

No. 62

AN ACT

SB 752

Giving municipalities the right and power to adopt home rule charters or one of several optional plans of government and to exercise the powers and authority of local self-government subject to certain restrictions and limitations; providing procedures for such adoption and defining the effect thereof.

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

ARTICLE I  
PRELIMINARY PROVISION

Section 101. This act shall be known and may be cited as the "Home Rule Charter and Optional Plans Law."

Section 102. As used in this act:

"Government study commission" or "commission" means the body composed of electors of the municipality elected under the provisions of this act.

"Councilman" means county commissioner, city councilman, borough councilman, town councilman, township commissioner in a township of the first class, and supervisor in a township of the second class.

"Election officials" means the county boards of elections.

"Electors" means the registered voters of any municipality involved in proceedings relating to the adoption and repeal of optional forms of government.

"Governing body" or "municipal council" or "council" means boards of county commissioners, city councils, borough or incorporated town councils, commissioners of townships of the first class, and supervisors of townships of the second class as their successor forms of government.

"Home rule charter" means a written document defining the powers, the structure, privileges, rights and duties of the municipal government and limitations thereon. The charter shall also provide for the composition and election of the governing body, which in all cases shall be chosen by popular elections.

"Local municipality" means a city, borough, incorporated town or township.

"Municipality" means a county, city, borough, incorporated town or township.

"Optional forms" means a general description including both home rule charters and optional plans.

"Optional plans" means optional municipal powers, procedures and administrative structures as provided by this act.

ARTICLE II  
PROCEDURE FOR ADOPTION OF A HOME RULE CHARTER  
OR OPTIONAL PLAN OF GOVERNMENT

A. Government Study Commission

Section 201. (a) Whenever authorized by ordinance of the governing body, or upon petition of the registered voters of any municipality to the county board of electors of the county wherein the municipality is located, an election shall be held in the municipality upon one of the following questions:

(1) "Shall a government study commission of (seven, nine or eleven) be elected to study the charter and form of government of the municipality, to study and consider the advisability of adoption of an optional form of government and to recommend whether or not an optional plan of government should be adopted."

(2) "Shall a government study commission of (seven, nine or eleven) be elected to study the charter and form of government of the municipality, to study and draft a home rule charter and to recommend whether or not a home rule charter should be adopted."

(3) "Shall a government study commission of (seven, nine or eleven) be elected to study the charter and plan of government of the municipality, to study and consider the advisability of adoption of an optional plan of government or a home rule charter and to recommend whether or not an optional form of government or a home rule charter should be adopted."

The petition calling for such election shall be in the form required by subsection (b) hereof, and shall be signed by electors of the municipality comprising five per cent of the number of electors voting for the Office of Governor in the last gubernatorial general election within the municipality.

Within five days after the final enactment of an ordinance authorizing such election, the municipal clerk or secretary shall file a certified copy of the ordinance with the county board of elections, together with a copy of the question to be submitted to the electors. At the next municipal or general or primary election occurring not less than sixty days after the filing of the ordinance or the petition with the county election board, it shall cause the appropriate question above stated to be submitted to the electors of the municipality as other questions are submitted under the provisions of the Pennsylvania Election Code.

(b) A petition under this section shall be filed at least sixty-four days prior to the municipal or general election, and the petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions in so far as such provisions are applicable, except that

no petition shall be signed or circulated prior to sixty days before the last day on which such petition may be filed.

Section 202. A governmental study commission of seven, nine or eleven members as designated in the question shall be elected by the qualified voters at the same election the question is submitted to the electors. Candidates for the office of government study commissioner shall be nominated and placed upon the ballot containing the question in the manner provided by and subject to the provisions of the Pennsylvania Election Code which relate to the nomination of candidates nominated by nomination papers filed for other offices elective by the voters of a municipality, except that they shall be nominated and listed without any political designation or slogan, and, no nomination paper shall be signed or circulated prior to sixty days before the last day on which papers may be filed. Each voter shall be instructed to vote on the question and, regardless of the manner of his vote on the question, to vote for the designated number of members of a government study commission who shall serve if the question is or has been determined in the affirmative.

Section 203. (a) Candidates for the government study commission shall be registered voters of the municipality. They may be nominated by nomination papers signed by a number of qualified electors of the municipality equal at least to two per cent of the largest entire vote cast for any municipal officer elected at the last preceding municipal election in the municipality or two hundred registered voters whichever is less and filed with the county board of elections not less than forty-four days prior to the date of the election.

(b) Each nominating paper shall set forth the names, places of residence, and post office addresses of the candidate or candidates thereby nominated, that the nomination is for the office of government study commissioner, and that the signers are legally qualified to vote for such candidate or candidates. Every voter signing a nominating paper shall add to his signature his place of residence, post office address and street number, if any. No voter shall sign a nomination paper or papers for more than the designated number of candidates.

(c) Each nominating paper shall, before it may be filed with the county board of elections, contain an acceptance of such nomination in writing, signed by the candidate or candidates therein nominated, upon or annexed to such paper, or if the same person or persons be named in more than one paper, upon or annexed to one of such papers. Such acceptance shall certify that the candidate is a registered voter of the municipality, that the nominee consents to stand as a candidate at the election, and that if elected he agrees to take office and serve.

(d) Each nominating paper shall be verified by an oath or affirmation of one or more of the signers thereof, taken and subscribed before a person qualified under the laws of Pennsylvania to administer an oath, to the

effect that the paper was signed by each of the signers thereof in his proper handwriting, that the signers are, to the best knowledge and belief of the affiant, registered voters of the municipality, and that the nomination paper is prepared and filed in good faith for the sole purpose of endorsing the person or persons named therein for election as stated in the paper.

Section 204. The result of the votes cast for and against the question as to the election of a government study commission shall be returned by the election officers, and a canvass of such election had, as is provided by law in the case of other public questions put to the voters of a single municipality. The votes cast for members of the commission shall be counted, and the result thereof returned by the election officers, and a canvass of such election had, as is provided by law in the case of election of members of municipal council or board. The designated number of candidates receiving the greatest number of votes shall be elected and shall constitute the commission: Provided, That if a majority of those voting on said question shall vote against the election of a commission, none of the candidates shall be elected. If two or more candidates for the last seat shall be equal in number of votes, they shall draw lots to determine which one shall be elected.

Section 205. As soon as possible and in any event no later than fifteen days after its certification of election, the government study commission shall organize and hold its first meeting and elect one of its members as chairman, another member as vice chairman, fix its hours and place of meeting, and adopt such rules for the conduct of its business as it may deem necessary and advisable. A majority of the members of said commission shall constitute a quorum for the transaction of business, but no recommendation of said commission shall have any legal effect unless adopted by a majority of the whole number of the members of the commission.

Section 206. In case of any vacancy in the government study commission, the remaining members of such commission shall fill it by appointing thereto some other properly qualified elector.

Section 207. It shall be the function and duty of the government study commission to study the form of government of the municipality, to compare it with other available forms under the laws of this State, to determine whether or not in its judgment the government of the municipality could be strengthened, made more clearly responsible or accountable to the people, or whether its operation could become more economical or efficient under a changed form of government.

Section 208. Members of the government study commission shall serve without compensation, but shall be reimbursed by the municipality for their necessary expenses incurred in the performance of their duties. Council shall appropriate moneys necessary for such purpose.

Within the limits of such appropriations and other public and privately contributed funds and services as shall be made available to it, the commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix a reasonable compensation to be paid such consultants and clerical and other assistants.

Section 209. The government study commission shall hold one or more public hearings, may hold private hearings and sponsor public forums, and generally shall provide for the widest possible public information and discussion respecting the purposes and progress of its work.

Section 210. (a) The government study commission shall report its findings and recommendations to the citizens of the municipality within nine calendar months from the date of its election except that it shall be permitted an additional three months if it elects to prepare and submit a proposed home rule charter. It shall publish or cause to be published sufficient copies of its final report for public study and information, and shall deliver to the municipal clerk or secretary sufficient copies of the report to supply it to any interested citizen upon request. If the commission shall recommend the adoption of a home rule charter or any of the optional plans of government as authorized in this act, the report shall contain the complete plans as recommended.

(b) There shall be attached to each copy of the report of the commission, as a part thereof, a statement sworn to by the members of the commission listing in detail the funds, goods, materials and services, both public and private, used by the commission in the performance of its work and the preparation and filing of the report. In addition, the list shall identify specifically the supplier of each item thereon.

