunicipal application, the municipalities.

(5) Any other information required by the department.

Section 106-A. Evaluation criteria.

The center shall evaluate a program application on the basis of municipal financial characteristics and the quality of the proposed program, including the extent to which the program is estimated to improve the administrative, operational and financial management capacity of the applicant municipality. The following factors shall be considered in the evaluation:

(1) The current and projected financial condition of the municipality.

(2) The economic and demographic condition of the municipality.

(3) The proactive measures the municipality has taken to manage its finances in a responsible manner, including attempts to reduce expenditures, increase revenues, adopt sound management practices, establish municipal priorities and adhere to generally accepted financial management, budget and financial reporting standards.

(4) The extent to which the municipality has demonstrated its willingness and commitment to engage in a multimunicipal or regional strategy and has examined whether certain municipal services can be provided through a council of governments, a county government or other structure.

(5) *The extent to which the municipality has demonstrated its willingness and commitment to improve its financial and administrative operation through the adoption and implementation of a multiyear financial management plan.*

(6) *Where it has received assistance and funding from the department, past performance by the municipality.*

(7) *Where applicable, the elements of the Keystone Principles shall be included as part of the evaluation criteria.*

(8) *Any other factors the center considers relevant.*

Section 107-A. Award.

The secretary shall announce by letter applications selected for funding. The contact person specified in the application shall be sent the offer letter. All funding decisions shall be made subject to the availability of funds.

Section 108-A. Guidelines.

The department shall establish guidelines consistent with this chapter, particularly the program requirements and measurements to ensure a municipality is provided with adequate guidance. The program shall include a requirement of a financial audit of the municipality, prepared by an independent accountant or firm, for the fiscal year immediately preceding the application for funds under this chapter. The department may establish guidelines for the audit, and the requirement may be satisfied by any previous audit prepared in accordance with the guidelines.

Section 8. Section 203(c) and (g) of the act, amended June 30, 1992 (P.L.336, No.69), are amended to read:

Section 203. Procedure for determination.

* * *

(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 *or with department funds* under *Chapter 1-A* or section 121 shall be placed in the record of the public hearing.

* * *

(g) Appeal.—A determination by the secretary under this [act] *section* is appealable pursuant to [Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure)] 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 9. Sections 221(d) and (e), 222 and 223 of the act are amended to read:

Section 221. Designation.

* * *

(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.]:

(1) Present, at a public meeting within 45 days of the execution of the contract between the department and the coordinator, a list of the coordinator's preliminary findings, as to the financial condition of the municipality. The list of findings shall include, but is not limited to, a quantification of all operating deficits for the current fiscal year and a

projection of revenues and operating expenses for the next three fiscal years, all outstanding debt obligations, the cost and term of all outstanding contracts and other relevant information.

(2) Solicit, not later than the date of the coordinator's presentation described in paragraph (1), comments in writing relating to the issues associated with the municipality's distress from such persons and entities who:

(i) have participated in the early intervention process;

(ii) have provided consultation on behalf of the municipality relating to the issues associated with its distress; or

(iii) are elected officials or employees of the municipality or labor organizations representing employees of the municipality.

(3) Consider all comments submitted within 30 days of the coordinator's presentation described in paragraph (1) before preparing and administering a plan designed to relieve the financial distress of the municipality which the coordinator has been appointed to serve.

(e) Powers.—The coordinator may **[apply]**:

(1) Apply for grants and loans pursuant to Chapter 3, as [he] the coordinator deems necessary.

(2) Investigate the tax-exempt status of any property within a distressed municipality and advise the governing body of the municipality to appeal the assessment or exempt status of property within the distressed municipality.

(3) Solicit and negotiate payments in lieu of taxes from institutions of public charity and other tax-exempt property owners in the municipality and recommend action by the municipality.

Section 222. Access to information.

(a) General rule.—The coordinator shall have full access to all municipal records.

(b) Enforcement where records in possession of official or public employee.—If the coordinator believes that an official or employee of the municipality *or an authority* 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.

(c) Enforcement where records in possession of other persons.—*If the coordinator believes that a person is not furnishing information related to municipal records and that person is not subject to subsection (b), the coordinator may seek a subpoena in the court of common pleas to compel testimony and furnish records and documents.*

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] 65 Pa.C.S. Ch. 7 (relating to open meetings)**, in connection with plan preparation.

(b) Private meetings authorized.—Notwithstanding the provisions of [the **Sunshine Act**] *65 Pa.C.S. Ch. 7*, 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 10. The act is amended by adding a section to read:

Section 224.1. Performance of coordinator.

(a) Review of coordinator.—Beginning on July 1, 2015, the secretary, or his designee, shall conduct an annual review of each coordinator appointed under section 221 to assess whether:

(1) The coordinator's performance has been in compliance with the requirements of the coordinator's contract, if any, and the provisions of this act.

(2) The coordinator has been ineffective in providing assistance necessary to develop and implement the plan.

(b) Termination of coordinator.—An unfavorable review under this section may constitute grounds for termination of the coordinator's contract.

Section 11. Section 241 of the act, amended or added June 30, 1992 (P.L.336, No.69) and July 5, 2012 (P.L.1104, No.133) and repealed in part October 13, 1994 (P.L.596, No.90), is amended to read:

Section 241. Contents.

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

(1) Projections of revenues and expenditures for the current year and the next **[three] five** years, both assuming the continuation of present operations and as impacted by the measures in the plan. The projections must include an itemization of the following:

(i) Projected revenues, including:

(A) Local taxes.

(B) Licenses, permits and fines.

(C) Sales and rentals.

(D) Federal, State and county grants and loans.

(E) Any other sources of projected revenue.

(ii) Projected expenditures, including:

(A) Debt service.

(B) Workforce.

(C) Elected and executive officials.

(D) Financial management.

(E) Infrastructure costs, including highways, roads and wastewater systems.

(F) Maintenance costs, including recycling and trash collection, disposal and removal.

(G) Other professional services.

(H) Public safety.

(I) Community and economic development.

(J) Any other applicable expenditures.

(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.]

(7.1) An analysis of whether the economic conditions within the municipality are so severe that it is no longer viable and should consolidate or merge with an adjacent municipality or municipalities in accordance with 53 Pa.C.S. Ch. 7 (relating to alteration of territory or corporate entity and dissolution) or disincorporate in accordance with 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.

(10.1) Recommendations for enhanced cooperation and changes in land use planning and zoning, including regional approaches that would promote economic development and improve residential, commercial and industrial use availability within and around the municipality.

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

(12) An analysis of current revenue sources and recommendation to modify revenue sources, including the subjects and rates of taxation of the distressed municipality in accordance with section 123. Recommendations relating to a modification of revenue sources shall be made with consideration to the effect on economic development, employment and an equitable distribution of tax burden. The analysis and recommendations shall be presented to the court in any proceeding under section 123. The analysis shall address:

(i) The tax bases of current and recommended revenue sources from both within and outside of the distressed municipality.

(ii) Collection rates, methods and costs of existing and, to the extent possible, proposed revenue sources and tax collection.

(iii) The current fee, charge, penalty and fine provisions of municipal enactments related to municipal services and police powers.

(iv) Revenue as defined in section 103.

Section 12. Section 242(a) of the act, amended December 19, 1988 (P.L.1272, No.157), is amended and the section is amended by adding a subsection to read:

Section 242. Publication.

(a) Filing.—Within [90] 120 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.

* * *

(c.1) Solicitation of comments.—The coordinator shall, no later than the date of filing, solicit comments on the coordinator's plan to be presented at the public meeting from such persons and entities which submitted timely comments under section 221(d)(2).

* * *

Section 13. Section 245 of the act, amended December 19, 1988 (P.L.1272, No.157), is amended to read:

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]** *shall* issue an order directing the implementation of the plan no later than seven days from the enactment of the ordinance by the governing body.

Section 14. Section 246(d)(3) of the act is amended to read:

Section 246. Preparation and action on alternate plan.

* * *

(d) Review by secretary.—

* * *

(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.

(iv) *The applicability of Chapters 6 and 7 to the municipality.*

Section 15. Section 247(a)(4) of the act, amended June 30, 1992 (P.L.336, No.69), is amended to read:

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:

* * *

(4) Terminate the plan upon its completion *in accordance with Subchapter C.1.*

* * *

Section 16. The act is amended by adding a section to read:

Section 247.1. Annual budget.

(a) *Proposed budget.—Notwithstanding any provision of law or home rule charter to the contrary, a municipality subject to a plan under this chapter shall, at least 120 days prior to the end of its current fiscal year, commence development of a proposed annual budget for the next fiscal year that implements the provisions of the plan or makes other changes to the management of the municipality necessary to implement the provisions of the plan. The proposed budget shall be prepared by the governing body or the chief executive officer, as the case may be.*

(b) *Coordinator review.—At least 75 days prior to the end of the fiscal year, the governing body or chief executive officer shall submit the proposed budget to the coordinator. The coordinator shall review the proposed budget to verify that the proposed budget conforms with the plan. The coordinator shall make any modifications necessary to the proposed budget to meet the objectives of the plan.*

(c) *Return of proposed budget.—After completion of the coordinator's review, the coordinator shall, at least 45 days before the end of the municipality's fiscal year, submit the proposed budget, together with the*

coordinator's modifications, if any, to the municipality for adoption in accordance with law.

(d) Notification to secretary.—Within 30 days of the municipality's adoption of the budget, or the municipality's failure to timely adopt a budget, the coordinator shall notify the secretary whether or not the adopted budget, if any, conforms to the plan. Upon a determination that the budget does not conform to the plan, or that the municipality has not timely adopted a budget, the secretary may take action as provided for by this act.

Section 17. Sections 248 and 250 of the act are amended to read:
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[.] *and, upon a written recommendation of the coordinator, the secretary may request a determination of a fiscal emergency in accordance with Chapter 6.*

Section 250. Debt provisions.

Adoption of a plan *in accordance with this subchapter and Subchapter C.1* 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] *53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing)*. 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 18. Section 253 of the act is repealed:
[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 are no longer present. 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.]

Section 19. The act is amended by adding a subchapter to read:

**SUBCHAPTER C.1
DURATION OF DISTRESSED STATUS**

Section 254. Limitation of status.

