



Senate Box 203078  
Harrisburg, PA 17120-3078  
(717) 787-7680  
Fax (717) 772-4524  
www.lgc.state.pa.us

**LOCAL GOVERNMENT  
COMMISSION**  
*Created in 1935*

**EXECUTIVE DIRECTOR**  
Michael P. Gasbarre

**ASSISTANT DIRECTOR**  
Philip H. Klotz

---

**MEMBERS**

Senator John H. Eichelberger, Jr.  
Senator Robert D. Robbins  
Senator Edwin B. Erickson

Senator John N. Wozniak  
Senator John P. Blake

Representative Chris Ross  
Representative Mauree Gingrich  
Representative Kate Harper

Representative Robert L. Freeman  
Representative Mary Jo Daley

---

## **Summary of Amendments to Act 47 of 1987**

### **Municipalities Financial Recovery Act**

#### **Act 199 of 2014; House Bill 1773, PN 4312**

#### **Recommended by the Local Government Commission Act 47 Task Force**

The following summary identifies recommended changes to Act 47 of 1987 as a result of the first comprehensive review of the law since its original enactment in 1987. As an outcome of public hearings held jointly in the fall of 2011 by the House Urban Affairs and Local Government Committees and the Senate Community, Economic and Recreational Development and Local Government Committees, and the resulting recommendations emanating from those hearings, the Local Government Commission reconstituted a task force to examine the effectiveness of the statute with the goal of improving the ability of Act 47 to address municipal fiscal distress. The Commission had sponsored Act 47 and had appointed the original task force that assisted in the formation of the statute. Those entities, agencies and organizations that had participated in the task force in 1986 were once again requested to participate in a concerted effort to address the limitations of Act 47. The following summary provides a description of the proposed substantive changes by chapter and section. Technical and editorial changes are not identified.

#### **Past Legislative History**

House Bill 1773 was introduced on October 17, 2013 and referred to the House Urban Affairs Committee. An identical version was introduced as Senate Bill 1157 on November 15, 2013 and referred to the Senate Local Government Committee. After extensive amendments in the House and Senate, House Bill 1773 was passed finally on October 16, 2014 and signed into law

by the Governor on October 31, 2014. Except as otherwise provided, the amendments to Act 47, now enacted as Act 199 of 2014 become effective on December 30, 2014.

## **Chapter 1. General Provisions**

### **Subchapter A. Preliminary Provisions**

#### **Section 102. Purpose and legislative intent.**

The Early Intervention Program is being codified in Chapter 1-A. It currently is a voluntary program in which municipalities may seek the assistance of the Department of Community and Economic Development (DCED) in addressing indicators of distress prior to possible entrance into Act 47. The legislative intent provisions of Act 47 are amended to include reference to this program in section 102(b)(1)(i). Additionally, subsections 102(b)(1)(v) and (6) are added to reference that some municipalities after many years of participation in Act 47 are not viable and may be subject to new disincorporation procedures provided in Chapter 4, Subchapter C (Disincorporation of non-viable municipalities).

#### **Section 103. Definitions.**

The definition of “authority” is added to include a municipal authority, parking authority, or other authority subject to control by the municipality.

The definition of “municipal record” is being redefined to include not only municipal financial records that a coordinator or receiver under Chapters 2 and 7, respectively, would have the ability to examine, but also those financial records of a municipal authority and all other authorities that act on behalf of the municipality. In addition, records of entities that perform a governmental function on behalf of the municipality, other than those of the municipality or an authority, would be defined as municipal records and thus subject to examination by a coordinator or receiver. Information related to personnel matters and legal proceedings would be subject to redaction.

### **Subchapter B. Administrative Provisions**

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

A reference in section 121(a) relating to the two page length of the Survey of Financial Condition (SFC) that is submitted annually by municipalities to DCED is removed. Since most municipalities submit the survey electronically and the information that is needed for DCED to assess a municipality’s fiscal health needs to be more detailed, the page limit is eliminated. This

limitation was originally placed into Act 47 as a means of restricting the reporting burden imposed on municipalities. Based on the evaluation of the data submitted by a municipality, section 121(b) is amended to provide that DCED may recommend that a municipality enter into the Early Intervention Program (EIP). In concert with requirements that distressed municipalities be given priority in community and economic development funding under section 282, section 121(c) is amended to require DCED to notify all state departments by January 1 of each year of the priority funding status.

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

Section 122(c) is added to provide a limited waiver of regulatory mandates by state departments on distressed municipalities if requested by the coordinator or receiver. The waiver may not include a regulatory requirement that: (1) is expressly provided in federal law or regulation or state statute or is related to rights or terms of conditions of employment by the municipality, and (2) is likely to affect public health or safety.

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

Subsection (a) is amended to provide that, notwithstanding the provisions of Act 42 of 2013, which requires PennDOT to distribute liquid fuels monies to municipalities by March 1 of each year, the SFC must still be filed with DCED by March 15 before these funds may be distributed. In effect, there may be a 15 day delay in the distribution of the funds. It is difficult for PennDOT to bifurcate payments by making a portion of the initial payment by March 1 and the remainder at a later date once the SFC is filed by a municipality. This amendment clarifies the inconsistency with Act 42.

Subsection (c) is amended as follows:

- In clause (1), reference is made to new provisions of the 5-year/3-year exit plan from Act 47 provided by Subchapters C (Coordinator's plan) and C.1 (Exit plan). A municipality must adopt, as the case may be, one of these plans to be eligible to apply to the court for a tax rate increase or approval of a newly authorized tax as provided in clause (1.1). In addition, consonant with case law, residents and nonresidents would be subject to a higher rate of earned income tax if the tax is a component of the coordinator's plan developed under Chapter 2 and is approved by the court on an annual basis.<sup>1</sup> Current law does not specify that nonresidents are subject to an increase in the rate of earned income tax. Nonresidents are subject to an enhanced EIT only where an equal or greater increase in the EIT is levied against residents at the same time.

