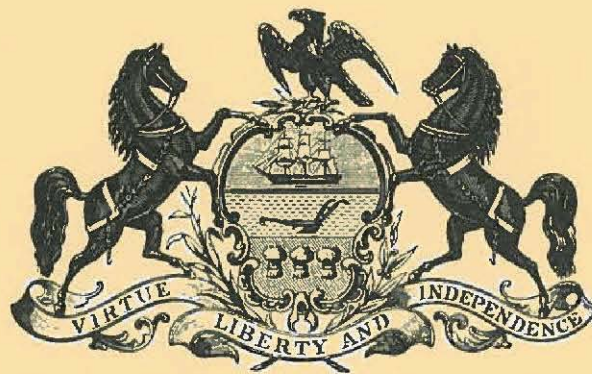


# **MUNICIPAL FISCAL DISTRESS**

## **BACKGROUND AND LEGISLATIVE REMEDY**



General Assembly of the Commonwealth of Pennsylvania  
**LOCAL GOVERNMENT COMMISSION**  
Harrisburg, Pennsylvania  
January, 1987

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The Local Government Commission was created by Act of 1935, May 29, P.L.244, as amended, as a continuing agency to provide research and advice to the General Assembly of the Commonwealth of Pennsylvania on matters affecting political subdivisions and municipal governments.

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## FORWARD

In June, 1985, the Local Government Commission authorized formation of a Task Force to study problems associated with distressed municipalities and to formulate a legislative proposal to alleviate these problems. The Task Force was comprised of members which represented the Legislature, various municipal associations, research organizations, business interest groups, the university community, the U.S. Bankruptcy Court, and several state departments.

The Task Force commenced its work in October, 1985 by reviewing legislation and statutes from Pennsylvania and other states for assistance in drafting a proposal which best reflects the current state of distressed municipalities in the Commonwealth. Much original thought and language also was included in the Task Force's proposal to accomplish three objectives which the members believed needed to be addressed:

- (1) Development of a state assistance plan to aid distressed municipalities in restoring their financial integrity while leaving principal responsibility for the conduct of financial affairs of the municipality to its locally elected officials.
- (2) Creation of an updated procedure to enable distressed municipalities to file a municipal debt readjustment action under federal law.
- (3) Development of a procedure to consolidate distressed municipalities which are no longer considered economically viable. The procedure is voluntary and requires approval of the majority of voters in each municipality proposed to be consolidated.

The general philosophy of the Task Force was to draft legislation which would enable distressed municipalities to assist themselves through adoption of an acceptable financial plan. Task Force members were opposed to an outright state "bailout" of municipalities in fiscal distress as not to encourage marginal communities from seeking financial aid without recognizing their own financial limitations. Thus, no specific grant program is provided in this legislation. In addition, distressed municipalities which refuse to adopt a fiscal plan pursuant to this legislation would no longer be eligible to receive certain state entitlements or grants.

Its work completed in September, 1986, the Task Force submitted its proposal to the ten-member Local Government Commission in November, 1986. With the introduction of the Financially Distressed Municipalities Act, the Local Government Commission has specifically provided legislation which identifies (through indicators of distress) those municipalities needing financial planning assistance. In July, 1986, the General Assembly enacted several bills designed to programmatically aid distressed municipalities and businesses and industries in those communities. The Commission's legislative proposal will compliment those programs by both creating criteria to measure fiscal distress and providing the necessary financial planning to resolve distressed situations.



## I. BACKGROUND

The problems associated with distressed municipalities have been well documented on both the national and state levels. Beginning in 1979, the United States Advisory Commission on Intergovernmental Relations (ACIR) studied the role of the states in assisting distressed communities with particular emphasis on how the states influenced community economic conditions. Subsequent reports published by the ACIR in March and November of 1985 concentrated on classification and case studies of financial emergencies, including bankruptcies and defaults. In Pennsylvania, the Chancellor of the University of Pittsburgh, Dr. Wesley W. Posvar, convened a conference on May 11, 1984 to adopt recommendations and intervention strategies concerning municipal financial distress and emergencies. This conference was followed by a policy briefing paper issued by the Graduate School of Public and International Affairs at the University of Pittsburgh which defined municipal fiscal distress and fiscal emergencies in Pennsylvania and outlined a comprehensive approach to identify distressed municipalities and to advocate state action intended to prevent or alleviate fiscal distress. The Intergovernmental Cooperation Program of the Allegheny League of Municipalities (ICP) developed a fiscal monitoring system to assist local officials in taking a comprehensive review of the fiscal condition of their municipality over a period of time. The fiscal monitoring system was also referred to as "an early warning system" to enable local officials in recognizing problem areas before they became unmanageable. The ICP also issued a comprehensive report in September, 1985 which specifically addressed the issue of municipal bankruptcy in Pennsylvania and recommended legislative alternatives to prevent same.

The purpose of this background information is to lend credibility to the fact that many municipalities in Pennsylvania are indeed distressed and to establish the need for the development of comprehensive legislation to address this issue in a substantive manner. Each of the above named studies is reviewed below as concisely as possible in order to give the reader the necessary insight in developing a thoughtful opinion on the need for legislation to alleviate municipal fiscal distress and bankruptcy in the Commonwealth.

### A. DEFINING DISTRESS

What is municipal fiscal distress and what are its causes? What policies can states adopt to prevent it? According to the Advisory Commission on Intergovernmental Relations (ACIR) in a report released in November, 1985, cyclical and structural forces within a community generate distress. Cyclical forces are short-term (two to five years) and generally correspond with swings in the business cycle. Structural forces are long-term (over five years) and reflect changes in the economy which are beyond the control of a state or local government. (In Pennsylvania, an example of a structural change in the economy is the decline of the American steel industry due to the lower cost of imported steel, aging technology, and overcapacity. The unemployment which results is referred to as structural unemployment).

The ACIR also attributed structural distress to "market failure". In the relation to distressed municipalities, "market failure occurs when inefficiencies in the private marketplace, such as a lack of competition, or economic and social discrimination, combine to create pockets, neighborhoods, or even whole cities where the economy stagnates or shrinks".<sup>1</sup> As a result, investors are reluctant to invest in market failure areas due to the high risk. The ACIR emphasized that market failure can occur in communities whether or not there is a long-term structural shift in the economy. They stated that market failure has even occurred during upward cyclical trends in the economy. When economic conditions eventually deteriorate, "conditions in market failure areas become that much worse".<sup>2</sup>

The ACIR report classified economic distress in terms of community distress and government distress. The former was concerned with measuring the relative economic and social conditions of people, where they live, and businesses. The latter measured fiscal conditions of local governments in terms of revenues and expenditures in both the short-term and long-term. For purposes of defining a distressed community in its study, the ACIR utilized the following:

"Distressed communities are those local government jurisdictions, and in some instances sub-areas of jurisdictions, which are in the bottom 25% of all jurisdictions of the same class throughout the state, based on the most appropriate economic measure of distress for the same class of jurisdiction, e.g., poverty, unemployment, or blight".<sup>3</sup>

Variables utilized by the ACIR in evaluating distress affecting a local government were divided into four categories. These included: socio-economic measures (per capita income, poverty level and rate, welfare dependence, rate of violent crimes, and education status); physical measures (condition of the roads, bridges, sewers, and housing stock); fiscal measures (average operating surplus or deficit, average short-term debt as a percentage of revenues, and dependence on governmental aid); and economic development measures (population decline, levels of employment and unemployment, business dissolution and start-up rates, and levels of plant utilization). The ACIR concentrated its study on population growth, decline, and composition; income and poverty; employment or unemployment; public physical infrastructure; and private sector economic activity.<sup>4</sup>

#### Municipal Distress - Short-term v. Long-term

Local governments provide invaluable assistance to their citizens. As the level of government most visible to its citizenry, it likely is also the most responsive. A municipality must be fiscally sound to meet its residents requirements for the delivery of necessary and vital services. Yet in determining the extent of fiscal distress which affects local governments, it must be realized that adverse fiscal conditions are not easily overcome. Without being oversimplistic, short-term distress, which is usually caused by a municipality's inability to balance its budget, can be determined by variables that measure a current budgetary balance between revenues and expenditures (surplus or deficit), the average short-term debt as a percentage of total revenues and average debt service costs as a percentage of total revenues.<sup>5</sup> These short-term indicators, initially reported by

Katherine Bradbury in "Structural Distress in Cities; Causes and Consequences," [New England Economic Review (Jan./Feb. 1983), pp. 32-43], were defined by the ACIR as follows:

Current Account Surplus as Percent of Budget: difference between total revenues and total expenditures expressed as percent of average of expenditures and revenues. Total expenditures include general expenditures, noncapital utility expenditures, long-term debt retired and city contributions to its own retirement systems. Total revenues include general revenues (intergovernmental and own source) and utility revenues.

Short-term Debt as Percent of Total Revenues: ratio of short-term debt outstanding at year-end to general revenues expressed as percent.

Debt Service Costs as Percent of Total Revenues: interest expense on short-term debt<sup>6</sup> outstanding, and long-term debt retired as percent of general revenues.

Long-term distress can be caused by the retrenchment of funding sources not generated at the local level which a municipality may have heavily relied upon to balance annual budgets. The ACIR noted that although in 1981 intergovernmental grants-in-aid made up 83% of all federal aid received by cities, and that federal assistance had risen at an annual rate of 14.6% in a 25 year period (1955-1980), after inflation, no real growth in federal assistance had been experienced since FY 1973. When coupled with the demise of federal revenue sharing and the outright elimination or cuts in other federal programs (due in part to Gramm-Rudman) in FY 1986, some municipalities in market failure areas may either have to drastically raise taxes to fund deficits caused by the loss of federal funds or make the difficult choice of severely cutting expenditures and thereby services. The key question then arises, what if expenditures can no longer be cut and local revenues cannot be increased because of existing tax limits?

The ACIR also reported that long-term distress (also called "structural distress") results from an imbalance between responsibilities and revenues. This imbalance "results from the unfavorable combination of six factors; (1) size of the tax base; (2) amount of intergovernmental aid; (3) tax collection by overlapping governments; (4) range of service responsibilities; (5) costs of local production; and (6) level of service needs".<sup>8</sup>

In conclusion, municipal fiscal distress can be cyclical or structural, short-term or long-term, and is the result of "a complex array of economic, social, and political factors that are difficult to separate". In assessing how states can aid distressed communities, the ACIR in 1985 made the following recommendations:

(1) The positive trend toward decentralizing responsibility to the states and lowering the federal profile in economic development and assistance programs, makes it necessary for state governments to: (1) strengthen relationships between state and local governments and the private sector; and (2) provide more explicitly articulated and carefully focused economic policies and plans, accompanied by tighter

structuring and coordination of economic development and assistance programs.

(2) That states enhance the capabilities of, and lift burdensome restrictions upon, local governments so that those governments may have increased flexibility in coping with local needs and problems as they arise. Such action is a necessary aspect of devolution and decentralization, and the need for it is especially acute in distressed areas.

(3) That states encourage and provide technical assistance to neighborhood self-help associations and other community-based organizations, especially those located in distressed areas. Possible implementing measures include:

(a) providing state tax credits and other financial and nonfinancial incentives to corporations and other organizations contributing funds, facilities, or equipment to neighborhood nonprofit organizations;

(b) involving neighborhood organizations on a volunteer, contractual, or other appropriate basis in state-assisted housing rehabilitation and public facility repair and maintenance programs;

(c) broadening state legislation on interlocal contracting and joint enterprise statutes so that nonprofit community-based organizations can contract to deliver city, county, or special district services to the extent deemed appropriate by the overlying local governmental unit; and

(d) authorizing local governments to establish neighborhood subunits of government to exercise such powers and conduct such activities as the local units are empowered to conduct and which they are not legally precluded from delegating. The objectives of such authorizing legislation include the opportunity for limited self-governance of neighborhoods, provisions of local public services in ways responsive to community needs, and the creation of wealth and facilitation of other economic development within the community.

(4) That states consider enacting legislation to establish and strengthen linkages between and among private employers, education and training providers, employee organizations, and state and local governments to maximize employment opportunity for all employable persons and to provide adequate education, job and entrepreneurial training, re-training facilities, and instruction and placement so there is a literate and otherwise qualified work force for private and public employment.

(5) That state governments concentrate their efforts in the housing field upon: (1) facilitating, through code revision and other deregulatory efforts, the operation of the free market in providing adequate housing and housing opportunities for all citizens; (2) authorizing local government participation in federal housing

assistance programs; (3) experimenting, in collaboration with local governments, with alternative methods for delivering housing assistance, such as housing allowances, vouchers and rental certificates; (4) authorizing and assisting in establishing homesteading programs; and (5) authorizing and encouraging formulation of tenant-management associations.

(6) That states review local fiscal needs and resources and state aid programs from the standpoint of interlocal equity, e.g., that:

(a) states consider establishing or revising state revenue sharing programs to take into account wide variances in local fiscal capacity and the special problems of distressed municipalities; and

(b) jurisdictions in densely settled areas be authorized to share a portion of future increases in their commercial-industrial tax bases. Such sharing can reduce the intensity of interlocal competition for valuable industrial and commercial facilities which sometimes is accompanied by actions to exclude the housing required to accommodate the employees of such facilities. It also can provide a negotiating basis for neighboring jurisdictions to use in balancing utility and other service requirements against the advantages and disadvantages of incorporation or annexation.

(7) That state governments adopt individually tailored policies, programs, and institutional arrangements for attracting commercial and industrial development in economically distressed areas; appropriate measures include business deregulation, tax credits, and establishing of enterprise zones.

(8) That states continue information sharing, public promotion, technical assistance, and loan activities that benefit minority and small business enterprises in distressed areas.

(9) Given the relative absence of meaningful evaluations of state assistance programs for distressed areas, that states enact stringent sunset and program evaluation provisions when adopting any new programs of direct financial assistance or when providing tax credits to encourage economic revitalization in such areas. New programs should carry a repeal date, with evaluations and their results available prior to that date, so the Governor and Legislature may make informed judgements about continuing, modifying, or lapsing such programs.

(10) Pending a reappraisal of relative responsibilities among federal, state, and local governments, that the national government refrain from further impeding or encumbering state and local governments with new regulatory mandates as they strive to meet increased responsibilities to their citizens in the wake of a reduced federal role. The Commission further suggests that the Congress authorize expanded flexibility for state and local governments to transfer funds among aid categories, within specified maxima, so that problems of the highest urgency which vary from state to state and from locality to locality may be addressed as adequately as possible.

B. NATIONAL REVIEW OF MUNICIPAL DISTRESS AND BANKRUPTCIES - OHIO AND NEW YORK CASE STUDIES

In March, 1985, the ACIR released a report on bankruptcies, defaults, and other local government financial emergencies. They noted that during a nine year period (1972-1983), three general purpose units of government actually filed for bankruptcy. Although the ACIR found no evidence that local governments are generally experiencing increased financial emergencies, they nevertheless comprehensively classified financial emergencies, provided a history of same (highlighting the developments in New York and Cleveland), and concluded that "the quality of financial management was the key determinant in keeping cities out of financial emergencies".<sup>10</sup> The ACIR found that affected local governments usually had bad budgeting and accounting practices and unaudited financial reports which resulted in unbalanced budgets and accumulated fund deficits which eventually resulted in the loss of liquidity. The ACIR also recognized that court judgements and arbitration awards and the use of deficit funding bonds have had an adverse effect on a municipality's long-term financial health. In issuing long-term bonds to finance deficits, the ACIR urged that such actions be done only as part of an overall state-supervised plan to resolve a municipality's financial problems.

The report also reviewed the provisions of federal bankruptcy law as it pertains to municipalities. Article VI, Section 8 of the United States Constitution empowers Congress to "establish uniform laws on the subject of bankruptcies through the United States". Requirements and procedures for filing Municipal Debt Adjustment proceedings are specifically provided for in Chapter 9 of the United States Bankruptcy Code. The ACIR emphasized the need for state governments to keep municipalities solvent since services provided by local governments are essential to the general health and welfare of their residents. Local governments simply "cannot cease operations and liquidate their assets like private sector bankruptcies".<sup>11</sup> According to the ACIR, Municipal Debt Adjustment should be a procedure by which the financial obligations of a municipality are "restructured" to provide for the orderly repayment of debts. ACIR opined that local governments should utilize Chapter 9 federal bankruptcy law proceedings only in instances in which state remedies are inadequate.

There are four major requirements which must be met before a municipality may file and subsequently qualify for relief under Chapter 9. The municipality must:

- (1) be considered a municipality as defined in law;
- (2) be permitted by state law to file;
- (3) be insolvent or unable to meet debts as they mature; and
- (4) desire to effect a plan for the adjustment of debts.<sup>12</sup>

The ACIR also examined financial emergencies generated from municipal defaults, e.g., situations which result from failure to pay interest or principal on municipal securities but which do not result in a bankruptcy filing. Between 1972 and the end of 1983, the ACIR found 36 defaults on government-purpose debt and 82 on private-purpose tax exempt debt. Of the 36 government-purpose defaults, 11 were general obligation debts. In relation to government-purpose revenue bond defaults, 6 were for water supply

systems and sewers, 5 were for housing,<sup>13</sup> 5 were for hospitals, and 3 were for utilities other than water and sewers. Unfortunately, according to the ACIR, no single source of default information existed. They prepared a list of defaults by canvassing various states. As a result, they were able to provide classic case studies of defaults which included the cities of Parlier, California; New York, New York; Cleveland, Ohio; Saco, Maine; and the Cleveland Board of Education.

In reviewing its 1973 recommendations, the ACIR once again advocated that states should play an active part in providing assistance to municipalities faced with financial emergencies. The ACIR, at that time, recommended certain state actions that might be taken after an emergency has been declared. These guidelines for determining a financial emergency were:

- (1) default in payment of principal or interest on debt;
- (2) failure for a specified time period to make payments to the state or other governments of required tax withholdings, pension contributions, or other mandated payments;
- (3) failure for a specified time period to pay salaries or pension benefits; and
- (4) a floating debt of accounts payable or other current obligations which, net of funds available, exceeds 10% of the total prior year's appropriation.<sup>14</sup>

The ACIR recommended that state action consist of "state receivership with a variety of powers to regulate and control local government's finances". Two key requirements were included: (1) to require a plan to regain solvency; and (2) to provide a temporary state cash loan or loan guarantee from private sources to enable the government to meet its needs. Subsequent to these suggestions, Ohio and New York enacted laws patterned after them.