(a) Termination date.—

(1) *Except as otherwise provided in this subchapter, no municipality shall be subject to the provisions of this act after five years from the effective date of an ordinance enacted in accordance with section 245 or 246. No amendment to a plan shall affect the termination date as determined from the date of enactment of the original ordinance.*

(2) *Nothing in this section shall be construed to:*

(i) *prohibit a municipality from participating in an early intervention program as provided in Chapter 1-A or reentering distressed status in accordance with this act after a termination of status in accordance with this subchapter.*

(ii) *Prohibit termination of status proceedings in accordance with section 255.1 prior to the termination date as provided in this section.*

(b) Distressed municipalities.—

(1) *Municipalities operating pursuant to a recovery plan on the effective date of this section shall be subject to a termination date five years from the effective date of the most recent recovery plan or amendment enacted in accordance with this act, provided, however, that municipalities subject to a plan that will remain in effect for one year or less on the effective date of this subsection shall be subject to a termination date three years from the termination date of the current plan or plan amendment.*

(2) *If its distressed status has not been rescinded or has been continued in accordance with section 710.1, a municipality operating under Chapter 7 shall be subject to a final termination date no more than five years from the termination date of receivership. Section 255 shall not apply to a termination of status under this paragraph.*

Section 255. Coordinator's report.

(a) *General rule.—Not later than 180 days after the beginning of the final year of distressed status as determined in accordance with section 254(a) and (b)(1), the coordinator shall complete a report stating the financial condition of the municipality and include one of the following findings:*

(1) *Conditions within the municipality warrant a termination in status in accordance with section 255.1. A report containing a*

recommendation under this paragraph shall address each of the factors set forth in section 255.1(c).

(2) Conditions are such that the municipality should be disincorporated in accordance with Chapter 4.

(3) Conditions are such that the secretary should request a determination of a fiscal emergency in accordance with Chapter 6.

(4) A three-year exit plan in accordance with section 256 is warranted.

(b) Filing and notice.—

(1) The report shall be filed with the same parties as provided in section 242(a). The date of filing shall be the date on which the municipal clerk or municipal secretary places a true and correct copy of the report on file for public inspection in the municipal office.

(2) On the date of filing, notice that the report 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 department shall pay for the cost of the publication of the notice. The notice shall contain the following information:

(i) A statement that a report regarding the status of the municipality's financial distress was filed pursuant to this act.

(ii) The date and place of filing.

(iii) A statement that the public has 15 days from the date of filing in which to file written comments on the report.

(iv) The name and address of the coordinator to whom written comments should be sent.

(v) A summary of the report and findings of the coordinator.

(vi) The date and place of a public meeting to receive comments on the report.

(c) Written comments.—Written comments on the report 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 report.

(d) 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 report. 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. The coordinator has the discretion whether to consider comments made on the report.

(e) Revision of report.—

(1) Nothing in this section shall be construed to preclude the coordinator from revising a report of his own initiative.

(2) Neither the secretary nor the chief executive officer or the governing body, as appropriate, may revise the coordinator's report.

(3) If the coordinator decides to revise the report, the coordinator shall consult with the secretary and either the chief executive officer or

the governing body throughout the revision of the report and shall give consideration to comments they may propose.

(4) A revised report shall be completed and delivered to each party cited in section 242(a) within ten days from the date of the coordinator's public meeting on the original report.

Section 255.1. Termination of status.

(a) Public hearing.—Within 30 days of the date for the filing of a final report containing a finding as provided in section 255(a)(1), the secretary shall conduct a public hearing, advertised with notices given as provided in section 203.

(b) Determination.—Within 90 days of the conclusion of the public hearing, the secretary shall issue an administrative determination of whether the termination of status is appropriate and reasons for the determination. The determination shall include findings addressing each of the factors in subsection (c) and shall consider information provided in the report of the coordinator and any additional information received during the public hearing.

(c) Factors to consider.—If the secretary concludes that substantial evidence supports an affirmative determination for each of the following factors, the determination shall be that distressed status will be rescinded. The secretary shall consider whether:

(1) Operational deficits of the municipality have been eliminated and the financial condition of the municipality, as evidenced by audited financial statements prepared in accordance with generally accepted accounting principles and projections of future revenues and expenditures, demonstrates a reasonable probability of future balanced budgets absent participation in this act.

(2) Obligations issued to finance the municipality's debt have been retired, reduced or reissued in a manner that has adequately refinanced outstanding principle and interest and has permitted timely debt service and reasonable probability of continued timely debt service absent participation in this act.

(3) The municipality has negotiated and resolved all claims or judgments that would have placed the municipality in imminent jeopardy of financial default.

(4) The reasonably projected revenues of the municipality are sufficient to fund ongoing necessary expenditures, including pension and debt obligations and the continuation or negotiation of collective bargaining agreements and the provision of municipal services. Projections of revenues shall include any anticipated tax or fee increases to fund ongoing expenditures for the first five years after a termination of distressed status.

(d) Appeal.—The determination of the secretary may be appealed pursuant to 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action) by any of the following:

(1) The governing body of the municipality.

(2) A creditor of the municipality.

(3) Ten percent of the number of electors of the municipality that voted at the last municipal election.

(4) *Ten percent of the beneficiaries of a pension fund of the municipality.*

(5) *Ten percent of the employees of the municipality.*

(6) *Trustees or paying agents of a municipal bond indenture.*

(7) *Elected auditors, elected controllers or appointed independent auditors.*

(8) *A trustee of the Municipal Pension Fund.*

(9) *The chief executive officer of any city.*

(10) *A labor organization that is a party to a collective bargaining agreement with the municipality.*

(e) *Suspension of subsequent proceedings.—The coordinator and secretary shall not take any action under sections 256 and 257 until a final decision is issued for any appeal under subsection (d) or (f). The duration of distressed status of the municipality shall be extended subject to subsequent action in accordance with section 257.*

(f) *Action of the secretary preserved.—Except as otherwise provided in chapters 6 and 7, the secretary may, following a duly advertised public hearing with notices given as provided in section 203, at any time issue a determination as provided in this section upon written recommendation of the coordinator setting forth a discussion of each of the factors specified in subsection (c). The determination may be appealed in accordance with subsection (d).*

Section 256. Exit plan.

(a) *General rule.—If recommended in a final report under section 255, the coordinator shall within 90 days of the public meeting referred to in section 255 or the filing of the final report under section 255(e)(4), whichever is later, prepare an exit plan for the municipality. The exit plan shall be subject to the same filing, notice, public meeting and revision procedures as specified in section 255.*

(b) *Contents of exit plan.—The exit plan prepared by the coordinator shall contain such elements as may be necessary to ensure termination of distressed status after three years, including, but not limited to:*

(1) *The sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed municipality.*

(2) *Functional consolidation of or privatization of existing municipal services.*

(3) *The execution, approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed municipality, provided, however, that the provisions of section 252 shall apply to any exit plan adopted in accordance with this subchapter.*

(4) *Changes in the form of municipal government or the configuration of elected or appointed municipal officials and employees as permitted by law.*

(c) *Adoption of plan.—*

(1) *Not later than 45 days following the coordinator's public meeting to hear comments on the exit plan, the municipal governing body shall enact an ordinance approving the implementation of the plan, including enactment of necessary related ordinances and revisions to ordinances.*

(2) 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 shall issue an order directing the implementation of the plan no later than seven days from the enactment of the ordinance by the governing body.

(3) If the governing body fails to adopt and implement the plan, the secretary shall, upon a written determination by the coordinator, request that the Governor make a determination of a fiscal emergency in accordance with Chapter 6.

(4) The requirements of this subsection shall be suspended if the coordinator first provides a recommendation to the secretary that the municipality should be disincorporated under Chapter 4.

Section 257. Postreport procedures.

(a) Five-year procedures.—The secretary shall, upon written recommendation from the coordinator and after filing a final report under section 255, take one of the following actions:

(1) Terminate the distressed status of the municipality effective 90 days after a determination or final decision requiring termination of status as provided in section 255.1.

(2) After filing a final report containing a recommendation under section 255(a)(2), terminate the distressed status of the municipality effective on the date of a final order establishing an unincorporated district under Chapter 4.

(3) After filing a final report containing a recommendation under section 255(a)(3), request a determination of a fiscal emergency in accordance with Chapter 6.

(b) Exit plan procedures.—The secretary may, after the adoption of a plan under section 256(c) and upon written recommendation of the coordinator:

(1) issue a determination in accordance with section 255.1; or

(2) request a determination of a fiscal emergency in accordance with Chapter 6.

(c) Postexit plan procedures.—If three years have elapsed since the adoption of an exit plan without a recommendation as provided in subsection (b), the secretary shall terminate the distressed status of the municipality.

Section 20. Section 261(a) introductory paragraph and (4) of the act, amended July 5, 2012 (P.L.1104, No.133), is amended and the section is amended by adding a subsection to read:

Section 261. Filing municipal debt adjustment under Federal law.

(a) [Authorization.—In the event one of the following conditions is present, a] General authorization.—A municipality is hereby authorized to apply to the department to file a municipal debt adjustment action pursuant to the Bankruptcy Code (11 U.S.C. § 101 et seq.), **if at least one of the following conditions is present:**

[(4) A majority of the current or immediately preceding governing body of a municipality determined to be financially

distressed has failed to adopt a plan or to carry out the recommendations of the coordinator pursuant to this act.]

(a.1) Filing after determination of distress.—The municipality's authorization under subsection (a) shall continue after the issuance of a declaration of distress under section 203, so long as the municipality is not in a state of fiscal emergency pursuant to a declaration under section 602. A municipality that is in a state of fiscal emergency shall not be authorized under subsection (a) to apply to the department to file a municipal debt adjustment.

* * *

Section 21. Section 281 of the act, added June 30, 1992 (P.L.336, No.69), is amended to read:

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.

Section 22. Section 282(b) of the act, added June 30, 1992 (P.L.336, No.69), is amended and the section is amended by adding a subsection to read:

Section 282. Priority.

* * *

(b) Releases of funds.—Funds granted to a distressed municipality shall only be released upon concurrence by the coordinator *or receiver* that the program to be funded is consistent with efforts to alleviate the financially distressed status of the municipality as provided in this act.

(b.1) Release of funds to unincorporated district.—Funds granted to an unincorporated district shall be released to the administrator in accordance with section 441.

* * *

Section 23. Chapter 4 heading of the act is amended to read:

CHAPTER 4
[CONSOLIDATION OR MERGER OF] ECONOMICALLY
NONVIABLE MUNICIPALITIES

Section 24. Chapter 4 of the act is amended by adding subchapters to read:

SUBCHAPTER C
DISINCORPORATION OF NONVIABLE MUNICIPALITIES

Section 431. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrator." A service district administrator appointed pursuant to section 434.

"District." An unincorporated service district created by section 441.

"District advisory committee." A service district advisory committee established by section 442.

"Governing standards." Provisions within an essential services plan providing for certain conduct of residents and property owners as provided by section 436(c).

"Municipality." A county, city, borough, incorporated town, township or home rule municipality that does not provide police service or fire service through its employees. The term does not include a city of the first class.

"Restricted account." An account established in the State Treasury as provided by section 445.1.

Section 431.1. Determination of nonviability.