---

<sup>1</sup> *In re City of Scranton*, 638, A.2d 379, 162 Pa.Cmwlth. 109 (Pa.Cmwlth. 1994); *In re Petition of Clairton for Court Approval etc.*, 598 A.2d 838 (Pa.Cmwlth. 1991).

- Clause 1.1 is added to permit distressed municipalities to petition the court levy a local payroll preparation tax as limited by subsection (d)(2).
- Instead of levying an increased EIT, a distressed municipality may petition the court to levy a Local Services Tax (LST) as provided in subsection (d)(1) and (d)(1.1).
- Increases in or enactment of the above tax provided as well as the current authority to ask for an increase in the earned income tax rate in effect for one year and require the submission of an annual petition to the court for renewal of the taxing power (subsection (c)(2)).
- In addition to the current requirements imposed on the City of Scranton when petitioning the court for an annual increase in tax rates, Scranton will be limited to petitioning for an increase in an Earned Income Tax (EIT) on residents that is at least as high or higher as that of non-residents; these requirements will continue in effect notwithstanding a potential change in the municipal classification of the city.

Subsection (d) is added to give the coordinator an additional revenue option when analyzing current revenue and expenditure patterns in an effort to provide for an equitable distribution of the tax burden through the imposition of a payroll preparation tax that is provided in section 303 of the Local Tax Enabling Act (which Pittsburgh currently levies) not in excess of the amount of revenue raised from the municipality's mercantile or business privilege tax from the previous year. A municipality levying a payroll preparation tax under this section would be required to permanently terminate the levy of the business privilege / mercantile tax, but it would be able to continue the levy of the payroll preparation tax, even after leaving distressed status at a rate not to exceed the rate originally established by this section. This authority would be limited to those municipalities imposing a business privilege or mercantile tax in the year of the petition. Language was restored that allows distressed municipalities to petition the court for a Local Services Tax (LST) in excess of \$52, but not to exceed \$156 in lieu of imposing an enhanced Earned Income Tax (EIT) under the Act. This provision was previously removed by amendment on the House floor, but the version adopted by the Senate allows the LST *only* where the municipality imposing the LST would not have been prohibited from levying an EIT on non-residents.

Subsection E was removed, which would have permitted a separate authorization for distressed municipalities with distressed pension systems to levy an increased LST with an alternative set of rules. When subsection E was removed, an additional provision was added to subsection D to provide that where a distressed municipality with a level two or level three distressed pension system under Act 205 of 1984 petitions the court to levy an increased LST under Act 47, it is limited to levying an LST of \$104 if it also levies an earned income tax above municipal limits under section 607(f) of Act 205. Limitations that apply to the LST for all other distressed municipalities apply to distressed municipalities with distressed pension systems. (i.e. annual court approval to levy, must not levy enhanced EIT under Act 47 on residents or nonresidents,

may not levy if not permitted to levy an EIT on nonresidents, does not extend beyond distressed status).

### **Chapter 1-A. Early Intervention Program**

This is a new chapter intended to codify an existing program that provides matching grants to assist municipalities experiencing financial difficulties to develop multiyear fiscal plans and establish both short-term and long-term objectives. According to existing guidelines established by DCED, the EIP is “designed to offer a preemptive step for municipalities who feel as if their financial situations, while not yet formally declared distressed, are realizing difficulties and seek to improve their financial position.”<sup>2</sup>

#### **Subchapter A. Preliminary Provisions**

##### **Section 101-A. Definitions.**

For purposes of this Chapter, the definitions of “Center” (Governor’s Center for Local Government Services), “Keystone Principles” and “Program” (EIP) are added.

##### **Section 102-A. Program objectives.**

This section delineates the objectives of the EIP including: providing resource assistance to assist a municipality in identifying, prioritizing and addressing financial difficulties; engaging in a review of management operations and service delivery; implementing a multiyear financial management plan; implementing financial trend analysis; promoting multimunicipal and regional planning and strategies, including cost sharing; adopting best management practices; and integrating sound community and economic development strategies.

#### **Subchapter B. Administrative Provisions**

##### **Section 103-A. Authorization.**

This section establishes the authority for the Center to provide assistance through grants to a municipality to insure fiscal stability by developing and implementing long-term financial, managerial and economic development strategies.

---

<sup>2</sup> Department of Community and Economic Development, *Early Intervention, Program Guidelines*, January 2009, p.1.

**Section 104-A. Grants.**

This section provides that the Center may award grants not exceeding \$200,000 in the initial fiscal year to one or more municipalities for the purposes stated in section 103-A.<sup>3</sup> The grant amount is to be adjusted annually by an increase in the Consumer Price Index. To be eligible for a grant, a municipality must meet the basic training requirements established in guidelines developed by the Center pursuant to section 108-A. The grant amount is subject to a municipal match of 50% unless the Center determines that a match of lesser amount, but not less than 10%, is warranted. The municipality's matching amount may be offset by an undefined, in-kind match. Eligible activities for a grant are enumerated, including those specified in the program objectives as provided in section 101-A and a merger and consolidation feasibility study.

**Section 105-A. Application.**

Contents of the application form for an EIP grant are specified. An application submitted by a municipality is to be on a form prescribed by DCED utilizing the electronic single application format.

**Section 106-A. Evaluation Criteria.**

Applications are to be evaluated on the basis of municipal financial characteristics and the quality of the proposed program. Factors to be considered include: (1) current and projected financial condition of the municipality; (2) economic and demographic conditions; (3) proactive measures the municipality has taken regarding its finances, including adherence to generally accepted financial management, budget and reporting standards; (4) intergovernmental cooperation efforts; (5) commitment to improve the municipality's financial and managerial operations; (6) past performance relating funding assistance granted by DCED to the municipality; (7) where applicable, inclusion of the Keystone Principles as part of the evaluation process; and (8) any other factors the Center considers relevant.

**Section 107-A. Award.**

Awarding of grants is subject to the availability of funds. Successful applicants will be announced by letter from the Secretary of DCED.