(c) A copy of the final report of the commission with its findings and recommendations shall be filed with the Department of Community Affairs.

Section 211. (a) The government study commission shall be discharged upon the filing of its report: Provided, That if the commission's recommendations require further procedure on the part of the municipal council or board or the people of the municipality, the commission shall not be discharged until a copy of the report has been certified to the county board of elections. Any time before such procedure has been finally concluded but not later than one year from the date of the publication of its final report, the commission may modify or change any recommendation set forth in said final report by publishing an amended report.

(b) Whenever a commission issues an amended report pursuant to subsection (a) above, such amended report shall supersede the final report and such final report shall cease to have any legal effect under this act.

(c) The procedure to be taken under the amended report shall be governed by all provisions of Article II of this act applicable to the final report of a commission submitted pursuant to section 210 of this act.

Section 212. The government study commission shall report and recommend in accordance with the question presented to the electorate as provided in section 201:

(1) that a referendum shall be held to submit to the qualified voters of the municipality the question of adopting one of the optional plans of government authorized by this act to be specified by the commission; or

(2) that a referendum shall be held to submit to the qualified voters of the municipality the question of adopting a home rule charter as prepared by the commission and as authorized by this act; or

(3) that the form of government of the municipality shall remain unchanged; or

(4) such other action as it may deem advisable consistent with its functions as set forth in this article.

Section 213. (a) If the government study commission report, shall recommend the amendment of any of the optional plans of government set forth in this act, except the optional county plan provided in Article X, the report of the commission may specify that (i) the municipal council shall consist of three, five, seven or nine members (except that under the small municipality plan as provided for in Article IX, and under the optional county plan as provided in Article X, the number of councilmen shall be as provided in section 911 and section 1002, respectively); and (ii) the treasurer, where such office is provided, shall be elected by the voters.

If a commission report, initiative petition or ordinance shall recommend any optional plan, except for the optional county plan set forth in Article X, it may specify that the then existing basis for electing councilmen shall be changed to an at-large, district, or combination at-large and district basis.

If a commission report, initiative petition or ordinance shall recommend the adoption of the council-manager form of government, it may specify that the mayor be elected directly by the voters of the municipality rather than by council.

If a commission report, initiative petition or ordinance for a county shall recommend the adoption of any of the optional plans, except the optional county plan set forth in Article X of this act, it may specify that the sheriff be elected directly by the voters of the county as provided in Article XI of this act.

In all cases, except for the council-manager plan set forth in Article VIII, the commission report, initiative petition or ordinance shall specify whether the executive (mayor) of the municipality shall be called "Executive" or "Mayor."

(b) If the commission shall recommend the adoption of a home rule

charter, it shall specify the number to be on the municipal council, all offices to be filled by election, and whether elections shall be on an at-large, district, or combination district and at-large basis.

(c) Notwithstanding any other provisions of this act, if an approved home rule charter or optional plan of government or other form of government adopted pursuant to the provisions of this act shall specify that the election of the municipal council shall be on an at-large, district, or combination district and at-large basis, which basis differs from the existing basis and therefore requires eliminating districts or establishing revised or new districts, then election of municipal officials shall not take place on the new basis until the municipal election following the next primary election taking place later than one hundred eighty days after the election at which the referendum on the question of a new form of government has been approved by the electorate. The new form of government shall not go into effect until the first Monday in January following the election of municipal officials on the new basis. New or revised districts shall be established by the court of common pleas in the county within ninety days from the date of approval by the electorate of a new form of government.

Section 214. The question to be submitted to the voters for the adoption of a home rule charter or any of the optional plans of government authorized by this act shall be submitted in the following form or such part thereof as shall be applicable.

"Shall the Home Rule Charter contained in the report, dated _____ of the Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the _____ ?" _____ (insert type and name of municipality)	Yes
	No

or

"Shall _____ (insert name of plan) including recommendations pertaining to optional provisions contained in the report of the Government Study Commission, dated _____, as authorized by the Home Rule Charter and Optional Plans Law, be adopted by the _____ ?" _____ (insert type and name of municipality)	Yes
	No

or

<p>“Shall the (Home Rule Charter) (Optional Plan) of the _____</p>	<p>Yes</p>
<p>(insert type and name of municipality) be repealed, and the form of government recommended in the report of the Government Study Commission, dated _____, be adopted as authorized by the Home Rule Charter and Optional Plans Law?”</p>	<p>No</p>

or

<p>“Shall an Optional Plan for the _____</p>	<p>Yes</p>
<p>(insert type and name of municipality) be amended as specified in the report of the Government Study Commission filed with the election officials of the County of _____, on _____ (insert name of county) (insert date) as authorized by the Home Rule Charter and Optional Plans Law?”</p>	<p>No</p>

Section 215. If the government study commission shall recommend that the question of adopting a home rule charter or one of the optional plans of government authorized by this act shall be submitted to the voters of the municipality, it shall be the duty of the municipal clerk or secretary, within five days thereafter, to certify a copy of the commission’s report to the county election board, which shall cause the question of adoption or rejection to be placed upon the ballot or voting machines at such time as the commission shall in its report specify. The commission may cause the question to be submitted to the people at the next primary, municipal or general election, occurring not less than sixty days following the filing of a copy of the commission’s report with the county board of elections, at such time as the commission’s report shall direct. At such election, the question of adopting that form of government recommended by the commission shall be submitted to the voters of the municipality by the county board of elections in the same manner as other questions are submitted to the voters of a municipality under the provisions of the Pennsylvania Election Code. The commission shall frame the question to be placed upon the ballot as herein provided, and if it deems appropriate an interpretative statement to accompany such question.

Section 216. (a) No ordinance may be passed and no petition may be filed for the election of a government study commission pursuant to section 201 of this act while proceedings are pending under any other



petition or ordinance filed or passed under the authority of this act, nor on the same question if it has been defeated within four years after an election shall have been held pursuant to any such ordinance or petition passed or filed.

(b) For the purpose of this section, proceedings shall be considered as having started (i) in the case of an ordinance upon the final vote of council in favor of the ordinance, notwithstanding the fact that the ordinance cannot take effect until a certain number of days thereafter; or (ii) in the case of a petition, as soon as it is properly signed by one-third of the number of registered voters required for such petition and written notice thereof filed in the office of the county board of elections and in the office of the municipal clerk or secretary, who shall cause the same to be immediately posted in a conspicuous place in said office, open to public inspection.

Section 217. Whenever the legally qualified voters of any municipality by a majority of those voting on the question vote in favor of adopting a change in their form of government pursuant to this act, the proposed form shall take effect according to its terms and the provisions of this act.

Section 218. The voters of any municipality which has adopted a home rule charter or an optional plan of government pursuant to this act may not vote on the question of changing the form of government until five years after the home rule charter or optional plan became effective.

Section 219. For the purposes of this act, each of the optional forms of government provided by this act and each of said optional forms as modified by any available provisions concerning size of council, election of municipal officials, the basis for electing councilmen, is hereby declared to be a complete and separate form of government provided by the Legislature for submission to the voters of the municipality.

#### B. Amendment of Existing Charter or Optional Form

Section 221. The procedure for amending a home rule charter or optional plan of government shall be the same as for the adoption of a home rule charter or optional plan of government, except that an optional plan of government may be amended through the initiative procedure as hereinafter provided for in this act.

#### C. Amendment of Optional Plan by Initiative Petition or Ordinance and Referendum

Section 231. A referendum on the question of amendment of an optional plan of government may be initiated by electors of the municipality, and a referendum on the question of amendment of an optional plan of government may be initiated by an ordinance of the governing body. A proposal for amendment of an optional plan shall be limited to the additional options provided for in section 213 of this act.

Section 232. A petition containing a proposal for referendum on the question of amending an optional plan of government signed by electors comprising five per cent of the number of electors voting for the Office of Governor in the last gubernatorial general election in the municipality, or an ordinance of the municipal governing body proposing amendment of an optional plan, may be filed with the election officials at least ninety days prior to the next primary, municipal or general election. The name and address of the person filing the petition shall be clearly stated on the petition.