(a) General rule.—Upon recommendation of a coordinator appointed under Chapter 2 or a receiver appointed under Chapter 7, the secretary shall consider whether all of the following conditions have been met in determining that a municipality is nonviable:

(1) The municipality is unable to function as a general purpose unit of government to provide essential services to its residents and property owners.

(2) The municipality has experienced such deteriorated economic conditions and a collapse of its tax base that all reasonable efforts to restore economic viability have failed.

(3) Efforts to merge or consolidate the municipality with a neighboring municipality are unachievable or will not result in viability.

(b) Notice and recommendation.—If the secretary determines that a municipality is nonviable under all of the conditions provided in subsection (a), the secretary shall provide notice to the governing body of the municipality of the secretary's determination and recommend that the municipality be disincorporated under this subchapter.

Section 432. Procedure for disincorporation.

(a) Ordinance.—Within 45 days of a determination of nonviability under section 431.1, the governing body may enact an ordinance, subject to review by the court of common pleas under section 433, that will initiate the disincorporation of the municipality. The ordinance shall be advertised as required by law but it may not become effective until the court has issued its decree under section 433.

(b) Petition by electors.—If the governing body of the municipality fails to pass an ordinance authorized under subsection (a), then a petition signed by registered electors of the municipality comprising at least 51% of the number of electors voting for the office of Governor in the last gubernatorial general election may be submitted to the court within 60 days of the failure of the governing body to enact an ordinance as provided in subsection (a).

Section 433. Judicial review of ordinance or petition.

(a) Filing and notice.—Upon presentation to the court of the filing of an ordinance under section 432(a) or a petition under section 432(b), the court shall direct the prothonotary to give notice of the filing of the ordinance or petition in a newspaper of general circulation in the county where the municipality is located once a week for four consecutive weeks and once in the county legal journal, if any, during the four-week period. The notice shall provide the date the ordinance or petition was filed and specify that exceptions to the ordinance or petition may be filed within 45 days of the date of the filing of the ordinance or petition by any of the following:

- (1) the governing body of the municipality;**
- (2) a taxpayer of the municipality;**
- (3) any creditor or bondholder of the municipality; or**
- (4) any collective bargaining unit or contractor of the municipality.**

(b) Notice of hearing.—No later than 60 days after the date of the filing of the ordinance or petition, the court shall conduct a hearing on the ordinance or petition and exceptions filed thereto. Notice of the hearing shall be provided by the court to those receiving notice under subsection (a) and to all other parties that have filed exceptions in accordance with subsection (a).

(c) Hearing proceedings.—

(1) The governing body of the municipality and all other individuals and entities which have filed exceptions under subsection (a) shall be parties to the proceedings and shall be entitled to present testimony or other evidence relevant to the nonviability of the municipality or relevant to exceptions timely filed, provided that the court, in its discretion, may consolidate testimony related to similar exceptions.

(2) The coordinator or receiver, or another designee of the secretary, shall testify about the progress of the municipality under the adopted recovery plan under Chapter 2 or plan adopted under Chapter 7 and render an opinion regarding the viability of the municipality.

(3) The court may examine pertinent financial information and any audits prepared by a certified public accountant of the municipality and receive additional evidence relevant to the matter, including, but not limited to, evidence relating to:

(i) The effect of disincorporation, including provisions for services that would be continued to be provided to residents and property owners of the proposed disincorporated area.

(ii) Additional plans, proceedings or strategies that could ensure that the municipality remain viable.

(iii) The effect of the disincorporation on any bonds, other obligations or agreements of the municipality.

(d) Costs and fees.—Court costs and filing fees associated with proceedings under this subchapter shall be paid by the department.

(e) Judicial decree.—

(1) The court shall issue a decree approving the validity of the ordinance or granting the petition unless it finds, by clear and

convincing evidence, that the municipality should continue to exist as a separate municipal corporation because of a reasonable expectation that the municipality is viable.

(2) Upon issuance of the judicial decree, the department and governing body of the municipality shall engage in the duties required by this subchapter to prepare for disincorporation. The disincorporation shall take effect upon the execution of disincorporation under section 439.

Section 433.1. Failure to initiate disincorporation.

(a) Conditions prior to determination.—The secretary shall issue a determination under subsection (b) within 30 days of either:

(1) the final day for filing a petition under section 432(b), if judicial review under section 433 has not been initiated; or

(2) a final adjudication pursuant to a hearing held under section 433 finding that the municipality should continue to exist as a separate municipal corporation because of a reasonable expectation that the municipality is viable.

(b) Determination.—The secretary shall determine whether:

(1) the recovery plan for the municipality shall remain in effect subject to the limitations of Subchapter C.1 of Chapter 2 and, if the coordinator has previously issued a report pursuant to section 255, the secretary shall direct the coordinator to prepare an exit plan according to section 256;

(2) the elected and appointed officials of the municipality have demonstrated a failure to adequately implement recovery measures and, if so, request a determination of a fiscal emergency in accordance with Chapter 6;

(3) conditions within the municipality warrant a termination in status in accordance with section 255.1; or

(4) conditions as set forth in section 261 exist and, if so, that the governing body should initiate proceedings for Federal debt readjustment under Subchapter D of Chapter 2.

Section 434. Service district administrator.

(a) Appointment.—No later than 30 days following a decree of the court of common pleas under section 433(e), the secretary shall appoint a service district administrator. The administrator must have a minimum of five years' experience and demonstrable expertise in business, financial or State or local budgetary matters and be a resident of this Commonwealth for at least one year prior to appointment.

(b) Compensation and expenses.—The administrator's compensation and reimbursement for actual and necessary expenses shall be paid by the Commonwealth. The date and amount of compensation shall be established by the secretary. The department may require the compensation and expenses of the administrator to be reimbursed by an assessment for administrative costs under Subchapter D.

(c) Revocation and vacancy.—The secretary may the elected and appointed officials of the revoke the appointment of an administrator at any time. A vacancy in the office of the administrator by way of revocation

or resignation shall be filled in the same manner as the original appointment.

(d) Prohibitions.—An administrator may not:

(1) Seek or hold a position as any other elected or appointed public official within this Commonwealth or as a political party officer during the term of the administrator's tenure.

(2) Seek election as a public official or political party officer for one year after the person's service as administrator has ended.

(3) Engage in any conduct prohibited by the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, or 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure).

(e) Liability.—

(1) The administrator shall not be liable personally for any obligations of the municipality or unincorporated service district.

(2) It is declared to be the intent of the General Assembly that the administrator shall enjoy sovereign and official immunity as provided in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) and shall remain immune from suit except as provided by and subject to the provisions of 42 Pa.C.S. Ch. 85 Subchs. A (relating to general provisions) and B (relating to actions against Commonwealth parties).

(f) Powers and duties.—Notwithstanding any other provision of law, the administrator shall have the following powers and duties:

(1) To require the municipality to take actions necessary for disincorporation under section 439, including:

(i) The sale, conveyance, assignment or other use or disposition of the municipality's assets as provided by law.

(ii) The repayment of debt, bonds or other obligations before disincorporation.

(iii) Any other action necessary to implement the disincorporation.

(2) To seek a writ of mandamus against the governing body to carry out this subchapter.

(3) To identify essential services which should be provided to the residents and property owners of the district after the municipality is disincorporated.

(4) To approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements to provide services to the residents and property owners of the district.

(5) To deposit all funds collected to administer Subchapter D in the municipality's restricted account and to requisition moneys from the restricted account.

(6) To apply for grants, loans or payments under any economic and community development program funded by the Commonwealth.

(7) To establish fees which may be assessed to fund essential services provided by contract or intergovernmental cooperation agreements under Subchapter D.

(8) To meet and consult with the municipal governing body before disincorporation and the district advisory committee after the establishment of the district.

(9) To meet and consult with county officials to prevent, abate and mediate blight as permissible by law.

(10) To contract for professional services to aid in the administrator's duties under this subchapter and Subchapter D.

(11) To seek enforcement of any provision of this subchapter and Subchapter D.

(12) To seek invalidation of any act by the governing body of the municipality in conflict with the administrator's essential services plan.
Section 435. Powers and duties of municipality.

(a) General rule.—After the review of the court of common pleas resulting in a decree under section 433(e), but not less than 30 days before the date set by the administrator for disincorporation to take effect, the governing body of the municipality shall:

(1) Enact a budget in the municipality's projected final year that funds the municipality's functions until the date of disincorporation and provides for the payment of every current obligation of the municipality before the date of disincorporation. All remaining municipal funds as of the date of disincorporation shall be transferred to the municipality's restricted account.

(2) Provide for the transfer and administration of any municipal pension obligation to a private or public pension fund. Nothing in this paragraph shall be construed to authorize a modification of the pension benefits due to any current or past employee of the municipality.

(3) Provide for the appointment of the district advisory committee to assist the administrator after the disincorporation of the municipality.

(b) Corporate powers reserved.—After the review of the court of common pleas resulting in a decree under section 433(e) until the date of disincorporation, the governing body shall retain all corporate powers otherwise authorized by law, except that it shall not take any action inconsistent with the administrator's plan for disincorporation.

(c) Establishment of governing standards for district.—

(1) The governing body of the municipality may adopt recommended governing standards which may be included by the administrator in the essential services plan as the governing standards of the district.

(2) If the governing body adopts recommended governing standards, the following shall apply:

(i) No later than 30 days following a decree of the court of common pleas under section 433(e), the governing body shall provide written notice to the administrator that the governing body intends to adopt an ordinance containing recommended governing standards for the inclusion in the essential services plan.

(ii) No later than 60 days following the notice provided under subparagraph (i), the governing body shall adopt an ordinance containing recommended governing standards for inclusion in the

essential services plan. The ordinance may incorporate, by reference, any previously enacted ordinance of the municipality.

(d) Powers of district advisory committee authorized.—After the review of the court of common pleas resulting in a decree under section 433(e) but prior to the date of disincorporation, in addition to the powers provided for under this subchapter, the governing body of the municipality may advise the administrator in the manner provided for the district advisory committee under Subchapter D in the formation and amendment of the essential services plan.

Section 436. Essential services plan.

(a) Formation.—The administrator shall, within 90 days following appointment and in consultation with the department, develop an essential services plan to provide essential services after the date of disincorporation. The essential services plan shall provide for:

(1) Negotiation of contracts for the provision of vital and necessary services, not otherwise provided by an authority, as defined under Chapters 6 and 7. If the municipality participates in a regional police or fire department through an intergovernmental cooperation agreement, the essential services plan may provide for continued service from that regional department by contract or by renegotiating the intergovernmental cooperation agreement.

(2) Local emergency management in accordance with the plan and program of the Pennsylvania Emergency Management Agency. The administrator shall consult with the emergency management organization of the county where the district is located to develop a plan which serves the district in a substantially similar manner as plans required for a political subdivision under 35 Pa.C.S. Ch. 75 Subch. A (relating to general provisions). The plan shall include a procedure for a declaration of a disaster emergency to be made in the district and the designation of a local coordinator of emergency management. The administrator is authorized to negotiate any contracts which are necessary to provide for the execution of a plan formed under this paragraph.