Review of use of the Ohio law (from 1979 through 1983) indicated that the statute was utilized on 10 occasions. Similar to Pennsylvania law, the Ohio Constitution provides that a general law of application must be applied to all municipalities and not solely to a given community (e.g., Cleveland). In November, 1979 the Ohio Legislature enacted a comprehensive statute to cover "Local Fiscal Emergencies". The law details the conditions which constitute a fiscal emergency and contain the following characteristics:

- (1) the existence of a default on a debt obligation for more than 30 days;
- (2) failure to pay employees within 30 days of when such payment is due unless two-thirds of the employees have agreed to a delay of up to 90 days;
- (3) (A technical measure unique to Ohio, based on a need to reallocate tax levies, within the constitutional tax limitation, from other local governments to the municipality.);
- (4) accounts payable that are delinquent by more than 30 days in either the general fund or all funds that, after deducting cash available to pay them, exceed one-twelfth of the prior year's general fund or all fund revenues;

- (5) a condition in which the total deficit for a combination of funds, less balances in any other funds that can be transferred to reduce such deficits, exceeds one-twelfth of the prior year's revenues of those funds that are in deficit; and
- (6) a condition in which uncommitted cash and investments in the general cash accounts of the government are less than the book balances of the funds by an amount greater than one-twelfth of the total cash received in those funds in the prior years.

The law provides that the state auditor shall determine whether a local government meets any one of the six conditions for a financial emergency. If the auditor so determines, a fiscal emergency is declared and a financial planning and supervision commission is established.<sup>15</sup>

In evaluating the effectiveness of the Ohio law, the ACIR found that of the 10 governments which were declared to be in a state of fiscal emergency in 1980, three were found by the state auditor to be free of emergency conditions in 1983. Of the remaining seven, all had improved their finances, but had not removed the emergency conditions by the end of 1983. ACIR found that the principal condition that keeps municipalities in a financial emergency is fund deficits which were caused by unbalanced budgets. The only means of eliminating the defaults is to increase revenues. Thus, it is not only necessary for Ohio local governments to "cure the problems that caused the unbalanced budgets but also to devise a way to provide excess revenues".<sup>16</sup> The Ohio law requires a city to have a plan to accomplish this aim and it provides the mechanism to monitor the municipality's compliance with the law in an effort to eventually correct the emergency conditions. The statute authorizes the State of Ohio to buy a municipality's notes to provide cash assistance to a distressed municipality. The ACIR concluded that as of March, 1985, the Ohio law appeared to be relatively successful. It had revealed financial emergencies in a timely fashion, and<sup>17</sup> "had some success in providing a basis for correcting the emergencies".

Unlike Ohio, the New York Legislature has not passed a law of general application for financial emergencies. Instead, special legislation is enacted when a fiscal emergency exists or is about to occur. In situations involving New York City, Yonkers, and Erie County, the Legislature created a Board of Control to oversee the financial operation of those communities. ACIR reported that in less severe cases, the state authorized issuing bonds to fund distressed municipality's deficit to restore the local governments cash position when the municipality had accumulated deficits that threatened its liquidity. New York law requires the establishment of a special debt service fund, to be held in trust by a bank, which directly receives property tax revenues sufficient to pay the debt service.<sup>18</sup>

The state comptroller is required to monitor the annual budgets of those governments which have been authorized to issue deficit funding bonds. The comptroller examines the revenue and expenditure estimates in municipal budgets and makes recommendations to the local government. The comptroller has no authority to alter a local budget or require actions by the local government.



ACIR reported that the State of New York has been flexible in dealing with local government emergencies. The state determines the existence of a fiscal emergency by special legislation and "tailors the legislation to address the particular emergency". The difference, according to the ACIR, between the Ohio statute and the New York law, is that "Ohio local governments know in advance the conditions that will trigger an emergency declaration and the state actions that will ensue, while New York local governments cannot be sure when or how the state will act".<sup>19</sup>

New York also provides, as a part of its state budget, a municipal overburden aid package for communities which have reached their existing tax limits. This form of grant is intended to forestall further financial difficulties for municipalities which can neither raise the additional revenues nor reduce expenditures.

### C. MUNICIPAL FISCAL DISTRESS IN PENNSYLVANIA - RELEVANT STUDIES

#### 1. GSPIA Study

The faculty and students of the Graduate School of Public and International Affairs (GSPIA) at the University of Pittsburgh prepared a policy briefing paper (1985) evaluating the complexity of municipal fiscal distress in the Commonwealth of Pennsylvania, calling for a comprehensive approach to identify distressed municipalities and to initiate state action which would "avert or cope" with fiscal distress. This project was part of a collaborative effort between GSPIA's Program for the Study of Knowledge and Use and the Legislative Office for Research Liaison of the Pennsylvania General Assembly.<sup>20</sup>

The study contends the severity of the fiscal distress problem in Pennsylvania has not been adequately investigated due to the absence of economic and managerial indicators which would allow distressed municipalities to be identified more readily. These indicators would further enable the cause, scope, and severity of the fiscal distress in a municipality to be identified.

In addition to the absence of necessary indicators, the legal environment offers few solutions to the current fiscal distress problem facing municipalities. No specific statutes exist in Pennsylvania which proscribe actions to be taken when a community experiences fiscal distress. Statutes which indirectly address the problem such as "code laws", the Department of Community Affairs statutory responsibilities regarding financial reports, the Intergovernmental Cooperation Act, the Local Government Unit Debt Act, and the Federal Bankruptcy Act, are said to be generally ineffective because they are either outdated or ignored by municipal governments.

The Constitution of the Commonwealth of Pennsylvania currently contains restrictive language prohibiting the General Assembly from intervening in the monetary affairs of local governments. A discussion on Constitutional limitations is further expounded later in this report. There are, however, two provisions which encourage local initiatives to cope with fiscal distress. Article IX, Section 5 suggests that municipal governments may

cooperate in the exercise of any function of government. Article IX, Section 8 instructs the General Assembly to enact uniform legislation to aid those municipalities which are considering a change in their boundaries. In light of these constitutional provisions, the authors of this policy briefing study have developed a Fiscal Distress Model describing three levels (types) of potential state action to "avert and cope" with municipal fiscal distress.

The first level of the Fiscal Distress Disaster Model develops strategies which would increase available information to identify distressed municipalities. Implementation of level one would allow for early detection of currently or potentially distressed municipalities. Strategies to increase available information are the following:

- (1) Promotion of Generally Accepted Accounting Principles (GAAP). GAAP could be implemented by mandate, or municipalities could be induced to adopt uniform procedures.
- (2) Development and implementation of an Indicator System. This type of information system would evaluate economic and managerial indicators in ascertaining the scope and cause of fiscal distress in an area.
- (3) General Education, Training, and Technical Assistance. The implementation of GAAP would require several years, consequently local officials would need assistance and training during this period of time. In addition, further coordination and development of general financial management programs would be necessary. Finally, certification for various municipal positions, such as clerks, should be required.
- (4) Removal of Constraints. The General Assembly should evaluate the legitimacy of existing mandates which may impede the additional flexibility needed on the part of a distressed municipality.<sup>21</sup>

The second level of the Fiscal Distress Disaster Model contains three strategies to "avert and cope" with distress. This level is engaged in after a municipality is identified as distressed or potentially distressed. These strategies encourage cost savings alternatives and planned cutback management, such as:

- (1) Targeted Technical Assistance. At this level, training and assistance would be more individualized in order to focus on needs specific to the municipality in distress.
- (2) Shared Services. The most commonly used arrangements in Pennsylvania are inter-local contracts, joint municipal authorities, and COG's.
- (3) State Supervision of Local Management. This calls for creation of an emergency board which would temporarily replace<sup>22</sup> the town council in a municipality close to fiscal distress.

The third and final level of the Fiscal Distress Disaster Model involves strategies to cope with disaster emergencies. A disaster emergency is defined as a situation that is no longer controllable by local officials and requires extreme measures to rectify the existing situation.<sup>23</sup> These strategies are based on the assumption that previous managerial action has failed to alleviate a prolonged state of distress. Strategies to cope with emergencies include:

- (1) Direct Investment. This would require a decision by the State to direct large amounts of money toward the revitalization of a particular community.
- (2) Structured Reorganization of Government. Under this concept the autonomy and identity of a municipality are altered. A Boundary Adjustment Board would be created and would handle such changes.
- (3) Annexation. Pennsylvania's annexation provision currently contains language requiring a citizen initiative before a boundary change can be implemented. A Boundary Adjustment Board may be established and granted the authority to initiate annexation plans involving all or part of a municipality if it would benefit the community's fiscal welfare and interest.
- (4) Consolidation. Several municipalities unite their governments to form a new political entity. The proposed Boundary Adjustment Board could recommend consolidations.
- (5) Receivership. The local government unit would cease to exist. The necessary services to the affected citizens would be provided by a larger responsible entity such as a county or state.<sup>24</sup>

Recommendations for legislative action set forth by this policy briefing paper include implementation of the strategies discussed herein, as well as revising and amending current legislation such as the bankruptcy statutes and the Local Government Unit Debt Act. It further suggests delegating broader responsibilities to the Department of Community Affairs.

## 2. Intergovernmental Cooperation Program

Recognizing the deteriorating financial condition among local municipalities today, the Intergovernmental Cooperation Program has published the Municipal Financial Monitoring System in order to enable local officials to more thoroughly evaluate the financial condition of their community over a period of time.

The Municipal Financial Monitoring System (MFMS) outlines a procedure for monitoring fiscal, economic, and demographic factors which indicate whether a community is financially stable. The System is said to be a tool for officials in establishing fiscal policy and adopting budgets. Additionally, it would afford municipal managers and secretaries the opportunity to evaluate their communities' financial condition and recommend necessary actions accordingly.

While maintaining simplicity and flexibility, the MFMS includes 24 fiscal and administrative factors which are to be examined on a regular basis by the municipality. The factors to be calculated include revenue and expenditure trends, operating position of the community, liability and performance of administration and management, and community resources. Due to the flexible nature of MFMS, factors which are not currently included but deemed desirable by a specific municipality may be added from time to time.<sup>25</sup>

By calculating the various factors, municipal officials would be afforded the opportunity to examine more closely the fiscal trends transpiring in their respective communities. Based on the aforesaid data, trends would be identified as favorable, stable, or unfavorable. Information containing all factor trends would subsequently be plotted on a color-coded chart for simplicity. A community found to be pursuing an unfavorable trend would establish an "action agenda" in order to lend direction to the municipal officials coping with the undesirable financial conditions.

The report contains an explanation as to the application of the Municipal Financial Monitoring System. The following steps are suggested:

- (1) Appoint personnel to implement the MFMS. Because the municipal manager, secretary and other in-house staff are familiar and work with the budget on a daily basis, they are perceived to be ideal candidates to implement MFMS. Involvement by the Municipal Finance Committee is recommended, as well as the Pennsylvania Economy League which would be able to calculate the factors for the municipality by using a computer program developed by the League.
- (2) Determine which factors to use in examining the municipality's financial and administrative status. Due to the individuality of each community, a determination of applicable factors would be necessary. The flexibility of the MFMS would allow factors to be added and/or deleted as specified by the municipality.
- (3) Compile a list of the data needed to examine various factors. Each factor will identify the proper data sources.
- (4) Calculate the factors. Each factor would have a separate factor sheet describing the factor and its calculations. It is further suggested in this step that when implementing the MFMS initially, it may be helpful to calculate the factors for several previous years in order to establish a trend.
- (5) Analyze the trends. In order to simplify the analysis of municipal financial trends the report emphasizes the use of a plotted graph, color-coding individual trends to present a general overview of the community's fiscal and administrative positions.
- (6) Establish an action agenda for those factors with unfavorable ratings. The Pennsylvania Economy League may assist a municipality in this step by developing an action agenda dealing with needs specific to the aforesaid community.<sup>26</sup>

The contents of the report are said to be a useful tool in determining the financial stability of a community only if municipal officials are willing to take action to deal with potential or existing problems revealed by the MFMS. To demonstrate the use of MFMS, various appendices are included within, depicting charts, calculations, factors, and formulas as well as case studies of actual use.

The Intergovernmental Cooperation Program also commissioned Ed Wells and Larry Swanson of Action-Housing, Inc., to conduct a study addressing municipal bankruptcy and crises situations leading to bankruptcy. The report, Municipal Bankruptcy in Pennsylvania: The Economic Consequences and Legal Framework, with Recommendations for Legislative Action, offers six recommendations for state action, all of which have been based on three principles. First, municipalities in Pennsylvania tend to be smaller and more vulnerable to misfortune than the state as a whole; consequently, the state should assist municipalities in times of distress. Secondly, well managed municipalities should not be expected to bail out the mismanaged ones and bear the burden for their incompetence.<sup>27</sup> Therefore, the third principle asserts that in order to insure that state assistance and municipal resources are used productively, the state should claim some supervisory powers over financially distressed municipalities until their fiscal health has been revitalized.<sup>28</sup>

The six recommendations and explanations as presented in the ICP report are presented below.

Recommendation 1: Amend state laws to clarify the authorization of Pennsylvania municipalities to make use of Chapter 9 of the Federal Bankruptcy Code.

This recommendation would provide clear state authorization for a Pennsylvania municipality that finds a Chapter 9 proceeding advisable. Authorization should be extended to all political subdivisions, public agencies, and instrumentalities of the state. The report contends that existing statutes (53 P.S. 571-572) should be repealed in their entirety and replaced with a statute which would include the following provisions.

- (1) Any political subdivision, agency, or instrumentality of the Commonwealth should be permitted to file under Chapter 9 of the Federal Bankruptcy Code at any time, provided authorization is first requested from the Secretary of Community Affairs (in cases devoted primarily to education, the Secretary of Education) and the request is not denied.
- (2) The Secretary shall within five days of receipt of a request for authorization, appoint a representative to investigate the conditions of the municipality.
- (3) Upon completion of the investigation, the representative would recommend to the Secretary whether the petition should be approved.
- (4) If the Secretary concluded that the interest of the community in question could best be served and the fiscal emergency best resolved by a Chapter 9 proceeding, authorization would be granted. If no action had been taken by the Secretary after thirty (30) days of the request

for authorization, the municipality could presume the request to be granted and would therefore have been authorized by the state to file a bankruptcy petition.

This proposed statute would clarify the procedure for Pennsylvania municipalities to obtain permission to file a bankruptcy petition. Furthermore, it would grant power to the state to prevent unnecessary or ill-advised filings.

Recommendation 2: Reduce the uncertainty surrounding Chapter 9 proceedings by providing for guidelines or advice to municipalities and the court on matters involving the exercise of municipal legislative and executive prerogatives.

The second recommendation is intended to reduce the uncertainty and potential for delay in a Chapter 9 case by providing for state guidelines and advice to the municipality and the court regarding the exercising of municipal legislative or executive duties. The report suggested that the courts may choose to be guided by the opinions of a designated state body on specific matters such as "approving or denying the issuance of certificates of indebtedness, the protection of lease-financing agreements that secure local bond issues, and the renegotiation of abrogated collective bargaining agreements."<sup>30</sup>

Recommendation 3: Enact measures to improve the standard and practice of municipal finance in Pennsylvania.

The report emphasized the need for establishment of unified financial practices. Accounting standards, fiscal monitoring and training were felt to be areas in need of considerable improvement. The Department of Community Affairs was designated a key role in the development and implementation of mandatory accounting standards and procedures to be followed by municipalities. These reporting requirements call for a degree of flexibility, imposing some of the generally-accepted accounting principles on the larger municipalities, while not burdening to smaller communities with excessive reporting requirements. In conjunction with the aforesaid duties, it would further be the responsibility of the Department of Community Affairs to establish indicators which would give warning to a municipality approaching fiscal emergency conditions, as well as provide simple methods by which local officials may monitor these indicators. The work recently completed by the Pennsylvania Economy League was cited as such an example for DCA to provide to local municipalities. Finally DCA, counties, local councils of government, and the Allegheny League of Municipalities should coordinate their resources in order to provide more comprehensive and thorough training to local officials in dealing with fiscal and budgetary matters.

Recommendation 4: Strengthen routine state review authority over local government finances to prevent fiscal emergencies.

This would require all municipalities in Pennsylvania (excluding first and second class cities and counties) to submit budgets for the current year

and annual statements for the preceding year to the appropriate regional office of the Bureau of Local Government Services of the Department of Community Affairs within a designated period of time. The Bureau would be responsible for certifying the documents to be in compliance with state law and reviewing them for signs of fiscal distress. It should not be construed to mean that the certifying authority has any authority over the contents of the documents, providing they do not violate state law. Municipalities that fail to file these documents, or whose documents are found to be in violation of state law, may have any or all transfer of state funds halted until the requirements are fulfilled or violations corrected.

Recommendation 5: Provide for direct supervision of municipal finances by a state-local board during times of fiscal emergency.

A supervisory board would be appointed to assess the current fiscal affairs of the fiscally distressed municipality and supervise implementation of a financial plan to eliminate the emergency. The board could additionally assist in directing resources to the municipality during the time of crisis. This provision would further require definitions and guidelines to be established regarding what constitutes a fiscal emergency, who has authority to declare a fiscal emergency and by what procedure, how the supervisory board should be selected and composed, and what its powers should be.

Recommendation 6: Study the possibility of instituting a state-sponsored bond bank/bond insurance/refunding authority to back small local government bond issues.

This final recommendation requests the state to consider creation of a state-sponsored bond bank. The bond bank would be designed primarily for small municipal issues and would operate without state subsidy. Furthermore, it is argued the bond bank would decrease the cost of borrowing for small municipalities and provide a source of refunding credit as a part of distress work-out plans.