**Section 108-A. Guidelines.**

DCED is to establish operational guidelines relating to program requirements and measurements. The program must include a requirement of a financial audit of the

---

<sup>3</sup> The General Appropriations Act of 2013 appropriated \$1,785,000 to DCED for early intervention for distressed municipalities (Act 1-A of 2013, House Bill 1437, Printer's Number 2198).

municipality, prepared by an independent auditor or firm for the fiscal year immediately preceding the application for funds by a municipality. DCED may accept any previous audit prepared in accordance with the guidelines.

## **Chapter 2. Municipal Financial Distress**

### **Subchapter A. Determination of Municipal Financial Distress**

#### **Section 203. Procedure for Determination**

This section is amended to provide a specific cross-reference to existing procedural law for appeals from a determination of distress. It replaces a previous provision which allowed for an appeal from any determination of the Secretary under the act in accordance with Title 2 (Administrative Law and Procedure) of the Pennsylvania Consolidated Statutes.

### **Subchapter B. Coordinator**

#### **Section 221. Designation.**

Subsection (d) is amended by specifically imposing the duty upon the coordinator, within 45 days of the execution of a contract with DCED, to issue a list of preliminary findings on the fiscal condition of the municipality. The listing would include projected operating deficits for the current fiscal year and projections of revenues and operating expenses for the next three fiscal years, all outstanding debt obligations, the cost and term of outstanding contracts, and other relevant information. The coordinator would further be required to solicit comments from those who may have participated in the EIP, consultants who provided assistance to the municipality on issues related to distress, elected officials and employees, and members of collective bargaining units. Under subsection (e), the coordinator would be empowered to investigate the tax-exempt status of property within the municipality and solicit and negotiate payment of in lieu of taxes from institutions of purely public charity and other tax-exempt property owners.

#### **Section 222. Access to information.**

To obtain needed municipal financial information and the ability to compel those who hold those records to provide the information, section 222 is bifurcated to comport with the amendment to the definition of "municipal record." Subsection (b) would pertain to records held by public officials and employees of the municipality, a municipal authority or other authorities. Failure on the part of these officials or employees to cooperate or provide records could lead to the coordinator seeking a subpoena to compel testimony or to obtain records.

Similarly, subsection (c) is added to provide parallel provisions for other entities that possess municipal records.

### **Section 224.1. Performance of Coordinator**

The Secretary of the Department of Community and Economic Development, or his designee, must conduct, commencing July 1, 2015, an annual performance evaluation of each coordinator to ensure that each coordinator is performing in compliance with the provisions of the act and the coordinator's contract. Should the Secretary find that a coordinator is failing to perform according to the requirements of the coordinator's contract, or where the coordinator has not been effective in providing the assistance necessary to develop and implement the plan, an unfavorable review will provide sufficient grounds to terminate a coordinator's contract.

## **Subchapter C. Coordinator's Plan**

### **Section 241. Contents.**

Incorporated as areas to be examined by the coordinator when the coordinator is formulating a solvency plan are the following:

- Subsection 7.1 – An analysis of whether economic conditions are so severe that the municipality should be disincorporated under new provisions provided in Chapter 4;
- Subsection 10.1 – Recommendations for enhanced cooperation and changes in land use planning, including regional approaches that would promote economic development;
- Subsection 12 – An analysis of current revenue sources and modification of revenue sources, including subjects and rates of taxation provided in section 123 and section 124. Elements of the analysis, with consideration given to economic development, employment and tax burden, would include: examination of the tax bases of current and recommended revenue sources from both within and outside the municipality; collection rates and proposed revenue sources; current fees, charges, penalties and fine provisions in municipal enactments; and revenue as defined in section 103.

### **Section 242. Publication.**

In subsection (a), the period of time a coordinator possesses to complete a solvency plan once a contract is executed with DCED is extended from 90 to 120 days. Similar to section 221(d)(2), subsection (c.1) is added to require the coordinator, when formulating the coordinator's plan that will be presented at a required public meeting, to solicit comments on a proposed plan from those who have participated in the EIP, consultants acting on behalf of the municipality on



issues associated with the municipality's distress, and employees and members of a collective bargaining unit.

**Section 245. Adoption by Municipality.**

For consistency, the provision of this section relating to adoption of plans by home rule and optional plan municipalities is amended to provide that a chief executive officer "shall" issue an order directing implementation of the plan.

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

When the Secretary of DCED reviews an alternate plan prepared by a municipal governing body or chief executive officer (when the coordinator's plan has been rejected by the municipality), and if the Secretary believes that the alternate plan will not overcome the municipality's financial problems, an added subsection (d)(3)(iv) provides that the Secretary shall notify the municipality of the application of the procedures in Chapter 6 (Fiscal Emergencies in Municipalities) and Chapter 7 (Receivership).

**Section 247.1. Annual Budget.**

With the addition of this section, a distressed municipality will be required to begin forming its annual budget at least 120 days before the end of its fiscal year. At least 75 days before the end of the fiscal year, the governing body or chief executive officer, as the case may be, shall submit a proposed budget to the coordinator for the coordinator's review. The coordinator then will review the proposed budget to determine whether the proposal is consistent with the adopted recovery plan and return the proposed budget, together with any modifications that the coordinator deems necessary, at least 45 days before the end of the fiscal year. The municipality would then be required to adopt an annual budget according to existing law; however, if the coordinator determines that the adopted budget fails to be consistent with the provisions of the recovery plan, the coordinator shall notify the Secretary, and the Secretary may take remedial actions as provided by Act 47, which may include the withholding of state funding or the implementation of chapters 6 and 7.

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

Under current law, if no plan is adopted pursuant to Act 47, then certain state monies will be withheld from the municipality and held in escrow by the Secretary until there is compliance with this act. In this event, section 248 is amended to specify that upon recommendation of the coordinator, the Secretary may request a declaration of a financial emergency from the Governor under Chapter 6.