(3) Payment of the lawful financial obligations of the unincorporated service district, including any transferred current obligation of the municipality and service of any debt incurred by the municipality in the manner provided by Subchapter D, after the disincorporation of the municipality.

(4) Assessment of fees as provided by Subchapter D.

(5) Disposition of all municipal property by sale, lease or conveyance for any of the following purposes:

(i) Payment of outstanding debt obligations.

(ii) Provision of services by an entity contracting with the unincorporated service district.

(iii) Possession of title by the Commonwealth as provided by Subchapter D.

(6) Termination of all contracts with the municipality.

(7) Administration of the unincorporated service district, which may include reimbursement to the department for the compensation of the administrator.

(8) Establishment of the date of disincorporation of the municipality as provided for by section 439.

(9) Establishment of the name of the district. A district established by this act shall be named "The Unincorporated District of"

(b) Restrictions.—An essential services plan may not:

(1) Provide for the levy of any taxes.

(2) Terminate an obligation to repay any debt, except that the plan may designate the unincorporated service district as the servicer of a debt and may specify that a debt secured by the collection of taxes shall be secured by the assessment of fees sufficient to satisfy the service obligations of the debt.

(3) Assess and collect a higher amount of fees in the district's first full calendar year totaling 5% more than the total taxes levied in the municipality's final year before disincorporation.

(4) Authorize the incurrence of any debt by the district, except as provided under section 441(k).

(c) Governing standards of the district.—

(1) The essential services plan shall provide for governing standards, which standards shall include:

(i) Rules and conduct related to the maintenance of property, conduct in public places and the parking of vehicles in public places which shall protect the health, safety and welfare of the residents and property owners of the district to the extent such rules and conduct could have been adopted by the municipality by ordinance.

(ii) Fines and other relief which may be granted by a court presiding over a civil action brought for a violation of the governing standards.

(2) If the governing body of the municipality adopts recommended governing standards as provided in section 435(c), the administrator shall include the recommended governing standards in the essential services plan unless the administrator finds that the recommended governing standards are unlawful, unconstitutional or would substantially impede the administration of the essential services plan.

Section 437. Proposed essential services plan.

(a) Filing.—Within 90 days of the appointment of the administrator, the administrator shall deliver true and correct copies of the proposed essential services plan 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 chief executive officer of the municipality.

(5) The chief financial officer of the municipality.

(6) The solicitor of the municipal governing body.

(b) Date of filing.—For purposes of this section, the date of filing the proposed essential services plan shall be the date on which the municipal clerk or municipal secretary places a true and correct copy of the proposed essential services plan on file for public inspection in the municipal office.

(c) Notices of proposed essential services plan.—

(1) On the date of filing, notice that a proposed essential services plan has been filed and is open for public inspection in the municipal office shall be published by the administrator 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 contain the following:

(i) A statement that a proposed essential services plan has been filed regarding the provision of essential services to the residents and property owners of the unincorporated service district which shall succeed the municipality after disincorporation.

(ii) The date and place of filing.

(iii) A statement that the public has 15 days from the date of filing in which to file written comments relating to the proposed essential services plan.

(iv) The name and address of the administrator to whom written comments should be sent.

(v) A summary of the proposed essential services plan.

(2) Notice of an administrator's public meeting on the proposed essential services plan shall be published by the administrator 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:

(i) A statement that the purpose of the administrator's public meeting is to receive public comments on the proposed essential services plan.

(ii) The date and place of the meeting.

(3) The administrator may combine the publication of the notice that a proposed essential services plan has been filed with the publication of the notice of the public meeting.

(d) Comment period.—Written comments on the proposed essential services plan may be filed with the administrator. Written comments shall be made no later than 15 days after the date of filing. Written comments judged by the administrator to have value to the proposed essential services plan may be used to develop revisions for a final essential services plan.

(e) Administrator's public meeting.—A meeting conducted by the administrator in the municipality shall be set for a date no later than 20 days after the date of filing the proposed essential services plan. The administrator shall request in writing that the chief executive officer, each member of the municipal governing body and the chief financial officer of the municipality to be present at the service administrator's meeting. At that meeting, the administrator shall:

(1) Present a summary of the proposed essential services plan.

(2) *Receive public comment on the proposed essential services plan.*

(3) *Allow the members of the governing body of the municipality to present written and oral comments requesting revisions of the proposed essential services plan.*

Section 438. Final essential services plan.

(a) *Amendment of plan.—*

(1) *The administrator shall consider all timely submitted written comments, comments presented at the public meeting and requests for revision in the amendment of the publicly presented proposed essential services plan before publishing a final essential services plan.*

(2) *In the event that the administrator does not incorporate the requests for revision by the members of the governing body of the municipality regarding the levels of services provided under the proposed essential services plan or the basis for the calculation of fees assessed under the proposed essential services plan, the administrator shall state in the proposed essential services plan why the requested revisions were not feasible to incorporate in the final essential services plan.*

(b) *Notice of final essential services plan.—Within 45 days of the public meeting, the administrator shall file the final essential services plan with the persons listed in section 437(a) and provide notice of the publication of the final essential services plan in the manner provided in section 437(c)(1)(i), (ii) and (v).*

(c) *Appeal.—*

(1) *Any person aggrieved by the final essential services plan may appeal the plan to the court of common pleas within 30 days of notice of the filing of the final essential services plan. For purposes of this section, notice shall constitute the date that the person received actual notice of the final essential services plan, or the date that notice of the filing of the final essential services plan is first published in a newspaper with general circulation serving the area in which the municipality is located.*

(2) *No appeal of a final essential services plan shall constitute an automatic stay of the essential services plan.*

(3) *The appeal shall be sustained only where the court finds that the final essential services plan is unlawful or unconstitutional, or the conduct of the administrator is arbitrary or capricious.*

Section 439. Disincorporation of municipality.

(a) *Effects of disincorporation.—On the date of disincorporation, the following shall occur:*

(1) *Notwithstanding any other provision of law, the terms of office of all elected officials of the municipality shall end and no person shall be elected or appointed to fill any vacancy of office.*

(2) *All ordinances of the municipality shall be nullified.*

(3) *All corporate powers granted to the municipality under its charter, municipal code or any other provision of law shall terminate.*

(4) *The municipality shall be deemed by operation of law to be disincorporated. The area formerly contained within the municipality*

shall be an unincorporated service district as provided under Subchapter D.

(b) Duties of administrator.—On or before the date of disincorporation, the administrator shall:

(1) Execute all contracts for the provision of services and otherwise implement the essential services plan, which shall take effect on the date of disincorporation.

(2) Provide notice of assessments to the property owners of the unincorporated service district according to the procedure provided in section 443(b), which may be a partial year assessment as provided by section 443(e).

(3) Provide notice to the Governor and all Commonwealth agencies that the municipality has been disincorporated and the date of disincorporation.

(c) Duties of county.—Effective on the date of disincorporation, notwithstanding any other provision of law, the county in which the municipality is located shall:

(1) Adopt a zoning ordinance which applies to the unincorporated service district and adopts the substantive provisions of the municipality's zoning ordinance, if any, as it was in effect before nullification by subsection (a)(2).

(2) Adopt an official map for the unincorporated service district which adopts the substance of the municipality's official map, if any, as it was in effect before nullification by subsection (a)(2).

(3) Unless the county has adopted a subdivision and land development ordinance prior to the date of disincorporation of the municipality, adopt a subdivision and land development ordinance which shall apply to any unincorporated service district within the county.

(4) Provide for the administration of the zoning ordinance and the subdivision and land development ordinance as they apply to the unincorporated service district and any other provisions of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, that may be applicable.

(5) Amend the county's comprehensive plan to the extent necessary to be consistent with the requirements of this subsection.

(d) Property succession.—Immediately following disincorporation, the area formerly contained within the municipality shall, by operation of law, be deemed an unincorporated service district under Subchapter D, the Commonwealth shall succeed in title to all property, including all real property, personal property and moneys in any municipal account, of the disincorporated municipality to be held in trust for the benefit of the residents and property owners of the unincorporated service district as provided under Subchapter D.

SUBCHAPTER D UNINCORPORATED SERVICE DISTRICT

Section 441. Establishment of unincorporated service district.

(a) General rule.—The area formerly contained within a municipality shall, after disincorporation under Subchapter C, become an unincorporated service district. The district shall be an entity of the Commonwealth established for the special purpose of providing essential services to the citizens living within the district until such time as the district is incorporated as a municipality or made a part of a merged or consolidated with an existing municipality under section 447.

(b) Authorized administrative authority.—All powers providing for the administration of the district shall be vested in the department through the administrator as provided in this subchapter. The district advisory committee shall not possess the corporate powers of the governing body of any municipality or any authority, except as provided by this subchapter.

(c) Corporate powers prohibited.—Nothing in this subchapter shall be construed as authorizing the district to exercise corporate powers for the administration of a local government, including the power to levy taxes, establish elected or appointed offices and purchase, sell or convey property, except that the residents of the district may incorporate a municipality or merge or consolidate with an existing municipality as provided for in section 447.

(d) Assets held by Commonwealth in trust.—

(1) All assets not sold by the municipality during the process of its disincorporation shall be conveyed to the Commonwealth to be held in trust for the benefit of the residents and property owners of the district.

(2) The administrator shall serve as trustee of the property and provide for the repair and maintenance of all real property and roadways held in trust for the benefit of the residents and property owners of the district through the collection of assessments under this subchapter and administration of payments distributed to the district as provided in subsection (f).

(3) Nothing in this subsection shall be construed as providing the express approval of the General Assembly to dispose of or use any lands acquired with funds under the act of June 22, 1964 (Sp.Sess., P.L.131, No.8), known as the Project 70 Land Acquisition and Borrowing Act, for purposes other than those provided by that act, except that the Commonwealth may succeed in title of the property for the limited purposes established by this subsection.

(e) Former municipal debt secured by entrusted assets.—

(1) All debt incurred by the municipality before the establishment of the district shall be held by the district for administration by the administrator. Any such debt shall be secured by the assets conveyed to the Commonwealth and held in trust under subsection (d) and serviced by fees collected under this subchapter.

(2) Nothing in this section shall be construed to authorize the Commonwealth to guarantee any debt incurred by a municipality or district with the full faith and credit of the Commonwealth, revenues from the General Fund or any other source of revenue not derived from fees assessed for the administration of this subchapter or gains from the sale of assets of the former municipality.