The ultimate goal of these recommendations is to eliminate the inadequacies of Pennsylvania municipal bankruptcy law and provide a five-tier defense against municipal bankruptcy: (1) improvement of standard practices; (2) monitoring and early warning; (3) resolution of fiscal emergencies under state law, with local participation and a minimum of litigation; (4) establishment of a bond bank to refund defaulted bonds; and (5) as a last resort, access to Chapter 9 bankruptcy proceedings. The ICP report asserts that the recommendations set forth in this study afford ample "opportunity for interested parties to minimize the damage suffered from economic misfortune and municipal fiscal irresponsibility at a small cost to the state and to the fiscally healthy communities within the state, while preserving the balance between local prerogatives, state authority, and court jurisdiction."<sup>31</sup>

3. UNIVERSITY OF PITTSBURGH CONFERENCE ON MUNICIPAL FISCAL DISTRESS EMERGENCIES

In May of 1984, Dr. Wesley W. Posvar, Chancellor of the University of Pittsburgh, convened a conference addressing municipal financial distress and

emergencies. The invited participants at the conference consisted of a large and varied group of men and women representing government, corporations, organized labor, academic and non-profit institutions. This group developed nineteen recommendations in dealing with municipal fiscal distress set forth in the report, Municipal Financial Distress and Emergencies: Issues and Intervention Strategies. The proposed recommendations contained in this report are presented below:

Recommendation 1: The Commonwealth should be more active in oversight of municipal fiscal management.

The conferees called for a more reactive and proactive role to be played by the Commonwealth with regard to municipal financial management. It was further suggested that this new role be based upon a careful assessment of experiences in other states.

Recommendation 2: Commensurate with its proactive role, the Commonwealth should enact legislation to mandate municipal accounting, reporting and auditing standards and practices.

As suggested by several other studies discussed previously, the Chancellor's conferees also called for institution of Generally Accepted Accounting Principles (GAAP). The recommendation reveals that GAAP should be mandated for all municipalities in Pennsylvania, with special accommodations made for smaller municipalities. The conferees felt the implementation of these mandated standards should consist of a period of years and should include Commonwealth grants-in-aid and technical assistance to enhance a smooth transition. The Department of Community Affairs, and where appropriate, counties and/or councils of government, were designated to play a role in providing technical assistance. Smaller municipalities would be encouraged to use "circuit rider" financial managers or accountants.

Recommendation 3: Commensurate with its reactive role, the Commonwealth should require timely monitoring of municipal financial health, and implementation of municipal fiscal emergency legislation.

The conferees felt that the current duties performed by the Department of Community Affairs in collecting financial data from municipalities was not uniformly comparable nor timely due to certification procedures and resource constraints. Consequently, the following recommendations were submitted:

- (a) DCA should be funded to monitor, publish, and analyze municipal financial indicators in a timely fashion.
- (b) Consideration should be given to using Act 675 of 1959, which is an amendment to the Public School Code addressing distressed school districts, as a model for municipal fiscal emergency legislation in the Commonwealth. (Stressed that research should be undertaken to develop legislation that is sensitive to the Commonwealth's political and economic environments).
- (c) Distressed communities which receive financial assistance through DCA should be required to participate in the development of



strategies to resolve their current distress and to avert future fiscal problems.

Recommendation 4: Public and private institutions should explore their mutual interests in the financial health of municipalities and collaborate in providing technical assistance.

It was suggested that banking and other private financial institutions should be encouraged to strengthen their fiscal analytical capacities and provide technical assistance to municipalities. Further recommended was the establishment of a public-private task force to be convened to define the extent of mutual interest in these matters.

Recommendation 5: The Commonwealth of Pennsylvania should take legislative action to clarify municipal access to Chapter 9 bankruptcy proceedings.

The report contends that Pennsylvania laws currently leave both the state and its municipalities ill-equipped to deal with municipal bankruptcy. Yet the bankruptcy of any municipality in the state is a matter of concern to all local governments in the Commonwealth because the bankruptcy of one damages the credit of all the others, and because a distressed or bankrupt municipality generally requires more state aid than others. The following recommendations respond to the need for a legal framework and technical assistance. The key recommendation is that the existing statutes should be repealed in their entirety and replaced with a statute providing that:

1. Any political subdivision or agency or instrumentality of the Commonwealth may file a Chapter 9 petition at any time, provided authorization is first requested from the Secretary of Community Affairs (or, in the case of school districts and other agencies and political subdivisions devoted primarily to educational purposes, the Secretary of Education), and the request is not denied.
2. Upon request for authorization to file a Chapter 9 petition, the Secretary shall within five days designate a representative or representatives to investigate the basis for the request.
3. Within 20 days of designation the representative(s) shall recommend to the Secretary whether the petition should be authorized.
4. Within five more days, the Secretary at his/her discretion shall grant or deny the request for authorization. If upon consideration of the findings and recommendations of the representative(s) the Secretary concludes that the public interest will best be served, and the fiscal emergency best resolved by a Chapter 9 proceeding, then authorization shall be granted.

Recommendation 6: The Commonwealth should adopt a policy and program to deal with those municipalities which have outlived their economic usefulness.

The conferees expressed concern regarding local jurisdictions which remain economically unviable after state intervention. One group proposed

that a policy be constructed around the concepts of disincorporation or unincorporation, coupled with county service delivery systems financed from resources generated by the county. Another group, although not proposing any positive action, rejected state "bail outs" (judicial or legislative) as courses of action.

Recommendation 7: The Commonwealth should encourage further intergovernmental cooperation among its substate governmental units in the delivery of their public service programs.

The "encouragement" roles proposed by various discussion groups were areas of increased fiscal support of COG's, training in various aspects of intergovernmental relations, continuous publicity about successful intergovernmental cooperation, and the provision of technical assistance to their member municipalities in accounting, reporting, monitoring, and budgeting.

Recommendation 8: The Commonwealth should review and amend existing laws governing municipal taxes and other revenues to insure that they are sufficiently adequate and flexible to meet municipal needs.

The conferees observed that the limitations and inflexibility of current municipal tax laws may be contributing to local fiscal emergencies. It was suggested that a municipal tax and revenue system be designed that is not overly sensitive to uncertainties imposed by business cycles and economic decline.

Recommendation 9: Steps should be taken by the Commonwealth and/or private financial institutions to develop pooling schemes for the issuance of bonds by municipal governments.

Conferees proposed two approaches for providing municipalities with a means of obtaining capital at a lower and more favorable cost. Further suggested was the creation of a state bond bank (such as those existing in Vermont and Maine). Conferees additionally proposed lending institutions explore ways to pool bond issues for groups of municipalities.

Recommendation 10: The national government should adopt policies and programs to alleviate interregional inequities stemming from changes in the structure of regional growth.

It was recommended that the national government play a positive role regarding distressed municipalities. Several viewpoints were presented in support of this suggestion:

- (a) Interstate, national, and international factors often underpin corporate decisions to locate a place of business or a factory.
- (b) Those location decisions may have a profound effect on a municipality's financial health.
- (c) Municipalities, and often states, have little if any leverage to exercise on those decisions, and yet they must bear major

proportions of the social and financial consequences of them.

- (d) Among such consequences is the financial distress brought about by the per capita cost of maintaining in-place the public service infrastructure as the resident population declines.
- (e) Neither the people who remain behind, nor the taxpayers of the state in which the municipality is located, should be expected to carry the full burden of these costs.

Before defining a specific national role in municipal fiscal distress, the report recommended further improvements in the states' administration and fiscal assistance programs.

Recommendation 11 - 19: These recommendations deal with a variety of research and public service initiatives for action by the University of Pittsburgh, cooperatively with other private and public sector organizations.

Dr. Wesley W. Posvar spoke to the Local Government Commission in Harrisburg, Pennsylvania on February 25, 1985 concerning the current state of municipal fiscal distress in the Commonwealth by presenting the report, Municipal Fiscal Distress: Choices for Pennsylvania, which the University of Pittsburgh prepared (along with advanced students) for the Legislative Office for Research Liaison of the Pennsylvania House of Representatives. A synopsis of this study had been previously included within this report.

## II. CONSTITUTIONAL CONSIDERATIONS

The approach of the proposed Financially Distressed Municipalities Act anticipates some of the restrictions imposed upon the state - local government relationship by the Constitution of the Commonwealth of Pennsylvania. The issues generally concern the scope and extent of state interference with the operational and fiscal affairs of local governments. The relevant Constitutional provisions which apparently restrict legislative interference address the propriety of local and special legislation, the extent of permissible regulation of local governments by local and special laws, and the assumption of local debt by the state.

### (a) Legislative Power to Control Local Affairs.

Legislative control over local government is justified by a state's exercise of its sovereign powers. It is a well accepted principle of municipal law that a local government, as a municipal corporation, is an instrumentality of the state deriving its powers and very existence from the state,<sup>33</sup> and that a local government may exercise only such powers as are expressed or derived from acts of the Legislature.<sup>34</sup> These principles are known as "Dillon's Rule," and are the well established law of Pennsylvania. See City of Philadelphia v. Fox, 64 Pa. 169 (1870); American Airline Products Incorporated v. Lock Haven, 288 Pa. 420, 135 A 726 (1927); In re Valley Deposit and Trust Company of Belle Vernon, 311 Pa. 495, 167 A 42 (1933); Kline v. City of Harrisburg, 362 Pa. 438, 68 A2d 182 (1949); Knauer v. Commonwealth of Pennsylvania, 17 Pa. Cmwlth. Ct. 360, 332 A2d 589 (1975). Moreover, powers conferred upon local governments by the Legislature may be modified or even withdrawn by the Legislature at its pleasure. Borough of Hummelstown v. Lower Dauphin School District, 24 Pa. Cmwlth. Ct. 486, 357 A2d 727 (1976). See also, Fox.

However, the power exercised by the Commonwealth and the General Assembly over local government is not as complete and absolute as Dillon's Rule and its progeny might imply. While reference is often made to the Commonwealth as sovereign, the ultimate power of government derives from and is inherent in the people generally. This is a fundamental legal principle upon which the existence of all government and forms of government (state, local, executive, judicial, and legislative) rests; and is embodied in Article I, Section 2 of the Pennsylvania Constitution.<sup>35</sup> The duties, powers, and limitations of all forms of government are governed by declarations set forth in the Constitution which establishes them. Thus, to the extent that the Pennsylvania Constitution is a declaration of fundamental law, O'Neil v. White, 343 Pa. 96, 22 A2d 25 (1941), the Legislature can exercise only so much of its generally accepted power under Dillon's Rule as is permitted by the Constitution, Commonwealth v. Maxwell, 27 Pa. 444 (1856); Weister v. Hade, 52 Pa. 474 (1866). Conversely, the Constitution preserves certain rights to local governments with which the Legislature may not interfere.

### (b) Constitutional and Inherent Local Powers.

Instantly, it is clear that it is fundamentally the State Constitution which is the source of whatever may be the nature, scope, and extent of local

government existence and powers. In Pennsylvania, the Constitution is conspicuously void of any express grant of powers directly to local governments; and thus, there are no inherent powers of governance which a local government may exercise.<sup>36</sup> Obviously, local governments adopting home rule charters are excepted from the general principles or inherent rights; but in Pennsylvania the exception applies only if the exercise of a power or performance of a function by a home rule municipality has not been denied by the Legislature.<sup>37</sup> Thus, in Pennsylvania the Constitution expressly delegates to the Legislature the authority to grant and define the powers of local governments,<sup>38</sup> and principles of inherent local self-government have no effect with respect to non-home rule charter local governments and very limited effect with respect to home rule charter local governments upon the Legislature's exercise of its powers over local governments under Dillon's Rule. Given this state of the law, no reasonable or legitimate argument can be made that provisions of this proposed legislation are an unconstitutional legislative usurpation of either constitutional or inherent local government fiscal powers.

(c) General vs. Special and Local Laws.

Legislative control over local governments, however, may be exercised only by general law. Local or special laws which interfere with local government powers cannot pass constitutional muster. The Pennsylvania Constitution clearly instructs the Legislature to enact only general laws which affect local governments;<sup>39</sup> and prohibits enactment of certain local or special laws.<sup>40</sup> This legislation passes the constitutional test.

If enacted, this bill would become a general law<sup>41</sup> whose provisions embrace within its definition of municipality all local governments without<sup>42</sup> exception and equally as a class of fiscally distressed local governments. The bill recognizes that all local governments function as instrumentalities of the Commonwealth and that as such their fiscal integrity impacts the general health, safety, and welfare of the entire Commonwealth. Accordingly, the establishment of a statutory classification and mechanism for addressing problems of local government fiscal distress has a natural relationship to a proper state purpose;<sup>43</sup> and is based upon real distinctions between fiscal stability and fiscal collapse.<sup>44</sup> Similarly, no provisions of the bill regulate the affairs of some members of the class of fiscally distressed local governments differently than other members of the class. All local governments which fall within the general criteria of the legislation must be accorded the same opportunities to resolve their fiscal difficulties without preference or distinction. Thus, even if the bill is determined to be an intrusion into local affairs, the intrusion<sup>45</sup> is constitutionally permissible as a general enactment of the Legislature<sup>45</sup> and as a proper exercise of legislative powers pursuant to Dillon's Rule.

(d) Local Debt.

Another constitutional restriction upon legislative interference with local governments concerns the existing debts of local governments. Clearly, and with no need for citation to authority,<sup>46</sup> local governments in Pennsylvania have the power to borrow money. No provisions of the bill remove either the power to incur debt or the necessarily complimentary power to tax.<sup>47</sup>

However, once debt has been incurred by a local government, it must remain local debt. But for two specific instances, the Commonwealth cannot pay the debts, either in whole or in part, of any local government.<sup>48</sup> The proposed Financially Distressed Municipalities Act does not permit or require the Commonwealth to assume the debts of local governments. Therefore, there can be no objection that this proposal is unconstitutional on this basis.

(e) Other Considerations.

Article III, Section 31 of the Pennsylvania Constitution specifically prohibits the General Assembly from delegating "to any special commission, private corporation, or association any power to supervise or interfere with any municipal improvement, money, property, or effects, or to levy taxes or perform any municipal function whatever." (emphasis added). This proposal does not mandate that the plan requirements found within it are required to be followed by a distressed municipality. No special commission is created to control the fiscal affairs of the municipality or to usurp the policy-making power of a municipal governing body. Indeed, a distressed municipality may ultimately reject any fiscal plan proposed by a state appointed coordinator (through the existing Department of Community Affairs) to assist the municipality in becoming solvent. Although this option remains with local decision-makers, the Commonwealth would be under no obligation to continue to fund with state grants or entitlements (with exceptions) a municipality classified as distressed which refuses to help itself. Thus, the integrity of Article III, Section 31 is not challenged.

FOOTNOTES

- <sup>1</sup> Advisory Commission on Intergovernmental Relations, "The States and Distressed Communities: The Final Report", Washington, D.C., November, 1985, p. 2.
- <sup>2</sup> Ibid.
- <sup>3</sup> Ibid, p. 2-3.
- <sup>4</sup> Ibid, p. 3.
- <sup>5</sup> Ibid, p. 12.
- <sup>6</sup> ACIR, "The States and Distressed Communities: The Final Report", p. 13.
- <sup>7</sup> Ibid, p. 14.
- <sup>8</sup> Ibid.
- <sup>9</sup> ACIR, "The States and Distressed Communities: The Final Report", p. 24-25.
- <sup>10</sup> Advisory Commission on Intergovernmental Relations, "Bankruptcies, Defaults, and other Local Government Financial Emergencies", Washington, D.C., March, 1985, p. 5.
- <sup>11</sup> Ibid, p. 7.
- <sup>12</sup> Ibid, p. 8.
- <sup>13</sup> ACIR, "Bankruptcies, Defaults, and other Local Government Financial Emergencies", p. 19.
- <sup>14</sup> Ibid, p. 29.
- <sup>15</sup> ACIR, "Bankruptcies, Defaults, and other Local Government Financial Emergencies", p. 30.
- <sup>16</sup> Ibid, p. 32.
- <sup>17</sup> Ibid, p. 33.
- <sup>18</sup> Ibid, p. 34.
- <sup>19</sup> ACIR, "Bankruptcies, Defaults, and other Local Government Financial Emergencies", p. 34.
- <sup>20</sup> "Municipal Fiscal Distress: Choices for Pennsylvania", (prepared for the Legislative Office for Research Liaison by students and faculty of the Graduate School of Public and International Affairs of the University of Pittsburgh), January, 1985.

- <sup>21</sup>"Municipal Fiscal Distress: Choices for Pennsylvania", p. 16-18.
- <sup>22</sup>Ibid, p. 19-22.
- <sup>23</sup>"Municipal Fiscal Distress: Choices for Pennsylvania", p. iii.
- <sup>24</sup>Ibid, p. 23-25.
- <sup>25</sup>"The Municipal Financial Monitoring System" was developed by the Pennsylvania Economy League for the Intergovernmental Cooperation Program and partially funded by a grant from the Department of Community Affairs.
- <sup>26</sup>"The Municipal Financial Monitoring System", p. 1-2.
- <sup>27</sup>"Municipal Bankruptcy in Pennsylvania: The Economic Consequences and Legal Framework, with Recommendations for Legislative Action: Executive Summary", p. 10-11.
- <sup>28</sup>Ibid, p. 10.
- <sup>29</sup>"Municipal Bankruptcy in Pennsylvania: The Economic Consequences and Legal Framework, with Recommendations for Legislative Action: Executive Summary", p. 8.
- <sup>30</sup>Ibid.
- <sup>31</sup>"Municipal Bankruptcy in Pennsylvania: The Economic Consequences and Legal Framework, with Recommendations for Legislative Action: Executive Summary", p. 8.
- <sup>32</sup>Wells, Ed and Larry Swanson. "Municipal Bankruptcy in Pennsylvania: An Economic and Legal Analysis, with Recommendations for Legislative Action. Presented to the present conference based upon research carried out for the Intergovernmental Cooperation Program of the Allegheny County League of Municipalities, with assistance from ACTION-HOUSING, Inc.
- <sup>33</sup>"Municipal Corporations owe their origin to, and derive their powers and rights wholly from, the Legislature. It breathes into them the breath of life, without which it cannot exist. As it creates, so it may destroy." City of Clinton v. Cedar Rapids and Missouri River Railroad Company, 24 Iowa 455, 475 (1868).
- <sup>34</sup>"It is a general and undisputed proposition of law that a municipal corporation possess and can exercise the following powers: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, -- not simply convenient, but indispensable". 1 Dillon, Law of Municipal Corporations, 448-49 (5th Ed. 1911).
- <sup>35</sup>Article I, Section 2. "Political Powers. All powers is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety, and happiness...." See also: Shapp v. Butera, 22 Pa. Cmwlth. Ct. 229, 348 A2d 910 (1975); Citizens Com. to Recall Rizzo v. Bd. of Elections, 470 Pa. 1, 367 A2d 232 (1976).