The election officials shall review the initiative petition as the number and qualifications of signers. If the petition appears to be defective, the election officials shall immediately notify the persons filing the petition of the defect. When the election officials find that the petition as submitted is in proper order, they shall send copies of the initiative petition without signatures thereon to the governing body of the municipality and to the Secretary of Community Affairs. The initiative petition as submitted to the election officials, along with a list of signatories, shall be open to inspection in the office of the election officials.

Section 233. A referendum on the question of the amendment of an optional plan of government shall be held when the election officials find that the initiative petition or ordinance of the governing body is in proper order, and the referendum shall be governed by the provisions of the Pennsylvania Election Code. The election officials shall cause the question to be submitted to the electors of the municipality at the next primary, general or municipal election occurring not less than sixty days following the filing of the initiative petition or ordinance with the election board. At such election, the question shall be submitted to the voters in the same manner as other questions are submitted under the provisions of the Pennsylvania Election Code. The election board shall frame the question to be placed upon the ballot.

#### D. Conduct of Election

Section 241. All elections provided for in this act shall be conducted by the election officials for such municipality in accordance with the Pennsylvania Election Code. The election officials shall count the votes cast and make return thereof to the county board of elections. The result of any such election shall be computed by the county board of elections in the same manner as is provided by law for the computation of similar returns. Certificates of the result of any such election shall be filed by the county board of elections with the municipal council or board of the municipality and with the Secretary of the Commonwealth, and with the Secretary of Community Affairs.

Section 242. At least thirty days' notice of each election herein provided for shall be given by the clerk or secretary of the municipality. A copy of such notice shall be posted at each polling place of the

municipality on the day of the election, and shall be published in at least one newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of thirty days prior to the election.

ARTICLE III  
GENERAL POWERS AND LIMITATIONS OF A  
HOME RULE CHARTER MUNICIPALITY

Section 301. A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by its home rule charter or by the General Assembly at any time. All grants of municipal power to municipalities governed by a home rule charter under this act, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

Section 302. (a) The home rule charter adopted in accordance with the provisions of this act shall not give any power or authority to the municipality contrary to, or in limitation or enlargement of powers granted by acts of the General Assembly which are applicable to a class or classes of municipalities on the following subjects:

(1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction thereof.

(2) The procedures in the exercise of the powers of eminent domain, and the assessment of damages and benefits for property taken, injured or destroyed.

(3) Boundary changes of municipalities.

(4) Regulation of public schools.

(5) The registration of electors and the conduct of elections.

(6) The fixing of subjects of taxation.

(7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.

(8) The assessment of real or personal property and persons for taxation purposes.

(9) Defining or providing for the punishment of any felony or misdemeanor.

(b) No municipality shall (i) engage in any proprietary or private business except as authorized by the General Assembly, (ii) exercise powers contrary to, or in limitation or enlargement of powers granted by acts of the General Assembly which are applicable in every part of the Commonwealth, (iii) be given the power to diminish the rights or privileges of any former municipal employe entitled to benefits or any present municipal employe in his pension or retirement system, (iv) enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the

manufacture, processing, storage, distribution and sale of any foods, goods or services subject to any Commonwealth laws or regulations unless such municipal ordinance or regulation is uniform in all respects with such Commonwealth laws and regulations. Nothing herein contained shall be construed to in any way affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto, nor (v) enact any provision inconsistent with any statute heretofore enacted by the General Assembly affecting the rights, benefits or working conditions of any employe of a political subdivision of the Commonwealth.

(c) Acts of the General Assembly in effect on the effective date of this act that are uniform and applicable throughout the Commonwealth shall remain in effect and shall not be changed or modified by this act. Acts of the General Assembly enacted after the effective date of this act that are uniform and applicable throughout the Commonwealth shall supersede any municipal ordinance or resolution on the same subject.

(d) No municipality which adopts a home rule charter shall at any time thereunder determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by acts of the General Assembly, which are applicable in every part of the Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.

(e) No municipality shall enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

(f) Nothing contained herein shall limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

Section 303. No county which has adopted a home rule charter shall at any time thereafter exercise within any municipality in the county, a power or function being exercised by that municipality on the date of the adoption of the county home rule charter, except under all of the following conditions:

(1) The exercise of such power or function by the county shall be authorized by ordinance of the governing body of the county, which ordinance in addition to such other filings as may be required by law, shall, within thirty days of its enactment, be filed with the clerk or secretary of each local municipality within the county.

(2) The transfer of a power or function to the county from any local municipality within the county, as authorized by such ordinance, shall not become effective for at least fifteen months from the date of adoption of such ordinance.

(3) Within one hundred twenty days from the adoption of such

ordinance, the governing body of any local municipality, exercising on the date of the adoption of the county home rule charter any power or function authorized by ordinance of the county to be exercised by the county, may elect by ordinance to be excluded from the county exercise of such power or function. Within sixty days after the date of adoption by the governing body of a local municipality of an ordinance excluding such municipality from the exercise by the county of a power or function, or in the absence of any action of the governing body, the qualified voters of such municipality may initiate a petition requiring that the question of inclusion or exclusion from the exercise of such power or function by the county be submitted to a referendum of the electorate at the election held on the date of the next ensuing primary, municipal or general election not less than sixty days after the filing of the initiative petition with the county board of elections. The initiative and referendum procedures set forth in Articles III and IV shall be followed, except where the same may be inconsistent with any of the provisions of this section.

In the event the county determines there is insufficient interest or that it is not feasible to establish the proposed municipal function or power as provided for in the ordinance passed by the county, the county may repeal the county ordinance prior to the effective date of the ordinance.

(4) The governing body of any local municipality may by ordinance, subsequent to the time limit for action as set forth in clause (3) of this section, request the county to be included in a municipal power or function being exercised by the county: Provided, however, That the county may specify the terms and conditions for acceptance or denial of the power or function requested by the local municipality to be exercised by the county, which shall be subject to court review if the local municipality determines that the terms and conditions as set forth by the county are unreasonable.

(5) No assessment, tax, fee or levy in the nature thereof made by the governing body of a county in support of the exercise of a power or function as authorized by ordinance of the county, shall be applicable in any municipality within the county which is providing the same municipal power or function.

(6) If the electors of a municipality by referendum vote to exclude the municipality from the exercise of a power or function by the county, a petition may not be initiated nor may a referendum be held on the same question more often than every five years thereafter.

(7) A local municipality may, by action of the governing body, or by initiative and referendum, withdraw from a power or function which it was exercising at the date of the adoption of the county home rule charter which it transferred to a county, provided it again assumes and exercises the power or function but may not vote on the question of withdrawing sooner than four years from the time the county assumed the power or function of the local municipality.

Section 304. Municipalities adopting a home rule charter shall have the power to sue and be sued, to have a corporate seal, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, to appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof.

Section 305. The municipal clerk or secretary of the municipality shall forthwith cause the new charter as approved by the qualified electors to be recorded in the ordinance books of the municipality. He shall also file a certified copy thereof in the office of the Secretary of the Commonwealth, with the Secretary of the Department of Community Affairs, and with the county board of elections.

Section 306. All elective officials of the municipality in office at the time of the adoption of a home rule charter shall continue in office until their terms expire.

Section 307. The procedure for repeal of a home rule charter shall be the same as for adoption of a home rule charter. Whenever the electors of any municipality, by a majority vote of those voting on the question, vote in favor of repeal of a home rule charter and the establishment of a particular form of government, such municipality shall be governed under the form of government selected by the electors, from the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.

The elective officials of the municipality under a new form of government selected by the electors shall be elected at the first municipal election held after the referendum on the repeal of a home rule charter or at such later date as may be specified by the commission in its report.

#### ARTICLE IV GENERAL PROVISIONS AND LIMITATIONS FOR OPTIONAL PLAN MUNICIPALITIES

Section 401. Upon the adoption by the qualified voters of any municipality of any of the optional plans of government as set forth in this act, the municipality shall thereafter be governed by the plan adopted and by the provisions of general law applicable to that class or classes of municipality except as otherwise provided herein. Unless and until the municipality should adopt another form of government as provided by law, the plan adopted and the provisions of general law applicable to that class or classes of municipality shall become law in the municipality at the time fixed by this act. All acts and parts of acts, local, special, or general, affecting the organization, government and powers of such municipality which are not inconsistent or in conflict herein, shall remain in full force until modified or repealed as provided by law.

Section 402. The municipal clerk or secretary of the municipality shall forthwith cause the new plan of government as approved by the qualified electors to be recorded in the ordinance book of the municipality. He shall also file a certified copy thereof in the office of the Secretary of the Commonwealth, with the Secretary of the Department of Community Affairs, and with the county board of elections.