(f) Eligibility for State grants and programs unaffected.—

(1) A district shall be eligible to receive any financial grant, loan or payment and participate in any program for which it was eligible when it was a municipality, including, but not limited to, emergency grants and loans under Chapter 3, payments distributed pursuant to the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law, all programs administered by the Pennsylvania Infrastructure Investment Authority and all economic and community development programs funded by the Commonwealth.

(2) A district shall continue to receive priority in all economic and community development programs funded by the Commonwealth as provided for by Subchapter E of Chapter 2.

(3) The administrator may apply for and shall manage any funds distributed to the district pursuant to this section.

(g) Credit for fees assessed.—The payment of fees under this subchapter by a resident of a district shall constitute a credit against the collection of any income tax by a municipality on nonresidents, if applicable.

(h) Relationship with existing municipal and other authorities preserved.—

(1) All authorities established to provide services to the residents and property owners of a municipality prior to disincorporation shall continue to serve the residents and property owners of a district, and all members of the authority appointed by the governing body of the municipality prior to disincorporation shall continue to serve out the remainder of the members' terms.

(2) Notwithstanding the provisions of 53 Pa.C.S. § 5607 (relating to purposes and powers) or any other provision of law, subsequent appointments to the authority board which would otherwise be made by the governing body of the municipality shall be made by the administrator in consultation with the district advisory committee.

(i) Governing standards enforceable.—

(1) The governing standards included in the essential services plan shall be enforceable by the filing of a civil action by the administrator or any aggrieved property owner or resident of the district.

(2) A violation of the governing standards shall constitute a public nuisance.

(3) A magisterial district court or another court of competent jurisdiction presiding over a civil action brought under this subsection may find relief for the filing party according to the relief provided for in the essential services plan or any other relief which is available by law for the abatement of a public nuisance.

(j) Pennsylvania Construction Code applicable.—

(1) The act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, shall apply to all construction, alteration, repair and occupancy of all buildings within the district as though the district were a municipality which opted not to adopt the uniform construction code by ordinance.

(2) The administrator shall receive any application for a construction permit and provide appropriate notices to an applicant of a

construction permit and the Department of Labor and Industry as provided under section 501(e) of the Pennsylvania Construction Code Act.

(k) Incurrence of debt limited.—The district shall not incur debts not provided for in subsection (e), except that the administrator may utilize such mechanisms as are necessary to incur temporary debts, or make purchases on credit, on behalf of and for the limited purpose of managing the cash flow for the district. All obligations incurred under this subsection shall be satisfied in full within one year and secured only by the anticipation of the collection of assessments under section 443. Section 442. Service district advisory committee.

(a) Establishment.—Each service district shall establish a service district advisory committee.

(b) Composition.—The district advisory committee shall be composed of three persons who are at least 18 years of age, including two resident property owners of the district and one owner of a business within the district, if any, who may or may not be a resident of the district.

(c) Appointment by governing body.—At least 30 days prior to the date of disincorporation, the governing body of the former municipality shall appoint three members of the district advisory committee. The governing body shall designate that one appointee serve a term of one year, one appointee serve a term of two years and one appointee serve a term of three years.

(d) Vacancy.—At the expiration of the term of a member of the district advisory committee, the remaining members of the committee shall appoint a person to fill the vacancy. In the event that the remaining members of the committee are unable to agree on a person to fill the vacancy or there is more than one vacancy, the administrator shall select a person or persons to fill the vacancy. All persons appointed to fill a vacancy on the district advisory committee shall have a term of three years beginning on the date of appointment.

(e) Advise administrator.—The district advisory committee shall, at least once every three months, meet with the administrator and may make recommendations to the administrator for revisions to the essential services plan, including revisions to the levels of services provided to the residents and property owners of the district and methodology of rate calculation. The administrator shall consider all recommendations of the district advisory committee.

(f) Advise county on land-use issues.—The district advisory committee may provide recommendations on behalf of the residents and property owners of the district to any county official regarding any land-use-related matter.

(g) Advise department on incorporation.—The district advisory committee may provide recommendations to the department at any time that the residents of the district and the department consider the feasibility of incorporating as a viable municipality or merger or consolidation with an existing municipality.

(h) Recommended amendment of governing standards.—

(1) Amendments to the governing standards may be recommended by a majority vote of the district advisory committee or by a petition signed by registered electors of the municipality comprising at least 10% of the number of electors voting for the office of Governor in the last gubernatorial general election.

(2) Upon receipt of a recommendation made under this subsection, the administrator shall include the recommended amendments to the governing standard as a proposed plan amendment under section 444, unless the administrator finds that the recommended amendment of the governing standards is unlawful, unconstitutional or would substantially impede the administration of the essential services plan.

(i) Restrictions.—The district advisory committee shall have no authority to act as a municipal governing body.

(j) Open meetings.—The district advisory committee shall be an agency for purposes of the open meeting provisions of 65 Pa.C.S. Ch. 7 (relating to open meetings).

Section 443. Assessments.

(a) Authority to assess.—The administrator may establish assessments on a front foot or benefit-conferred basis, or a combination of both, on all real property within the district to provide for:

(1) The cost of all essential services provided to the district.

(2) The service of all debts held in trust by the Commonwealth which were incurred by the former municipality prior to disincorporation.

(3) The necessary construction, maintenance or repair of facilities or properties which have been conveyed to the Commonwealth and are held in trust for the benefit of the district.

(4) Reimbursement to the department of its reasonable costs of administration of the district, including, but not limited to, the compensation of the administrator and the collection of assessments authorized under this section.

(5) Other costs incurred by the district or administrator in the execution of this subchapter, including a reserve of no more than 15% of the annual estimated costs of the essential services plan in the restricted account established in section 445 to provide for the provision of unforeseeable costs.

(b) Establishment of assessment.—

(1) No later than October 1 of the year preceding the year for which the assessment applies, the administrator shall establish a schedule of assessment for all real property within the unincorporated district.

(2) The administrator shall provide written personal notice to each property owner of each property of the assessment due for the ensuing year no later than November 1 of the year preceding the year for which the assessment applies.

(3) As used in this subsection, "personal notice" shall mean and include notice upon the owner of a property either by personal service upon the owner or by certified mail to the owner at the owner's last known address or where service, after a reasonable attempt, shall not

have been successfully made by either of these two methods, then by leaving notice at or upon the property.

(c) Appeal of assessment.—Any person wishing to challenge the reasonableness of the assessment may file a suit in the court of common pleas within 30 days of receiving the notice provided in subsection (b).

(d) Payment of assessments.—Payment of the assessment in full shall be due no later than March 1, unless the administrator has provided for installment payments in accordance with subsection (e).

(e) Installments.—The administrator may provide for the payment of assessments by equal installments on a quarterly or semiannual basis as follows:

(1) The administrator shall provide written personal notice of the installment plan to owners containing the date installments are due, interest and prepayment.

(2) The rate of interest for the installments shall be established by the administrator at a rate of 6% per year.

(3) If any of the installments remain unpaid for 60 days after the same has become due and payable, the entire unpaid assessment, plus unpaid accrued interest and any costs, shall be due and payable, and the administrator shall proceed to collect the assessment due as provided in subsection (g).

(4) A property owner upon whom an assessment has been made may pay all or as many of the installments before the same are due, with interest and costs to the due date of the next installment.

(f) First-year assessment.—The administrator may provide for a partial assessment for the calendar year in which the disincorporation of the municipality occurs. The due date for a partial-year assessment and installment schedule may be set by the administrator, provided that no assessment shall be due sooner than 60 days after the administrator provides written personal notice of the assessment under the procedure in subsection (a).

(g) Delinquent assessments.—Assessments remaining unpaid on December 31 of the year in which they are due shall be delinquent and subject to interest at a rate of 10% per year from the date of filing as a lien in accordance with the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law.

(h) Liens.—An assessment, together with all charges, expenses and fees, including reasonable attorney fees necessary for its collection, shall be a lien upon the real property benefited. The lien shall have the same priority and may be collected in the same manner as a municipal lien in accordance with the Municipal Claim and Tax Lien Law or through a civil action initiated by the administrator.

(i) Limited assessment of public property.—An assessment under this section on property held by the Federal Government, the Commonwealth and any other public property shall be limited to an assessment for those services which are directly consumed by the property, including, but not limited to, water service, sewer service and waste collection.

Section 444. Amendment of essential services plan.

(a) Periodic review.—No less than once per year, the administrator shall meet with the district advisory committee to consider the adequacy of the essential services plan and consider any request for revision of the essential services plan made by the district advisory committee.

(b) Filing of amendment.—The administrator may file a proposed essential services plan amendment with the secretary and each member of the district advisory committee at any time. The district advisory committee may request a public meeting to consider the amendment within five days of the filing of a proposed essential services plan amendment.

(c) Notice of amendment.—No later than the date that the administrator files the proposed essential services plan amendment, the administrator shall provide notice to the public of the amended essential services plan using the procedure provided for by section 437(c)(1). If the district advisory committee requests a public hearing, the administrator shall schedule a public meeting within 30 days of the date that the proposed essential services plan amendment was filed and provide notice of the public meeting using the procedure provided for by section 437(c)(2).

(d) Comment period.—Written comments on the proposed essential services plan amendment may be filed with the administrator. Written comments must be made no later than 15 days after the date of filing. Written comments judged by the administrator to have value to the essential services plan may be used to develop revisions for a final essential services plan amendment.

(e) Administrator's public meeting.—If a public meeting is scheduled at the request of the district advisory committee, the administrator shall request in writing that the members of the district advisory committee be present at the administrator's meeting. At that meeting, the administrator shall:

(1) Present a summary of the proposed essential services plan amendment.

(2) Receive public comment on the proposed essential services plan amendment.

(3) Allow the members of the district advisory committee to present written and oral comments requesting revisions of the proposed essential services plan amendment.

(f) Final essential services plan amendment.—The administrator shall consider all timely submitted written comments, comments presented at the public meeting and requests for revision in the amendment of the publicly presented proposed essential services plan before filing a final essential services plan amendment. In the event that the administrator does not incorporate the requests for revision by the district advisory committee regarding the levels of services provided under the essential services plan or the basis for the calculation of fees assessed under the essential services plan, the administrator shall state in the essential services plan amendment why the requested revisions were not feasible to incorporate in the final essential services plan.

(g) Emergency essential services plan amendment.—Notwithstanding the requirements provided by this section for the adoption of a final

essential services plan amendment, where the secretary finds that there is or will be an imminent threat to public safety, human health or the environment, the secretary may provide a waiver to the administrator allowing the administrator to immediately publish an emergency essential services plan amendment. An emergency essential services plan amendment shall take effect immediately.

(h) Notice of final essential services plan amendment.—The administrator shall provide notice of the publication of the final essential services plan amendment or emergency essential services plan amendment in the manner provided in section 437(c)(1)(i), (ii) and (v). Upon providing notice as required by this chapter, the administrator may execute any contract necessary to administer the essential services plan, as amended.