<sup>36</sup>See also, Trenton v. New Jersey, 262 U.S. 182, 67 L.Ed. 937, 43 S. Ct. 534 (1923). In Re Acquisition of Water System in White Oak Borough, 372 Pa. 424, 93 A2d, 437 (1953); Genkinger v. New Castle, 368 Pa. 547, 84 A2d, 303 (1951).

<sup>37</sup>Pennsylvania Constitution, Article IX, Section 2. "A municipality which has a home rule charter may exercise any power or perform any function not denied by this constitution, by its home rule charter, or by the General Assembly at any time." Also, Act 62 of 1972, P.L. 184, known as the Home Rule Charter and Optional Plans Law, further limits the otherwise inherent power of home rule municipalities.

<sup>38</sup>See Pennsylvania Constitution, Article IX, generally.

<sup>39</sup>Pennsylvania Constitution, Article IX, Section 1. "The General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters."

<sup>40</sup>Pennsylvania Constitution, Article III, Section 32. "The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law: 1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts. . . ."

<sup>41</sup>See Wheeler v. Philadelphia, 77 Pa. 338 (1875) wherein the court said that a "statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special."

<sup>42</sup>See Appeal of City of Erie, 297 Pa. 260, 147A 58 (1929) for accepted judicial definition of general law.

<sup>43</sup>See Tosto v. Pennsylvania Nursing Home Loan Agency, 460 Pa. 1, 331 A2d 198 (1975) for authority of the state to establish statutory classifications based upon a natural relation to a proper state purpose.

<sup>44</sup>See Freezer Storage, Inc. v. Armstrong Cork Co., 476 Pa. 270, 382 A2d 715 (1978) for authority of state to classify subjects according to relevant distinctions.

<sup>45</sup>See Pennsylvania Constitution, Article III, Section 32. This provision forbids state intrusion into the local affairs of local governments only by local or special laws.

<sup>46</sup>This power to borrow is not directly authorized by the Constitution, but rather is authorized by statute. It is beyond the scope of this discussion to analyze in detail the nature, scope, and extent of either the power to incur debt or the power to tax (each power being integral to the other); but reference should be made to each respective local government code for specific powers, even though such provisions are generally identical in their delegation of such powers.

<sup>47</sup>Moreover, even if such powers were removed by the Legislature, in light of (a) Dillon's Rule, (b) the strong constitutional authority of the

Legislature to determine the nature, scope, and extent of local government powers (see discussion above), and (c) the repudiation of the concept of inherent powers of local self-government (see discussion above), it is apparent that such legislative action would be constitutional. See also, footnote No. 1 above; and City of Philadelphia v. Fox, 64 Pa. 169. Nevertheless, this is not an issue which appears on the face of the bill under discussion.

- 48 Pennsylvania Constitution, Article VIII, Section 9. "The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough, incorporated town, township, or any similar general purpose unit of government unless such debt shall have been incurred to enable the Commonwealth in the discharge of any portion of its present indebtedness."

### III. COMMENTARY

This legislation is a newly created proposal which is not found in current Pennsylvania statute. The proposal was drafted utilizing several sources [e.g., Chapter 118 of the Ohio Revised Code; Chapter 11 USCA; 1 PACS 1991; Section 102 of the Local Government Unit Debt Act (53 P.S. 6780-2); "Early Warning Signals" as Indicators of Impending Financial Problems - DOE Circular 6-76; Governmental Accounting, Auditing, and Financial Reporting Manual; and Senate Bill 1143, Printer's Number 1433 of 1985] and original language created by the Local Government Commission's Task Force on Municipal Fiscal Distress and Bankruptcy. Many of the procedural aspects of Senate Bill 1143 were incorporated into this "Financially Distressed Municipalities Act" although much of the language found in Senate Bill 1143 was substantially altered. For your convenience, included in the Appendix is derivation table which gives the source of each section of the Task Force's proposal.

In this commentary, the staff of the Local Government Commission briefly explains the content of each section of the bill. If additional explanation is desired on the legislation's content, please contact Commission staff at (717) 787-7680. The section by section analysis follows.

#### CHAPTER 1 GENERAL PROVISIONS SUBCHAPTER A PRELIMINARY PROVISIONS

Section 101. Short title. This legislation is entitled the "Financially Distressed Municipalities Act."

Section 102. Purpose and legislative intent. This section sets forth the Legislature's intent, purpose, and policy in determining that the fiscal integrity of local governments effects the general health and welfare of all citizens of the Commonwealth. Two important declarations are made in this section: first, although the General Assembly is enacting procedures and guidelines to protect the fiscal stability of municipalities, the conduct of a municipality's fiscal affairs remains with the duly elected local officials; and second, the General Assembly recognizes that some severely depressed communities are no longer economically viable and thus should be given the opportunity to voluntarily consolidate into one municipality.

Section 103. Definitions.

"Chief executive officer" - incorporates all those elected or appointed officials who would act in such a capacity. The "chief executive officer" is included in this legislation to satisfy section 246(a) which requires the chief executive officer to formulate an alternate fiscal plan if the municipality rejects the plan devised by the coordinator.

"Claim" - a right to receive from a municipality recompense or redress for harms, damages, injuries, or legal obligations.

"Commonwealth agency" - every agency or department of state government including the Legislature and Judicial branches.

"Consolidated or merged municipality" - the resulting governmental entity created by a consolidation or merger of two or more adjacent municipalities, one of which must be distressed.

"Consolidation or merger" - the term given to the structural combination of two or more adjacent municipalities, one of which must be distressed.

"Contiguous territory" - land which abuts the boundary of another municipality. This definition denotes a requirement for consolidation, e.g., two or more municipalities must be contiguous to one another to effectuate a merger or consolidation.

"Creditor" - those individuals, persons, or entities which possess a claim against a distressed municipality. A creditor is given standing in Section 202 to petition the Secretary of the Department of Community Affairs for a declaration of distress providing it adheres to a nine month forbearance on alternate legal action against a distressed municipality or until a municipality adopts a plan, whichever occurs first.

"Department" - the Department of Community Affairs which is responsible for implementation of the procedures of this legislation.

"Election officials" - the county board of elections of each county which reviews for validity initiative petitions or joint agreements relating to consolidation or merger and subsequently places the consolidation or merger question on the ballot for voter approval.

"Expenditures" - Governmental Accounting, Auditing, and Financial Reporting standards for disbursement of revenues or assets of a municipality. The definition acknowledges fiscal accounts kept on an accrual or cash basis.

"Governing body" - the legislative policy-making body in counties, cities, boroughs, towns, townships, and home rule municipalities. The governing body is ultimately responsible for accepting or rejecting a fiscal plan designed to make its distressed municipality solvent.

"Initiative" - constitutional definition taken from Article IX, Section 14 of the Pennsylvania Constitution. Initiative in this legislation specifies the number of signatures needed on a petition to propose a consolidation or merger, the time limits for filing a petition, and the number of years which must elapse before an initiative petition can be refiled once having been defeated by the voters.

"Matured claim" - a claim which has been recorded as a judgement in the local courts or which has been contractually settled as to nature and amount; but only if such claim has been recorded or the contract has been executed more than 90 days before proceedings for fiscal distress begin under this legislation. All other claims, including those which have been recorded or

liquidated by agreement 90 days before proceedings, are not considered as "matured".

"Municipal records" - all fiscal records and documents of a distressed municipality or an authority created by it. Such records and documents must be made accessible to the coordinator pursuant to Section 222. Certain confidential information is excluded from this definition.

"Municipality" - all counties, cities, boroughs, towns, townships, or home rule municipalities which by definition may be declared distressed.

"Referendum" - constitutional definition taken from Article IX, Section 14 of the Pennsylvania Constitution. Referendum in this legislation refers to the consolidation or merger question to be submitted to the voters of the affected municipality.

"Revenues" - derived from the definition of "Total Revenues" in the Local Government Unit Debt Act (1972 P.L.781, No.185), this term denotes all monies received by a municipality in a fiscal year with exception of certain debt-related funds or financial subsidies.

"Secretary" - the Secretary of the Department of Community Affairs who is responsible for: declaring a municipality to be in distress; appointing a fiscal plan coordinator; commenting on a fiscal plan formulated by a coordinator; withholding state funds from a distressed municipality which refuses to adopt a financial plan; and determining whether a municipality ceases to be distressed.

#### SUBCHAPTER B ADMINISTRATIVE PROVISIONS

Section 121. Powers and duties of the department. The Department of Community Affairs is given primary responsibility for identifying and assisting municipalities deemed to be distressed. The Department of Community Affairs would be required to:

(1) maintain current and accurate fiscal information on municipalities and submit to each municipality by January 1 of every year a "Survey of the Financial Condition" of the municipality applicable to the previous fiscal year (January 1 - December 31). The "Survey" is necessary since municipal financial data currently compiled by the department is three years old. The "Survey" is intended to be as concise and complete as necessary to facilitate a prompt response by all municipalities. The "Survey" is to be a supplement to the annual audit reports submitted by local governments to the department. The "Survey" must also include information based upon the criteria specified in Section 201;

(2) undertake a consultative review with municipalities which have an indication of being distressed to determine whether a municipality is actually experiencing fiscal distress or simply has minor fiscal problems.

If the later is true, the department is required to offer recommendations to the municipality to correct its problems;

(3) make a determination of actual fiscal distress pursuant to the provisions of the legislation;

(4) acquire all necessary municipal fiscal information from all other state departments and analyze the data as it relates to the financial condition of municipalities;

(5) notify all state departments that a municipality has been declared to be distressed;

(6) forward fiscal information furnished by various state agencies to the appointed distressed municipality coordinator so that information may be considered when a financial plan is ultimately developed by the coordinator;

(7) develop, implement, and continuously monitor an early warning system to identify municipal fiscal emergencies before they reach crisis proportions; and

(8) adopt necessary regulations to implement the provisions of the act.

Section 122. Duties of Commonwealth agencies. When a municipality is declared to be distressed, every state agency is required to review all programs proposed, pending, or underway which affect the distressed municipality. If an agency head determines that his agency is in a position to assist the distressed municipality, this fact is to be reported to the Department of Community Affairs. In addition, all state agencies are required to submit to the department all relevant fiscal data and information related to the municipality.

Section 123. Powers and duties of municipalities. Municipalities are required to submit to the Department of Community Affairs by March 30 of each year the completed "Survey of Financial Conditions" referred to in Section 121(a)(2). Municipalities which fail to comply with this requirement will have their liquid fuels monies withheld by the Pennsylvania Department of Transportation until they comply with this provision.

Distressed municipalities are also granted the power to petition the court of common pleas to exceed their tax limits on both the real estate and earned income taxes if they have adopted a financial plan as provided in Chapter 2. This provision is patterned after similar language found in the "Municipal Pension Plan Funding Standard and Recovery Act" (1984 P.L.1005, No.205). Any increase in earned income tax is not subject to sharing with the coterminous school district.

#### SUBCHAPTER C JUDICIAL PROVISIONS

Section 141. Jurisdiction of the court of common pleas. The court of common pleas of each county is given power to hear the request of a

distressed municipality to increase its real estate tax and earned income tax limits. If the court agrees to such request, the increased taxing powers of the municipality are to be terminated when the fiscal plan ceases.

CHAPTER 2  
MUNICIPAL FINANCIAL DISTRESS  
SUBCHAPTER A  
DETERMINATION OF MUNICIPAL FINANCIAL DISTRESS

Section 201. Criteria. These are the ten criteria which the department utilizes in determining whether a municipality is in a state of distress. Only one indicator need be present for the Department of Community Affairs to begin its review to ascertain the validity of a possible distress situation. Some criteria are exceptionally broad while others reflect a specific act. The criteria also are intended to identify both immediate and long-term fiscal shortfalls as well as possible financial mismanagement by a local government.

Section 202. Standing to bring a determination. Eight parties are granted standing to petition the Secretary of the Department of Community Affairs for a declaration of fiscal distress. They are:

(1) The Department of Community Affairs if, pursuant to its review of submitted fiscal data and subsequent consultation with a municipality, it concludes that a municipality is substantially in a state of distress.

(2) The governing body of a municipality by passage of a resolution by majority vote following a special public meeting.

(3) A creditor with a matured claim whom the municipality owes \$10,000 or more, provided he agrees to forbear legal action to collect the debt for a nine month period or until a municipality adopts a plan under this legislation, whichever occurs first. No forbearance is required if the municipality files a federal debt adjustment (bankruptcy) action. See definition of "matured claim".

(4) Ten percent of the electors of the municipality who voted at the last municipal election.

(5) Trustees, an actuary, or ten percent of the beneficiaries of a pension fund who allege that the municipality has failed to timely deposit its minimum obligation payment as required by the Municipal Pension Plan Funding Standard and Recovery Act (1984 P.L.1005, No.205).

(6) Ten percent of the employees of a municipality who have not been paid for more than thirty days from the time of a missed payroll.

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

(8) The elected or appointed auditors, or the controller of a municipality.

Section 203. Procedure for determination. Any party with standing pursuant to Section 202 may petition the Secretary of the Department of Community Affairs to seek a determination that a municipality is distressed providing: (1) the party has legal standing to petition the Secretary; (2) the party alleges that the municipality is distressed and has at least one of the fiscal indicators present; (3) the party provides a listing of recorded judgements against the municipality; and (4) the party provides any other material allegation justifying a declaration of distress. These conditions are meant to decrease the number of frivolous petitions that could be filed with the Secretary.

Subsequent to receiving the petition, the Secretary is required within ten days to schedule a public hearing within the county of the subject municipality. The hearing may not be held sooner than two weeks nor later than 30 days from the date the Secretary schedules the public hearing. Notice of the hearing must be in accordance with the "Sunshine Law". In addition, written notice by certified mail, return receipt requested must be sent to the municipal clerk or municipal secretary, the mayor (if one exists), the municipal solicitor, each member of the governing body, and the petitioners. Prior to the hearing, however, the Secretary may investigate the fiscal affairs of the municipality. The results of the investigation or any study previously done during a department consultation with the municipality become part of the record of the public hearing.

At the actual hearing, the Secretary or departmental official appointed by the Secretary, shall conduct the public hearing to take testimony. Within 30 days of the hearing, the Secretary is required to issue an administrative determination concerning the possible distress status of the municipality.

Section 204. Commonwealth funds. No municipality may be determined to be distressed for the sole reason it had failed to receive Commonwealth funding, including any federal money which is passed through to the municipality by the Commonwealth. In light of Gramm-Rudman, the demise of federal revenue sharing, and cuts in other federal programs, all local governments will be faced with loss of certain federal entitlements. Although some communities used these monies to fund operational aspects of government (for instance, fire and police departments), authorizing municipalities to declare distress because of the loss of these funds would interfere with the intended purpose of the legislation. The Task Force believed that the loss of non-generated local revenues would not have had substantial impact upon a distressed municipality in that the municipality most likely would have been declared distressed whether or not it received these monies.

#### SUBCHAPTER B COORDINATOR

Section 221. Appointment. Following a declaration of distress, the Secretary is required to appoint within 30 days of the declaration, a distressed municipality coordinator. The coordinator will be ultimately responsible for preparation of a fiscal plan to address the municipality's financial problems. The coordinator, who shall be compensated by the department, may either be a departmental employee or consultant. If a consultant or consulting firm is chosen by the Secretary, the consultant's



contract is not subject to competitive bidding procedures. This is meant to expedite the process and save valuable time necessary to implement a plan.

Section 222. Access to information. The coordinator is given full access to all fiscal records of the distressed municipality or any authority incorporated by the municipality. Employees and officials of the municipality are required to furnish the coordinator with requested information or answer questions posed to them by the coordinator. If an official refuses to cooperate with the coordinator, the coordinator may seek a subpoena in the local court of common pleas. In addition, the coordinator may seek an action in mandamus to enforce his request for information. The Task Force believed subpoena power is necessary since refusal of an official or employee to answer questions may not be considered a ministerial act. A ministerial act is necessary to file a mandamus action.

Section 223. Public and private meetings. In preparing his plan, the coordinator may hold public meetings as long as such meetings comply with the "Sunshine Law". However, the coordinator may also hold private sessions with municipal officials and individual creditors in an effort to resolve claims against the municipality.

Section 224. Coordinator barred from elective office. The coordinator is prohibited from seeking elective office in the distressed municipality or its coterminous school district for two years from the date of the adoption of a fiscal plan. This provision effectively prohibits a coordinator, especially a consultant, from using the proceeding as a political forum.

#### SUBCHAPTER C COORDINATOR'S PLAN

Section 241. Contents. Any plan formulated by the coordinator must be consistent with existing law. Various named factors, if relevant, must be considered by the coordinator when drafting his plan. Included in these factors are revenue and expenditure forecasts over the next three years; specific recommendations addressing the payment of debts; methods to balance budgets; consideration of changes in accounting and automation procedures; recommendations for possible personnel changes; if necessary, whether the distressed municipality should file a federal debt adjustment (bankruptcy) action under Section 261; or, if all other suggested remedies are not possible, that the distressed municipality consolidate with another municipality or municipalities.

Section 242. Publication. Within 90 days of being appointed, the coordinator is required to formulate a fiscal distress relief plan. Copies must be sent to named municipal officials and parties which petitioned the Secretary for a declaration of distress. Once the municipal secretary or municipal clerk formally files the plan for public review, a notice to that effect must be published in the county legal reporter and in at least one

newspaper of general circulation which serves the distressed municipality. The notice that a plan has been filed with the municipal clerk or municipal secretary must contain information relating to the following:

- (1) that a plan has been filed to coordinate relief of the municipality's financial distress;
- (2) the date and place of filing;
- (3) that the public has 15 days from the date of filing to offer written comments on the plan;
- (4) the name and address of coordinator to whom written comments should be submitted; and
- (5) that a summary of the plan is available for inspection.

Within 20 days of the filing, the coordinator is to conduct a public meeting concerning his fiscal plan. Notice of this meeting must also be placed in the county legal reporter and in at least one newspaper of general circulation. This notice must specifically state that the purpose of the coordinator's public meeting is to illicit public comments on his plan and specify the date and place of the meeting. The chief executive officer of the municipality, each member of the governing body, and the chief financial officer of the municipality are to be requested by the coordinator to be present at the public meeting.

