

## No. 2001-56

## AN ACT

## SB 379

Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," changing gender-specific references to members of the governing body; further providing residency requirements for elective office, for vacancy appointments and for compensation of auditors; and making editorial changes.

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

Section 1. Section 234 of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, is amended to read:

Section 234. Property; Assets; Liabilities; Ordinances; Wards; Election Districts and Certain Officers.—Upon the formation of the borough government, all of the property and assets of the city shall become the property of the borough, and such change of government shall not in any way affect any liabilities incurred, rights accrued or vested, obligations, issued or contracted, or any suits or prosecutions pending or instituted to enforce any right or penalty accrued, or punish any offense committed prior to such change. All ordinances of the former city shall continue in force in the new borough until altered or repealed in the manner provided by law. The wards and election districts of the city shall become the wards and election districts of the borough until altered or changed as may be provided by law. And in the election of [councilmen] *members of council* from the several wards, two [councilmen] *members of council* shall be elected from each ward, unless thereafter changed as provided by law. All constables, aldermen and election officers in office in the city, when the borough government is organized, shall remain in office until the expiration of their respective terms of office.

Section 2. Section 601 of the act, amended October 9, 1967 (P.L.399, No.181), is amended to read:

Section 601. Power of Court to Erect, Abolish and Change Wards and to Adjust, Alter and Establish Lines.—The court of quarter sessions, upon petition, may divide boroughs into wards, erect new wards out of two or more adjoining wards or parts thereof, consolidate two or more wards into one ward, divide any ward already erected into two or more wards, alter the lines of any two or more adjoining wards or cause the lines or boundaries of wards to be ascertained or established, or abolish all wards. No borough shall be divided or redivided into more than thirteen wards.

No ward shall be created containing less than three hundred registered electors therein, and all wards which now or at any time hereafter shall contain less than three hundred fifty registered electors therein may, in the discretion of the court, be abolished and if so abolished, the territory thereof

shall be distributed among the remaining wards in such manner as the court of quarter sessions shall direct. All other wards as heretofore established shall remain as heretofore, until altered or divided as provided in this article.

In boroughs wherein any ward shall be abolished as herein provided and the number of wards shall be reduced to less than five, then the **[councilman] member of council** or **[councilmen] members of council** in the ward or wards abolished shall continue in office for the term for which elected and shall become a **[councilman] member of council** or **[councilmen] members of council** at large from such borough.

If the latest official census of the United States shall disclose that in any borough the population of any ward exceeds by fifty percent or more or is fifty percent or more less than the average population of all the wards of such borough, the court of quarter sessions upon application of the borough council or, in case of failure of the council so to apply, upon petition of any citizen of the borough, shall adjust the boundaries of any or all of the wards in such borough, for the purpose of more nearly equalizing ward populations throughout the said borough. The provisions of sections 602, 603 and 604 of this act shall not apply in cases of ward boundary adjustment as provided for by this paragraph.

Section 3. Section 801 of the act, amended June 27, 1991 (P.L.72, No.11), is amended to read:

Section 801. Electors Only to be Eligible; Incompatibility.—Registered electors of the borough only shall be eligible to elective borough offices. All elected borough officers shall reside in the borough from which elected and shall have resided in the borough continuously for at least one year *immediately* before their election. A school director shall not be eligible to an elective borough office. No individual shall at the same time hold more than one elective borough office.

Section 4. Section 805 of the act is amended to read:

Section 805. Election of Borough Officers When Boroughs Created, Etc.—Whenever a borough is incorporated under the provisions of sections 201 to 219 inclusive of this act, or whenever two or more boroughs are consolidated under the provisions of sections 221 to 228 of this act, or whenever a borough is created from a city of the third class under the provisions of sections 231 to 235 of this act, the officers of the borough, provided for in section 806 of this act, shall be elected at the appropriate municipal election as provided in said sections and such officers shall take office on the first Monday of January succeeding such election.

At any such election, if the borough is not divided into wards, of the seven **[councilmen] members of council** to be elected, three or four **[councilmen] members of council**, as the case may be, shall be elected for terms of two years each, and three or four **[councilmen] members of council**, as the case may be, shall be elected for terms of four years each, to coincide with the number of **[councilmen] members of council** elected at

such election in existing boroughs under the provisions of section 811 of this act.