Section 403. The general grant of municipal power contained in this article is intended to confer the greatest power of self government consistent with the Constitution of this Commonwealth and with the provisions of and the limitations prescribed by this act. Any specific enumeration of municipal powers contained in this act or in any other laws will not be construed in any way to limit the general description of power contained in this article, and any such specifically enumerated municipal powers shall be construed as in addition and supplementary to the powers conferred in general terms by this article. All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

Section 404. The optional plan of any municipality adopted in accordance with this act shall not give any power or authority to diminish any rights or privileges of any present municipal employe in his pension or retirement system. No municipality shall exercise any powers or authority beyond the municipal limits except such as are conferred by an act of the General Assembly, and no municipality shall engage in any proprietary or private business except as authorized by the General Assembly.

## ARTICLE V

### OPTIONAL PLAN: EXECUTIVE (MAYOR) - COUNCIL PLAN A

#### A. Form of Government: Elected Officials

Section 501. The form of government provided in this article shall be known as the "Mayor-Council Plan A" and shall, together with the laws applicable to that class of municipality and Articles IV and XII of this act, govern any municipality the voters of which have adopted it pursuant to this act.

Section 502. Each municipality hereunder shall be governed by an elected council, an elected executive who may be called mayor, as determined by the government study commission, an elected district attorney in the case of counties and, when recommended by the government study commission and adopted by the voters, an elected treasurer, an elected controller, and by such other officers and employes as may be duly appointed pursuant to this article, general law or ordinance.

Section 503. The executive (mayor), the treasurer, if elected, the district attorney in the case of counties and the controller, if elected, shall be elected by the voters of the municipality at a regular municipal election, and shall serve for a term of four years beginning on the first Monday of January next following his election.

Section 504. The council shall consist of five members, unless pursuant to the authority granted under section 213 of this act, the municipality shall be governed by a council of three, seven or nine members. Members of the council shall be elected at-large by the voters of the municipality, unless, pursuant to the authority granted under section 213 of this act, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at-large and district basis as determined by the charter study commission, or as specified in an initiative petition or ordinance of the governing body under the provisions of section 231 through section 233 of this act, at a regular municipal election and shall serve for a term of four years, except as hereinafter provided for those first elected beginning on the first Monday of January next following their elections.

Section 505. At the first municipal election following the adoption by a municipality of this plan, councilmen shall be elected and shall serve for the terms as provided in section 1262 of this act.

#### B. Council

Section 511. The legislative power of the municipality as provided by laws applicable to that class of municipality shall be exercised by the municipal council, except as may otherwise be provided for by the provisions of this act.

Section 512. On the first Monday of January following the regular municipal election, the members of council shall assemble at the usual place of meeting and organize and elect a president from among its members, who shall preside at its meetings and perform such other duties as council may prescribe, and a vice president, who shall preside in the absence of the president. If the first Monday is a legal holiday, the meeting shall be held on the first day following.

Section 513. The council, in addition to such other powers and duties as may be conferred upon it by general law, may require any municipal officer, in its discretion, to prepare and submit sworn statements regarding his official duties in the performance thereof, and may otherwise investigate the conduct of any department, office or agency of the municipal government.

Section 514. A municipal clerk or secretary shall be appointed in the manner set forth in the Administrative Code as provided in section 1246 of this act. The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this act requires, and perform



such functions as may be required by law or by local ordinance. The municipal clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

### C. Executive (Mayor) and Administration

Section 521. The executive power of the municipality shall be exercised by the executive (mayor).

Section 522. The executive (mayor) shall enforce the plan and ordinances of the municipality and all general laws applicable thereto. He shall, annually, report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make such recommendations for action by the council as he may deem in the public interest. He shall supervise all of the departments of the municipal government, and shall require each department to make an annual and such other reports of its work as he may deem desirable.

Section 523. (a) Ordinances adopted by the council shall be submitted to the executive (mayor) and he shall, within ten days after receiving any ordinance, either approve the ordinance by affixing his signature thereto, or return it to the council by delivering it to the municipal clerk together with a statement setting forth his objections thereto or to any item or part thereof. No ordinance or any item or part thereof shall take effect without the executive's (mayor's) approval, unless the executive (mayor) fails to return an ordinance to the council within ten days after it has been presented to him, or unless council upon reconsideration thereof on or after the third day following its return by the executive (mayor) shall by a vote of a majority plus one of the members resolve to override the executive's (mayor's) veto.

(b) The executive (mayor) may attend meetings of council and may take part in discussions of council but shall have no vote except in the case of a tie on the question of filling a vacancy in the council, in which case he may cast the deciding vote.

Section 524. (a) The executive (mayor) shall designate any department head, to act as executive (mayor) whenever the executive (mayor) shall be prevented, by absence from the municipality, disability, or other cause, from attending to the duties of his office. During such time the person so designated by the executive (mayor) shall possess all the rights, powers, and duties of the executive (mayor). Whenever the executive (mayor) shall have been unable to attend to the duties of his office for a period of sixty consecutive days for any of the above stated reasons, a member of council shall be appointed by the council as acting executive (mayor), who shall succeed to all the rights, powers and duties of the executive (mayor) or the then acting executive (mayor), until he shall return or his disability shall cease.

(b) The municipality may have a department of administration and

shall have such other departments as council may establish by ordinance. All of the administrative functions, powers and duties of the municipality, other than those vested in the office of the clerk, treasurer, if elected, and controller, shall be allocated and assigned among and within such departments.

(c) Each department shall be headed by a director who shall be appointed by the executive (mayor) with the advice and consent of the council. Each municipality shall also have a solicitor who shall be appointed by the executive (mayor) with the advice and consent of the council. Each department head and the solicitor shall serve during the term of office of the executive (mayor) appointing him, and until the appointment and qualification of his successor. No member of municipal council shall head a department.

(d) The executive (mayor) may, in his discretion, remove any department head after notice and an opportunity to be heard. Prior to removing a department head, the executive (mayor) shall first file written notice of his intention with the council, and such removal shall become effective on the twentieth day after the filing of such notice.

(e) Department heads shall appoint subordinate officers and employes within their departments under procedures established in section 1222 of this act.

Section 525. Where a department of administration is established, it shall be headed by a director. He shall be chosen solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter set forth. At the time of his appointment, he need not be a resident of the municipality or State. He shall have, exercise and discharge the functions, powers and duties of the department. The department, under the direction and supervision of the executive (mayor), shall:

- (1) Assist in the preparation of the budget;
- (2) Administer a centralized purchasing system;
- (3) Establish and administer a centralized personnel system;
- (4) Establish and maintain a centralized accounting system which shall be so designed as to accurately reflect the assets, liabilities, receipts, and expenditures of the municipality;
- (5) Perform such other duties as council may prescribe through an administrative code or as the executive (mayor) shall direct.

#### D. Budget

Section 531. The municipal budget shall be prepared by the executive (mayor) with the assistance of the director of the department of administration, or other officer designated by the executive (mayor).

Section 532. The budget shall be in such form as is required by council, and shall have appended thereto a detailed analysis of the various

items of expenditure and revenue. The budget as submitted and adopted must be balanced. Council may reduce any item or items in the executive's (mayor's) budget by a vote of a majority of the council, but an increase in any item or items therein shall become effective only upon an affirmative vote of a majority plus one of the members of council.

Council shall, upon the introduction of the proposed budget, fix a date for adoption thereof, which shall except as otherwise provided be not later than the thirty-first day of December immediately following.

Section 533. During the month of January next following any municipal election, the executive (mayor) may submit an amended budget to council and council shall consider it in the same manner as provided in section 532, but final consideration of the amended budget shall be completed by February 15 of the same year.

Section 534. Council shall have the power to amend the budget during the month of January next following any municipal election. Final adoption of the amended budget shall be completed by February 15 of the same year.

## ARTICLE VI

### OPTIONAL PLAN: EXECUTIVE (MAYOR) - COUNCIL PLAN B

Section 601. The form of government provided in this article shall be known as the "Executive (Mayor) - Council Plan B" and shall, together with Articles IV, V, and XII, with the exception of subsection 524 (b), govern any municipality, the voters of which have adopted it pursuant to this act.