Section 243. Review of plan. Comments made to the coordinator may be considered by him for possible inclusion in the plan. Creditors who do not accept the handling of their claims by the plan must notify the coordinator of their rejection no later than ten days before a meeting scheduled by the governing body at which the governing body will either accept or reject the coordinator's plan. If a creditor has rejected the plan, the coordinator is required to make a written report to the governing body indicating whether the timing and amount of payment or the proposed resolution of a claim is the best disposition the municipality can make.

If a creditor or creditors reject(s) the proposed plan, the coordinator may hold additional meetings between the municipality and creditors in an attempt to resolve the issue of unpaid claims. The governing body may also propose to the plan coordinator a method for resolving claims which have been the subject of rejections of the proposed plan.

Section 244. Revision. Only the coordinator may finally revise a fiscal plan formulated for a distressed municipality. The coordinator is to consult with the Secretary and either the chief executive officer or the governing body during the revision process and is required to give consideration to any comments they propose. Obviously, the coordinator who is serving in the capacity of the municipality's expert financial consultant must be given the freedom to determine what items should be included in the plan's content. It would be a disservice to the community to have outside interference or municipal in-fighting delay adoption of a final plan drafted to restore the local government to solvency.

Section 245. Adoption by municipality. The governing body of the distressed municipality is granted 15 days from the date of the coordinator's public meeting to decide whether to adopt the coordinator's plan by ordinance or reject it and formulate its own plan pursuant to Section 246. If an ordinance is adopted in a municipality operating under an optional plan or home rule charter, the chief executive officer may issue an order directing implementation of the plan no later than seven days after the governing body has adopted its ordinance. If the coordinator's plan is adopted, the maximum time expired from the date a petition was filed with the Secretary for declaration of distress and the final adoption of the coordinator's plan would be approximately 225 days.

Section 246. Preparation and action on alternate plan. The Task Force believed that constitutional limitations prohibited the General Assembly from mandating that a distressed municipality adopt a fiscal plan formulated by the coordinator. This section provides the distressed municipality with the opportunity to draft its own financial plan. Depending on the form of government, either the chief executive officer in a home rule or optional plan municipality or the governing body must develop a plan within 14 days of the refusal of applicable public officials to implement the coordinator's plan. This alternate plan is subject to a public meeting within ten days of its completion. The coordinator must attend this public meeting and furnish written and oral comments on the alternate plan. Following the public meeting, the governing body of the municipality ultimately may adopt or reject the plan drafted either by the chief executive officer or governing body, depending on the form of government. If a municipality rejects its fiscal plan, it will receive only emergency or necessary state funds it had previously been entitled to receive. All other state funds will be held in escrow by the Secretary of the Department of Community Affairs until the distressed municipality adopts a plan to resolve its fiscal problems.

Section 247. Plan implementation. If the governing body adopts the coordinator's plan, the coordinator is required to implement his plan by:

(1) giving written notice of the adoption of the plan to all creditors, collective bargaining units, and other parties affected by his plan. In each notice, he is required to outline the plan's provisions and how the plan impacts upon that person's claim or interest;

(2) initiating the plan's commencement and continue its oversight for at least four months;

(3) supervising completion of the plan directly or by transferring supervision to a person designated by the governing body or the chief executive officer, as the case may be. The designee, if appointed, must keep the coordinator apprised through the issuance of monthly reports;

(4) terminating the plan upon its completion;

(5) suggesting any amendments to the plan which may be necessary to commence or complete the plan.

If the chief executive's alternative plan is finally adopted, all the implementation powers listed above are vested with him. If the governing body's alternative plan is finally adopted, all the implementation powers are vested with a person designated by the governing body.

Section 248. Plan amendments. The Task Force recognized that in many cases the final plan adopted by a distressed municipality may be in need of subsequent amendment. If the plan finally adopted was drafted by the coordinator, he may initiate an amendment to the plan. Likewise, the chief executive officer or the governing body, as the case may be, may initiate amendments to their plans if they were the ones finally adopted. In any case, adoption of an amendment to the plan must be by ordinance of the governing body.

Section 249. Debt provisions. Before a distressed municipality may incur any long-term debt or may fund debt under the Local Government Unit Debt Act, the municipality must have adopted a plan pursuant to this legislation. However, the distressed municipality and lender may jointly waive any debt financing provisions of the plan provided the waiver is expressly worded in the indenture or contract securing debt. The Task Force members agreed to include this section with the understanding that only the debt financing provisions of the plan should be waived by the lender and the municipality since this provision would affect only them and not other creditors.

Section 250. Commonwealth agency payments or assistance. The Task Force believed that distressed municipalities which failed to adopt a plan proposed by this legislation should be barred from receiving state funds or grants. In essence, the members felt that "good money should not be thrown at municipalities which refuse to help themselves". Thus, if a distressed municipality fails to implement an adopted plan, it would no longer receive any present and future grant, loan, entitlement, or payment made by the Commonwealth or any of its agencies. All monies so suspended are to be held in escrow until the distressed municipality adopts a fiscal plan. Exceptions were made for (1) capital projects in progress; (2) emergency funds received as a result of a declaration of disaster; and (3) pension fund disbursements.

Section 251. Plan not effected by certain collective bargaining agreements or settlements. After a distressed municipality has adopted a plan, any collective bargaining contract or arbitration settlement executed after the plan has been adopted may not violate, expand, or diminish the provisions of the fiscal plan.

Section 252. Termination of status. Either the Secretary directly or the municipality, through petition to the Secretary, may initiate a determination proceeding for cessation of a municipality's distressed status. Such a determination may be made only after the holding of a duly advertised public hearing and only if the Secretary is satisfied that the conditions which led to the earlier determination of a distressed municipality are no longer present.

SUBCHAPTER D  
APPLICATION OF FEDERAL LAW

Section 261. Filing municipal debt adjustment under Federal law. Current provisions in Pennsylvania law for municipalities to file a federal bankruptcy action are both dated and unclear. The existing applicable statute, enacted in 1935, prohibits a political subdivision from filing a petition with the United States Bankruptcy Court unless the petition has been approved by the State Department of Internal Affairs (which no longer exists) (53 P.S. 5571). When the petition is filed with the department, the department is to investigate the financial condition of the political subdivision to ensure the petition is justified and whether any plan of readjustment will be fair and equitable to all creditors (53 P.S. 5572).

This section is designed to meet the requirements for a municipality to file for relief under Chapter 9 of the United States Bankruptcy Code. It permits a distressed municipality to file a Municipal Debt Adjustment action under federal law upon a majority vote of the governing body, if: the coordinator recommends such an action; or, if the municipality is placed in imminent jeopardy by an action of a creditor, claimant, or supplier of goods or services; or, if one or more creditors have rejected the proposed or adopted plan and efforts to resolve their claims have been unsuccessful for a ten day period; or, if such an action is the only potential soluble remedy available; or, if a majority of the present or next succeeding governing body of a distressed municipality has failed to adopt a plan or carry out the recommendations of the plan coordinator.

Section 262. Significance and duty on filing federal action. Any municipality which files a Municipal Debt Adjustment action under federal law is automatically deemed to be distressed even if the Secretary of the Department of Community Affairs has not declared such status pursuant to Section 203(f). In this case, the municipality must immediately notify the Secretary of its bankruptcy filing. In turn, the Secretary will appoint a plan coordinator if none has been appointed. The coordinator will be responsible for formulating a plan under this legislation as well as a debt adjustment plan which will satisfy the federal bankruptcy court. Both plans may be the same.

Section 263. Application of this act during federal action. If a distressed municipality is in the process of adopting a fiscal plan as specified in this legislation and it subsequently proceeds to file a federal debt adjustment action, the distressed municipality is required to utilize the fiscal plan adopted pursuant to this proposal and incorporate any federal remedies deemed appropriate. If the distressed municipality has filed a debt adjustment action before it has been declared distressed, it must utilize the procedures in this legislation concurrently with the processing of the federal action to expedite the formulation and timely confirmation of a plan by the federal bankruptcy court. Final adoption of the fiscal/bankruptcy plan must be by ordinance and implementation of the plan must be coordinated through this legislative proposal in cooperation with any requirements set by the federal bankruptcy court.

Section 264. Suspension of Commonwealth funding. Similar to Section 250, this provision would prohibit a distressed municipality from receiving certain state funds if the municipality (1) failed to adopt or implement a plan within a time period set by the federal bankruptcy court, or (2) has failed or refused to follow a recommendation by a plan coordinator. Within ten days of the failure of the distressed municipality to adopt a plan or refusal to follow the coordinator's recommendations, the Secretary will certify to the municipality that any future state grant, loan, entitlement, or payment will be suspended pending adoption of a plan devised to fully resolve the municipality's state of distress. The same exceptions to the withholding of grants or loans found in Section 250 are also provided in this section.

CHAPTER 3  
CONSOLIDATION OR MERGER OF ECONOMICALLY NONVIABLE  
MUNICIPALITIES  
SUBCHAPTER A

Comment:

The Task Force recognized that from both a historical and economic perspective, some municipalities may no longer be viable units of local government. In consideration of this scenario, the Task Force has provided a voluntary mechanism for consolidation of distressed municipalities in an effort to allow those communities to take advantage of economies of scale in providing essential services and to create an expanded revenue base to finance such public programs.

Chapter 3 addresses the issue of distressed municipalities which are no longer considered economically viable. In such instances, these municipalities are given the additional option of voluntarily merging with adjacent municipalities. The procedure is predicated on leading case law (Middle Paxton Township v. Borough of Dauphin, 458 PA 396, 326 A2d 342, 1974) and may be accomplished either through initiative of the people or by joint agreement of the governing bodies of the municipalities proposed for consolidation or merger. In either case, the proposed merger must be accepted by a majority vote in each municipality in which merger or consolidation is considered. If a consolidation or merger is approved by the voters, the consolidated or merged municipality will receive priority in all economic and community development programs funded by the Commonwealth.

Section 301. Determination. If a municipality is in such a distressed state that consolidation or merger with another community remains the only viable option, the coordinator may recommend that the distressed municipality consolidate with an adjacent municipality or municipalities.

Section 302. Procedure for consolidation or merger. Consolidation of two or more municipalities, one of which must be distressed, may be accomplished either by joint agreement of the affected governing bodies as approved by ordinance, or by initiative of the voters of the affected municipalities. If two municipalities are to be consolidated, they must be contiguous to each

other. If three or more municipalities are involved, one of the municipalities shall be contiguous to at least one other municipality.

Section 303. Joint agreement of governing bodies. If the governing bodies of the municipalities proposed for consolidation or merger enter into a joint agreement to consolidate or merge, the agreement must contain: (1) the name of each municipality which is a party to the agreement; (2) the name and the territorial boundaries of the proposed consolidated or merged municipality; (3) the type and class of the consolidated or merged municipality; (4) whether the consolidated or merged municipality shall be covered by a specific municipal code and all laws related thereto or whether it will be governed by a home rule charter or optional plan of government if one of the consolidated or merged municipalities had previously adopted same; and (5) the number of wards, if any, into which the consolidated or merged municipality shall be divided.

The joint agreement must also include terms covering: disposition of existing assets and liquidation of current indebtedness of each municipality; and the assumption, assignment, or disposition of existing liabilities of each municipality, either through joint, separate, or proportionate action, financed by separate rates of taxation within each of the municipalities until consolidation or merger becomes effective. A uniform tax system is also to be developed which will be implemented in the consolidated or merged municipality.

The joint agreement must identify the governmental organization of the consolidated or merged municipality as it relates to elected officials. The agreement must contain a transitional plan and schedule applicable to elected offices and provide for the abolition of the elected offices of each municipality and the termination of their terms of office. The agreement is to provide for the election of the first officers of the consolidated or merged municipality so that after the transitional period, the election and tenure of those municipal officials shall conform with those in other municipalities of the same type or class.

Finally, the agreement must also provide for common administration and enforcement of ordinances which will be uniformly enforced within the consolidated or merged municipality.

Section 304. Initiative of electors. Consolidation or merger may also be initiated by the voters of two or more municipalities (one of which must be distressed). Petitions containing signatures of at least 5% of the electors in each respective municipality voting for the office of Governor in the last gubernatorial general election must be filed with the county board of elections of the county in which the consolidated or merged municipality (or greater portion of its territory) is located. If the election board finds the petitions to be in proper form, they must send copies of the initiative petitions to the governing bodies of each of the municipalities affected by consolidation or merger. Specifically, the initiative petition must contain the same provisions as found in the commentary on Section 303, paragraph one.

Once the circulation of the petition has begun, it must be submitted to the county board of elections within 21 days. This language is comparable to existing law for candidates seeking elective office when circulating their nominating petitions. If the 21 day limit is violated, the petitions are to be invalidated.

Section 305. Conduct of referenda. When either the governing body through joint agreement or the electors by initiative have proposed a consolidation or merger, a referendum on this issue must be placed on the ballot in each municipality proposed to be consolidated or merged into a single municipality. The referendum is to be held at the first election after either the date of the general agreement entered into by the governing bodies or the date of the filings of the initiative petitions. A consolidation or merger will not become effective unless it is approved by majority vote in each of the municipalities in which the referendum is conducted. If the referendum fails in any one of the municipalities, the consolidation or merger effort fails. In such case, the consolidation or merger question cannot be voted on again for five years.

Section 306. Consolidation or merger agreement. In cases where the consolidation or merger effort was initiated by the voters and upon subsequent approval of a consolidation or merger referendum, the governing bodies of the constituent municipalities must meet within 60 days after certification of the approval of the referendum to enact a consolidation or merger agreement. This agreement is to contain the same provisions as the joint agreement described in the commentary on Section 303. Copies of this agreement must be filed with the Department of Community Affairs, the Department of Transportation, the Department of Education, the Governor's Office of Policy Development or its successor, the State Tax Equalization Board, the Legislative Reapportionment Commission, the Court of Common Pleas, and the county commissioners of the county or counties in which the municipalities are located.

Section 307. Effectuation of consolidation or merger. Once the consolidation or merger is approved by the voters, the constituent municipalities shall remain in existence until the first Monday in January following the municipal election (odd numbered years) after the election in which the consolidation or merger referendum was held. This provides the time necessary to elect the officers of the consolidated or merged municipality (e.g., at the next municipal election). The election of the officers shall be in accordance with the laws applicable to the type or class of the consolidated or merged municipality. The municipal officers elected at the municipal election shall be elected for terms of office as specified in the consolidation or merger agreement authorized in either Section 303 or Section 306, as the case may be. The officers then take office on the first Monday in January. The constituent municipalities cease to exist when the consolidated or merged municipality begins to function.

Section 308. Collective bargaining agreements; furlough of employees; disputes. In light of possible successor clauses and constitutional safeguards against impairment of existing contracts, a consolidated or merged municipality must continue to abide by collective bargaining contracts or arbitration awards which were effective in the former constituent municipalities. Once those contracts or awards expire, any subsequent collective bargaining contract or arbitration award cannot impair the implementation of a plan adopted pursuant to this legislation. However, the newly created municipality may, in accordance with provisions of the



existing contracts or awards, furlough employees to avoid overstaffing and duplication of positions. If at a subsequent date the consolidated or merged municipality determines it is necessary to increase its workforce, the employees of the former constituent municipalities must be reinstated in order of seniority if they had been previously furloughed.

The consolidated or merged municipality retains all rights and duties granted to all municipalities by the Legislature in respect to laws related to collective bargaining. Jurisdiction to resolve labor disputes, other than those arising out of interpretation or construction of a collective bargaining agreement containing provisions for binding arbitration, shall lie with the Pennsylvania Labor Relations Board.

Section 309. Procedures. After the consolidation or merger becomes effective, a new ordinance book is to be used by the municipality and the first document to be recorded in it shall be the consolidation or merger agreement. No later than two years after the consolidation or merger is in effect, all ordinances of the consolidated or merged municipality must be codified. The codification shall include indexing of the ordinances of the former constituent municipalities that become effective in the consolidated or merged municipality.

All rights, privileges, franchises, and real and personal property of the former constituent municipalities become vested with the consolidated or merged municipality. The titles to real estate vested in the former municipalities shall not revert by reason of the consolidation or merger. All rights of creditors and liens are preserved, all contracts and agreements remain in force, and all debts, liabilities, and duties of the former constituent municipalities are attached to the consolidated or merged municipality and may be enforced against it.

#### SUBCHAPTER B ECONOMIC ASSISTANCE

Section 321. Eligibility. This section provides that a distressed municipality which has been consolidated or merged with another municipality shall be eligible for economic and community development assistance as provided in Section 322.

Section 322. Priority. If a distressed municipality has been merged or consolidated with another municipality or municipalities, the successor municipality, notwithstanding any law to the contrary, shall receive priority in all economic and community development programs funded by the Commonwealth. It becomes the duty of the Secretary of the Department of Community Affairs to notify all other state agencies of this fact.

CHAPTER 4  
TECHNICAL PROVISIONS

Section 401. Repeal. Act 146 of 1935, providing for the Department of Internal Affairs to approve or disapprove petitions for readjustment of debts of political subdivisions to the courts is repealed as it applies to municipalities defined by this legislation. School districts could still avail themselves to the provisions of the 1935 statute.

Section 402. Effective date. This legislation, if enacted, becomes effective in 60 days.

APPENDIX

AN ACT

1 Empowering the Department of Community Affairs to declare  
2 certain municipalities as financially distressed; providing  
3 for the restructuring of debt of financially distressed  
4 municipalities; limiting the ability of financially  
5 distressed municipalities to obtain government funding;  
6 authorizing municipalities to participate in Federal debt  
7 readjustment actions and bankruptcy actions under certain  
8 circumstances; and providing for consolidation or merger of  
9 contiguous municipalities to relieve financial distress.

10

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- 20 Section 402. Effective date.