In the case of the consolidation of two or more boroughs into one borough, or the creation of a borough from a city of the third class, and where in either event two [councilmen] *members of council* are to be elected from each ward, one [councilman] *member of council* shall be elected from each ward for a term of two years and one [councilman] *member of council* shall be elected from each ward for a term of four years.

In all boroughs coming within the provisions of this section, three auditors shall be elected, one for a term of two years, one for a term of four years, and one for a term of six years.

All other officers of the borough shall be elected at such election for terms of two or four years, as the case may be, to coincide with the terms of officers elected under this act at such election in the existing boroughs.

Section 5. Section 806 of the act, amended March 30, 1988 (P.L.309, No.40), is amended to read:

Section 806. Officers to be Elected.—It shall be lawful for the electors of the borough to elect:

(1) In boroughs not divided into wards, seven [councilmen] *members of council*, one mayor, one assessor, except in those boroughs where, under the applicable county assessment law, the office of elected assessor in boroughs shall have been abolished; a tax collector and three auditors or one controller except in such boroughs where there shall be an appointed auditor in lieu of elected auditors or controller. In any borough with population, as determined by the latest official census, of less than three thousand, the total number of [councilmen] *members of council* may be reduced from seven to five or to three upon petition to the court of common pleas, as provided in section 818 of this act.

(2) In boroughs divided into wards, at least one, and not more than two [councilmen] *members of council* in each ward, except in boroughs where prior to the passage of this act three [councilmen] *members of council* were elected in each ward. In such boroughs, the number of [councilmen] *members of council* is fixed at three in each ward until such number is reduced in the manner provided by this act. [Councilmen] *Members of council* shall be residents of the ward from which they are elected, and chosen by the electors of the ward; also a mayor, a tax collector and three auditors or a controller, except in such boroughs where there shall be an appointed auditor in lieu of elected auditors or controller, and an assessor, except in those boroughs where, under the applicable county assessment law, the office of elected assessor shall have been abolished who shall be chosen by the electors of the boroughs at large.

Section 6. The heading of subdivision (b) of Article VIII of the act is amended to read:

(b) [Councilmen] *Members of Council*

Section 7. Section 811 of the act, amended February 24, 1967 (P.L.1, No.1) and October 9, 1967 (P.L.399, No.181), is amended to read:

Section 811. Election of **[Councilmen] *Members of Council***.—At the municipal election to be held in the year 1967, there shall be elected in each borough a sufficient number of **[councilmen] *members of council*** to equal one-half of the entire number of which such council is legally composed, to serve for a term of four years from the first Monday of January next succeeding, and, where such entire number is seven, nine, or eleven, then sufficient to constitute three, four, or five, as the case may be; the aforesaid **[councilmen] *members of council***, to be elected in the year 1967, being successors to those elected in the year 1963, whose terms, as heretofore provided by law, expire on the first Monday of January, 1968. All **[councilmen] *members of council*** whose terms expire on the first Monday of January, 1970 shall continue to hold their office until the first Monday of January, 1970, as now provided, and their successors shall be elected at the municipal election in the year 1969, to serve for a term of four years, from the first Monday of January next succeeding. If for any reason **[councilmen] *members of council*** are not elected as hereinabove provided, **[councilmen] *members of council*** whose terms end on the same date shall cast lots to determine who shall serve for a two-year term and who shall serve for a four-year term. The secretary of the borough shall certify the results to the appropriate county board of elections. Biennially thereafter, at the municipal election, a sufficient number of **[councilmen] *members of council*** shall be elected, for a term of four years from the first Monday of January next succeeding, to fill the places of those whose terms, under the provisions of this act, shall expire on the first Monday of January next following such election.