## Subchapter C.1. Duration of Distressed Status

### Background

Task Force discussions focused, in part, on the lack of a specified end to the distressed status of municipalities.<sup>4</sup> Particularly in those cases in which a distressed municipality has become dependent on the additional taxing authority under section 123, the lack of an express endpoint to distress can reduce the immediacy of difficult decision-making on the part of governing bodies. Furthermore, in the rare case in which a municipality is deemed “nonviable,” unable to emerge from Act 47, and unable to merge or consolidate with other municipalities, the Act currently permits a perpetual distressed status for a municipality that cannot realistically function independently.<sup>5</sup> Along with the new procedures for disincorporation contain in Chapter 4,<sup>6</sup> the new Subchapter C.1 is intended to provide a timetable of events leading to financial recovery or disincorporation.

### Section 253. Termination of Status

This section was repealed and replaced by new section 255.1.

### Section 254. Limitation of Status.

This section establishes a general rule for the termination of distress. As of the effective date of section 254, municipalities will be subject to a five-year limitation on distressed status, subject to a possible three-year exit plan extension. For municipalities in distressed status as of the effective date of the section, the five-year period would begin to run from the effective date of the most recent recovery plan or amendment. For municipalities in their last year of a recovery plan on the effective date of the section, the date for the termination of distressed status would be three years from the termination date of the current plan. For municipalities emerging from receivership back into the Chapter 2 distressed proceeding, a five-year period would run from the termination of receivership and result in an automatic termination of distressed status at the end of the five-years. Amendments to the plan shall not affect the

---

<sup>4</sup> For example, the Borough of Franklin has had a distressed determination since July 26, 1988. See The Pennsylvania Department of Community and Economic Development, *Borough of Franklin: Fifth Amended Recovery Plan Pursuant to the Municipalities Financial Recovery Act*, Executive Summary, p. 4. The City of Farrell has been distressed since November 12, 1987. See Pennsylvania Economy League, *Municipalities Financial Recovery Act Amended Plan Recommendations, City of Farrell, Mercer County*, May 2013, p. 2.

<sup>5</sup> See *Borough of Franklin*, p. 11 (“As noted at the beginning of this report the initial recovery plan recognized that Franklin was a nonviable municipality and that boundary change was necessary for the long term benefit of the residents of the community. Nothing since that time has altered that original recommendation.”).

<sup>6</sup> See *infra*, p. 11.

termination date as provided in the section, and the ability to emerge from distressed status prior to the termination date is expressly preserved.

### **Section 255. Coordinator's report.**

This section imposes a duty on the coordinator to prepare a report in no later than the first 180 days of the last year of distressed status as determined by section 254. The report may recommend one of the following:<sup>7</sup>

- That the distressed status of the municipality be terminated.
- That the municipality be disincorporated.
- That the municipality, because of noncompliance with recovery recommendations, should be declared in a state of fiscal emergency under Chapter 6, and the possibility of receivership under Chapter 7.
- That a three-year exit plan be adopted.

The report would be filed, publicly open for inspection, and subject to comment and a public meeting in a manner similar to that found in Subchapter C of Chapter 2, relating to the formulation of a recovery plan. Subsection (e) authorizes the coordinator to amend the report after conducting the meeting and receiving comment.

### **Section 255.1. Termination of Status**

Under new section 255.1, four new criteria are established to allow for the Secretary to determine whether a municipality's distressed status should be terminated. The Secretary shall apply these criteria to issue a determination following a public hearing that is provided for in this section. The Secretary is still able to initiate the process at the Secretary's discretion at any time (as old section 253, which is replaced by this section, provided), however, if a coordinator makes a recommendation for a termination of status in the five-year report (see section 255) the Secretary will be required to consider the recommendation and make a determination under this section. Finally, a determination under this section is appealable by a delineated list of parties which include the parties with standing to petition for a determination of distress under section 202 (other than the Department) and a collective bargaining unit which is a party to a contract with the municipality.<sup>8</sup>

---

<sup>7</sup> Previously, the report also allowed for a recommendation that the municipality begin the bankruptcy process, however that provision was removed on the House floor. Nevertheless, this change would not affect the rights of a municipality to declare bankruptcy under section 261 after receiving the approval of the Secretary.

<sup>8</sup> A technical provision is added to the end of the bill (see section 35) which clarifies that the changes to the process and appealability of a determination of whether or not distressed status should be terminated under section 255.1 does not apply to any determination made or appealed before the effective date of these amendments to the act.

**Section 256. Exit plan.**

If the coordinator's report prepared in accordance with the new section 255 recommends a three-year exit plan, the coordinator shall prepare an exit plan within 90 days of the public meeting referred to in section 255. The exit plan would be subject to the same notice, comment and meeting requirements as the report. Subsection (c) requires the governing body to adopt the exit plan as an ordinance or the Secretary shall, upon a recommendation of the coordinator, seek a declaration of fiscal emergency under Chapter 6, and the possibility of receivership under Chapter 7. A recommendation for a declaration of fiscal emergency upon the failure of a municipality to enact or implement a 3-year exit plan would not apply in a case of where the coordinator has made a recommendation for disincorporation of the distressed municipality to the Secretary.

**Section 257. Post report procedures.**

This section establishes the duties of the Secretary as a result of the coordinator's report in section 255, as well as duties related to the administration of an exit plan. Depending on the recommendations of the coordinator's report, the Secretary shall do one of the following:<sup>9</sup>

- Terminate the distressed status of the municipality *in accordance with section 255.1.*<sup>HF</sup>
- Initiate disincorporation proceedings.
- Seek a declaration of fiscal emergency under Chapter 6, and the possibility of receivership under Chapter 7.

In the case of an implemented exit plan, the Secretary, at any time during the plan, may:

- Terminate the distressed status of the municipality in accordance with section 255.1, or
- Seek a declaration of fiscal emergency under Chapter 6, and the possibility of receivership under Chapter 7.

At the end of the exit plan the Secretary shall terminate the distressed status of the municipality without further proceedings under section 255.1.