(i) Appeal.—

(1) Any person aggrieved by a final essential services plan amendment or emergency essential services plan amendment may appeal the final essential services plan amendment to the court of common pleas within 30 days of notice of the filing of the final essential services plan amendment.

(2) For purposes of this section, notice shall constitute the date that the person received actual notice of the final essential services plan amendment, or the date that notice of the filing of the final essential services plan amendment is first published in a newspaper with general circulation serving the area in which the municipality is located.

(3) An appeal of a final essential services plan amendment shall be limited to the amended portion of the essential services plan.

(4) No appeal of a final essential services plan amendment shall constitute an automatic stay of any portion of the essential services plan.

(5) The appeal shall be sustained only where the court finds that the final essential services plan amendment is unlawful or unconstitutional, or the conduct of the administrator is arbitrary or capricious.

Section 445. Unincorporated Service District Trust Fund.

(a) Establishment.—There is hereby established a special fund in the State Treasury, separate and apart from all other public moneys or funds of the Commonwealth, to be known as the Unincorporated Service District Trust Fund. The purpose of this fund shall be to hold moneys from unincorporated service districts and pay for the expenses and obligations of administrators, unincorporated service districts and the department pursuant to Subchapter C. The department shall allocate funds specific to a district in a restricted account pursuant to section 445.1.

(b) Appropriation.—As much as may be necessary of such moneys and interest in the special fund established under subsection (a) is hereby appropriated for the purposes authorized by this subchapter.

Section 445.1. Restricted accounts.

(a) Establishment.—There is established in the Unincorporated Service District Trust Fund a restricted account for each unincorporated service district. The administrator for each district shall deposit all moneys collected by assessments, delinquent municipal tax receipts and proceeds

from the sale of municipal assets authorized under this subchapter into the restricted account not later than 30 days after collection. Any interest accrued on the account shall be credited to the account for purposes of meeting the requirements of this subchapter. The restricted account shall be used to pay for the expenses and obligations of the administrator and the unincorporated service district. The department may pay for the compensation and expenses of the administrator from the restricted account.

(b) Appropriation.—As much as may be necessary of such moneys and interest in the restricted account established under subsection (a) is hereby appropriated for the purposes authorized by this subchapter.

Section 446. Audit.

The Auditor General shall conduct an annual audit of the district. The audit shall include a review of the services rendered under the essential services plan, the proceeds generated by the assessments levied pursuant to section 443 and all transactions made by the administrator on behalf of the district.

Section 447. Merger and consolidation; incorporation of municipal corporation.

(a) Merger and consolidation.—

(1) For the limited purpose of merging or consolidating with one or more surrounding municipalities under 53 Pa.C.S. Ch. 7 Subch. C (relating to consolidation and merger), the residents of the district may file a petition with the county board of elections as provided in 53 Pa.C.S. §§ 735 (relating to initiative of electors seeking consolidation or merger without new home rule charter) and 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter).

(2) Residents of the district may be nominated to, and serve on, a commission formed to study merger or consolidation of the district with one or more municipalities.

(3) Upon favorable action by the electorate on consolidation or merger, the administrator, in consultation with the district advisory committee, may enter into a merger or consolidation agreement with the governing bodies of other municipalities in accordance with 53 Pa.C.S. § 737 (relating to consolidation or merger agreement) and shall provide for the transition of the district into a consolidated or merged municipality with the same powers and duties as provided by law to governing bodies of municipalities.

(4) The administrator may expend district funds to the extent authorized by law for the purpose of merger, consolidation or incorporation as provided in subsection (b).

(b) Incorporation as municipality.—If the secretary determines that the district could be incorporated as a viable municipality, the residents of the district may establish or incorporate the territory of the district as a municipality as provided by law.

(c) Grants permitted.—The department may issue any loan or grant authorized under Chapter 3 to a merged, consolidated or subsequently

incorporated municipality, including the territory of the district, to provide transitional assistance.

(d) Assets in trust.—All assets conveyed to the Commonwealth to be held in trust, not otherwise transferred under the essential services plan or sold to repay the debt of the former municipality, shall be conveyed to a merged, consolidated or subsequently incorporated municipality, including the territory of the district.

(e) Assumption of debt.—All debt obligations held in trust by the Commonwealth on behalf of the former municipality for service by a district shall be assumed by a merged, consolidated or subsequently incorporated municipality, including the territory of the district.

Section 25. Chapter 5 of the act is repealed:

**[CHAPTER 5
FUNDING**

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.]

Section 26. Chapter 6 heading of the act, added October 20, 2011 (P.L.318, No.79), is amended to read:

**CHAPTER 6
FISCAL EMERGENCIES IN [CITIES OF THE
THIRD CLASS] MUNICIPALITIES**

Section 27. Sections 601, 602 and 603 of the act, added October 20, 2011 (P.L.318, No.79), are amended to read:

Section 601. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authority." A municipal authority, parking authority or any other authority or corporate entity that is directly or indirectly controlled by a distressed [city] *municipality* or to which a distressed [city] *municipality* has power of appointment. The term shall not include a joint municipal authority.

["City." A city of the third class.]

"Debt obligations." Any obligation to pay money, including amounts owed for payments relating to lease rental debt, debt service, bonds, notes, guarantees for bonds or notes, trust indentures, contracts or other agreements.

"Distressed [**city**] *municipality*." A [**city**] *municipality* which has been determined to be financially distressed under section 203(f).

"Fiscal emergency." A determination made by the Governor under section 602(b).

"Insolvent." Unable to meet all financial obligations as they become due, including payment of debt obligations.

"*Municipality.*" *A municipality as defined in section 103, other than a city of the first class.*

"Vital and necessary services." Basic and fundamental municipal services, including any of the following:

- (1) Police and fire services.
- (2) Ambulance and rescue services.
- (3) Water supply and distribution.
- (4) Wastewater services.
- (5) Refuse collection and disposal.
- (6) Snow removal.
- (7) Payroll and pension obligations.
- (8) Fulfillment of payment of debt obligations or any other financial obligations.

Section 602. Declaration of fiscal emergency.

(a) Fiscal emergency.—The Governor determines a fiscal emergency exists if the distressed [**city**] *municipality*:

- (1) (i) is insolvent or is projected to be insolvent within 180 days or less; **[or] and**
 - (ii) is unable to ensure the continued provision of vital and necessary services; **[and] or**
- (2) **[(i)]** has failed to adopt or implement:
 - (i) the coordinator's plan *in accordance with Subchapter C or C.1 of Chapter 2*; or
 - (ii) **[has failed to adopt or implement]** an alternative plan that the secretary has approved under section 246.

(b) Governor.—Upon making a determination that a state of fiscal emergency exists, the Governor may declare a state of fiscal emergency within the distressed [**city**] *municipality*. Immediately upon making the declaration, the Governor shall:

- (1) Provide written notice of the declaration to the governing body and, *if applicable, the* chief executive officer of the distressed [**city**] *municipality* along with a concise statement of facts supporting the determination.
- (2) Direct the secretary to, within ten days of the Governor's declaration, develop an emergency action plan to ensure that vital and necessary services are maintained within the [**city**] *municipality* during the state of fiscal emergency.

(c) Secretary.—In developing the emergency action plan, the secretary shall consider the financial plan prepared by the coordinator under Subchapter C of Chapter 2 and any other available plan or information the secretary deems appropriate and may employ financial or legal experts to assist in addressing the fiscal emergency. Notwithstanding any law to the

contrary, the employment of such experts shall not be subject to contractual competitive bidding procedures.

Section 603. Notification by the secretary.

(a) Notice.—Upon completion of the emergency action plan, the secretary shall cause the plan to be posted on the department's *publicly accessible* Internet website and shall provide written notice of the emergency action plan by overnight delivery service, providing proof of receipt, to all members of the governing body and, *if applicable*, the chief executive officer of the distressed [city] *municipality*.

(b) Publication.—The secretary shall publish once in a newspaper of general circulation notice that the emergency action plan has been completed. The notice shall specify the *publicly accessible* Internet address of the department's website where the plan is posted.

Section 28. Sections 604, 605, 606, 607, 608, 609 and 610 of the act, added October 20, 2011 (P.L.318, No.79), are amended to read:

Section 604. Powers of the Governor.

(a) Powers.—During the state of fiscal emergency, the Governor may exercise the authority of the elected or appointed officials of the distressed [city] *municipality* or authority as necessary to ensure the provision of vital and necessary services and may delegate the authority to the secretary or a designee of the secretary. The emergency powers of the Governor shall include the following:

(1) The power to collect funds payable to the distressed [city] *municipality* and authority and use those funds to pay for vital and necessary services.

(2) The power to obtain emergency financial aid for the distressed [city] *municipality* and authority under Chapter 3 to pay for vital and necessary services.

(3) The power to enter into contracts and agreements on behalf of the distressed [city] *municipality* and authority to pay for vital and necessary services.

(4) The power to modify the emergency action plan as necessary to ensure the provision of vital and necessary services.

(5) Any other power of the elected or appointed officials of the distressed [city] *municipality* or authority to ensure the provision of vital and necessary services.

(b) Orders.—The Governor may issue an order to an elected or appointed official of the distressed [city] *municipality* or an authority to implement any provision of the emergency action plan or refrain from taking any action that would interfere with the powers granted to the Governor or the goals of the plan. An order issued under this subsection shall be enforceable under section 606.

(c) Authorization prohibited.—Neither this chapter nor the emergency action plan shall be interpreted to authorize the Governor to:

(1) Unilaterally levy taxes.

(2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:

(i) held by a holder of a debt obligation of a distressed [city] *municipality*; and

(ii) granted by the contract, law, rule or regulation governing the debt obligation.

(3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed [city] *municipality* or authority[, **except as otherwise ordered by a court of competent jurisdiction**].

(4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed [city] *municipality* or authorities in a manner contrary to section 707.

(5) Pledge the full faith and credit of the Commonwealth.

Section 605. Elected and appointed officials.

During a fiscal emergency, the authorities and appointed and elected officials of the distressed [city] *municipality* shall continue to carry out the duties of their respective offices, except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor under section 604.

Section 606. Mandamus.

The Governor may petition Commonwealth Court to issue a writ of mandamus upon any elected or appointed official of the distressed [city] *municipality* or authority to secure compliance with an order issued under section 604(b). The court shall grant the relief requested within 14 days of the filing of the petition if it determines that the order was issued in compliance with this chapter.

Section 607. Consent agreement.

(a) Negotiations.—Within eight days of the declaration of a fiscal emergency, the governing body and, *if applicable, the* chief executive officer of the distressed [city] *municipality* shall convene a special public meeting to negotiate a consent agreement. The meeting shall be attended by the secretary or secretary's designee. Negotiations among creditors and any of the parties in this subsection shall be conducted in accordance with section 223(b).