Section 8. Sections 812, 813, 814, 816 and 817 of the act are amended to read:

Section 812. Election of **[Councilmen] *Members of Council*** Where New Wards Created.—Whenever the **[court of quarter sessions] *court of common pleas*** shall divide any borough into wards, erect new wards out of two or more wards or parts thereof, divide a ward already erected into two or more wards, or create a new ward out of annexed territory, and when the report, in such case, is confirmed by the court, it shall, at the same time, decree the election of an equal number of **[councilmen] *members of council***, in each of the wards, in such manner as not to interfere with the terms of those theretofore elected. Where a borough is first divided into wards, the court shall fix the number of **[councilmen] *members of council*** in each ward at not more than two. In decreeing such election, when the entire number of council shall be composed of an even number, the decree shall be so made that one-half of the entire number shall thereafter be elected at each municipal election. When the entire number of council shall be an odd number, the court shall divide such council into two classes, and shall make its decrees so that one-half of the entire number of **[councilmen]**

*members of council*, less one, shall, as soon as possible, take their office in a year divisible by four, and the remaining number of [councilmen] *members of council* shall take their office in an even-numbered year not divisible by four. The apportionment shall be so made by the court that there shall be equal or as nearly equal as possible, representation by wards in each class. Biennially thereafter, at each municipal election, a sufficient number of [councilmen] *members of council* shall be elected, for the term of four years from the first Monday of January next succeeding, to fill the places of those whose terms shall expire on the first Monday of the January next following such election.

Section 813. Fixing Number of [Councilmen] *Members of Council* When Wards Created.—Whenever upon the division of any borough into wards, or the creation of a new ward or wards, the number of [councilmen] *members of council* cannot be equally divided among the wards of the boroughs, it shall be lawful for the court, in decreeing such division or creation, to increase the number of council to, and not exceeding, such number as will enable the court to make an equal apportionment of the same among the several wards of such borough. But where a borough is first divided into wards, the number of [councilmen] *members of council* provided for a ward shall not exceed two.

Section 814. Increase in Number of [Councilmen] *Members of Council*.—The [court of quarter sessions] *court of common pleas*, having fixed the number of [councilmen] *members of council*, as provided in section 812 of this article, may, upon petition of at least five percent of the registered electors of the borough, increase the same to any number not exceeding two for each ward. The sufficiency of the number of signers to any such petition shall be ascertained as of the date when the petition is presented to court.

Section 816. Election of [Councilmen] *Members of Council* Where Wards Abolished.—Whenever the [court of quarter sessions] *court of common pleas* shall abolish all wards in any borough and when the report in such case is confirmed by the court, it shall, at the same time, decree the election of seven [councilmen] *members of council* at large for the borough in such manner as not to interfere with the terms of those ward [councilmen] *members of council* theretofore elected. In decreeing such election, where there were theretofore:

(1) Seven [councilmen] *members of council*, the decree shall be so made that, at the first municipal election thereafter the electors shall elect three or four [councilmen] *members of council*, as the case may be, the number to be elected to be that which, when added to the number of [councilmen] *members of council* already in office whose terms are not about to expire, shall bring the membership of the council to seven. Such newly elected [councilmen] *members of council* shall serve for terms of four years from the first Monday of January next succeeding such first municipal election, except that, in any case where the election of four

[councilmen] *members of council* shall be required to bring the membership of council to its full complement of seven, and only three [councilmen] *members of council* are elected at such municipal election in the other boroughs of the State not divided into wards, three [councilmen] *members of council* shall be elected for four-year terms and one for a two-year term. Thereafter, at every succeeding municipal election, the electors shall elect three or four [councilmen] *members of council*, as the case may be, each to serve for a term of four years from the first Monday of January following such municipal election.

(2) Eight or more [councilmen] *members of council*, the decree shall be so made that, at the first municipal election thereafter the electors shall elect a sufficient number of [councilmen] *members of council* that, when added to the number of [councilmen] *members of council* already in office whose terms are not about to expire, will bring the membership of the council to seven. Such newly elected [councilmen] *members of council* shall serve for terms of four years from the first Monday of January next succeeding such first municipal election. At the second municipal election after such decree, the electors shall elect a sufficient number of [councilmen] *members of council*, that, when added to the number of [councilmen] *members of council* elected at the previous municipal election, shall bring the membership of council to its full complement of seven, some of such [councilmen] *members of council* elected at such second municipal election to serve for a four-year term following the first Monday of January next succeeding, the remainder to serve for a two-year term, the number in each case to be that required to bring the number of [councilmen] *members of council* to be elected in such borough in succeeding municipal elections into conformity with the number elected in the other boroughs of the Commonwealth not divided into wards. In the third and all subsequent municipal elections following such decree of court, the electors shall elect three or four [councilmen] *members of council*, as the case may be, each to serve for a term of four years from the first Monday of January following such municipal election.