---

<sup>9</sup> This section previously allowed for the municipality to begin the bankruptcy process, however that provision was removed on the House floor. However, this change would not affect the rights of a municipality to declare bankruptcy under section 261 subject to the approval of the Secretary. <sup>HF</sup>

**Section 261. Filing municipal debt adjustment under Federal Law.**

This section is restructured, without substantive change, to specify that a municipality may petition for bankruptcy after a declaration of distress except to the extent it is subject to a declaration of fiscal emergency or receivership. This is a restatement of current law. Municipalities not currently in Act 47 retain the ability to apply to the Department for approval to file a petition for bankruptcy pursuant to section 261(a).

**Subchapter E. Economic Assistance****Section 282. Priority.**

Under this section, distressed municipalities are to be given priority in all community and economic development funding. Section 282(b.1) is added to comport with section 441 which makes unincorporated districts created under Chapter 4 also eligible for such priority funding.

**Chapter 4 –Economically Nonviable Municipalities****Subchapters A and B**

The amendments to Chapter 4 begin with an updated chapter title to reflect the previous repeals of the majority of Subchapters A and B, which dealt with consolidation and merger and economic assistance, and the addition of Subchapters C and D, which provide for the disincorporation of a nonviable municipality and the administration of an unincorporated service district.

**Subchapters C and D****Background**

Subchapters C and D of Chapter 4 provide a new approach under Pennsylvania law for addressing municipalities that simply have an inadequate tax base to provide for a functional municipality even if the municipality reorganizes its debts through bankruptcy. Complex political, economic and case-by-case challenges have interfered with voluntary merger or consolidation of nonviable municipalities with neighboring municipalities to date, and efforts to force a consolidation or merger, though constitutionally possible, are widely considered to be politically unachievable. The following subchapters establish instead, a new procedure by which the affairs, obligations and assets of a nonviable municipality are wound down and a special purpose entity of the Commonwealth, referred to here as an unincorporated service district, is established to provide for the essential needs of the residents and property owners of the

district. Ultimately, the goal served by establishment of the district is to remove some of the complex issues and barriers that may have made voluntary merger or consolidation so far unachievable for a community.

The added subchapters were developed through discussions among Members of the Local Government Commission serving on the Act 47 Task Force and their staff and in consideration of the work conducted by the Task Force subcommittees.

### **Subchapter C. Disincorporation of Nonviable Municipalities**

#### **Section 431. Definitions.**

Section 431 provides the definitions of “administrator,” “district,” “municipality,” “restricted account” and “governing standards” as they are used throughout this chapter. The definition for “municipality” is any county, city, borough, incorporated town, township and home rule municipality, except cities of the first class, that does not provide police service or fire service through its employees.

#### **Section 431.1. Determination of nonviability.**

This section requires the Secretary of DCED to determine whether a municipality is nonviable after receiving a recommendation of nonviability from a coordinator or receiver. To make a determination that the municipality is nonviable, the Secretary is required by this section to find that *all* of the following are true: (1) the municipality is unable to provide essential services to its residents and property owners and otherwise function as a municipality; (2) the municipality has experienced a collapse of its economy and tax base such that all reasonable efforts to restore economic vitality have failed; and (3) merging or consolidating with a neighboring municipality is either unachievable or will not solve the problem of nonviability. If the Secretary makes a determination that the municipality is nonviable, the secretary is required to provide notice to the governing body of the municipality and recommend that the municipality be disincorporated under this chapter.

#### **Section 432. Procedure for disincorporation.**

If the Secretary determines that the municipality is nonviable under section 431, this section provides two methods by which the process of disincorporation may be initiated:

- The first is that the municipality may enact an ordinance initiating disincorporation within 45 days of the Secretary’s determination.
- The second, which is authorized if the governing body does not enact an ordinance initiating disincorporation, is a petition comprised of 51% of the electors who voted in the

last gubernatorial election submitted to the court of common pleas within 60 days of the deadline for the municipality to adopt an ordinance.

- An amendment adopted on the House floor removed a provision that would have authorized the Secretary, after the time has expired for disincorporation to be initiated by ordinance or petition by electors, to petition the court directly to initiate disincorporation.

### **Section 433. Judicial review of ordinance or petition.**

After disincorporation is initiated by ordinance or petition by the electors of the municipality, the court is required to hold a hearing to decide whether to issue a decree approving disincorporation. This section establishes the procedure for the court's review which provides for, among other things, a notification of the public by the prothonotary that a hearing will take place and that the governing body of the municipality and any taxpayer, creditor, bondholder, collective bargaining unit or contractor of the municipality may file exceptions with the court before the hearing. At the hearing, the governing body of the municipality, individuals and entities who have filed exceptions and the Secretary, or the Secretary's designee, have the opportunity to present testimony and other relevant evidence about whether the municipality is, in fact, nonviable, what effect disincorporation would have on the residents and taxpayers, whether other plans or strategies could be employed that would restore viability, and what effect disincorporation would have on debts and obligations of the municipality. After taking evidence at the hearing, the court is charged to issue a decree upholding the municipality's ordinance for disincorporation or granting the electors' petition initiating disincorporation, unless it finds by clear and convincing evidence that the municipality should continue to be incorporated because of a reasonable expectation that the municipality is viable.

#### **Section 433.1. Failure to initiate disincorporation.**

In the event that the governing body of the municipality fails to adopt an ordinance under section 432(a) and the electors of the municipality fail to adopt a petition under section 432(b), or in the event that a court does not issue a decree that would initiate disincorporation following its consideration of an ordinance or petition, the Secretary is required to decide what should happen to the municipality instead of disincorporation. The Secretary may find that:

- The municipality should continue to operate under its recovery plan if it has not run out of time by the limitations of Subchapter C.1 of Chapter 2. If the coordinator has already issued the five year report pursuant to section 255, then the secretary shall direct the coordinator to prepare an exit plan under section 256;
- The elected and appointed officials of the municipality have failed to implement recovery measures and the municipality is an appropriate candidate a declaration of fiscal emergency and the application of chapters 6 and 7;

- The municipality's distressed status should be terminated under section 255.1; or
- The municipality should initiate proceedings for a federal debt adjustment under bankruptcy.