(b) Contents.—

(1) The consent agreement shall incorporate a plan setting forth measures designed to provide long-term financial stability to the distressed [city] *municipality* after the termination of the fiscal emergency.

(2) The consent agreement shall include all of the following:

(i) Continued provision of vital and necessary services.

(ii) Payment of the lawful financial obligations of the distressed [city] *municipality* and authority. This subparagraph includes debt obligations, municipal securities, lease rental obligations, legal obligations and consensual modifications of existing obligations, except as otherwise ordered by a court of competent jurisdiction.

(iii) Timely deposit of required payments to the pension fund for the distressed [city] *municipality* and each authority or the fund in which the distressed [city] *municipality* and each authority participates.

(iv) Legislative and administrative actions to be taken by the elected or appointed officials of the distressed [city] *municipality* during the term of the consent agreement.

(3) The consent agreement may include:

(i) The sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed [city] *municipality* or authority.

(ii) Approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed [city] *municipality* or authorities.

(iii) Execution of new contracts or agreements.

(4) The consent agreement may not include any of the following:

(i) Projections of revenue from a tax or tax rate not currently authorized by law.

(ii) Provisions that unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority, that is:

(A) held by a holder of a debt obligation of a distressed [city] *municipality*; and

(B) granted by the contract, law, rule or regulation governing the debt obligation.

(iii) Provisions that unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed [city] *municipality* or authority[, **except as otherwise ordered by a court of competent jurisdiction**].

(iv) Provisions that authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed [city] *municipality* or authorities in a manner contrary to section 707.

(v) Any increase in the rate of an earned income tax imposed on nonresident workers.

(c) Ordinance.—Notwithstanding any law to the contrary, the following shall apply:

(1) Upon approval by a majority vote of the governing body of the distressed [city] *municipality*, the consent agreement shall be presented to the secretary within 20 days of the declaration of fiscal emergency.

(2) The secretary shall approve or disapprove the consent agreement within three days.

(3) If the secretary determines that the consent agreement is sufficient to overcome the distressed [city's] *municipality's* financial distress and approves the agreement, the governing body shall enact the consent agreement in the form of an ordinance within seven days of approval by the secretary.

(4) The ordinance shall provide that, in the event of a breach or unilateral modification of the consent decree by the governing body or an elected or appointed official, the Governor may institute or reinstitute proceedings under Chapter 7.

(d) Consent to proceedings under Chapter 7.—In addition to breach or modification of the consent agreement under subsection (c), the following shall be deemed consent to proceedings under Chapter 7:

(1) Failure of the governing body of the distressed [city] *municipality* to convene or the failure of a quorum of the governing body to participate in a special public meeting required by subsection (a).

(2) Failure of the governing body or, *if applicable, the* chief executive officer to enact a valid ordinance under subsection (c).

(3) Failure of the distressed [city] *municipality* to comply with the consent agreement or provision of an ordinance enacted under subsection (c).

(4) Enactment by the distressed [city] *municipality* of an amendment to the ordinance enacted in subsection (c) in violation of subsection (e).

(e) Amendment.—The ordinance may be amended upon the approval of the secretary.

(f) Collective bargaining.—A collective bargaining agreement or arbitration settlement executed following the enactment of an ordinance under this section may not in any manner violate, expand or diminish the provisions of the consent agreement, *provided, however, that the provisions of section 252 shall apply to any consent agreement adopted in accordance with this subchapter.*

Section 608. Termination of fiscal emergency and suspension of powers.

(a) [Financial] *Fiscal* emergency.—A fiscal emergency shall end upon certification by the secretary that the [city is no longer financially distressed.] *municipality*:

(1) *is solvent and is not projected to be insolvent within 180 days or less; and*

(2) *is able to ensure the continued provision of vital and necessary services after the termination of the fiscal emergency.*

(b) Governor's powers.—The emergency powers of the Governor under this chapter shall be suspended upon the enactment and continued implementation of an ordinance under section 607 or entry of a judicial order appointing a receiver under section 702.

Section 609. Restrictions.

(a) Earned income tax on nonresidents.—A distressed [city] *municipality* subject to this chapter or Chapter 7 may not petition a court of common pleas for an increase in the rate of an earned income tax imposed on nonresident workers under section 123(c) [until the secretary terminates the distress status of the city under section 253].

(b) Municipal debt adjustment.—A distressed [city] *municipality* subject to this chapter or Chapter 7 may not file a municipal debt adjustment action under the Bankruptcy Code (11 U.S.C. § 101 et seq.) except to the extent authorized under Chapter 7.

Section 610. Applicability.

(a) Statement.—

(1) This chapter shall apply only to distressed [cities] *municipalities*.

(2) Except as set forth in subsection (b), nothing in this chapter is intended to limit or otherwise abrogate the applicability of any other part of this act.

(b) Conflict.—If there is a conflict between a provision of this chapter and any other provision of this act, the provision of this chapter shall prevail.

Section 29. Chapter 7 heading of the act, added October 20, 2011 (P.L.318, No.79), is amended to read:

CHAPTER 7
RECEIVERSHIP IN [CITIES OF THE
THIRD CLASS] *MUNICIPALITIES*

Section 30. Sections 701, 702, 703, 704, 705(g), 706, 707, 708, 709 and 710 of the act, added October 20, 2011 (P.L.318, No.79), are amended to read:

Section 701. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authority." A municipal authority, parking authority or any other authority or corporate entity that is directly or indirectly controlled by a distressed [city] *municipality* or to which a distressed [city] *municipality* has power of appointment. The term shall not include a joint municipal authority.

["City." A city of the third class.]

"Debt obligations." Any obligation to pay money, including amounts owed for payments relating to lease rental debt, debt service, bonds, notes, guarantees for bonds or notes, trust indentures, contracts or other agreements.

"Distressed [city] *municipality*." A [city] *municipality* which has been determined to be financially distressed under section 203(f).

"Fiscal emergency." A determination made by the Governor under section 602(b).

"Insolvent." Unable to meet all financial obligations as they become due, including payment of debt obligations.

"Vital and necessary services." Basic and fundamental municipal services, including any of the following:

- (1) Police and fire services.
- (2) Ambulance and rescue services.
- (3) Water supply and distribution.
- (4) Wastewater services.
- (5) Refuse collection and disposal.
- (6) Snow removal.
- (7) Payroll and pension obligations.
- (8) Fulfillment of payment of debt obligations or any other financial obligations.

Section 702. Receivership.

(a) Receiver.—Following the issuance of a declaration of fiscal emergency under section 602(b), the Governor may direct the secretary to file a petition in Commonwealth Court to appoint the individual named in the petition as a receiver for the distressed [city] *municipality*. The court shall have no authority to appoint anyone other than the individual named in the petition as the receiver.

(b) Service and notice.—

- (1) The secretary shall serve the petition upon:
 - (i) the governing body of the distressed **[city] municipality**;
 - (ii) the chief executive officer of the distressed **[city] municipality**; and
 - (iii) the governing body of each authority.
- (2) The secretary must publish notice of the filing of the petition once in a newspaper of general circulation.
- (c) Hearing.—Upon notification of the Governor of the failure of the distressed **[city] municipality** to adopt a valid ordinance under section 607, Commonwealth Court shall conduct a hearing within 15 days on the petition.
- (d) Determination.—No later than 60 days following the filing of a petition under this section, the court shall issue an order under subsection (e) if it finds by a preponderance of the evidence that all of the following apply:
 - (1) Thirty days have passed since the declaration of a fiscal emergency.
 - (2) There has been a failure by:
 - (i) the governing body of the distressed **[city] municipality** to adopt an ordinance under section 607;
 - (ii) the governing body of the distressed **[city] municipality** to implement an ordinance under section 607; **[or]**
 - (iii) an elected or appointed official of the distressed **[city] municipality**¹ or authority to strictly comply with an order issued by the Governor under section 604[.]; **or**
 - (iv) *(Reserved)*.
 - (3) A fiscal emergency under section 602(a) continues to exist.
- (e) Order.—An order issued under this subsection shall:
 - (1) set forth the findings under subsection (d);
 - (2) grant the petition and declare the distressed **[city] municipality** to be in receivership;
 - (3) appoint the individual named in the petition to be the receiver for a period not to exceed two years, subject to extension under section 710(b);
 - (4) direct the receiver to develop a recovery plan within 30 days under section 703 and submit it to the court, the secretary, the governing body and, **if applicable**, the chief executive officer of the distressed **[city] municipality**; and
 - (5) require and empower the receiver to implement the emergency action plan developed by the secretary under section 602 until a recovery plan developed by the receiver is approved by the court under section 703.
- (f) Additional actions.—
 - (1) The Governor may direct the secretary to file a petition in Commonwealth Court to appoint an individual named in the petition as a receiver for the distressed **[city] municipality** if the distressed **[city] municipality** fails to comply with or has amended the ordinance without the approval of the secretary under section 607(d)(3) or (4).

¹the distressed city" in enrolled bill.

(2) The court shall conduct a hearing on the petition under paragraph (1) within 15 days of the filing of the petition.

(3) No later than 60 days following the filing of the petition under paragraph (1), the court shall issue an order under subsection (e) if it finds by a preponderance of the evidence that the distressed **[city] municipality** has failed to comply with section 607(d)(3) or (4).

Section 703. Recovery plan.

(a) Issuance.—Within 30 days of the appointment of the receiver, the recovery plan required under section 702(e)(4) shall be furnished to Commonwealth Court, the secretary and the governing body and, *if applicable*, the chief executive officer of the distressed **[city] municipality**.

(b) Contents.—The receiver shall consider the plan prepared by the coordinator under section 241 and any other existing alternate plans in the development of the recovery plan. The following shall apply:

(1) The recovery plan shall provide for all of the following:

(i) Continued provision of vital and necessary services.

(ii) Payment of the lawful financial obligations of the distressed **[city] municipality** and authorities. This subparagraph includes debt obligations, municipal securities, lease rental obligations, legal obligations and consensual modifications of existing obligations.

(iii) Timely deposit of required payments to the pension fund in which the distressed **[city] municipality** and each authority participates.

(2) The recovery plan may include:

(i) the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed **[city] municipality** or authority;

(ii) the approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed **[city] municipality** or authorities, except to the extent prohibited by the Constitutions of the United States and Pennsylvania;

(iii) the execution of new contracts or agreements; and

(iv) other information the receiver deems appropriate.

(c) Restrictions.—The recovery plan may not do any of the following:

(1) Unilaterally levy taxes.

(2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:

(i) held by a holder of a debt obligation of a distressed **[city] municipality**; and

(ii) granted by the contract, law, rule or regulation governing the debt obligation.

(3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed **[city] municipality** or authority[, **except as otherwise ordered by a court of competent jurisdiction**].