In any such borough where, under the ward system of electing [councilmen] *members of council*, the council shall have been so large that there shall be seven or more [councilmen] *members of council* whose terms shall not expire on the first Monday of January following the first municipal election after such decree, no [councilmen] *members of council* shall be elected at such first municipal election, and the [councilmen] *members of council* remaining in office shall constitute such borough council until the first Monday of January following the second municipal election following such decree. At such second municipal election, seven [councilmen] *members of council* shall be elected in such borough, some to serve for a four-year term of office from the first Monday of January following such second municipal election, the remainder to serve for a two-year term, the number in each case to be such as to bring the number of [councilmen]

*members of council* to be elected in such borough in succeeding elections into conformity with the number elected in other boroughs of the Commonwealth not divided into wards. Thereafter, at the third and all subsequent municipal elections following such decree, the electors shall elect three or four [councilmen] *members of council*, as the case may be, each to serve for a term of four years from the first Monday of January following such subsequent municipal election.

(3) Six or fewer [councilmen] *members of council*, the decree shall be made so that at the first municipal election thereafter, the electors shall elect a sufficient number of [councilmen] *members of council* that, when added to the number of [councilmen] *members of council* already in office whose terms are not about to expire, will bring the membership of council to its full complement of seven. Of such newly elected [councilmen] *members of council*, either three or four, as necessary to bring the number of [councilmen] *members of council* to be elected in such borough in succeeding municipal elections into conformity with the number elected in other boroughs of the Commonwealth not divided into wards, shall be elected for four-year terms of office, beginning the first Monday of January following such first municipal election, and the balance shall be elected for two-year terms. Thereafter, at the second municipal election following such decree and at all subsequent municipal elections, the electors shall elect three or four [councilmen] *members of council*, as the case may be, to serve for a term of four years from the first Monday of January following such subsequent municipal election.

In any case where a vacancy may occur, at any time following such decree, in the office of a [councilman] *member of council* originally elected or appointed from a particular ward, the person appointed to fill such vacancy need not be a resident of the area formerly comprising such ward, but need only be a registered elector of the borough.

Section 817. Vacancies Created After a Primary Election.—Whenever a decree of court is made after a primary election and, as a result thereof, a vacancy is created in the office of [councilman] *member of council*, it may be filled by nomination made by such committee as is authorized by the rules of the party to make nominations in the event of vacancies on the party ticket.

Section 9. Section 818 of the act, amended March 30, 1988 (P.L.309, No.40), is amended to read:

Section 818. Decrease in Number of [Councilmen] *Members of Council*.—The court of common pleas may, upon petition of at least five percent of the registered electors of any borough, which, according to the latest official census, had a population of not more than three thousand, reduce the total number of [councilmen] *members of council* for such borough from seven to five or to three. The sufficiency of the number of signers to any such petition shall be ascertained as of the date when the petition is presented to court.

The court shall give notice of the filing of such petition by advertisement in the legal journal of the county, if one is published in the county, and in one newspaper of general circulation in the borough, and in such notice shall fix a day and time for hearing. After such hearing, the court may decrease the number of **[councilmen] members of council** elected in such borough from seven to five or three, as requested in the petition.

At the municipal election following the decrease in the number of **[councilmen] members of council** in such borough, from seven to five, if four **[councilmen] members of council** would otherwise have been elected, there shall instead be elected three **[councilmen] members of council**; if three **[councilmen] members of council** would otherwise have been elected there shall instead be elected two **[councilmen] members of council**. At the second municipal election following the decrease in the number of **[councilmen] members of council** in such borough, if four **[councilmen] members of council** would otherwise have been elected, there shall instead be elected three **[councilmen] members of council**; if three **[councilmen] members of council** would otherwise have been elected, there shall be elected two **[councilmen] members of council**. At all following municipal elections, there shall be elected the proper number of **[councilmen] members of council** to correspond to the number of **[councilmen] members of council** whose terms are to expire the first Monday of the following January.