**Section 434. Service district administrator.**

This section establishes an administrator who will serve the Commonwealth during the municipality's disincorporation process to ensure that the residents' and taxpayers' needs for services are met, and then manage the day-to-day operations of the unincorporated area that results from the municipality's disincorporation, which is referred to in Chapter 4 as an "unincorporated service district." The administrator is appointed by the Secretary of DCED and must meet similar qualifications as a receiver appointed to administer Chapters 6 and 7. As discussed more fully in section 436, the administrator will form a plan for the provision of essential services for the district after the municipality's disincorporation. This section sets out a list of powers and duties that enable the administrator to form and carry out that plan, including the power to negotiate contracts for the provision of services, administer monies from a restricted account of the Commonwealth, apply for grants, loans and payments on behalf of the district, and establish an assessment of fees necessary for the provision of services.

**Section 435. Powers and duties of municipality.**

After the court issues a decree under section 433, the municipality's powers are limited by this section to require that the municipality not act in any manner that is inconsistent with the administrator's plan. The municipality's modified duties under this section require it to enact a final budget providing for the municipality until the date that the municipality is disincorporated by operation of the administrator's plan, transfer any municipal pension to a public or private pension fund that maintains the pension benefits due to any current or past employee of the municipality, and appoint a service district advisory committee, established by section 442, which will advise the administrator after the municipality's disincorporation. Finally, the municipality may opt, by the procedure established in this section, to recommend to the administrator by ordinance a set of governing standards to be included in the plan, which are detailed in section 436.

**Section 436. Essential services plan.**

This section requires the administrator, within 90 days of appointment, to formulate an essential services plan that will provide for vital and necessary services, emergency management of the district, including authorization to contract with or participate in a regional police or fire department, payment of short-term obligations and long-term debt obligations, disposal of municipal property by sale, lease or conveyance for the benefit of residents and



property owners, and the disincorporation of the municipality and the establishment and administration of the unincorporated service district. To pay for the services provided by the plan, the administrator will establish an assessment, governed by section 443, on property within the district, but will not be authorized to levy or collect any taxes, incur debt other than for short-term cash flow, or terminate any obligation to repay the debt of the municipality. This section also specifically provides that, notwithstanding the provisions of section 443, the assessment in the first full year may not be greater than 5% more than the total taxes levied by the municipality in the municipality's final year.

Finally, the plan must contain governing standards for the district which establish rules and conduct for the maintenance of property, conduct in public places and parking of vehicles in public places to protect the health, safety and welfare of the residents and property owners of the district, as well as provide for fines or other relief which may be granted by a court for violations of these standards. If the governing body of the municipality recommends governing standards for inclusion in the plan as provided by section 435, the administrator is required to incorporate the recommended governing standards unless the administrator finds that the recommendations would be unlawful or unconstitutional or would substantially impede the administration of the essential services plan.

#### **Section 437. Proposed essential services plan.**

This section establishes the procedure for the administrator to present and provide public notice of a proposed essential services plan formed under section 436. These procedures are similar to those established in Chapter 2 for the presentation of a coordinator's plan, and like the presentation of a coordinator's plan, they invite comment from the public both in writing and at a public meeting held by the administrator for the consideration of the plan.

#### **Section 438. Final essential services plan.**

The administrator must consider all timely submitted and presented comments and requests for revision of the plan before filing a final essential services plan within 45 days of the public meeting. Where the governing body of the municipality has presented with its comments requests for revisions of the plan that propose a different method of calculation of the assessment or a different level of service than provided by the plan, the administrator is required to either amend the plan accordingly or explain in the final plan why the requested revisions were not feasible to be included in the final plan.

After giving notice of the final essential services plan as provided in this section, any party aggrieved by the plan may appeal the plan to the court of common pleas within 30 days. An appeal does not automatically result in a stay of the implementation of the plan, and the court

should only sustain the appeal where it finds that the plan is unlawful or unconstitutional or the conduct of the administrator is arbitrary or capricious.

**Section 439. Disincorporation of municipality.**

This section provides the final procedures that will result in the disincorporation of the municipality. Before disincorporation takes effect, the administrator is required to execute all contracts necessary to implement the essential services plan, provide notice of assessments under the plan to the property owners within the unincorporated service district, and provide notice to the Governor and all Commonwealth agencies of the municipality's disincorporation.

If the municipality has a zoning ordinance and/or an official map, the county in which the municipality is located must adopt the same, which contain the substance of the municipality's zoning ordinance and/or official map, and if necessary, amend its comprehensive plan to be generally consistent with the zoning ordinance. The county must also adopt a subdivision and land development ordinance (SLDO) that may be the county's existing SLDO, which will apply to all unincorporated service districts within the county. After disincorporation of the municipality, the county will provide for the administration of the land use ordinances applicable to the district as required.

Finally, on the date that disincorporation is to take effect under the provisions of the essential services plan, the terms of office of the elected officials of the municipality end, the ordinances are nullified, the corporate powers of the municipality terminate, and the municipality is deemed disincorporated. Upon disincorporation, an unincorporated service district is established containing the entire area that was formally within the municipality as provided by Subchapter D.

**Subchapter D. Unincorporated Service District**

**Section 441. Establishment of unincorporated service district.**

An unincorporated service district established under this section is an entity of the Commonwealth that is established for the special purpose of providing essential services to the residents and property owners of the district until such time when the district is incorporated as a municipality or made a part of a merged or consolidated municipality under section 447. The district is operated according to the provisions of the essential services plan established under Subchapter C, administered by the administrator appointed under section 434, and funded primarily by assessments established under the plan on property within the district, which shall serve as a credit against any municipality's attempt to collect nonresident income taxes on residents of the district. The district is precluded under this section from exercising

corporate powers granted to municipalities, including the power to tax and the power to establish elected or appointed officers. The only new debt that the district is permitted to incur, apart from any former municipal debt transferred for the district's administration, is short-term debt or credit for the purposes of managing the district's cash flow, which must be satisfied within one year.