Section 602. The municipality shall have a department of administration and shall have such other departments as council may establish by ordinance. All of the administrative functions, powers and duties of the municipality, other than those vested in the office of the clerk, treasurer, if elected, and controller, shall be allocated and assigned among and within such departments except that the functions specified in section 525 of this act shall be assigned to the department of administration.

Section 603. It is the intent and purpose of Executive (Mayor) - Council Plan B to mandate the establishment of a department of administration.

## ARTICLE VII

### OPTIONAL PLAN: EXECUTIVE (MAYOR) - COUNCIL PLAN C

Section 701. The form of government provided in this article shall be known as the "Executive (Mayor) - Council Plan C" and shall, together with Articles IV, V and XII with the exception of section 522 of this act, govern any municipality, the voters of which have adopted it pursuant to this act.

Section 702. The executive (mayor) shall enforce the plan and ordinances of the municipality and all general laws applicable thereto. He shall, annually, report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make such recommendations for action by the council as he may deem in the public interest.

Section 703. The executive (mayor) shall appoint, with the advice and consent of the council, a managing director who shall exercise supervision over all activities of the departments of government and who shall be the contact officer between the mayor and such departments. The managing director shall make periodic reports with such recommendations as he deems appropriate to the executive (mayor) concerning the affairs of municipal government and particularly of those departments under his jurisdiction.

The executive (mayor) may, in his discretion, remove a managing director after notice and an opportunity to be heard. Prior to removing a managing director, the executive (mayor) shall first file written notice of his intention with the council, and such removal shall become effective on the twentieth day after the filing of such notice.

## ARTICLE VIII OPTIONAL PLAN: COUNCIL-MANAGER PLAN

### A. Form of Government: Elected Officials

Section 801. The form of government provided in this article shall be known as the "Council-Manager Plan" and shall, together with Articles IV and XII, govern any municipality, the voters of which have adopted this plan pursuant to this act.

Section 802. Each municipality under this article shall be governed by an elected council one member of which shall be an elected mayor chosen as provided in sections 213 and 811, an elected district attorney in the case of counties, an appointed municipal manager, and, when recommended by the charter commission and adopted by the voters an elected treasurer, an elected controller and by such other officers and employes as may be duly appointed pursuant to this article, general law or ordinance.

Section 803. The district attorney in the case of counties and the treasurer and controller, if provided for and if elected, shall be elected by the voters of the municipality at a regular municipal election, and shall serve for a term of four years beginning the first Monday of January next following his election.

Section 804. The municipal council shall consist of five members unless, pursuant to the authority granted under section 213 of this act, the municipality shall be governed by a council of three, seven or nine members. Members of the municipal council shall be elected, at-large, by the voters of the municipality, unless, pursuant to the authority granted

under section 213 of this act, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at-large and district basis as determined by the charter study commission or as specified in an initiative petition or ordinance of the governing body under the provisions of section 231 through section 233 of this act, at a regular municipal election, and shall serve for a term of four years, except as hereinafter provided for those first elected, beginning on the first Monday of January next following their election.

Section 805. At the first municipal election following the adoption by a municipality of this charter plan, councilmen shall be elected and shall serve for the terms as provided in section 1262 of this act.

### B. Council

Section 811. (a) On the first Monday of January following the regular municipal election, the members of the municipal council shall assemble at the usual place of meeting and organize and choose one of their number as mayor unless otherwise provided. The mayor shall be chosen by ballot by majority vote of all members of the municipal council. If the members shall be unable, within five ballots to be taken within two days of said organization meeting, to elect a mayor, then the member who in the election for members of the municipal council received the greatest number of votes shall be the mayor. Should such person decline to accept the office, then the person receiving the next highest vote shall be the mayor, and so on, until the office is filled. The mayor shall preside at all meetings of the municipal council and shall have a voice and vote in its proceedings.

(b) On the recommendation of the government study commission as provided in section 213, or as specified in an initiative petition or ordinance of the governing body as authorized by section 231 through section 233 of this act, the mayor shall be elected directly by the voters of the municipality at the regular municipal election in lieu of being chosen as provided in subsection (a) of this section.

Section 812. A municipal clerk or secretary shall be appointed in the manner set forth in the Administrative Code as provided in section 1246 of this act. The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this act requires, and perform such functions as may be required by law or by local ordinance. The municipal clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

Section 813. (a) All powers as provided by laws applicable to that class of municipality shall be vested in the municipal council, except as otherwise provided by this article, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law.

(b) The council shall by ordinance adopt an administrative code defining the responsibilities of the municipal departments and agencies as it deems necessary and proper for the efficient conduct of municipal affairs.

(c) The municipal council shall appoint a municipal manager. The office of municipal manager and municipal clerk or secretary may be held by the same person.

(d) The council may make investigations into the affairs of the municipality and the conduct of any municipal department, office or agency.

(e) The municipal council shall continue or create, and determine and define, the powers and duties of such executive and administrative departments, boards, and offices, in addition to those provided for herein, as it may deem necessary for the proper and efficient conduct of the affairs of the municipality including the office of deputy manager. Any department, board or office so continued or created may, at any time, be abolished by the municipal council. No member of municipal council shall head an administrative department.

(f) It is the intention of this article that the municipal council shall act in all matters as a body, and it is contrary to the spirit of this article for any of its members to seek individually to influence the official acts of the municipal manager, or any other officer, or for the council or any of its members to direct or request the appointment of any person to, or his removal from office, or to interfere in any way with the performance by such officers of their duties. The council and its members shall deal with the administrative service solely through the municipal manager and shall not give orders to any subordinates of the municipal manager, either publicly or privately. Nothing herein contained shall prevent the municipal council from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any officer or department, or any matter relating to the welfare of the municipality, and delegating to such committees or commissions such powers of inquiry as the municipal council may deem necessary.

### C. Municipal Manager

Section 821. The municipal manager shall be chosen by the council on the basis of his executive and administrative qualifications. At the time of his appointment, he need not be a resident of the municipality or State. The municipal manager shall not hold any elective governmental office.

Section 822. The municipal manager shall be appointed for an indefinite term, and may be removed by a majority vote of the council. At least thirty days before such removal shall become effective, the council shall notify the municipal manager of its decision to remove him from office, by a majority vote of its members, stating the reasons for his removal. The municipal manager may reply in writing and may request

a public hearing, which shall be held not earlier than twenty days nor later than thirty days after the filing of such request. After such public hearing, if one be requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution, the council may suspend the municipal manager from duty, but may, in any case, cause to be paid him forthwith any unpaid balance of his salary and thereafter his salary for the next three calendar months.

Section 823. The municipal manager may designate a qualified administrative officer of the municipality to perform his duties during his temporary absence or disability. In the event of his failure to make such designation, or if the absence or disability continues more than thirty days, the council may appoint an officer of the municipality to perform the duties of the manager during such absence or disability until he shall return or his disability shall cease.

Section 824. The municipal manager shall:

(1) Be the chief executive and administrative official of the municipality.

(2) Execute all laws and ordinances of the municipality.

(3) Appoint and have power to remove department heads, a deputy manager, if one be authorized by council, and appoint subordinate officers and employes under procedures established in section 1222 of this act.

(4) Negotiate contracts for the municipality, subject to the approval of the municipal council, make recommendations concerning the nature and location of municipal improvements, and execute municipal improvements as determined by the municipal council.

(5) Assure that all terms and conditions imposed in favor of the municipality or its inhabitants in any statute, public utility franchise or other contract are faithfully kept and performed, and upon knowledge of any violation, call the same to the attention of the municipal council.

(6) Prepare agenda for and attend all meetings of the municipal council with the right to take part in the discussions, but without the right to vote.

(7) Make such recommendations to the council concerning policy formulation as he deems desirable and keep the council and the public informed as to the conduct of municipal affairs.

(8) Prepare and submit the annual budget to the council together with such explanatory comment as he may deem desirable, and administer the council approved budget.

(9) Perform such other duties as may be required of the municipal manager by ordinance or resolution of the municipal council.

(10) Be responsible to the council for carrying out all policies established by it and for the proper administration of all affairs of the municipality within the jurisdiction of the council.

#### D. Budget

Section 825. The municipal manager shall submit to council his recommended budget, together with such explanatory comment or statement as he may deem desirable. The budget shall be in such form as is required by council for municipal budgets, and shall in addition have appended thereto detailed analysis of the various items of expenditure and revenue. The budget as submitted and adopted must be balanced. Council shall upon introduction of the proposed budget fix a date for adoption thereof which shall be not later than the thirty-first day of December immediately following.