At the municipal election following the decrease in the number of **[councilmen] members of council** in such borough from seven to three, if four **[councilmen] members of council** would otherwise have been elected there shall instead be elected two **[councilmen] members of council**; if three **[councilmen] members of council** would otherwise have been elected there shall instead be elected one **[councilman] member of council**. At the second municipal election following the decrease in the number of **[councilmen] members of council** in such borough, if four **[councilmen] members of council** would otherwise have been elected, there shall instead be elected two **[councilmen] members of council**; if three **[councilmen] members of council** would otherwise have been elected, there shall be elected one **[councilman] member of council**. At all the following municipal elections, there shall be elected the proper number of **[councilmen] members of council** to correspond to the number of **[councilmen] members of council** whose terms are to expire the first Monday of the following January.

In any borough where, under the provisions of this section, the number of **[councilmen] members of council** shall be reduced, the **[councilmen] members of council** then in office shall remain in office until the end of their respective terms. If any such borough shall thereafter attain a population in excess of three thousand, according to the latest official census, the number of **[councilmen] members of council** shall automatically be increased from three or five to seven, following the reverse



of the procedure set forth in the third or fourth paragraph of this section, as the case may be.

Section 10. Section 901 of the act, amended February 18, 1982 (P.L.82, No.29), is amended to read:

Section 901. Filling Vacancies in Elective Borough Offices.—If any vacancy shall occur in the office of the mayor, member of council, auditor, controller, assessor, or tax collector, by death, resignation, removal from the borough, or from a ward in the case of a ward office, or by failure to take the required oath or to give bond as provided by law or ordinance, or in any other manner whatsoever, the borough council shall fill such vacancy within thirty days by appointing, by resolution, a registered elector of the borough, or of the ward in case of a ward office, to hold such office, if the term thereof continues so long, until the first Monday in January after the first municipal election occurring more than sixty days after the vacancy occurs, at which election an eligible person shall be elected to the office for the remainder of the term. *No person shall be appointed to fill a vacancy in an elected borough or ward office unless he or she has resided within the borough, or within the ward in the case of a ward office, continuously for at least one year immediately prior to his or her appointment.*

The person appointed shall give bond if required by law or ordinance.

In cases where the person elected to the office shall fail to give bond, if any, required or to take the required oath, the borough council, before making the appointment, shall declare the office vacant.

If the council of any borough shall refuse, fail or neglect, or be unable, for any reason whatsoever, to fill any vacancy within thirty days after the vacancy happens, as provided in this section, then the vacancy shall be filled within fifteen additional days by the vacancy board. Such board shall consist of the borough council exclusive of the mayor, and one registered elector of the borough who shall be appointed by the borough council at the council's first meeting each calendar year or as soon thereafter as practical and who shall act as chairman of the vacancy board. The board shall appoint a registered elector of the borough, (or ward in the case of a ward office), to hold such office, if the term thereof continues so long, until the first Monday in January after the first municipal election occurring more than sixty days after the vacancy occurs, at which election an eligible person shall be elected to the office for the remainder of the term.

If the vacancy is not filled by the vacancy board within fifteen days, the chairman shall or in the case of a vacancy in the chairmanship the remaining members of the vacancy board shall petition the court of common pleas to fill the vacancy by the appointment of a registered elector of the borough (or ward in the case of a ward), to hold such office, if the term thereof continues so long, until the first Monday in January after the first municipal election occurring more than sixty days after the vacancy occurs, at which election an eligible person shall be elected to the office for the remainder of the term. In the case where there are vacancies in more than a

majority of the offices of council, the court of common pleas shall fill such vacancies upon presentation of petition signed by not less than fifteen registered electors of the borough.

Section 11. Sections 903 and 904 of the act are amended to read:

Section 903. Right of Council to Declare Seat of [Councilmen] *Member Vacant for Failure to Qualify.*—If any person, elected or appointed as a member of council, who has been notified of [his] election or appointment, shall refuse or neglect to qualify as such member of council within ten days next succeeding the beginning of [his] *the person's* term of office, unless prevented by sickness or prevented by necessary absence from the borough, the borough council, acting without such person, may declare [his] *the person's* office as member of council vacant, and may fill such vacancy as provided in section 901 of this act. For such actions a majority of the remaining members of the council shall constitute a quorum.

Section 904. Right of Council to Declare Seat of [Councilman] *Member Vacant for Failure to Attend Meetings, Etc.*—If any person, having qualified as a member of council, shall neglect or refuse to attend two successive regular meetings unless detained by sickness, or prevented by necessary absence from the borough, or if in attendance at any meetings shall neglect or refuse to vote or by [his] withdrawal from council or otherwise refuse to act in [his] *the person's* official capacity as a member of council, the borough council, acting without such person, may declare [his] *the person's* office as a member of council vacant, and may fill such vacancy as provided in section 901 of this act. For such actions a majority of the remaining members of the council shall constitute a quorum.