21 The General Assembly of the Commonwealth of Pennsylvania

22 hereby enacts as follows:

23 CHAPTER 1

24 GENERAL PROVISIONS

25 SUBCHAPTER A

26 PRELIMINARY PROVISIONS

27 Section 101. Short title.

28 This act shall be known and may be cited as the Financially

29 Distressed Municipalities Act.

30 Section 102. Purpose and legislative intent.

1 (a) Policy.--It is hereby declared to be a public policy of  
2 the Commonwealth to foster fiscal integrity of municipalities so  
3 that they provide for the health, safety and welfare of their  
4 citizens; pay due principal and interest on their debt  
5 obligations when due; meet financial obligations to their  
6 employees, vendors and suppliers; and provide for proper  
7 financial accounting procedures, budgeting and taxing practices.  
8 The failure of a municipality to do so is hereby determined to  
9 affect adversely the health, safety and welfare not only of the  
10 citizens of the municipality but also of other citizens in this  
11 Commonwealth.

12 (b) Legislative intent.--

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

14 (i) Enact procedures and provide powers and  
15 guidelines to ensure fiscal integrity of municipalities  
16 while leaving principal responsibility for conducting the  
17 governmental affairs of a municipality, including  
18 choosing the priorities for and manner of expenditures  
19 based on available revenues, to the charge of its elected  
20 officials, consistent with the public policy set forth in  
21 this section.

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

24 (2) The General Assembly further recognizes that  
25 changing and deteriorating economic conditions, developing  
26 technologies and attendant unemployment erode local tax bases  
27 and threaten essential municipal services. Under such  
28 circumstances, the General Assembly believes that such  
29 distressed governmental units may no longer be viable and  
30 that the citizens of those communities should be granted the

1 opportunity to voluntarily consolidate or merge their  
2 municipalities with other municipalities in an effort to  
3 allow municipal boundaries to reflect the geographic and  
4 economic realities of a distressed area, to merge a common  
5 community of interest, to take advantage of economies of  
6 scale in providing services, and to create an expanded  
7 revenue base to provide necessary public services to the  
8 citizens of financially distressed municipalities.

9 Section 103. Definitions.

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

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

22 "Claim." Right to payment, whether or not the right is  
23 reduced to judgment, liquidated, unliquidated, fixed,  
24 contingent, matured, unmatured, disputed, undisputed, legal,  
25 equitable, secured or unsecured; or right to an equitable remedy  
26 for breach of performance if the breach gives rise to a right to  
27 payment, whether or not the right to an equitable remedy is  
28 reduced to judgment, fixed, contingent, matured, unmatured,  
29 disputed, undisputed, secured or unsecured.

30 "Commonwealth agency." The Governor and the departments,



1 boards, commissions, authorities and other officers and agencies  
2 of this Commonwealth, whether or not subject to the policy  
3 supervision and control of the Governor.

4 "Consolidated or merged municipality." A municipal entity  
5 resulting from successful consolidation or merger proceedings  
6 under Subchapter A of Chapter 3.

7 "Consolidation or merger." The combination of two or more  
8 municipalities into one municipality.

9 "Contiguous territory." A territory of which a portion abuts  
10 the boundary of another municipality, including territory  
11 separated from the exact boundary of another municipality by a  
12 street, road, railroad or highway, or by a river or other  
13 natural or artificial stream of water.

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

18 "Department." The Department of Community Affairs of this  
19 Commonwealth.

20 "Election officials." The county boards of election, except  
21 in a city of the first class where "election officials" means  
22 the city board of elections.

23 "Expenditures." When accounts are kept on an accrual basis  
24 or the modified accrual basis, this term designates the cost of  
25 goods delivered or services rendered, whether paid or unpaid,  
26 including expenses, provision for debt retirement not reported  
27 as a liability of the fund from which retired, and capital  
28 outlays, which are presumed to benefit a given fiscal year of a  
29 municipality. When accounts are kept on a cash basis, the term  
30 designates actual cash disbursements for these purposes.

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

6 "Initiative." The filing with applicable election officials  
7 of a petition containing a proposal for a referendum to be  
8 placed on the ballot of the next election. The petition shall  
9 be:

10 (1) Filed at least 90 days before the election in which  
11 it will appear on the ballot.

12 (2) Signed by voters comprising 5% of the persons voting  
13 for the office of Governor in the last gubernatorial general  
14 election in the municipality where the proposal will appear  
15 on the ballot.

16 (3) Placed on the ballot by election officials in a  
17 manner fairly representing the content of the petition for  
18 decision by referendum at said election.

19 (4) Submitted not more than once in five years.

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

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

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

1 "Referendum." Placement of a question inserted on the  
2 ballot, by initiative or otherwise, by a majority vote of the  
3 electors voting thereon.

4 "Revenues." Moneys received by the municipality in a fiscal  
5 year from whatever source except:

6 (1) Subsidies or reimbursement from the Federal  
7 Government or from the Commonwealth measured by the cost of,  
8 or given or paid on account of, a particular project financed  
9 by debt.

10 (2) Project revenues, rates, receipts, user charges,  
11 special assessments and special levies which are or will be  
12 pledged or budgeted for specific self-liquidating debt or for  
13 payments under leases, guarantees, subsidy contracts or other  
14 forms of agreement which could constitute lease rental debt  
15 if the payments are payable solely from such sources; if a  
16 portion of the payments are returned to or retained by the  
17 municipality, that portion shall not be excluded.

18 (3) Interest on moneys in sinking funds, reserves and  
19 other funds, which interest is pledged or budgeted for the  
20 payment or security of outstanding debt and interest on bond  
21 or note proceeds, if similarly pledged.

22 (4) Grants and gifts in aid of or measured by the  
23 construction or acquisition of specified projects.

24 (5) Proceeds from the disposition of capital assets.

25 (6) Other nonrecurring items, including bond or note  
26 proceeds not considered income under generally accepted  
27 municipal accounting principles.

28 "Secretary." The Secretary of Community Affairs of the  
29 Commonwealth.

ADMINISTRATIVE PROVISIONS

Section 121. Powers and duties of department.

(a) Compile financial data.--

(1) A power and duty of the department shall be to maintain accurate and current information and data on the fiscal status of municipalities to determine if criteria set forth in section 201 exist and, if so, whether the existence of those factors validly indicates fiscal distress.

(2) In compiling the information and data, the department shall mail, before January 1 of each year, a Survey of Financial Condition form to each municipality applicable to the municipality's prior fiscal year.

(i) The survey shall seek information necessary to determine the fiscal status of a municipality, shall be concise to facilitate prompt response and shall contain an attestation clause to be signed by the municipality's chief executive officer.

(ii) The survey shall be a supplement to and shall be included with the annual audit reports submitted to the department in accordance with law.

(iii) The survey shall include information based on the criteria specified in section 201.

(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 determining 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. If the

1 department determines that a municipality is not financially  
2 distressed but needs assistance to correct minor fiscal  
3 problems, the department shall offer appropriate  
4 recommendations. If the municipality adopts those  
5 recommendations, the department need take no further action.

6 (c) Make determination of fiscal distress.--A power and duty  
7 of the department shall be to make determinations of fiscal  
8 distress based upon its review and analysis of various data and  
9 information available to it pursuant to this act and their  
10 interrelationship with the fiscal distress criteria set forth in  
11 section 201 when the department determines a municipality is in  
12 a state of distress pursuant to section 203(f).

13 (d) Notify agencies of determination.--Upon the making of a  
14 determination that a municipality is distressed, the department  
15 shall immediately notify the heads of all Commonwealth agencies  
16 of the determination.

17 (e) Act as repository of municipal reports.--A power and  
18 duty of the department shall be to act as the Commonwealth  
19 repository and analyzer for all reports, data and information  
20 required by law to be filed by municipalities with any  
21 Commonwealth agency when such reports, data and information  
22 directly relate to the financial conditions of municipalities.  
23 The department shall, in consultation with every Commonwealth  
24 agency, determine which reports, data and information relate to  
25 the fiscal condition of municipalities.

26 (f) Furnish program data to municipality.--Upon receipt of  
27 information forwarded to the department by each Commonwealth  
28 agency pursuant to section 122(a), the department shall furnish  
29 this information to the distressed municipality coordinator for  
30 possible inclusion of such information into the plan developed

1 by the coordinator in accordance with Subchapter C of Chapter 2.

2 (g) Develop early warning system.--In conjunction with  
3 evaluating a municipality's current fiscal stability under  
4 subsections (a), (b) and (c) and section 201, the department  
5 shall develop an early warning system utilizing necessary fiscal  
6 and socioeconomic variables to identify municipal financial  
7 emergencies before they reach crisis proportions. The department  
8 shall be responsible for testing the validity and reliability of  
9 these variables and shall continuously monitor them to assure  
10 their effectiveness. In developing an early warning system, the  
11 department may employ or contract with municipal fiscal  
12 consultants as deemed necessary to execute the provisions of  
13 this subsection.

14 (h) Promulgate rules and regulations.--The department shall  
15 promulgate rules and regulations necessary to implement the  
16 provisions of this act.

17 Section 122. Duties of Commonwealth agencies.

18 (a) Review programs.--After the department makes a  
19 determination that a municipality is distressed and notifies  
20 Commonwealth agencies of its determination, pursuant to section  
21 121(d), each agency shall review all matters and programs  
22 pending, underway or about to be commenced or possible programs  
23 concerning the distressed municipality. An action which is  
24 within the authority and budget of a Commonwealth agency and  
25 which, in the judgment of the head of the agency, will help to  
26 improve the distressed municipality's financial situation shall  
27 be reported to the department.

28 (b) Transfer documented information.--Each Commonwealth  
29 agency shall forward to the department all documented reports,  
30 data and other information referred to in section 121(e) within

1 30 days of receipt.

2 Section 123. Powers and duties of municipalities.

3 (a) File completed survey.--On or before March 30 of each  
4 year, every municipality shall return to the department a  
5 completed Survey of Financial Conditions referred to in section  
6 121(a). No municipality shall receive its allotted payments  
7 pursuant to the act of June 1, 1956 (1955 P.L.1944, No.655),  
8 referred to as the Liquid Fuels Tax Municipal Allocation Law,  
9 unless it complies with the provisions of this section,  
10 notwithstanding a provision of law to the contrary, and the  
11 Department of Transportation may not disburse funds to a  
12 municipality pursuant to the Liquid Fuels Tax Municipal  
13 Allocation Law until notified by the department that the  
14 municipality has complied with the provisions of this section.

15 (b) Right to petition court for tax increase.--After a  
16 municipality has adopted a plan under Subchapter C of Chapter 2,  
17 it may petition the court of common pleas of the county in which  
18 the municipality is located to increase its rates of taxation  
19 for earned income, real property, or both, beyond maximum rates  
20 provided by law. If a tax increase above existing limits is  
21 granted by the court, the additional amount of taxes shall not  
22 be subject to sharing with a school district.

23 SUBCHAPTER C

24 JUDICIAL PROVISIONS

25 Section 141. Jurisdiction of court of common pleas.

26 The court of common pleas of each county shall have  
27 jurisdiction to hear a petition filed by a municipality which  
28 has adopted a final plan pursuant to Subchapter C of Chapter 2  
29 to increase rates of taxation for earned income, real property,  
30 or both, beyond maximum rates provided by law. The court may not

1 extend the increased taxing powers of the municipality beyond  
2 the date for final consummation of a plan adopted by the  
3 municipality pursuant to Chapter 2.

4 CHAPTER 2

5 MUNICIPAL FINANCIAL DISTRESS

6 SUBCHAPTER A

7 DETERMINATION OF MUNICIPAL FINANCIAL DISTRESS

8 Section 201. Criteria.

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

15 (1) The municipality has maintained a deficit over a  
16 three-year period, with a deficit of 1% or more in each of  
17 the previous fiscal years.

18 (2) The municipality's expenditures have exceeded  
19 revenues for a period of three years or more.

20 (3) The municipality has defaulted in payment of  
21 principal or interest on any of its bonds or notes or in  
22 payment of rentals due any authority.

23 (4) The municipality has missed a payroll for 30 days.

24 (5) The municipality has failed to make required  
25 payments to judgment creditors for 30 days beyond the date of  
26 the recording of the judgment.

27 (6) The municipality, for a period of at least 30 days  
28 beyond the due date, has failed to forward taxes withheld on  
29 the income of employees or has failed to transfer employer or  
30 employee contributions for Social Security.



1 (7) The municipality has accumulated and has operated  
2 for each of two successive years a deficit equal to 5% or  
3 more of its revenues.

4 (8) The municipality has failed to make the budgeted  
5 payment of its minimum municipal obligation as required by  
6 section 302 of the act of December 18, 1984 (P.L.1005,  
7 No.205), known as the Municipal Pension Plan Funding Standard  
8 and Recovery Act, with respect to a pension fund during the  
9 fiscal year for which the payment was budgeted and has failed  
10 to take action within that time period to make required  
11 payments.

12 (9) A municipality has sought to negotiate resolution or  
13 adjustment of a claim in excess of 30% against a fund or  
14 budget and has failed to reach an agreement with creditors.

15 (10) A municipality has filed a municipal debt  
16 readjustment plan pursuant to Chapter 9 of the Bankruptcy  
17 Code (11 U.S.C. § 901 et seq).

18 Section 202. Standing to petition for a determination.

19 The following have standing to seek a determination of  
20 municipal financial distress from the department:

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

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

28 (3) A creditor with a matured claim to whom the  
29 municipality owes \$10,000 or more, if the creditor agrees in  
30 writing to suspend pending actions and to forbear from

1 bringing an alternate or additional legal action against the  
2 municipality to collect the debt or part of it for a period  
3 of nine months or until the municipality adopts a plan under  
4 this act, whichever occurs first. The filing of a Federal  
5 debt adjustment action by a municipality pursuant to  
6 Subchapter D of Chapter 2 during the nine-month period  
7 cancels the forbearance obligation.

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

12 (5) Trustee of a municipal pension fund; an actuary for  
13 a pension fund; or 10% or more of the beneficiaries of a  
14 pension fund upon petition to the department, provided that a  
15 municipality has not timely deposited its minimum obligation  
16 payment as required by section 302 of the act of December 18,  
17 1984 (P.L.1005, No.205), known as the Municipal Pension Plan  
18 Funding Standard and Recovery Act.

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

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

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

29 Section 203. Procedure for determination.

30 (a) Petition.--A party with standing to petition under

1 section 202 may petition the secretary seeking a determination  
2 that the municipality involved is a financially distressed  
3 municipality. The petition shall:

4 (1) Allege the petitioner has standing to bring a  
5 determination of the distress.

6 (2) State why the petitioner believes the municipality  
7 is distressed under section 201.

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

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

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

17 (c) Investigation.--After receiving the petition but before  
18 the public hearing the secretary may make an investigation into  
19 the financial affairs of the municipality. The results of the  
20 investigation of any study previously conducted by the  
21 department under section 121 shall be placed in the record of  
22 the public hearing.

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

1 (e) Hearing officer.--The secretary or an official of the  
2 department designated by the secretary shall conduct the public  
3 hearing to hear testimony of the petitioners and other  
4 interested persons.

5 (f) Determination.--Within 30 days after the hearing, the  
6 secretary shall issue an administrative determination of whether  
7 the municipality is financially distressed and reasons for the  
8 determination.

9 Section 204. Commonwealth funds.

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

15 SUBCHAPTER B

16 COORDINATOR

17 Section 221. Appointment.

18 (a) Duties.--No later than 30 days following a determination  
19 of municipal financial distress under section 203, the secretary  
20 shall appoint a coordinator who shall prepare a plan addressing  
21 the municipality's financial problems.

22 (b) Qualifications.--The coordinator may be an employee of  
23 the department, furnished with additional staff or consultant  
24 assistance, if needed, or may be a consultant or consulting  
25 firm. No elected or appointed employee of the municipality shall  
26 be eligible for serving as coordinator. The coordinator shall be  
27 experienced in municipal administration and finance.

28 (c) Compensation.--The department shall be responsible for  
29 compensating the coordinator appointed by the secretary for  
30 reasonable salary and expenses. Notwithstanding any law to the

1 contrary, the appointment of a plan coordinator shall not be  
2 subject to contractual competitive bidding procedures.

3 Section 222. Access to information.

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

15 Section 223. Public and private meetings.

16 (a) Public meetings authorized.--The coordinator may hold  
17 public meetings as defined in the act of July 3, 1986 (P.L.388,  
18 No.84), known as the Sunshine Act, in connection with plan  
19 preparation.

20 (b) Private meetings authorized.--Private negotiation  
21 sessions may be conducted by the coordinator between the  
22 municipality and the individual creditors in an effort to obtain  
23 the consent of each creditor to the proposed adjustment and  
24 handling of specific claims against the municipality.

25 Section 224. Coordinator barred from elective office.

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

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SUBCHAPTER C

COORDINATOR'S PLAN

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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.

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

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

9           (4) Recommended changes in municipal ordinances or  
10          rules.

11          (5) Recommendations for special audits or further  
12          studies.

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

18          (7) An analysis of whether the economic conditions of  
19          the municipality are so severe that it is reasonable to  
20          conclude that the municipality is no longer viable and should  
21          consolidate or merge with an adjacent municipality or  
22          municipalities pursuant to Chapter 3.

23          Section 242. Publication.

24          (a) Filing.--Within 90 days of being named, the coordinator  
25          shall formulate a plan for relieving the municipality's  
26          financial distress and shall deliver true and correct copies of  
27          it to:

28               (1) The municipal clerk or municipal secretary, who  
29               shall immediately place the copy on file for public  
30               inspection in the municipal office.

- 1 (2) The secretary.
- 2 (3) Each member of the municipal governing body.
- 3 (4) The mayor.
- 4 (5) The chief financial officer of the municipality.
- 5 (6) The solicitor of the municipal governing body.
- 6 (7) All parties who have petitioned the secretary under
- 7 section 203.

8 (b) Date of filing.--For purposes of this section, the date  
9 of filing the plan shall be the date on which the municipal  
10 clerk or municipal secretary places a true and correct copy of  
11 the plan on file for public inspection in the municipal office.

12 (c) Notices of plan.--

13 (1) On the date of filing, notice that a plan has been  
14 filed and is open for public inspection in the municipal  
15 office shall be published by the coordinator in the county  
16 legal reporter and in one or more newspapers with general  
17 circulation serving the area in which the municipality is  
18 located. The cost for publishing the notice shall be borne by  
19 the department. The notice shall set forth the following  
20 information:

21 (i) That a plan regarding the coordination and  
22 relief of the municipality's financial distress was filed  
23 pursuant to this act.

24 (ii) The date and place of filing.

25 (iii) That the public has 15 days from the date of  
26 filing in which to file written comments on the plan.