Section 826. During the month of January next following any municipal election, council may request the manager to submit an amended budget to council which shall consider it in the same manner as provided in section 825, except that final adoption of the amended budget shall not be later than February 15 of the same year.

### ARTICLE IX

#### OPTIONAL PLAN: SMALL MUNICIPALITY PLAN

##### A. Form of Government: Elected Officials

Section 901. The form of government provided in this article shall be known as the "Small Municipality Plan." It may be adopted by any municipality having a population of less than seven thousand five hundred inhabitants by the last Federal census. The plan together with Articles IV and XII of this act shall govern any municipality the voters of which have adopted it pursuant to this act.

Section 902. Each municipality shall be governed by an elected executive (mayor) and councilmen, an elected district attorney in the case of counties and such other officers as shall be appointed pursuant to this article, general law or ordinance.

##### B. Council

Section 911. The council shall consist of the executive (mayor), who shall be elected at-large, and two councilmen unless pursuant to the authority granted under section 213 of this act the municipality shall be governed by an executive (mayor) and four councilmen, an executive (mayor) and six councilmen, or an executive (mayor) and eight councilmen. Members of the council shall be elected at-large, unless, pursuant to the authority granted under section 213 of this act, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at-large and district basis as determined by the charter study commission or as specified in an initiative petition or ordinance of the governing body under the provisions of section 231 through section 233 of this act, at a regular municipal election



by the voters of the municipality and shall serve a term of four years beginning on the first Monday in January next following their election, except as hereinafter provided for those first elected.

Section 912. On the first Monday of January following the regular municipal election, the members of the council shall assemble at the usual place of meeting and organize. The executive (mayor) shall preside at all meetings of the council and shall have a voice and vote on its proceedings. The council shall select from among its members a president of the council who shall serve in place of the executive (mayor) in the event of his absence or disability.

Section 913. The legislative power of the municipality shall be exercised by the council, except as may be otherwise provided by general law. A majority of the whole number of the council shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn from time to time.

Section 914. (a) A municipal clerk or secretary shall be appointed in the manner set forth in the Administrative Code, as provided in section 1246 of this act. The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this act requires, and perform such functions as may be required by law. The clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

(b) The council may consistent with acts of the General Assembly applicable to that class or classes of municipality provide for the manner of appointment of a solicitor, any planning board, zoning board of adjustment, zoning hearing board or personnel board in the municipality and may create commissions and other bodies with advisory powers.

### C. Executive (Mayor) and Administration

Section 921. The executive power of the municipality shall be exercised by the executive (mayor). It shall be his duty to see that all laws and ordinances in force and effect within the municipality are observed. He shall address the council and report to the residents annually, and at such other times as he may deem desirable, on the condition of the municipality and upon its problems of government. The executive (mayor) shall also appoint a finance committee of the council, which shall consist of one or more councilmen, and may appoint and designate other committees of council of similar composition.

Section 922. The executive (mayor) shall appoint subordinate officers and employes with the advice and consent of council under procedures established in section 1222 of this act, except that in municipalities commonly known as counties, the office of prothonotary and clerk of courts, register of wills and clerk of orphans court shall be filled by appointment by the president judge of the appropriate court with advice and consent of a majority of the council.

### D. Budget

Section 941. The municipal budget shall be prepared by the executive (mayor) and shall be submitted to council in a form as is required by council. The budget as submitted and adopted must be balanced. Council shall upon introduction of the proposed budget, fix a date for adoption thereof which shall be not later than the thirty-first day of December immediately following.

Section 942. During the month of January next following any municipal election, the executive (mayor), upon his own initiative or at the request of council, may submit an amended budget to council, which shall consider it in the same manner as provided in section 941, except final adoption of the amended budget shall not be later than February 15 of the same year.

## ARTICLE X OPTIONAL PLAN: OPTIONAL COUNTY PLAN

### A. Form of Government: Elected Officials

Section 1001. The form of government provided in this article shall be known as the "Optional County Plan" and shall, together with Articles IV and XII govern any county, the voters of which have adopted this plan pursuant to this act. This option shall be available only to those municipalities commonly known as "counties."

Section 1002. (a) The county officers are:

- (1) County Commissioners,
- (2) Controller or Auditors,
- (3) District Attorneys,
- (4) Public Defenders,
- (5) Treasurers,
- (6) Sheriffs,
- (7) Registers of Wills,
- (8) Recorders of Deeds,
- (9) Prothonotaries,
- (10) Clerks of the Courts.

(b) County officers, except for public defenders who shall be appointed as provided by law, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such manner as may be provided by law.

(c) County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth, or as otherwise provided by law.

(d) Three county commissioners shall be elected in each county. In the election of these officers each qualified elector shall vote for not more than two persons, and the three persons receiving the highest number of votes shall be elected.

(e) The coroner or medical examiner shall be a statutory office elected at the municipal election and shall hold the office for the term of four years beginning on the first Monday of January next after election, and until their successors shall be duly qualified; shall be paid only by salary as provided by law; all vacancies shall be filled in such manner as may be provided by law.

(f) Jury commissioners shall be statutory officers and shall be elected at the municipal election and shall hold their office for the term of four years beginning on the first Monday of January next after election and until their successors shall be duly qualified; the salary board shall fix their salary; vacancies shall be filled by the president judge of the court of common pleas.

Section 1003. All county officers may exercise those powers granted by general law to county offices of the class of county to which it belongs.

#### ARTICLE XI ADDITIONAL COUNTY OPTION; ELECTED SHERIFF

Section 1101. A government study commission created and constituted as provided in Article II of this act for the municipality commonly known as counties, or an initiative petition or ordinance of the governing body as authorized by section 231 through section 233 of this act, may recommend and cause to be placed on the ballot as a part of the question submitted to the voters for approval, additional options as part of the optional plans as set forth in Article V, Executive (Mayor) - Council Plan A; Article VI Executive (Mayor) - Council Plan B; Article VII Executive (Mayor) - Council Plan C; Article VIII Council-Manager Plan; or Article IX, Small Municipalities Plan, providing for the election of the county sheriff.

Section 1102. If the optional plan, including an additional option or options as provided in section 1101, is approved by the voters, the county shall be governed by the provisions of the article providing the basic optional plan and by the provisions of Articles IV and XII of this act, except that the elected sheriff shall be subject to the provisions pertaining to that office as provided in Article X of this act.

ARTICLE XII  
GENERAL PROVISIONS COMMON TO OPTIONAL PLANS

A. Officers and Employes

Section 1201. In any case where a municipal officer or official elected or appointed knows or by the exercise of reasonable diligence could know that he is interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any personal property for the use of the municipality, or for any services to be rendered for such municipality involving the expenditure by the municipality of more than three hundred dollars (\$300) in any year, he shall notify council thereof, and any such contract shall not be passed and approved by council except by an affirmative vote of at least three-fourths of the members thereof. In case the interested officer is a member of council, he shall refrain from voting upon said contract. The provisions of this section shall not apply to cases where such officer or official is an employe of the person, firm or corporation to which money is to be paid in a capacity with no possible influence on the transaction and in which he cannot possibly be benefited thereby, either financially or in any other material manner. Any officer or officials who shall knowingly violate the provisions of this section shall be liable to the municipality upon his bond, if any, or personally, to the extent of the damage shown to be sustained thereby by the municipality, to ouster from office, and shall be guilty of a misdemeanor; and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or imprisonment not exceeding one year, or both.

Section 1202. No officer or employe shall accept or receive, directly or indirectly, from any person operating within the territorial limits of a municipality any interurban railway, bus line, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange or other business using or operating under a public franchise, any frank, free pass, free ticket or free service, or accept or receive, directly or indirectly, from any person, any other service upon terms more favorable than is granted to the public generally, except that such prohibition of free transportation shall not apply to policemen or firemen in uniform. Nor shall any free service to the municipal officials heretofore provided by any franchise or ordinance be affected by this section.

Section 1203. No candidate for office, appointment or employment and no officer, appointee or employe in any municipality shall, directly or indirectly, give or promise any person any office, position, employment, benefit or anything of value for the purpose of influencing or obtaining the political support, aid or vote of any person, under the penalty of being disqualified to hold the office or employment to which he may be or may have been elected or appointed.