No such office shall be declared vacant for failure to attend meetings of the council until the holder thereof shall have been given opportunity of hearing before the remaining members of the council, at which time he shall show cause why he shall not be removed. He shall be given at least ten days' written notice of the time and place of such hearing.

Section 12. Section 1001 of the act, amended October 31, 1995 (P.L.346, No.58), is amended to read:

Section 1001. Organization of Council; Quorum; Compensation; Eligibility.—The borough council shall organize on the first Monday of January of each even-numbered year, by electing one of their number as president and one of their number as vice-president, who shall hold such offices at the pleasure of the council. If the first Monday is a legal holiday, the meeting and organization shall take place the first day following. Any action taken by any borough council at any time between 12:01 o'clock ante meridian on January 1 of an even-numbered year and the organization of council in that year shall be subject to reconsideration by the new council at any time within ten days after such organization. The council may at the organization meeting elect such other officers as may be provided for by law or ordinance, or as may be deemed necessary for the conduct of affairs of the borough and may transact such other business as may come before the

meeting. The president, and during [his] *the president's* absence or incapacity the vice-president, shall preside over the meetings of council and perform such other duties as are prescribed by this act or by ordinance. A majority of the membership of council then in office shall constitute a quorum. [Councilmen] *Members of council* may receive compensation to be fixed by ordinance at any time and from time to time as follows: In boroughs with a population of less than five thousand, a maximum of eighteen hundred seventy-five dollars (\$1875) a year; in boroughs with a population of five thousand or more but less than ten thousand, a maximum of two thousand five hundred dollars (\$2500) a year; in boroughs with a population of ten thousand or more but less than fifteen thousand, a maximum of three thousand two hundred fifty dollars (\$3250) a year; in boroughs with a population of fifteen thousand or more but less than twenty-five thousand, a maximum of four thousand one hundred twenty-five dollars (\$4125) a year; in boroughs with a population of twenty-five thousand or more but less than thirty-five thousand, a maximum of four thousand three hundred seventy-five dollars (\$4375) a year; and in boroughs with a population of thirty-five thousand or more, a maximum of five thousand dollars (\$5000) a year. Such salaries shall be payable monthly or quarterly for the duties imposed by the provisions of this act.

The population shall be determined by the latest available official census figures. In no case shall the compensation for any [councilman] *member of council* exceed that of the mayor in any given borough: Provided, however, That wherever the mayor's compensation exceeds that authorized by this section for [councilmen] *members of council*, the president of council may receive compensation not to exceed that of the office of mayor.

Section 13. Sections 1002, 1003, 1004 and 1005(7) of the act are amended to read:

Section 1002. Oath of [councilmen] *Members of Council*.—Before entering upon the duties of their office, the [councilmen] *members of council* shall take and subscribe an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform the duties of their office with fidelity, together with such loyalty oath as is prescribed and required by law. The oath or affirmation may be taken before any judge or justice of the peace of the county, or before the mayor of the borough when he has qualified, and shall be filed with the borough secretary and be preserved among the records of the borough for a period of six years.

Section 1003. When the Mayor May Preside Over Council and Vote; Attendance of Mayor at Council Meetings; Breaking Tie Votes.—The mayor shall preside over the organization of the council, until it is organized as provided in section 1001, and he shall be deemed a member of council at the organization meeting if his membership becomes necessary to constitute a quorum, but he shall not vote thereat unless his vote shall, for any reason whatsoever, be required to effect the organization of council, or

to elect any officer who is required to be or may be elected at the organization meeting. In case of the absence of the mayor at the organization meeting, one of the members of council, chosen by the members present at the meeting, shall preside.