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

29 (v) Summary of the plan.

30 (2) Notice of a coordinator's public meeting on the plan



1 shall be published by the coordinator in the county legal  
2 reporter and in one or more newspaper with general  
3 circulation serving the area in which the municipality is  
4 located. The department shall bear the cost for publishing  
5 the notice. The notice shall contain the following  
6 information:

7 (i) That the purpose of the coordinator's public  
8 meeting is to receive public comments on the plan.

9 (ii) The date and place of the meeting.

10 (3) The coordinator may combine the publication of the  
11 notice that a plan has been filed with the publication of the  
12 notice of the public meeting.

13 (d) Comment period.--Written comments on the plan may be  
14 filed with the coordinator. Written comments shall be made no  
15 later than 15 days after the date of filing. Written comments  
16 judged by the coordinator to have value to the plan may be used  
17 to develop a revised plan.

18 (e) Coordinator's public meeting.--A meeting conducted by  
19 the coordinator in the municipality shall be set for a date not  
20 later than 20 days after the date of filing the plan. The  
21 coordinator shall request in writing that the chief executive  
22 officer, each member of the municipal governing body and the  
23 chief financial officer of the municipality to be present at the  
24 coordinator's meeting. Comments on the plan shall be received by  
25 the coordinator at that time.

26 Section 243. Review of plan.

27 (a) General rule.--The coordinator, in his discretion, shall  
28 consider comments made on the plan. Creditors who do not consent  
29 to the handling of their claim by the plan, shall notify the  
30 coordinator of their rejection of the plan not later than ten

1 days before the public meeting scheduled by the governing body  
2 under section 245.

3 (b) Rejected claims.--If a creditor has rejected the plan,  
4 the coordinator shall make a written report to the governing  
5 body stating whether the timing and amount of payment or  
6 proposed resolution of the claim is the best disposition the  
7 municipality can make.

8 (c) Additional negotiations authorized.--Additional  
9 negotiations between the municipality and creditors rejecting  
10 the plan shall be encouraged and presided over by the  
11 coordinator.

12 (d) Governing body proposals.--The governing body of the  
13 municipality may propose to the coordinator resolutions of  
14 claims which have been the reason for rejection of the proposed  
15 plan, and the coordinator may revise the plan accordingly.

16 (e) Revision on own initiative.--Nothing in this section  
17 shall preclude the coordinator from revising a plan of his own  
18 initiative.

19 Section 244. Revision.

20 Neither the secretary nor the chief executive officer or the  
21 governing body, as appropriate, may revise the coordinator's  
22 plan. However, the coordinator shall consult with the secretary  
23 and either the chief executive officer or the governing body  
24 throughout the revision of the plan and shall give consideration  
25 to comments they may propose.

26 Section 245. Adoption by municipality.

27 Not later than 15 days following the coordinator's public  
28 meeting, the municipal governing body shall either enact an  
29 ordinance approving the implementation of the plan, including  
30 enactment of necessary related ordinances and revisions to

1 ordinances, or shall reject the plan and proceed under section  
2 246. If the ordinance takes effect in a municipality operating  
3 under an optional plan form of government or a home rule  
4 charter, the chief executive officer may issue an order  
5 directing the implementation of the plan no later than seven  
6 days from the enactment of the ordinance by the governing body.  
7 Section 246. Preparation and action on alternate plan.

8 (a) Chief executive officer's plan.--If the governing body  
9 of a municipality that operates under an optional plan form of  
10 government or a home rule charter enacts an ordinance directing  
11 implementation of the coordinator's plan and the chief executive  
12 officer refuses or fails to issue an order as provided in  
13 section 245, or if the governing body refuses to enact an  
14 ordinance approving the coordinator's plan, then the chief  
15 executive officer, within 14 days of the action or refusal to  
16 act on the ordinance by the governing body, shall develop a  
17 plan, including a signed order implementing it, which shall be  
18 the subject of a public meeting no later than ten days following  
19 its completion.

20 (1) The chief executive officer may conduct private  
21 sessions before the public meeting with individual creditors  
22 in an effort to obtain the consent of each creditor to  
23 proposed adjustment and handling of specific claims against  
24 the municipality. An agreement reached as a result of these  
25 private sessions shall become a matter of record and part of  
26 the proceedings of the public meeting conducted pursuant to  
27 this subsection.

28 (2) The chief executive officer shall be responsible for  
29 placing notice that a public meeting will be held on his  
30 plan. Notice shall be published in the same manner as

1 provided in section 242(c). The coordinator shall attend the  
2 public meeting and furnish written and oral comments on the  
3 chief executive officer's plan.

4 (b) Governing body's plan.--In the case of a municipality  
5 operating under a form of government other than an optional plan  
6 form of government or a home rule charter, if the governing body  
7 by majority vote refuses to enact an ordinance approving and  
8 implementing the coordinator's plan as provided in section 245,  
9 then within 14 days of its refusal the governing body shall  
10 develop a plan which shall be the subject of a public meeting  
11 held not later than ten days following plan completion.

12 (1) The governing body may conduct private sessions  
13 before the public meeting with individual creditors in an  
14 effort to obtain consent of each creditor to proposed  
15 adjustment and handling of specific claims against the  
16 municipality. An agreement reached as a result of these  
17 private sessions shall become a matter of record and part of  
18 the proceedings of the public meeting conducted pursuant to  
19 this subsection.

20 (2) The governing body shall be responsible for placing  
21 notice that a public meeting will be held on its plan. Notice  
22 shall be published in the same manner as provided in section  
23 242(c). The coordinator shall attend the public meeting and  
24 furnish written and oral comments on the governing body's  
25 plan.

26 (c) Approval or rejection of plan.--Following the public  
27 meeting on the chief executive officer's plan or the governing  
28 body's plan, the governing body may enact an ordinance,  
29 including necessary related implementing ordinances or revisions  
30 to ordinances, approving the plan.

1 (d) Failure to adopt or implement plan.--If no plan is  
2 adopted pursuant to this chapter, then sections 250 and 264  
3 shall apply.

4 Section 247. Plan implementation.

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

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

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

15 (3) Oversee completion of the plan either by directly  
16 controlling the implementation process or by turning the  
17 implementation process over to a person designated by the  
18 governing body or by the chief executive officer, as the case  
19 may be. The person designated shall supply the coordinator  
20 with monthly reports.

21 (4) Terminate the plan upon its completion.

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

24 (b) Chief executive officer's plan.--If the plan adopted is  
25 the plan proposed by the chief executive officer in an optional  
26 plan form of government or home rule charter, the chief  
27 executive officer shall have the duties of the coordinator set  
28 forth in subsection (a).

29 (c) Municipal governing body's plan.--If the plan adopted is  
30 the plan proposed by the municipal governing body, a person

1 designated by the governing body shall have the duties of the  
2 coordinator set forth in subsection (a).

3 Section 248. Plan amendments.

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

8 Section 249. Debt provisions.

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

16 Section 250. Commonwealth agency payments or assistance.

17 (a) Withholding of certain Commonwealth funds.--Upon  
18 certification by the secretary that a financially distressed  
19 municipality has failed to implement an adopted plan as proposed  
20 under this act, the municipality shall not receive a grant,  
21 loan, entitlement or payment from the Commonwealth or any of its  
22 agencies. Moneys withheld shall be held in escrow by the  
23 Commonwealth until the secretary has rescinded the  
24 certification.

25 (b) Exceptions to the withholding of Commonwealth funds.--  
26 Notwithstanding the provisions of subsection (a), the following  
27 funds shall not be withheld from a municipality.

28 (1) Capital projects under contract in progress.

29 (2) Moneys received by a municipality from an agency of  
30 the Commonwealth or the Federal Government subsequent to the

1 declaration of a disaster resulting from a catastrophe.

2 (3) Pension fund disbursements made pursuant to State  
3 law.

4 Section 251. Plan not affected by certain collective bargaining  
5 agreements or settlements.

6 A collective bargaining agreement or arbitration settlement  
7 executed after the adoption of a plan shall not in any manner  
8 violate, expand or diminish its provisions.

9 Section 252. Termination of status.

10 (a) Determination by secretary.--Following a duly advertised  
11 public hearing with notices given as provided in section 203,  
12 the secretary may issue a determination that the conditions  
13 which led to the earlier determination of municipal financial  
14 distress municipality are no longer applicable. The  
15 determination shall rescind the status of municipal financial  
16 distress and shall include a statement of facts as part of the  
17 final order.

18 (b) Determination upon petition by a municipality.--A  
19 financially distressed municipality may petition the secretary  
20 to make a determination that the conditions which led to the  
21 earlier determination of municipal financial distress are no  
22 longer present. Upon receiving the petition, the secretary may  
23 issue a determination to rescind following a duly advertised  
24 public hearing with notices given as provided in section 203.

25 SUBCHAPTER D

26 APPLICATION OF FEDERAL LAW

27 Section 261. Filing municipal debt adjustment under Federal  
28 law.

29 (a) Authorization.--In the event one of the following  
30 conditions is present, a municipality is hereby authorized to

1 file a municipal debt adjustment action pursuant to the  
2 Bankruptcy Code (11 U.S.C. § 101 et seq.):

3 (1) After recommendation by the plan coordinator  
4 pursuant to section 241(6).

5 (2) Imminent jeopardy of an action by a creditor,  
6 claimant or supplier of goods or services which is likely to  
7 substantially interrupt or restrict the continued ability of  
8 the municipality to provide health or safety services to its  
9 citizens.

10 (3) One or more creditors of the municipality have  
11 rejected the proposed or adopted plan, and efforts to  
12 negotiate resolution of their claims have been unsuccessful  
13 for a ten-day period.

14 (4) A condition substantially affecting the  
15 municipality's financial distress is potentially solvable  
16 only by utilizing a remedy exclusively available to the  
17 municipality through the Federal Municipal Debt Readjustment  
18 Act (48 Stat. 798).

19 (5) A majority of the current or immediately preceding  
20 governing body of a municipality determined to be financially  
21 distressed has failed to adopt a plan or to carry out the  
22 recommendations of the coordinator pursuant to this act.

23 (b) Majority vote.--This authority may be exercised only  
24 upon the vote by a majority of the municipality's governing  
25 body.

26 Section 262. Significance and duty on filing Federal action.

27 (a) Status.--A municipality which files a municipal debt  
28 adjustment action under Federal law shall be deemed to be a  
29 financially distressed municipality under this act.

30 (b) Notice.--The municipality shall immediately notify the



1 secretary and the plan coordinator, if one has been assigned, of  
2 the Federal filing.

3 (c) Appointment of coordinator.--Upon receipt of notice of  
4 filing of the Federal action by a municipality, the secretary  
5 shall appoint a plan coordinator under section 221, if none had  
6 yet been appointed. The coordinator shall formulate a plan  
7 approvable by the Federal court.

8 Section 263. Application of this act during Federal action.

9 (a) Existing plan.--After filing a Federal municipal debt  
10 adjustment action, if there is a plan in process under the terms  
11 of this act, the municipality shall utilize the plan and the  
12 expertise of the plan coordinator, among others available to it,  
13 to work out a revised plan to be proposed through the Federal  
14 action, adapting it to incorporate Federal remedies which are  
15 appropriate in the circumstances.

16 (b) Necessary plan development.--A municipality which files  
17 a municipal debt adjustment action under Federal law, whether or  
18 not a proceeding under this act had been commenced as of the  
19 date of such filing, shall utilize the procedures set up by this  
20 act concurrently with the processing of the Federal action, so  
21 as to efficiently expedite the formulation of a plan, its timely  
22 confirmation by the Federal court having jurisdiction of the  
23 Federal action and its adoption by ordinance.

24 (c) Plan implementation.--After adoption of a plan by the  
25 municipality as an ordinance and confirmation of the plan by the  
26 Federal court, implementation of the plan shall be coordinated  
27 through this act and in accordance with requirements set by the  
28 Federal court.

29 Section 264. Suspension of Commonwealth funding.

30 (a) General rule.--A municipality which remains classified

1 as financially distressed by the department and has failed to  
2 adopt or implement a plan within a period set by the Federal  
3 court, or has failed or refused to follow a recommendation by a  
4 coordinator, shall be notified in writing by the coordinator  
5 that he is requesting the secretary to issue a suspension of  
6 Commonwealth funding to the municipality for its failure to take  
7 the steps enumerated in the notice.

8 (b) Certification.--Ten days after receipt by the secretary  
9 of the request, if the municipality has not shown cause to the  
10 secretary and coordinator why such action should not be taken,  
11 the secretary shall certify to the municipality in writing that  
12 each grant, loan, entitlement or payment by the Commonwealth or  
13 any of its agencies shall be suspended pending adoption of a  
14 plan calculated to fully resolve the municipality's financial  
15 distress. Suspended funds shall be held in escrow by the  
16 Commonwealth until the secretary has rescinded the  
17 certification.

18 (c) Exception.--Notwithstanding the provisions of subsection  
19 (b), the following funds shall not be withheld from a  
20 municipality:

21 (1) Capital projects under contract in progress.

22 (2) Moneys received by a municipality from an agency of  
23 the Commonwealth or the Federal Government subsequent to the  
24 declaration of a disaster resulting from a catastrophe.

25 (3) Pension fund disbursements made pursuant to State  
26 law.

27 CHAPTER 3

28 CONSOLIDATION OR MERGER OF ECONOMICALLY NONVIABLE

29 MUNICIPALITIES

30 SUBCHAPTER A

1 GENERAL PROVISIONS

2 Section 301. Determination.

3 If a municipality has been determined to be financially  
4 distressed pursuant to this act and the coordinator has further  
5 determined under section 241 that consolidation or merger of the  
6 municipality with an adjacent municipality or municipalities is  
7 in the public interest, then the municipality may utilize the  
8 provisions of this chapter.

9 Section 302. Procedure for consolidation or merger.

10 Two or more municipalities may be consolidated or merged into  
11 a single municipality, whether within the same or different  
12 counties, if each of the municipalities is contiguous to at  
13 least one of the other consolidating or merging municipalities,  
14 and if together such municipalities would form a consolidated or  
15 merged municipality. Consolidation or merger may be commenced by  
16 one of the following:

17 (1) Joint agreement of the governing bodies of the  
18 municipalities proposed for consolidation or merger approved  
19 by ordinance.

20 (2) Initiative of electors.

21 Section 303. Joint agreement of governing bodies.

22 (a) General rule.--The governing body of each municipality  
23 to be consolidated or merged shall enter into a joint agreement  
24 under the official seal of each municipality to consolidate or  
25 merge into one municipality.

26 (b) Elements.--The joint agreement shall set forth:

27 (1) The name of each municipality that is a party to the  
28 agreement.

29 (2) The name and the territorial boundaries of the  
30 consolidated or merged municipality.

1           (3) The type and class of the consolidated or merged  
2 municipality.

3           (4) Whether the consolidated or merged municipality  
4 shall be governed solely by the code and other general laws  
5 applicable to the kind and class of the consolidated or  
6 merged municipality or whether it shall be governed by a home  
7 rule charter or an optional plan of government previously  
8 adopted by one of the consolidating or merging  
9 municipalities.

10          (5) The number of wards, if any, into which the  
11 consolidated or merged municipality will be divided for the  
12 purpose of electing all or some members of its governing  
13 body.

14          (6) Terms for:

15           (i) The disposition of existing assets of each  
16 municipality.

17           (ii) The liquidation of existing indebtedness of  
18 each municipality.

19           (iii) The assumption, assignment or disposition of  
20 existing liabilities of each municipality, either  
21 jointly, separately or in certain defined proportions, by  
22 separate rates of taxation within each of the constituent  
23 municipalities until consolidation or merger becomes  
24 effective pursuant to section 307.

25           (iv) The implementation of a legally consistent  
26 uniform tax system throughout the consolidated or merged  
27 municipality which provides the revenue necessary to fund  
28 required municipal services.

29          (7) The governmental organization of the consolidated or  
30 merged municipality insofar as it concerns elected officers.

1           (8) A transitional plan and schedule applicable to  
2           elected officers. The transitional plan shall provide for the  
3           abolition of the elected offices of each component  
4           municipality and the termination of the terms of office of  
5           the elected officials of each municipality and for the  
6           election of the first officers of the consolidated or merged  
7           municipality so that election and tenure shall conform to  
8           those in other municipalities of the same kind and class in  
9           the Commonwealth with properly staggered terms where required  
10          or desired.

11          (9) The common administration and enforcement of  
12          ordinances enforced uniformly within the consolidated or  
13          merged municipality.

14 Section 304. Initiative of electors.

15          (a) General rule.--In order for consolidation or merger  
16          proceedings to be initiated by petition of electors, petitions  
17          containing signatures of at least 5% of the electors voting for  
18          the Office of Governor in the last gubernatorial general  
19          election in each municipality proposed to be consolidated or  
20          merged shall be filed with the county board of elections of the  
21          county in which the municipality, or the greater portion of its  
22          territory, is located.

23          (b) Notice to governing bodies affected.--When election  
24          officials find that a petition is in proper order, they shall  
25          send copies of the initiative petition without the signatures  
26          thereon to the governing bodies of each of the municipalities  
27          affected by the proposed consolidation or merger.

28          (c) Contents.--A petition shall set forth:

29                  (1) The name of the municipality from which the signers  
30                  of the petition were obtained.

1           (2) The names of the municipalities proposed to be  
2 consolidated or merged.

3           (3) The name of the consolidated or merged municipality.

4           (4) The type and class of the consolidated or merged  
5 municipality.

6           (5) Whether the consolidated or merged municipality  
7 shall be governed solely by the code and other general laws  
8 applicable to the kind and class of the consolidated or  
9 merged municipality, or whether it shall be governed by a  
10 home rule charter or an optional plan of government  
11 previously adopted by one of the consolidating or merging  
12 municipalities.

13           (6) The number of wards, if any, into which the  
14 consolidated or merged municipality will be divided for the  
15 purpose of electing all or some members of its governing  
16 body.

17           (d) Time limitations.--Once the circulation of a petition  
18 has begun, the petition shall be submitted to the county board  
19 of elections within 21 days. Failure to do so within that  
20 prescribed time limit will invalidate the petition.