Section 1204. If any person hereafter elected or appointed to any

office or position in a municipality governed under this act shall, after lawful notice or process, wilfully refuse or fail to appear before any court, any legislative committee, or the Governor, or having appeared shall refuse to testify or to answer any question regarding the property, government or affairs of the municipality, or regarding his nomination, election, appointment or official conduct on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify, may be removed from office by the council of the municipality in its discretion.

#### B. Treasurer

Section 1211. (a) Under any of the optional plans as set forth in this act, except for the plan set forth in Article X - Optional County Plan, the office of municipal treasurer may be omitted, or may be filled by appointment as recommended by the charter commission and adopted by the voters. If the office of municipal treasurer is to be filled by appointment, the appointment shall be made in accordance with the appointment procedures for other department heads.

(b) The municipal treasurer, if elected, shall perform such functions and duties and have such powers relating to the collection, receiving, safekeeping and payment over of public moneys including municipal, county, institution district and school district taxes as provided by general law and shall have such other functions, powers and duties as may be assigned to him by the executive of the municipality.

#### C. Appointment Power and Personnel

Section 1221. The appointment power of the chief executive of the municipality under any of the plans authorized by this act shall include the appointment of members of boards and commissions authorized by this act, by general law now or hereafter enacted, or by action of municipal council. All such appointments shall be with the advice and consent of a majority of municipal council.

Section 1222. Appointments and promotions of subordinate officers and employes within departments shall be made by the department head on the basis of a personnel system which shall include written procedures for appointment and promotion based on merit and fitness as demonstrated by examination or other evidence of position competence. The personnel system shall be governed by personnel rules which shall be prepared by the executive (mayor) or manager and submitted to the municipal council which shall adopt them with or without amendments unless otherwise provided for or arrived at by collective bargaining. The personnel rules may provide for:

(1) The classification of all municipal positions, based on the duties, authority and responsibility of each position, with adequate provision for

reclassification of any position whenever warranted by change of circumstances.

(2) A pay plan for all municipal positions.

(3) Methods for determining the merit and fitness of candidates for appointment or promotion.

(4) The policies and procedures regulating reduction in force and disciplinary action, including suspension and removal of employees.

(5) The hours of work, and provisions for sick and vacation leave and holidays, and provisions for overtime compensation.

(6) Grievance procedures, including procedures for the hearing of grievances.

(7) Other practices and procedures necessary to the administration of the municipal personnel system.

#### D. Filling Vacancies in Elected Office

Section 1231. This section shall apply to the filling of vacancies in elected office in all optional plans and options except those set forth in Article X - Optional County Plan, and Article XI - Additional County Options.

Section 1232. (a) If a vacancy exists in the municipal council, the municipal council shall, by a majority of its remaining members, fill such vacancy, within thirty days thereafter, by electing a qualified person to serve until that first Monday of January when his successor who shall have been elected by the qualified electors at the next municipal election, occurring at least fifty days after such vacancy exists, is duly sworn into office for the remainder of the term of the person originally elected to said office.

In case vacancies should exist whereby the offices of a majority or more members of the municipal council become vacant, the remaining members shall fill such vacancies, one at a time, giving each new appointee such reasonable notice of his appointment as will enable him to meet and act with the then qualified member or members of the municipal council in making further appointments until a bare majority of members of municipal council members have been qualified, whereupon the said members shall fill the remaining vacancies at a meeting attended by the said majority members of municipal council, such appointees to receive a majority of the votes of the members present at any such meeting. The person or persons selected to fill such vacancy or vacancies shall hold their offices as herein provided.

If, by reason of a tie vote, or otherwise, such vacancy shall not have been filled by the remaining members of municipal council within the time as limited herein, the court of common pleas, upon the petition of ten or more qualified electors, shall fill such vacancy by the appointment of a qualified person, for the portion of the unexpired term as above provided.

(b) If a vacancy occurs in the office of executive (mayor), municipal treasurer, if elected, municipal controller, if elected, county district

attorney, if elected, or county sheriff, if elected, the municipal council shall fill such vacancy, within thirty days thereafter, by choosing an executive (mayor), a municipal treasurer, a municipal controller, a county district attorney or a county sheriff, as the case may be, to serve until his successor is elected by the qualified electors at the next municipal election, occurring at least fifty days after such vacancy occurs, and is duly sworn into office. The person so elected shall serve from the first Monday of January next succeeding his election for the remainder of the term of the person originally elected to such office.

If, by reason of a tie vote or otherwise, a vacancy in the office of executive (mayor), treasurer, controller, county district attorney, or county sheriff shall not have been filled by council within the time as limited herein, the court of common pleas, upon petition of ten or more qualified electors, shall fill such vacancy by the appointment of a qualified person for the portion of the unexpired term as herein provided.

#### E. Legislation by Council

Section 1241. The council shall, by ordinance or resolution, designate the time of holding regular meetings which shall be at least monthly. The executive (mayor) or the president of council, as the case may be, may and, upon written request of a majority of the members of the council, shall call a special meeting of the council. In the call, he shall designate the purpose of the special meeting and no other business shall be considered. All meetings of the council shall be open to the public. The municipal clerk or secretary shall keep a journal of its proceedings and record the minutes of every meeting.

Section 1242. (a) Council shall determine its own rules of procedure, not inconsistent with ordinance or statute. A majority of the whole number of members of the council shall constitute a quorum, and no ordinance shall be adopted by the council without the affirmative vote of a majority of all the members of the council.

(b) Each ordinance or resolution shall be presented and considered as determined by council rules of procedure. The vote upon every motion, resolution or ordinance shall be taken by roll call and the yeas and nays shall be entered on the minutes. The minutes of each meeting shall be signed by the officer presiding at such meeting and by the municipal clerk or secretary.

(c) Council shall adopt by ordinance an administrative code which shall provide for the establishment and filling of additional administrative offices which it shall deem necessary, and shall provide for administrative procedures not otherwise provided for in this act or by general law.

(d) The compensation of the controller and treasurer shall be fixed by the council.

Section 1243. (a) Except as may otherwise be provided in this act all ordinances shall be adopted and published as provided by law: Provided, however, That any ordinance may incorporate by reference any standard

technical regulation or code, official or unofficial, which need not be so published whenever ten copies of said regulations or code have been placed on file in the office of the municipal clerk or secretary and in the office of the body or department charged with the enforcement of said ordinance.

(b) No ordinance other than the local budget ordinance shall take effect less than ten days after its final passage by council and approval by the executive (mayor) where such approval is required, unless the council shall adopt a resolution declaring an emergency and at least a majority plus one of all the members of the council vote in favor of such resolution.

Section 1244. The municipal clerk or secretary shall record all ordinances and resolutions adopted by council and at the close of each year, with the advice and assistance of the municipal solicitor, shall bind, compile or codify all the ordinances and resolutions, or true copies thereof, of the municipality which then remain in force and effect. He shall also properly index the record books, compilation or codification of ordinances and resolutions.

Section 1245. No rule or regulation made by any department, officer, agency or authority of the municipality, except such as relates to the organization or internal management of the municipal government or a part thereof, shall take effect until it is filed either with the municipal clerk or secretary or in such other manner as may be provided by ordinance. The council shall provide for the prompt publication of such rules and regulations.

Section 1246. The council shall cause to be prepared and pass as an ordinance an administrative code which shall provide for the manner of appointment of a solicitor, clerk or secretary, and may create commissions and other bodies with advisory powers, and may provide additional provisions relating to the internal structure of the municipality as long as the provisions of the administrative code are not in conflict with any of the provisions of this law applicable to the municipality.

#### F. Audit and Control

Section 1251. The council shall provide by separate ordinance or in the administrative code for the exercise of a control function in the management of the finances of the municipality by the municipal controller or, in the case of the optional plan set forth in Article X, the Optional County Plan, by the controller or auditors.

Section 1252. The council may provide for annual post audits of all accounts by an independent auditor who shall be a certified public accountant, registered in Pennsylvania, or a firm of certified public accountants so registered.

#### G. Transition to Optional Charter Plan

Section 1261. Whenever the electors of a municipality adopt any of the optional plans provided by this act at any election for that purpose,



such municipality shall be governed under the provisions of such plan, the provisions of general law applicable to that class of municipality and this act from the first Monday in January following the next succeeding municipal election, except as provided in section 213 (c) of this act.