The remainder of this section addresses assumption of assets and debts of the municipality once the unincorporated service district is established, and reconciliation with other state laws and programs to provide for the governance of the district. All property of the municipality that is not previously sold, conveyed or otherwise disposed of during the disincorporation process becomes the Commonwealth's property in trust for the benefit of the residents and property owners and maintained by the administrator. Similarly, the debts of the municipality are placed in the trust of the Commonwealth to provide for the service of the debt by the administrator. This provision has been carefully tailored to provide that the credit of the Commonwealth is not used to secure the debt, and not serviced by any source of the Commonwealth's revenue except for fees collected from the property owners in the district by the administrator.

The district is specifically permitted to be eligible for the emergency grants and loans under Chapter 3 of the Act as well as grants, loans and payments that it would have been eligible to receive when it was a municipality, including the same priority consideration for economic development programs under Chapter 2, Subchapter E as distressed municipalities. This section also specifically includes liquid fuels monies distributed to municipalities for repair, maintenance and construction of roads. The administrator is charged with applying for and managing funds authorized by this section.

To the extent that residents of the district were served by an authority prior to disincorporation, this section authorizes the authority to continue its services, and future appointments to the authority that would have been appointments by the governing body of the municipality would be made by the administrator.

Finally, although the ordinances of the municipality are nullified by disincorporation under section 439, the governing standards adopted by the essential services plan under Subchapter C become enforceable standards, which provide a cause of action for violations by aggrieved residents, property owners or the administrator, and also constitute a public nuisance. Separately, enforcement of the Uniform Construction Code is handled by the procedures for an 'opt-out' municipality under the Pennsylvania Construction Code Act, which allows municipalities who do not adopt the code by ordinance for municipal enforcement to enforce the code privately and through certain approvals of the Department of Labor and Industry.

**Section 442. Service district advisory committee.**

This section presents the composition, appointment, duties and powers of the service district advisory committee, which will serve the residents of the district as a body providing advice to the administrator on issues facing residents and property owners, the county on land use issues facing the residents and property owners, and DCED on issues related to the district's conceivable reincorporation as a new municipality or merger or consolidation with another municipality. Committee meetings must comply with Title 65 of the Pennsylvania Consolidated Statutes Chapter 7, also known as the Sunshine Act.

The committee is made up of two resident property owners and one business owner (if any) of the district who are initially appointed by the governing body of the municipality before disincorporation, and subsequent vacancies, caused by expiration of terms or other reasons, are filled by the remaining members of the committee if there is one vacancy, or the administrator if there are two or more vacancies.

Although the committee does not have any powers on its own, its recommendations must be considered by the administrator. In the case of recommendations by the committee proposing amendment of the governing standards within the essential services plan, or recommendations proposed by a petition of 10% of the electors of the district who voted in the last gubernatorial election for amendment of the governing standards, the administrator is required to include those recommendations as a proposed plan amendment, discussed under section 444, unless the administrator finds that the recommendations would be unlawful, unconstitutional or substantially impede the administration of the essential services plan.

**Section 443. Assessments.**

The administrator is authorized to establish an annual assessment, calculated on a front-foot or benefit conferred basis, or some combination thereof, that will allow the administrator to collect the funding necessary to provide services under the essential services plan, service debts, provide necessary upkeep of property held in trust by the Commonwealth, reimburse DCED for the compensation and expenses of the administrator, and maintain a reserve of up to 15% of the annual estimated cost of the essential services plan for unanticipated expenses. The administrator is authorized to establish a limited assessment for those properties held by governmental or other public entities, assessing only for services that are directly consumed by the property such as water, sewer, and solid waste services.

After the first assessment, which may be a partial year assessment depending upon the date of disincorporation under Subchapter C, the administrator is required to provide notice of the annual assessment by October 1 of the year preceding the assessment, and require payment of the assessment by March 1, unless the administrator allows the assessment to be collected on

a quarterly or semiannual basis. Unpaid and delinquent assessments accrue interest, and may be enforced by the establishment of a lien under the procedures outlined in the Municipal Claim and Tax Lien Law.

**Section 444. Amendment of essential services plan.**

This section authorizes the administrator to propose amendments to the essential services plan at any time. Once an amendment is proposed, the administrator is required to receive written comments on the plan, and, if requested by the service district advisory committee, hold a public meeting for consideration of the plan amendment. The administrator is required to consider comments submitted before publishing a final plan amendment, and where a request for revision of the plan amendment is submitted by the advisory committee that proposes a different method of calculation of the assessment or a different level of service than provided by the plan amendment, the administrator is required to either incorporate the recommendations in the final plan amendment accordingly or explain in the final plan amendment why the requested revisions are not feasible. At any time, if amendment of the essential services plan is immediately necessary to protect public safety, human health or the environment, the Secretary may waive the requirements for the consideration of a proposed plan amendment and issue a plan amendment that immediately takes effect.

After giving notice of the final plan amendment or emergency plan amendment as provided, any party aggrieved by the plan amendment may appeal the plan amendment to the court of common pleas within 30 days. An appeal does not automatically result in a stay of the implementation of the plan amendment and may not be used to bring objections to other portions of the plan not amended. The court should only sustain the appeal where it finds that the plan amendment is unlawful or unconstitutional or the conduct of the administrator is arbitrary or capricious.

**Section 445. Unincorporated Service District Trust Fund.**

The State Treasury is to create a separate special Unincorporated Service District Trust Fund for the purpose of holding moneys and paying expenses and obligations of unincorporated services districts. This section authorizes an appropriation of any moneys in the fund for the purposes provided in the essential services plans and other purposes authorized by Subchapter D.