The mayor may attend any or all regular and special meetings of council and may take part in the discussions of the council on matters pertaining to borough affairs, subject to any restrictions applicable to **[councilmen] members of council** contained in the rules of order or bylaws of the council. In all cases where, by reason of a tie or split vote, the council of any borough shall be unable to enact or pass any ordinance, resolution, or motion, or to declare or fill any vacancy in its membership, or in any other borough office, or to take any action on any matter lawfully brought before it, the mayor, if in attendance at the meeting, may at his option cast the deciding vote, or request that the matter be tabled until a special meeting of council to be held within not less than five days or more than ten days at which time the matter shall be reconsidered by council and, if a tie or split vote still exists, it shall be the duty of the mayor at that time to cast the deciding vote. If such a tie or split vote shall occur at any meeting when the mayor is not in attendance the matter shall be tabled to a special meeting to be held within not less than five days or more than ten days as set by the president of council, and the mayor shall be given at least five days' notice of such meeting, at which meeting it shall be the duty of the mayor to cast the tie-breaking vote.

Section 1004. Failure of Council to Organize.—If the council of any borough shall fail to organize within ten days from the time prescribed in this article, the court of **[quarter sessions] common pleas**, upon the petition of at least ten registered electors of the borough verified by the affidavit of one of the petitioners, shall issue a rule upon the delinquent **[councilmen] members of council** to show cause why their seats should not be declared vacant. The rule shall be returnable not less than five days from the time of its issue and, after hearing, the court may declare the seats of such **[councilmen] members of council**, as are responsible for such failure to organize, vacant, and shall thereupon appoint others in their stead, who shall hold office for the respective unexpired terms.

Section 1005. Powers of Council.—The council of the borough shall have power:

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(7) To provide by ordinance passed by a two-thirds vote of the entire number of **[councilmen] members of council** elected, for the appointment of an independent auditor who shall be a certified public accountant, registered in Pennsylvania, a firm of certified public accountants so registered or a competent public accountant or a competent firm of public accountants. Where such an ordinance has been so adopted, an independent auditor shall be appointed, annually, by resolution before the close of a fiscal year, to make an independent examination of the accounting records

of the borough for such fiscal year and such independent auditor shall also perform the other duties and exercise the powers as conferred upon him by subdivision (k) of article XI of this act. When an independent auditor is appointed as herein provided, the office of elected borough auditor or controller, as the case may be, is thereby abolished although the borough auditors, or controller, then in office shall continue to hold their office during the term for which elected and the borough auditors or controller shall not audit, settle, or adjust the accounts audited by such independent auditor but shall perform the other duties of their office.

Whenever any borough has provided by ordinance for the audit of its accounts by an appointed auditor, the borough shall have the right at any time to repeal said ordinance, and thereupon the office of appointed auditor shall be abolished, as of the date set in such ordinance and said borough shall have the further right at the next municipal election following the repeal of said ordinance to elect three auditors, one for a term of two years, one for a term of four years, and one for a term of six years, from the first Monday of January succeeding such election, which auditors so elected shall succeed the appointed auditor and shall have and possess all the powers and perform all the duties provided in this act for elected auditors. If at any time after the effective date of any such ordinance abolishing the office of appointed auditor, there shall be a vacancy in the office of elected auditor, council shall fill such vacancies in the manner prescribed in section 901 of this act.

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Section 14. Section 1030 of the act, amended December 17, 1990 (P.L.739, No.184), is amended to read:

Section 1030. When President or Vice-President of Council to Act as Mayor.—Whenever the mayor is absent or incapacitated, or there is a vacancy in the office, the duties of the office shall be discharged by the president of council, or in the absence or incapacity of the president of council, or where there is a vacancy in the office, by the vice-president of council. While discharging the duties of mayor, the president or vice-president of council shall be entitled to the same salary as the mayor would receive, and, during the time such salary is paid to the president or vice-president of council as acting mayor, the mayor shall not be paid compensation. The president or vice-president of council, when acting as mayor, shall have power to veto any proposed ordinance or to break a tie, but shall not have power to vote as [councilman] *a member of council*.