Section 1262. (a) Any elected municipal official in office at the time of the adoption of any optional plan provided by this act shall continue in office only until the new plan of government goes into effect as provided in section 1261, except as otherwise provided in subsections (c) and (d) of this section.

(b) At the municipal election next succeeding the adoption of one of the optional plans provided for in this act, if four or less councilmen are elected, they shall serve for terms of four years. If five are elected, the four successful candidates receiving the highest percentage of the votes cast for the office to which they are elected shall serve for terms of four years, and the candidate receiving the next highest percentage of votes shall serve for a term of two years. If six or more councilmen are elected, the five candidates receiving the highest percentage of the votes cast for the office to which they are elected shall serve for terms of four years, and the remaining successful candidates receiving the next highest percentage of votes shall serve for terms of two years. Thereafter, all councilmen shall be elected for terms of four years.

(c) If an elected municipal treasurer or elected municipal controller or elected county district attorney or elected county sheriff is in office at the time of the adoption of an optional plan under the provisions of this act, a treasurer or controller or district attorney or sheriff, as the case may be, shall not be elected or appointed to take office until after the resignation, death, removal or expiration of the term of said treasurer, controller, district attorney or sheriff.

At the expiration of the term of said treasurer, controller, district attorney or sheriff in office at the time of the adoption of an optional plan under the provisions of this act, a treasurer, controller, district attorney or sheriff, as the case may be, shall be elected or appointed for the full term for said office as provided by the optional plan adopted.

(d) Any member of a municipal governing body in office at the time of the adoption of an optional plan shall remain in office, continuing as an at-large or district councilman, as the case may be, until the expiration of his term in office, and shall receive the compensation provided by law at that time: Provided, That if that councilman was elected on an at-large basis, the newly adopted optional plan provides for a total number of at-large councilmen equal to or exceeding the total number of at-large councilmen under the existing form of government; or, if that councilman was elected on a district basis, the district from which that councilman was elected remains unchanged and continues to encompass the exact same geographical area under the newly adopted optional plan as under the existing form of government, and the number of councilmen to be elected

from that district under the newly adopted optional plan is equal to or exceeds the number elected from that district under the existing form of government. Any such councilman may, by writing filed with the municipal treasurer, direct that any portion of his annual compensation for serving in office be returned to the municipal treasury. For the purpose of this section, an executive or mayor who is also a member of the council under an existing plan shall be considered as a member of the council, and after the new plan goes into effect, his duties shall be only those of a member of council as prescribed by the new plan.

(e) At the municipal election next succeeding the adoption of one of the optional plans provided for in this act, the number of councilmen prescribed by the terms in the plan less the number of councilmen then in office whose terms do not expire on the first Monday of January next following, as may be determined by the foregoing subsection (d), shall be elected.

(f) If any vacancies in council occurring by reason of resignation, death or removal shall exist ninety days or more before such election, they shall be filled for the remainder of the term of the person originally elected to that office.

Section 1263. (a) The annual compensation of the executive (mayor) and councilmen elected to their offices in the year prior to the transition year under any of the optional plans, except the Optional County Plan set forth in Article X, adopted pursuant to this act, shall be established by the commission as part of its recommendations or by the initiative petition or ordinance of the governing body authorized by section 231 through section 233 of this act.

(b) The compensation of the executive (mayor), councilmen, controller, and treasurer elected to their offices subsequent to the transition year to any of the optional plans set forth in this act, except for the plan set forth in Article X, the Optional County Plan, shall be fixed by ordinance of council finally passed or adopted at least two days prior to the last day fixed by law for candidates to withdraw their names from nominating petitions previous to the day of the municipal election. After such compensation is once fixed by ordinance, only an increase or decrease thereof need be fixed by such ordinance.

Section 1264. On the effective date of an optional plan adopted pursuant to this act, all ordinances and resolutions of the municipality to the extent that they are not inconsistent with the provisions of this act shall remain in full force and effect until modified or repealed as provided by law.

Section 1265. (a) On the effective date of an optional plan adopted pursuant to this act, all appointive offices then existing in such municipality shall be abolished and the terms of all appointed officers shall immediately cease and terminate: Provided, That nothing in this section shall be construed to abolish the office or terminate the terms of office of

any alderman or constable or of any official or employe now protected by any tenure of office or civil service law, or of any policeman or fireman, whether or not protected by a tenure of office law.

(b) Provisions for officers and for the organization and administration of the municipal government under the optional plan may be made by resolution pending the adoption of ordinances, but any such resolution shall expire not later than sixty days after the effective date of the optional plan.

Section 1266. All actions and proceedings of a legislative, executive or judicial character, which are pending upon the effective date of an optional plan adopted pursuant to this act, may continue and the appropriate officer or employe under such optional plan shall be substituted for the officer or employe theretofore exercising or discharging the function, power or duty involved in such action or proceeding.

#### H. Repeal of an Optional Plan

Section 1271. The procedure for repeal of an optional plan shall be the same as for adoption of an optional plan as provided in Article II of this act, excluding the procedure provided in section 231 through section 233 of this act. Whenever the electors of any municipality, by a majority vote of those voting on the question, vote in favor of repeal of an optional plan and the establishment of a particular form of government, such municipality shall be governed under the form of government selected by the electors, from the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.

It is not the intent of this section to prohibit or limit in any way utilizing the procedure provided in section 231 through section 233 of this act to amend an optional plan.

### ARTICLE XIII GENERAL

Section 1301. This act shall not apply to any city of the first class or to any county of the first class.

Section 1302. No local municipality within a county shall supersede or exercise any power, function or service presently exercised by said county.

Section 1303. Each municipality which does not adopt a home rule charter or an optional plan of government under the provisions of this act, shall retain its existing form of government as provided in the code under which it operates, or under general law, or under the Constitution of Pennsylvania.

Section 1304. In case the electors of any municipality disapprove a proposal to adopt a home rule charter or an optional plan of government the municipality shall retain its existing form of government.

Section 1305. A municipality assuming a function previously performed by another municipality under the terms of this act shall also assume all the indebtedness and obligations of the municipality relating to the function. If property, indebtedness, or obligations of another municipality not within the boundaries of the municipality assuming the function is involved, the governing bodies of the party municipalities shall make an adjustment and apportionment of all public property involved.

The adjustment and apportionment as made shall be reduced to writing, and shall be filed with the court of common pleas of the county, and a copy shall also be filed with the Department of Community Affairs.

In case the municipalities cannot make an amicable adjustment and apportionment of the property, obligations and indebtedness within six months after the function is assumed any of the municipalities may present a petition to the court of common pleas. The court shall then appoint three disinterested commissioners, all residents and taxpayers of the county, but none residing in or owners of real estate in the municipalities, who, after hearing, notice of which shall be given to the municipalities as the court shall direct, shall make report to the court making an adjustment and apportionment of all the property as well as the obligations or indebtedness. The report shall state the amount that shall be due and payable from each municipality, the forms of payment and the amount of obligations and indebtedness that shall be assumed by each.

The commissioners shall give the municipalities at least five days' written notice of the filing of their report. Unless exceptions are filed to such report within thirty days after the date of the filing, the report shall be confirmed by the court absolutely. Any sum awarded by the report shall be a legal and valid claim in its favor against the municipality charged. Any property real or personal given to a municipality shall become its property. Any claim or indebtedness charged against the municipality may be collected from it.

If exceptions are filed to the report of the commissioners, the court shall dispose of the same, taking testimony therein if it deems the same advisable. The court shall enter its decree confirming the award of the commissioners, or modifying the same as to it appears just and proper.

The commissioners shall be allowed such compensation and expenses for their services as the court shall fix. The costs of the proceedings, including the compensation and expenses of the commissioners, shall be apportioned by the court between the municipalities as it deems proper.

In case a municipality or part of a municipality is located in two or more counties, the court of common pleas of the county where the larger part of the municipality assuming the function is located shall have exclusive jurisdiction over the proceedings.

Section 1306. Any city which began proceedings before the effective date of this act under the act of July 15, 1957 (P.L.901), known as the "Optional Third Class City Charter Law," may adopt an optional plan thereunder and function under the provisions of that act.

Section 1307. All acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 1308. If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 1309. This act shall take effect immediately.

APPROVED—The 13th day of April, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 62.

A handwritten signature in cursive script, reading "C. McLaughlin Tucker".

*Secretary of the Commonwealth.*