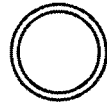


# City of Harrisburg Office of the Mayor



**COMPARISON OF PA. ACT 26, PA. ACT 79 (SB 1151), AND CHAPTER 9 OF  
U.S. BANKRUPTCY CODE**

**NOVEMBER 14, 2011**



# Time Line

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- Four Members of City Council (“Petitioners”) have filed a Chapter 9 Bankruptcy Petition
- By 6:00 PM, Monday, November 14, 2011, Mayor and City Council must submit a Plan to DCED consented to by creditors per Act 79 (SB 1151) and Governor’s Fiscal State of Emergency
- November 23, 2011, argument on legal question of whether Petitioners’ had authority for Bankruptcy filing
- If Petitioners are successful on November 23, 2011, then evidentiary hearing before Judge France as to whether City is eligible for bankruptcy commences
- Act 79 (SB 1151) Receiver will have been appointed prior to eligibility hearing in Bankruptcy proceeding

# Act 79 (SB 1151) Discussions

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- Present debt of Incinerator is \$318 million
- Estimated proceeds from sale of Incinerator and lease of Parking Garages is \$224 million
- Petitioners want \$100 million in concessions from creditors regardless of amount of stranded debt
- Creditors want City to assume \$26 million at most with additional concessions if original Act 47 Plan is accepted by Mayor and City Council

# Act 26 and Chapter 9

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- Even if Act 26 did not preclude a bankruptcy, the effect of a Chapter 9 filing could be the loss of all state funding to the City

See, Act 26 Section 1601-D.1 (c) Penalty.--If a city subject to this section fails to comply with subsection (b), all Commonwealth funding to the city shall be suspended.

## **Act 26, Act 79 (SB 1151) and Chapter 9**

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- **A bankruptcy judge cannot ignore state law.**

**See, 11 U.S.C. §901 and §903**

# Chapter 9

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Chapter 9 is VERY expensive –  
City of Vallejo Chapter 9 cost  
that City \$9.5 million in legal and  
professional fees

See, Bloomberg and Wall Street Journal

(Initial publishing of Petitioners' notice of filing would be in excess of \$40,000. Filing fee of Petitioners was \$1,100. Judge France to Petitioners' attorney on October 17, 2011, "Mr. Schwartz, if you think this is expensive now, you have not seen anything yet.")

# Chapter 9

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The City must propose a detailed plan of adjustment under 11 U.S.C. §943 which must:

- be feasible,
- be independently reviewed by court,
- be in the “**best interest of creditors**”,
- be voted on and accepted by creditors,
- use or propose to use all available assets, and
- consider all sources of income and all potential sources of income, i.e., tax increases

11 U.S.C. §§ 943, 1129; Kelley v. Everglades Drainage District, 319 U.S. 415 (1943) and Fano v. Newport Heights Irrigation Dist., 114 F.2d 563 (9th Cir. 1940); In re Valley Health System, 429 B.R. 692 (Bkcy CDCA 2010)

## Act 79 (SB 1151) – Chapter 7

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- **The Receiver**  
selected by the State  
is appointed for the  
benefit of creditors

# Act 79 (SB 1151) – Chapter 7

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- The Receiver must create a plan

## Act 79 (SB 1151) – Chapter 7

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- The Receiver has access to **ALL** of the City's assets for the benefit of the creditors

## Act 79 (SB 1151) – Chapter 7

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- The Receiver can propose to sell **ALL** or any of the City's assets.

## **Act 79 (SB 1151) – Chapter 7**

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- The Receiver may obtain a mandamus order from the court to compel the City officials to effectuate the plan over their objections and City officials cannot interfere with the plan

# Risks and Impacts of Act 79 (SB 1151) and Chapter 9

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- Loss of autonomy by City's elected officials
- Has caused downgrade on credit rating and higher borrowing costs on assets for which payments are current
- Cost of Receivership to City would be 60% of \$2.55 million in first year
- Exposes all assets of the City and its Authorities to satisfy creditors. Assets include:
  - Water and Sewer Systems
  - Parking Garages
  - City Government Center
  - Public Safety Building
  - National Civil War Museum building and artifacts
  - City Island subject to certain restrictions
  - DeHart Dam
  - Incinerator
  - Redevelopment Authority Properties
  - Broad Street Market
  - Fire Museum

# Benefits of Act 79 (SB 1151) Agreement

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- Retain Autonomy of Elected Officials
- Only Incinerator and Parking Garages to be used for creditors
- City limits its stranded debt exposure on Incinerator
- City obtains at least \$5.5 million in new yearly funding
- Bankruptcy dismissed and costs associated therewith not incurred
- Costs of Receivership not incurred
- City begins immediate financial recovery