(4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed **[city] municipality** or authority in a manner contrary to section 707.

(d) Confirmation.—Commonwealth Court shall conduct a hearing on the recovery plan within 30 days of the receipt of the plan from the receiver. The court shall confirm the plan within 60 days of the receipt of the plan unless it finds clear and convincing evidence that the plan is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency in the distressed **[city] municipality**.

(e) Modification of plan.—The receiver shall notify the Commonwealth Court of any modification to the plan. The court may conduct a hearing on the modification within 30 days of its receipt. The court shall confirm the modification within 60 days of receipt of notification of the modification unless it finds clear and convincing evidence that the recovery plan as modified is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency in the distressed **[city] municipality**.

Section 704. Confirmation.

(a) Effect of confirmation.—The confirmation of the recovery plan and any modification to the receiver's plan under section 703 shall have the effect of:

(1) imposing on the elected and appointed officials of the distressed **[city] municipality** or an authority a mandatory duty to undertake the acts set forth in the recovery plan;

(2) suspending the authority of the elected and appointed officials of the distressed **[city] municipality** or an authority to exercise power on behalf of the distressed **[city] municipality** or authority pursuant to law, charter, ordinance, rule or regulation to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan; and

(3) superseding the emergency action plan developed by the secretary under section 602.

(b) Form of government.—Confirmation of the recovery plan and any modification to the plan under section 703 shall not be construed to:

(1) change the form of government of the distressed **[city] municipality** or an authority; or

(2) except as set forth in subsection (a), affect powers and duties of elected and appointed officials of the distressed **[city] municipality** or an authority.

(c) Collective bargaining.—A collective bargaining agreement or arbitration settlement executed after confirmation of a recovery plan may not, in any manner, violate, expand or diminish the provisions of the recovery plan, *provided, however, that the provisions of section 252 shall apply to any recovery plan adopted in accordance with this chapter*.

Section 705. Receiver.

* * *

(g) Liability.—The receiver shall not be liable personally for any obligations of the distressed **[city] municipality** or authority. It is declared to be the intent of the General Assembly that the receiver shall enjoy sovereign and official immunity as provided in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) and shall remain immune from suit except as provided by and subject to the provisions of 42 Pa.C.S. Ch. 85

Subchs. A (relating to general provisions) and B (relating to actions against Commonwealth parties).

Section 706. Powers, duties and prohibited actions.

(a) Powers and duties.—Notwithstanding any other provision of law, the receiver shall have the following powers and duties:

(1) To require the distressed **[city] municipality** or authority to take actions necessary to implement the recovery plan under section 703.

(2) To modify the recovery plan as necessary to achieve financial stability of the distressed **[city] municipality** and authorities in accordance with section 703.

(3) To require the distressed **[city] municipality** or authority to negotiate intergovernmental cooperation agreements between the distressed **[city] municipality** and other political subdivisions in order to eliminate and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services.

(4) To submit quarterly reports to the governing body and, *if applicable*, the chief executive officer of the distressed **[city] municipality** and to the department. The reports shall be posted on **[the] a publicly accessible** Internet website **[for] maintained by** the distressed **[city] municipality**.

(5) To require the distressed **[city] municipality** or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed **[city's] municipality's** or authority's assets in accordance with section 707.

(6) To approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements with the distressed **[city] municipality** or authority, except to the extent prohibited by the Constitutions of the United States and Pennsylvania.

(7) To direct the distressed **[city] municipality** or authority to take any other action to implement the recovery plan.

(8) To attend executive sessions of the governing body of the distressed **[city] municipality** or authority and make reports to the public on implementation of the recovery plan.

(9) **[After July 1, 2012, to] To** file a municipal debt adjustment action under the Bankruptcy Code (11 U.S.C. § 101 et seq.) and to act on the **[city's] municipality's** behalf in the proceeding. The power under this paragraph shall only be exercised upon the written authorization of the secretary. The filing of a municipal debt adjustment action under this paragraph and any plan of the receiver accepted by the Federal court shall be considered a modification of the recovery plan, except that the modification shall not be subject to judicial review under section 709. A recovery plan submitted to and approved by the Federal court under a Federal municipal debt adjustment action may include Federal remedies not otherwise available under this chapter.

(10) To meet and consult with the advisory committee under section 711.

(11) To employ financial or legal experts deemed necessary to develop and implement the recovery plan. Notwithstanding any law to the

contrary, the employment of such experts shall not be subject to contractual competitive bidding procedures.

(12) To make a recommendation to the secretary that the municipality be disincorporated in accordance with Chapter 4.

(b) Authorization prohibited.—Neither this chapter nor the recovery plan shall be interpreted to authorize the receiver to do any of the following:

(1) Unilaterally levy taxes.

(2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:

(i) held by a holder of a debt obligation of a distressed **[city] municipality**; and

(ii) granted by the contract, law, rule or regulation governing the debt obligation.

(3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed **[city] municipality** or authority[, **except as otherwise ordered by a court of competent jurisdiction**].

(4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed **[city] municipality** or authority in a manner contrary to section 707.

Section 707. Use or disposition of assets.

(a) Use of proceeds.—The proceeds from any sale, lease, conveyance, assignment or other use or disposition of assets of the distressed **[city] municipality** or authority shall be applied to the payment of outstanding debt obligations owed by the distressed **[city] municipality** or authority, subject to any lien, charge, covenant, restriction, contract, law, rule or regulation, that encumbers or is otherwise applicable to the assets. Proceeds remaining after payment of outstanding debt obligations owed by the distressed **[city] municipality** or authority may be used by the receiver to restructure or provide escrow for the payment of future debt obligations or to meet operating and capital needs of the distressed **[city] municipality** or authority.

(b) Prohibitions.—Nothing under this section shall be construed to authorize the receiver to unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:

(1) held by a holder of a debt obligation of a distressed **[city] municipality**; and

(2) granted by the contract, law, rule or regulation governing the debt obligation.

Section 708. Elected and appointed officials.

(a) Orders.—The receiver may issue an order to an elected or appointed official of the distressed **[city] municipality** or an authority to:

(1) implement any provision of the recovery plan; and

(2) refrain from taking any action that would interfere with the powers granted to the receiver or the goals of the recovery plan.

(b) Enforcement.—An order issued under subsection (a) shall be enforceable under section 709.

Section 709. Judicial actions.

(a) Action by receiver.—The receiver may petition Commonwealth Court to issue a writ of mandamus upon any elected or appointed official of the

distressed [city] *municipality* or authority to secure compliance with an order issued under section 708. The court shall grant or deny the relief within 14 days of the filing of the petition. The court shall grant the relief requested if it determines that the order was issued in compliance with this chapter.

(b) Action by elected or appointed officials.—Any elected or appointed official of a distressed [city] *municipality* or authority may petition Commonwealth Court to enjoin any action of the receiver that is contrary to this chapter.

Section 710. Termination of receivership.

(a) Time.—Except as provided under subsection (b) or (c), the receivership under this chapter shall expire two years after the appointment of the receiver.

(b) Extension.—The secretary may petition Commonwealth Court for one or more extensions of the receivership. The court shall grant each extension [for] of up to another two years if the secretary establishes by a preponderance of the evidence that further implementation of the recovery plan is necessary to end the fiscal emergency.

(c) *Termination of fiscal emergency.—Notwithstanding the date of expiration of receivership under subsection (a) or an extension of receivership under subsection (b), the receivership shall terminate upon the secretary's termination of a fiscal emergency under section 608(a).*

Section 31. The act is amended by adding a section to read:

Section 710.1. Continuation of recovery plan.

(a) Administrative determination required.—Within 30 days of the termination or expiration of the receivership under section 710, the secretary shall issue one of the following administrative determinations:

(1) conditions within the municipality warrant a termination in status in accordance with section 255.1; or

(2) the municipality continues to be financially distressed.

(b) Appointment of coordinator.—Upon a determination under subsection (a)(2), a recovery plan adopted under section 703 and confirmed by Commonwealth Court shall remain in effect and shall be deemed to be a plan adopted under Chapter 2. The secretary shall appoint a coordinator in accordance with section 221. The receiver may be appointed as coordinator. The coordinator shall implement the recovery plan under section 247(a) subject to the following:

(1) The plan shall be subject to amendment in accordance with section 249, provided that nothing in this section shall authorize the impairment of existing lawful contractual or legal obligations of the distressed municipality except where otherwise permitted by law.

(2) The coordinator may exercise the same powers and duties of this chapter as a receiver for the purposes of issuing orders under section 708 and seek enforcement of such orders under section 709. The Commonwealth Court shall retain jurisdiction to hear an action under this paragraph.

(3) The plan shall terminate as provided in section 254(b)(2).

Section 32. Sections 711(a) and (b) and 712(a)(1) of the act, added October 20, 2011 (P.L.318, No.79), are amended to read:

Section 711. Municipal financial recovery advisory committee.

(a) Establishment.—**[There is established a]** *A* municipal financial recovery advisory committee *is established* to meet and consult with the receiver in carrying out the duties under this chapter. The sole function of the advisory committee shall be to provide recommendations and feedback to the receiver on the implementation of the recovery plan.

(b) Composition.—The advisory committee established under subsection (a) shall be comprised of the following:

(1) The chief executive officer, *if any*, of the distressed **[city] municipality** or a designee.

(2) The president of the governing body of the distressed **[city] municipality** or a designee.

(3) One member appointed by the county commissioners of the county where the distressed **[city] municipality** is located.

(4) One member appointed by the Governor.

* * *

Section 712. Applicability.

(a) Statement.—

(1) This chapter shall apply only to distressed **[cities] municipalities**.

* * *

Section 33. This act shall apply as follows:

(1) The addition of section 122(c) of the act shall apply to any and all regulations in effect on the effective date of this section.

(2) The amendment or addition of sections 608, 710 and 710.1(a) and (b) of the act shall not apply to a municipality that entered receivership prior to the effective date of this section and shall not supersede or constitute grounds to modify any order of court issued prior to the effective date of this section.

Section 34. For tax years beginning after the effective date of this section, a financially distressed municipality shall be prohibited from using the special taxing authority in section 607(f) of the act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act, to impose an increase in the rate, over the rate imposed as of June 30, 2014, of taxation on nonresident income unless an equal or greater increase in the rate of taxation on resident income, over the highest rate levied in the previous fiscal year, is imposed in the same tax year.

Section 35. The addition of section 255.1 of the act shall not apply to determinations issued by the Secretary of Community and Economic Development prior to the effective date of this section or to appeals pending on the effective date of this section.

Section 36. This act shall take effect as follows:

(1) Section 34 of this act and this section shall take effect immediately.

(2) The remainder of this act shall take effect in 60 days.

APPROVED—The 31st day of October, A.D. 2014

TOM CORBETT