Section 15. Section 1053 of the act, amended April 11, 1974 (P.L.255, No.64), is amended to read:

Section 1053. Compensation of Auditors.—[Each auditor shall receive no less than fifteen dollars (\$15) or more than thirty dollars (\$30), as council may determine, per day for each day necessarily employed in the discharge of his duties, to be paid by the borough. A day shall consist of not less than five hours in the aggregate.] (a) *Subject to the*

*limitations set forth in subsection (b), each auditor shall receive no less than five dollars (\$5) nor more than ten dollars (\$10), as council may determine, per hour for each hour or portion thereof necessarily employed in the discharge of his duties, to be paid by the borough.*

*(b) No auditor in a borough having a population of ten thousand or less shall be entitled to receive more than one thousand dollars (\$1,000) for completing the annual audit, settlement and adjustment. No auditor in a borough having a population in excess of ten thousand shall be entitled to receive more than two thousand dollars (\$2,000) for completing the annual audit, settlement and adjustment.*

*(c) Each auditor shall be reimbursed for travel costs incurred in the performance of the auditing duties at the rate established by the borough council under the act of July 20, 1979 (P.L.156, No.51), referred to as the Uniform Mileage Fee Law, and for other actual expenses, including postage, notary fees or publication costs, necessarily incurred during the audit.*

Section 16. Section 1104 of the act, amended March 28, 1990 (P.L.82, No.18), is amended to read:

Section 1104. Appointments; Incompatible Offices.—Unless there is incompatibility in fact, any elective or appointive officer of the borough shall be eligible to serve on any board, commission, bureau or other agency created by or for the borough, or any borough office created or authorized by statute and may accept appointments thereunder, but no mayor or [councilman] *member of council* shall receive compensation therefor. No elected borough official of a borough with a population of 3,000 or more may serve as an employe of that borough. Where there is no incompatibility in fact, and subject to the foregoing provisions as to compensation, appointees of council may hold two or more appointive borough offices, but no mayor or member of council may serve as borough manager or as secretary or treasurer. No person holding the office of justice of the peace may at the same time hold the office of borough treasurer. The offices of secretary and treasurer may be held by the same person when so authorized by ordinance. Nothing herein contained shall affect the eligibility of any borough official to hold any other public office or receive compensation therefor. All appointments to be made by the council or the corporate authorities shall be made by a majority of the members of council attending the meeting at which the appointment is made, unless a different vote is required by statute.

Section 17. Sections 1194 and 1404 of the act are amended to read:

Section 1194. Penalty.—Any [councilman] *member of council* who, by his vote, causes to be appointed any person to the police force or as a fire apparatus operator contrary to the provisions of this subdivision, or any [councilman] *member of council* or member of the commission who wilfully refuses to comply with, or conform to, the provisions of subdivision (j) of this article, shall be deemed guilty of a misdemeanor, and upon

conviction thereof, shall be sentenced to pay a fine not exceeding one hundred dollars (\$100), or suffer imprisonment not exceeding three months, or both.

Section 1404. Penalty for Personal Interest in Contracts or Purchases.—Except as otherwise provided in this act, no borough official either elected or appointed, who knows or who by the exercise of reasonable diligence could know, shall be interested to any appreciable degree either directly or indirectly in any purchase made or contract entered into or expenditure of money made by the borough or relating to the business of the borough, involving the expenditure by the borough of more than one thousand dollars (\$1000) in any calendar year, but this limitation shall not apply to cases where such officer or appointee of the borough is an employe of the person, firm or corporation to which the money is to be paid in a capacity with no possible influence on the transaction, and in which he cannot be possibly benefited thereby either financially or otherwise. But in the case of a [councilman] *member of council* or mayor, if he knows that he is within the exception just mentioned he shall so inform council and shall refrain from voting on the expenditure or any ordinance relating thereto, and shall in no manner participate therein. Any official or appointee who shall knowingly violate the provisions of this section shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the borough and to ouster from office, and shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or not exceeding one hundred eighty days' imprisonment, or both.

Section 18. Section 3103 of the act, amended October 9, 1967 (P.L.399, No.181), is amended to read:

Section 3103. Oaths of Members, Secretary and Health Officer; Organization; Bonds.—The members of the board shall severally take and subscribe to the oath prescribed for borough [councilmen] *members of council* together with such loyalty oath as is prescribed and required by law; and shall annually organize by electing a president from among the members of the board, a secretary who may or may not be a member of the board, and a health officer shall receive such salary as may be fixed by the board, and ratified by the borough council, and shall serve for a period until such time as their successors may be elected and qualified. If the borough council shall so require, they shall severally give bond to the borough in such sums as council shall prescribe for the faithful discharge of their duties. They shall take and subscribe to the oaths required of members of the board.

Section 19. This act shall take effect in 60 days.

APPROVED—The 25th day of June, A.D. 2001.

THOMAS J. RIDGE