21 Section 305. Conduct of referenda.

22           (a) Duty to place on ballot.--Following initiation of  
23 proceedings for consolidation or merger by the procedures set  
24 forth either in section 303 or 304, the question of  
25 consolidation or merger shall be placed before the electors of  
26 each of the municipalities proposed to be consolidated or  
27 merged. A referendum shall be held at the first primary,  
28 municipal or general election after either:

29           (1) the date of the general agreement entered into under  
30 the provisions of section 303; or

1           (2) the date of filing of the petition filed under the  
2 provisions of section 304.

3           (b) Approval.--Consolidation or merger shall not be  
4 effective unless the referendum question is approved by a  
5 majority of the electors voting in each of the municipalities in  
6 which the referendum is held. If in any one of the  
7 municipalities in which the referendum is held a majority in  
8 favor of consolidation or merger does not result, the referendum  
9 shall fail and consolidation or merger shall not take place. The  
10 question described in the consolidation or merger proposal shall  
11 not be voted on again for a period of five years.

12 Section 306. Consolidation or merger agreement.

13           (a) Form.--Upon favorable action by the electorate on  
14 consolidation or merger, in cases where consolidation or merger  
15 was initiated otherwise than by joint agreement of municipal  
16 governing bodies under section 303, the governing bodies of the  
17 municipalities to be consolidated or merged shall meet within 60  
18 days after the certification of the favorable vote and shall  
19 make a consolidation or merger agreement, as follows:

20           (1) If the governing body, or part of the governing  
21 body, of the consolidated or merged municipality is to be  
22 elected on a ward basis, the agreement shall set forth the  
23 ward boundaries and the ward designation, by number, and the  
24 number of members of the municipal governing body to be  
25 elected from each ward.

26           (2) The agreement shall set forth terms for:

27           (i) The disposition of the existing assets of each  
28 municipality.

29           (ii) The liquidation of the existing indebtedness of  
30 each municipality.

1 (iii) The assumption, assignment, and disposition of  
2 the existing liabilities of each municipality, either  
3 jointly, separately or in certain defined proportions, by  
4 separate rates of taxation within each of the constituent  
5 municipalities until consolidation or merger becomes  
6 effective pursuant to section 307.

7 (3) The agreement shall set forth the governmental  
8 organization of the consolidated or merged municipality,  
9 insofar as it concerns elected officers, and shall contain a  
10 transitional plan and schedule applicable to elected  
11 officers. The agreement shall provide for the abolition of  
12 elected offices and for the termination of the terms of  
13 office of elected officers of each municipality being merged  
14 or consolidated, and the election of the first officers of  
15 the consolidated or merged municipality so that election and  
16 tenure shall conform to those in other municipalities of the  
17 same kind and class in the Commonwealth, with properly  
18 staggered terms, where required or desired.

19 (4) The agreement shall provide for common  
20 administration and enforcement of ordinances to be enforced  
21 uniformly within the consolidated or merged municipality.

22 (5) The agreement shall also provide, consistent with  
23 existing law, for the implementation of an uniform tax system  
24 throughout the consolidated or merged municipality which  
25 shall provide the revenue necessary to fund required  
26 municipal services.

27 (b) Filing.--A copy of the consolidation or merger agreement  
28 shall be filed with the Department of Community Affairs, the  
29 Department of Transportation, the Governor's Office of Policy  
30 Development or its successor, the Department of Education, State



1 Tax Equalization Board, the Legislative Reapportionment  
2 Commission and the court of common pleas and the board of county  
3 commissioners of the county or counties in which municipalities  
4 affected are located.

5 Section 307. Effectuation of consolidation or merger.

6 Municipalities consolidated or merged shall continue to be  
7 governed as before consolidation or merger until the first  
8 Monday of January following the municipal election next  
9 succeeding the election at which consolidation or merger  
10 referenda were held. At that municipal election, the necessary  
11 officers of the consolidated or merged municipality shall be  
12 elected in accordance with the terms of the general law  
13 affecting municipalities of the kind or class of the  
14 consolidated or merged municipality, or, in case of a  
15 consolidated or merged municipality operating under a home rule  
16 charter or optional plan of government, in accordance with the  
17 charter or optional plan or with general law affecting home rule  
18 or optional plan municipalities, as applicable. The officers  
19 elected at that municipal election shall be elected for terms of  
20 office under the plan and schedule set forth in the  
21 consolidation or merger agreement authorized by section 303 or  
22 306, as the case may be. They shall take office as officers of  
23 the consolidated or merged municipality on the first Monday of  
24 January following the municipal election at which they were  
25 elected, and thereupon, the consolidated or merged municipality  
26 shall begin to function and the former municipalities  
27 consolidated or merged into it shall be abolished.

28 Section 308. Collective bargaining agreements; furlough of  
29 employees; disputes.

30 (a) Collective bargaining contracts, agreements or

1 arbitration awards.--A collective bargaining agreement or  
2 contract in existence in a municipality or an arbitration award  
3 in effect in a municipality prior to a consolidation or merger  
4 shall remain effective after consolidation or merger until the  
5 contract, agreements, or awards expire. After the expiration of  
6 the contracts, agreements or awards, a subsequent collective  
7 bargaining agreement, contract or award shall not impair the  
8 implementation of a plan adopted pursuant to this act.

9 (b) Reduction in existing work force.--Subsequent to  
10 consolidation or merger, the consolidated or merged municipality  
11 may, in accordance with existing contracts or arbitration award  
12 provisions and consistent with applicable laws, reduce the  
13 number of uniformed and nonuniformed employees to avoid  
14 overstaffing and duplication of positions in the consolidated or  
15 merged municipality. If a consolidated or merged municipality  
16 determines in its discretion that it is necessary to increase  
17 the number of uniformed or nonuniformed employees, employees of  
18 the constituent municipalities shall be reinstated in the order  
19 of their seniority if they had been previously furloughed.

20 (c) Disputes.--The Pennsylvania Labor Relations Board shall  
21 have jurisdiction to determine labor disputes or controversies,  
22 except those arising out of interpretation or construction of a  
23 collective bargaining agreement containing provision for binding  
24 arbitration, between the consolidated or merged municipality and  
25 its employees.

26 (d) Effect on existing law.--Nothing in this section shall  
27 prohibit a consolidated or merged municipality from exercising  
28 its powers and responsibilities pursuant to provisions of law  
29 related to collective bargaining, including, but not limited to,  
30 the act of June 24, 1968 (P.L.237, No.111), referred to as the

1 Policemen and Firemen Collective Bargaining Act, and the act of  
2 July 23, 1970 (P.L.563, No.195), known as the Public Employe  
3 Relations Act.

4 Section 309. Procedures.

5 (a) Ordinance book.--After consolidation or merger becomes  
6 effective, a new ordinance book shall be used by the  
7 municipality and the first document to be recorded in it shall  
8 be the consolidation or merger agreement.

9 (b) Ordinance codification.--No later than two years after  
10 consolidation or merger goes into effect, codification of all  
11 the ordinances of the municipality shall be completed. This  
12 shall include tabulation or indexing of those ordinances of the  
13 component municipalities that are of permanent effect in the  
14 consolidated or merged municipality.

15 (c) Vesting of rights, privileges, property and  
16 obligations.--All rights, privileges and franchises of each  
17 component municipality and all property belonging to each  
18 component municipality shall be vested in the consolidated or  
19 merged municipality. The title to real estate vested in any of  
20 those municipalities shall not revert or be in any way impaired  
21 by reason of the consolidation or merger. All liens and rights  
22 of creditors shall be preserved. Agreements and contracts shall  
23 remain in force. Debts, liabilities and duties of each of the  
24 municipalities shall be attached to the consolidated or merged  
25 municipality and may be enforced against it.

26

#### SUBCHAPTER B

27

#### ECONOMIC ASSISTANCE

28 Section 321. Eligibility.

29 In the event a municipality has been determined to be  
30 distressed pursuant to section 203(f) and has subsequently

1 consolidated or merged under provisions of this chapter, the  
2 consolidated or merged municipality shall be eligible for  
3 economic and community development assistance as provided in  
4 section 322.

5 Section 322. Priority.

6 Notwithstanding law to the contrary, if the electors of two  
7 or more municipalities at least one of which has been determined  
8 to be distressed pursuant to section 203(f), have voted to  
9 approve the consolidation or merger of those municipalities, the  
10 consolidated or merged municipality shall receive priority in  
11 all economic and community development programs funded by the  
12 Commonwealth. The secretary, upon notification of consolidation  
13 or merger of such municipalities shall notify Commonwealth  
14 agencies that the consolidated or merged municipality shall  
15 receive priority in funding as provided in this subchapter.

16 CHAPTER 4

17 TECHNICAL PROVISIONS

18 Section 401. Repeal.

19 The act of June 11, 1935 (P.L.323, No.146), entitled "An act  
20 designating the Department of Internal Affairs as the agency of  
21 the Commonwealth to approve or disapprove petitions to courts,  
22 and plans for the readjustment of debts of political  
23 subdivisions, under the act of Congress relating to the  
24 bankruptcy of political subdivisions; and defining the powers  
25 and duties of said department in relation thereto," is repealed  
26 insofar as it related to a municipality as defined in section  
27 103 of this act.

28 Section 402. Effective date.

29 This act shall take effect in 60 days.

DERIVATION TABLE  
FINANCIALLY DISTRESSED MUNICIPALITIES ACT

CHAPTER 1  
GENERAL PROVISIONS  
SUBCHAPTER A  
PRELIMINARY PROVISIONS

Section 102. Purpose and legislative intent.

- |     |   |
|-----|---|
| (a) | Chapter 118.02 of the Ohio Revised Code |
| (b) | Original                                |

Section 103. Definitions.

- |  |   |
|--|---|
| "Chief executive officer."             | Original  |
| "Claim."                               | Chapter 11, USCA 101(4)   |
| "Commonwealth agency."                 | 1 PACS 1991   |
| "Consolidated or merged municipality." | Original  |
| "Consolidation or merger."             | Original  |
| "Contiguous territory."                | Original  |
| "Creditor."                            | Original  |
| "Department."                          | Original  |
| "Election officials."                  | Original  |
| "Expenditures."                        | Governmental Accounting, Auditing, and Financial Reporting Manual, 1968 ed. |
| "Governing body."                      | Original  |
| "Initiative."                          | Original  |
| "Matured claim."                       | Original  |
| "Municipal record."                    | Original  |
| "Municipality."                        | Original  |
| "Referendum."                          | Original  |
| "Revenues."                            | Section 102(16) of The Local Government Unit Debt Act (53 P.S. 6780-2)      |
| "Secretary."                           | Original  |

SUBCHAPTER B  
ADMINISTRATIVE PROVISIONS

Section 121. Powers and duties of department.

- |     |  |
|-----|--|
| (a) | Original   |
| (b) | Original   |
| (c) | Original   |
| (d) | Senate Bill 1143, Printer's Number 1433<br>Section 601 |
| (e) | Original   |

- (f) Senate Bill 1143, Printer's Number 1433  
Section 601
- (g) Original
- (h) Original

Section 122. Duties of Commonwealth agencies.

- (a) Senate Bill 1143, Printer's Number 1433  
Section 601
- (b) Original

Section 123. Powers and duties of municipalities.

- (a) Original
- (b) Original

SUBCHAPTER C  
JUDICIAL PROVISIONS

Section 141. Jurisdiction of the court of common pleas.

Original

CHAPTER 2  
MUNICIPAL FINANCIAL DISTRESS  
SUBCHAPTER A  
DETERMINATION OF MUNICIPAL FINANCIAL DISTRESS

Section 201. Criteria for Fiscal Distress Status.

- (1) "Early Warning Signals" as Indicators  
of Impending Financial Problems -  
DOE Circular 6-76
- (2) "Early Warning Signals" as Indicators  
of Impending Financial Problems -  
DOE Circular 6-76
- (3) Senate Bill 1143, Printer's Number 1433  
Section 201(c)(2)
- (4) Senate Bill 1143, Printer's Number 1433  
Section 201(c)(1)
- (5) Senate Bill 1143, Printer's Number 1433  
Section 301(2)
- (6) Senate Bill 1143, Printer's Number 1433  
Section 201(c)(4)
- (7) Original
- (8) Senate Bill 1143, Printer's Number 1433  
Section 201(c)(2)
- (9) Original
- (10) Original

Section 202. Standing to bring petition for a determination.

- (1) Original
- (2) Senate Bill 1143, Printer's Number 1433  
Section 301(1)
- (3) Original
- (4) Senate Bill 1143, Printer's Number 1433  
Section 301(3)
- (5) Senate Bill 1143, Printer's Number 1433  
Section 301(2)
- (6) Original
- (7) Original
- (8) Original

Section 203. Procedure for determination.

- (a) (1) Original
- (a) (2) Original
- (a) (3) Original
- (a) (4) Original
- (b) Senate Bill 1143, Printer's Number 1433  
Section 601(b)
- (c) Senate Bill 1143, Printer's Number 1433  
Section 601(c)
- (d) Senate Bill 1143, Printer's Number 1433  
Section 601(d)
- (e) Senate Bill 1143, Printer's Number 1433  
Section 601(e)
- (f) Senate Bill 1143, Printer's Number 1433  
Section 601(f)

Section 204. Commonwealth funds.

Senate Bill 1143, Printer's Number 1433  
Section 602

SUBCHAPTER B  
COORDINATOR

Section 221. Distressed municipality coordinator.

- (a) Senate Bill 1143, Printer's Number 1433  
Section 501(a)
- (b) Original
- (c) Original

Section 222. Access to information.

Senate Bill 1143, Printer's Number 1433  
Section 501(c)

Section 223. Public and private meetings authorized.

- (a) Senate Bill 1143, Printer's Number 1433  
Section 502
- (b) Original

Section 224. Coordinator barred from elective office.

Senate Bill 1143, Printer's Number 1433  
Section 503

SUBCHAPTER C  
COORDINATOR' PLAN

Section 241. Contents.

- (1) Senate Bill 1143, Printer's Number 1433  
Section 501(b)(1)
- (2)(i) Chapter 118.06 Ohio Revised Code  
Section A(1)(b)
- (2)(ii) Chapter 118.06 Ohio Revised Code  
Section A(1)(c)
- (2)(iii) Chapter 118.06 Ohio Revised Code  
Section A(1)(d)
- (2)(iv) Chapter 118.06 Ohio Revised Code  
Section A(1)(e)
- (2)(v) Chapter 118.06 Ohio Revised Code  
Section A(1)(f)
- (2)(vi) Chapter 118.06 Ohio Revised Code  
Section A(1)(g)
- (2)(vii) Senate Bill 1143, Printer's Number 1433  
Section 501(b)(5),(6)
- (2)(viii) Original
- (3) Senate Bill 1143, Printer's Number 1433  
Section 501(b)(7),(8)
- (4) Senate Bill 1143, Printer's Number 1433  
Section 501(b)(9)
- (5) Senate Bill 1143, Printer's Number 1433  
Section 501(b)(11)
- (6) Original
- (7) Original



Section 242. Publication.

- (a) Senate Bill 1143, Printer's Number 1433  
Section 701
- (b) Senate Bill 1143, Printer's Number 1433  
Section 701
- (c) Original
- (d) Senate Bill 1143, Printer's Number 1433  
Section 702
- (e) Senate Bill 1143, Printer's Number 1433  
Section 703

Section 243. Review of plan.

- (a) Original
- (b) Original
- (c) Original
- (d) Original
- (e) Original

Section 244. Revision.

Original

Section 245. Adoption by municipality.

Senate Bill 1143, Printer's Number 1433  
Section 704

Section 246. Preparation and action on alternate plan.

- (a) Senate Bill 1143, Printer's Number 1433  
Section 705(a)
- (b) Senate Bill 1143, Printer's Number 1433  
Section 705(b)
- (c) Senate Bill 1143, Printer's Number 1433  
Section 706(a)
- (d) Original

Section 247. Plan implementation.

- (a) Original
- (b) Original
- (c) Original

Section 248. Plan amendments.

Senate Bill 1143, Printer's Number 1433  
Section 708

Section 249. Debt provisions.

Senate Bill 1143, Printer's Number 1433  
Section 801

Section 250. Commonwealth agency payments or assistance.

(a) Original  
(b) Original

Section 251. Plan not affected by certain collective bargaining agreements or settlements.

Senate Bill 1143, Printer's Number 1433  
Section 803(b)

Section 252. Termination of status.

(a) Senate Bill 1143, Printer's Number 1433  
Section 403  
(b) Original

SUBCHAPTER D  
APPLICATION OF FEDERAL LAW

Section 261. Filing municipal debt adjustment under Federal law.

(a) Original  
(a)(1) Original  
(a)(2) Original  
(a)(3) Original  
(a)(4) Original  
(a)(5) Original  
(b) Original

Section 262. Significance and duty on filing Federal action.

(a) Original  
(b) Original  
(c) Original

Section 263. Application of this act during Federal action.

(a) Original  
(b) Original  
(c) Original

Section 264. Suspension of Commonwealth funding.

- (a) Original
- (b) Original
- (c) Original

CHAPTER 3  
CONSOLIDATION OR MERGER OF ECONOMICALLY NONVIABLE MUNICIPALITIES  
SUBCHAPTER A  
GENERAL PROVISIONS

Section 301. Determination.

Original

Section 302. Procedure for consolidation or merger.

Original

Section 303. Joint agreement of governing bodies.

- (a) Original
- (b) (1) Original
- (b) (2) Original
- (b) (3) Original
- (b) (4) Original
- (b) (5) Original
- (b) (6) Original
- (b) (7) Original
- (b) (8) Original
- (b) (9) Original

Section 304. Initiative of electors.

- (a) Original
- (b) Original
- (c) Original
- (d) Original

Section 305. Conduct of referenda.

- (a) Original
- (b) Original

Section 306. Consolidation or merger agreement.

- (a) Original
- (b) Original

Section 307. Effectuation of consolidation or merger.

Original

Section 308. Collective bargaining agreements; furlough of employees; disputes.

(a)	Original
(b)	Original
(c)	Original
(d)	Original

Section 309. Procedures.

(a)	Original
(b)	Original
(c)	Original

SUBCHAPTER B  
ECONOMIC ASSISTANCE

Section 321. Eligibility.

Original

Section 322. Priority.

Original

CHAPTER 4  
TECHNICAL PROVISIONS

Section 401. Repeal.

Section 402. Effective date.