

No. 1992-69

AN ACT

SB 1379

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," changing the short title of the act; further providing for standing to request a determination, for determination procedure, for contents of the coordinator's plan, for plan implementation, for termination of status, for economic and community development assistance priority and for emergency financial aid for distressed municipalities.

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

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

Section 101. Short title.

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

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

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

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

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

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

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

(5) **[Trustee of a municipal pension fund; an actuary for a pension fund; or 10%] Ten percent** or more of the beneficiaries of a pension fund

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

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

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

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

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

(10) The chief executive officer of any city.

Section 203. Procedure for determination.

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

(1) Allege the **[petitioner] requesting party** has standing to bring a determination of the distress.

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

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

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

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

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

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

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

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

(ii) If the petition must be longer than one page in order to obtain the requisite number of signatures and addresses, the requesting party may enlist petition circulators to assist; however, each circulator shall

attest in writing to the accuracy of the signatures and addresses obtained and the method used to obtain them. This attestation shall be affixed to the sheet or sheets circulated by that person and returned to the requesting party.

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

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

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

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

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

(d) **Notice.**—The secretary shall publish notice of the hearing in accordance with the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, at least once in a newspaper with general circulation in the subject municipality and shall give written notice by certified mail, with return receipt requested, upon the municipal clerk or municipal secretary, the mayor, the municipal solicitor, each member of the governing body of the municipality and the petitioner.

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

(f) **Determination.**—Within 30 days after the hearing, the secretary shall issue an administrative determination of whether the municipality is financially distressed and reasons for the determination.

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

Section 241. Contents.

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

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

(2) Recommendations which will:

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

(ii) Eliminate deficits and deficit funds.

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

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

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

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

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

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

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

(4) Recommended changes in municipal ordinances or rules.

(5) Recommendations for special audits or further studies.

(6) An analysis of whether conditions set forth in section 261 exist, whether specific exclusive Federal remedies could help relieve the municipality's financial distress and whether filing a Federal debt adjustment action under Subchapter D is deemed to be appropriate.

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

(8) *An analysis of whether functional consolidation of or privatization of existing municipal services is appropriate and feasible and recommendations for where and how this could be done.***(9) *A capital budget which addresses infrastructure deficiencies.*****(10) *Recommendations for greater use of Commonwealth economic and community development programs.***

Section 247. Plan implementation.

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

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

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

(3) Oversee completion of the plan either by directly controlling the implementation process or by turning the implementation process over to a person designated by the governing body or by the chief executive officer, as the case may be. The person designated shall supply the coordinator with monthly reports. *The coordinator or the person designated by the governing body or by the chief executive officer, as the case may be, shall supply the department with monthly reports which shall contain the following information:*

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

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

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

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

(4) Terminate the plan upon its completion.

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

* * *

Section 253. Termination of status.

(a) Determination by secretary.—Following a duly advertised public hearing with notices given as provided in section 203, the secretary may issue a determination that the conditions which led to the earlier determination of municipal financial distress [**municipality**] are no longer [**applicable**] *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 2. Chapter 2 of the act is amended by adding a subchapter to read:

CHAPTER 2
MUNICIPAL FINANCIAL DISTRESS

* * *

SUBCHAPTER E
ECONOMIC ASSISTANCE

Section 281. Eligibility.

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

Section 282. Priority.

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

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

(c) Notification.—The secretary, upon making a determination of distress, shall notify all Commonwealth agencies about the municipality's priority status in order to facilitate providing moneys to the municipality. Priority status of more than one eligible municipality shall be based on the date the secretary notifies the agencies.

(d) Preexisting priority.—Nothing in this subchapter shall be construed to alter the priority of economic and community development assistance already approved and encumbered by the Commonwealth or its agencies.

Section 3. Section 301(a) and (c) of the act, added December 19, 1988 (P.L.1272, No.157), are amended to read:

Section 301. Program.

(a) Establishment.—There is hereby established within the department a program to provide emergency grants and loans to municipalities declared to be distressed in accordance with this act *and to provide for contracts for plan coordinators.*

* * *

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

Section 4. Sections 302 heading and (a) and 303(a) of the act are amended to read:

Section 302. Grant **[and loan]**, *loan and contract* procedure.

(a) General provisions.—A financially distressed municipality or the coordinator may apply to the secretary for a grant or loan subsequent to the adoption of a plan by a municipality pursuant to Chapter 2. In cases where the plan finally adopted has been formulated by the chief executive officer or governing body, the chief executive officer or a person designated by the governing body may apply to the secretary for a grant or loan. *The department may contract for plan coordinators' salaries from the fund.*

* * *

Section 303. Limitations.

(a) Use.—A loan or grant given to a financially distressed municipality under this act shall be used solely for the payment of current expenses of the municipality. Current expenses so paid shall not constitute “debt” or “unfunded debt” as defined in the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act, and shall not be subject to the provisions of that act. *A consultant contract shall be issued from the fund only to employ plan coordinators or consultants to supply plan coordinators.*

* * *

Section 5. Sections 304, 421, 422 and 423 of the act are repealed.

Section 6. This act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1992.

ROBERT P. CASEY