**Section 445.1. Restricted accounts.**

The State Treasury also is to establish a restricted account in the Unincorporated Service District Trust Fund for each unincorporated service district in which the administrator for each district shall deposit all collected moneys within 30 days after collection and from which the

administrator shall pay expenses and obligations of the service district. DCED may also pay for compensation and expenses of the administrator out of the restricted account. This section authorizes an appropriation of any funds in the account for the purposes provided in the essential services plan and other purposes authorized by Subchapter D.

**Section 446. Audit.**

The Auditor General of the Commonwealth is required to conduct an annual audit of the account, and assessments and transactions of the district.

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

This section allows the district to become part of another municipality or become a new independent municipality. It allows the district to participate in a merger or consolidation as provided under Title 53 of the Pennsylvania Consolidated Statutes whereby the residents of the district first initiate the process of merger or consolidation by petition. After the residents' petition, the administrator, in consultation with the service district advisory committee, is authorized to have the powers of a governing body of a municipality to enter into a merger or consolidation agreement with another municipality, provide for the transition of the district into a consolidated or merged municipality and expend district funds to the extent authorized by law to provide for incorporation.

Separately, if the Secretary determines that the district could be incorporated as a viable municipality, the residents are authorized to incorporate the area of the district as a municipality using any municipal code or other provision of law providing for incorporation.

Where the district becomes part of another existing or a new municipality, DCED is authorized to issue any grant or loan authorized under Chapter 3 to provide transitional assistance. Once reincorporated, all assets and debts held by the Commonwealth in trust on behalf of the residents and property owners of the district are assumed by the municipality.

**Chapter 6. Fiscal Emergencies in Municipalities**

Chapter 6, like Chapter 7, is editorially and technically changed to provide that procedures found in both chapters will apply, with the exception of Philadelphia, to all municipalities instead of only cities of the third class. Moreover, throughout both chapters, language is removed which appeared to provide an exception to the prohibition of unilateral modification of contracts by state entities where a state court has otherwise ordered the modification.

**Section 602. Declaration of fiscal emergency.**

This section is amended to specify that a fiscal emergency declaration by the Governor is warranted where: (1) the municipality is insolvent or projected to be insolvent and is unable to provide vital and necessary services, or (2) The municipality has failed to adopt or implement a coordinator's plan or an alternative plan. Previously, a municipality would have to fail to adopt or implement a plan and fail to meet either the solvency or provision of vital and necessary services threshold.

**Section 607. Consent Agreement.**

This section is clarified to provide that the provisions of 252 (providing for the application of plans to collective bargaining agreements) apply to a consent agreement pursuant to this section.

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

Changes to this section more clearly establish the conditions under which the fiscal emergency status of a municipality subject to Chapter 6 can end by specifying that a municipal fiscal emergency shall end upon the Secretary's determination that the municipality is solvent and able to provide vital and necessary services.

**Section 609. Restrictions.**

This section is amended to provide a necessary technical change to conform to the provisions contained within section 710.1(c) related to the imposition of an earned income tax on nonresidents after a municipality subject to Chapter 6 or 7 is deemed no longer in a state of fiscal emergency.

**Chapter 7. Receivership in Municipalities**

Chapter 7, like Chapter 6, is editorially and technically changed to provide that procedures found in both chapters will apply, with the exception of Philadelphia, to all municipalities instead of only cities of the third class. Moreover, throughout both chapters, language is removed which appeared to provide an exception to the prohibition of unilateral modification of contracts by state entities where a state court has otherwise ordered the modification. The changes to Chapter 7 also provide for the transition of a municipality after receivership has expired or been terminated.

**Section 704. Confirmation.**

This section is clarified to provide that the provisions of 252 (providing for the application of plans to collective bargaining agreements) apply to a recovery plan pursuant to this section.

**Section 710. Termination of receivership.**

Subsection (c) is added to provide that the Secretary's termination of a fiscal emergency under Section 608 shall also constitute a termination of a receivership.

**Section 710.1. Continuation of recovery plan.**

- Subsection (a) provides that upon a termination of a fiscal emergency as provided in section 608, the Secretary shall issue an administrative determination that the municipality's distressed status should be terminated or the municipality should be subject to further Act 47 proceedings outside of receivership under Chapter 2. If continued proceedings outside of receivership are recommended, subsection (b) provides that the Secretary shall appoint a coordinator, and the recovery plan established under the receivership shall continue in effect as the recovery plan of the municipality under Chapter 2. Plan amendments would occur by ordinance of the municipality's governing body after recommendation by the coordinator in accordance with Chapter 2. The recovery plan of the municipality would be subject to a maximum duration of five years from the termination of the receivership. The administration of the plan would also differ from that of other distressed municipalities as follows:
  - The coordinator would retain powers and duties of a receiver with regard to enforcement of plan completion.
  - The Commonwealth Court would retain jurisdiction to adjudicate disputes and enforce orders issued by the coordinator in accordance with the current plan.<sup>10</sup>

---

<sup>10</sup> Previous provisions under subsection (c) imposed the same restrictions that apply to Scranton for the levy of nonresident earned income tax increases on a municipality that returns to Chapter 2 after receivership.



**Technical Provisions****Section 33.**

(1) Shield language is added specifying that section 122(c), relating to waiver of regulatory mandates, will apply to all state rules and regulations in effect on or after the effective date of the section.

(2) An additional housekeeping provision clarifies that the additions and amendment of the receivership termination process does not apply to a municipality which has entered receivership prior to the effective date of this act. Thus, the post-receivership process contained in this bill will not apply to the City of Harrisburg.

**Section 34.**

A technical provision is added to prevent a distressed municipality that has a distressed pension system under Act 205 of 1984 from using the authorization under Act 205 to increase the earned income tax on non-residents by more than an increase on residents.<sup>SLGC</sup> This provision also prevents a distressed municipality from increasing the earned income tax on non-residents by more than on residents in anticipation of the enactment of this bill by comparing whether there has been an increase to any rate which was in effect on June 30, 2014.

**Section 35.**

A technical provision is added to clarify that any determination made by the Secretary regarding a municipality's termination of distress, or any appeals of any such decision, made prior to the enactment of this legislation shall not be subject to the provisions of section 255.1.