

No. 149

AN ACT

SB 403

Amending the act of April 13, 1972 (P.L.184, No.62), entitled "An act 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," requiring the members of certain government study commissions to take oath of office; changing provisions for the nomination and election of candidates for the government study commission, for vacancies, for reports of government study commissions and for the office of treasurer or controller limiting the power and authority of municipalities adopting home rule charters and making editorial changes.

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

Section 1. Sections 201, 202 and 203, act of April 13, 1972 (P.L.184, No.62), known as the "Home Rule Charter and Optional Plans Law," are amended to read:

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."]

(1) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the 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) members be elected to study the existing form of government of the

municipality, to consider the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?"

(3) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government or a home rule charter; to recommend the adoption of an optional form of government; or to draft and recommend a home rule charter?"

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] the thirteenth Tuesday** 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 *referendum* petition under this section shall be filed **[at least sixty-four days prior to the municipal or general election,] not later than the thirteenth Tuesday prior to the 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 *candidate's nomination* petition shall be signed or circulated prior to **[sixty days before the last day on which such petition may be filed.] the thirteenth Tuesday before the election nor later than the tenth Tuesday before the election and shall be filed on or before the tenth Tuesday before the election.**

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] Each candidate** 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] a candidate** nominated by nomination papers filed for other offices elective by the voters of a municipality, except that **[they] each candidate** 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.] the thirteenth Tuesday before the election, nor later than the tenth Tuesday before the election. No signature shall be counted unless it bears a date within this period.** 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. ***If an insufficient number of nominating papers is filed to fill all of the designated positions on the study commission, the question of establishing a commission shall be placed on the ballot, however, unless a sufficient number of study commission members are elected by receiving at least as many votes as signatures are required to file a nominating petition, then the question of creating a study commission shall be deemed to have been rejected.***

Section 203. (a) Candidates for the government study commission shall be registered voters of the municipality. **[They may] Each candidate shall** 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] number of electors voting for the office of Governor in the last gubernatorial general election within** the municipality or two hundred registered voters whichever is less and filed with the county board of elections not **[less] later than [forty-four days] the tenth Tuesday** prior to the date of the election.

(b) Each nominating paper shall set forth the **[names, places of residence, and post office addresses] name, place of residence, and post office address** 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]. Each elector may sign nomination papers for as many candidates for government study commissioner as, and no more than, he could vote for at the election.** 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 ***under oath or affirmation of the candidate*** 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 2. The act is amended by adding a section to read:

Section 204.1. *(a) As soon as possible, and in any event no later than ten days after its certification of election, the members of a government study commission hereafter elected on a county-wide basis shall, before a judge of a court of common pleas, make oath or affirmation to support the Constitution of the United States and the Constitution of this Commonwealth, and to perform the duties of the office with fidelity. Those previously elected to such government study commissions shall, within thirty days of the effective date hereof, make such an oath or affirmation unless a report has been filed, prior to the effective date of this act, by the commission of which they are members.*

(b) As soon as possible, and in any event no later than ten days after its certification of election, the members of a government study commission hereafter elected on other than a county-wide basis shall, before a district justice or a justice of the peace, make oath or affirmation to support the Constitution of the United States and the Constitution of this Commonwealth, and to perform the duties of the office with fidelity. Those previously elected to such government commissions shall, within thirty days of the effective date hereof, make such an oath or affirmation unless a report has been filed, prior to the effective date of this act, by the commission of which they are members.

Section 3. Sections 211, 213 and subsection (a) of section 302 of the act are amended to read:

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 *in the form of a referendum* 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,] *At any time prior to sixty days before the date of such referendum,* 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 213. (a) If the government study commission report, shall recommend ***the adoption or*** 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] (ii) the office of treasurer shall be omitted or whether it shall be filled by election by the voters of the municipality rather than by appointment; and (iii) the office of controller shall be omitted or whether it shall be filled by election by the voters of the municipality rather than by appointment.***

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 ***or president of council or chairman*** 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 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.

(10) Municipal planning under the provisions of the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code."

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Section 4. Sections 602, 802, 811, 902, 1211, 1232 and 1251 of the act are amended to read:

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, **if provided for**, 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 802. Each municipality under this article shall be governed by an elected council one member of which shall be **[an elected mayor] the mayor, or president of council, or chairman** chosen as provided in

sections 213 and 811, an elected district attorney in the case of counties, and appointed municipal manager, and, when recommended by the **[charter] 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 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 **or president of council or chairman** unless otherwise provided. The mayor **or president of council or chairman** 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 **or president of council or chairman**, then the member who in the election for members of the municipal council received the greatest number of votes shall be the mayor, **president of council or chairman**. Should such person decline to accept the office, then the person receiving the next highest vote shall be the mayor, **president of council or chairman**, and so on, until the office is filled. The mayor, **or president of council, or chairman** 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 902. Each municipality shall be governed by an elected executive (mayor) and councilmen, 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, or elected controller** and such other officers as shall be appointed pursuant to this article, general law or ordinance.

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 **or by election** 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.

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.

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 *an independent auditor or*, in the case of the optional plan set forth in Article X, the Optional County Plan, by the controller or auditors.

Section 5. The act is amended by adding a section to read:

Section 1253. Under any of the optional plans as set forth in this act, except for the plans set forth in Article X, the Optional County Plan, the office of controller may be omitted, or it may be filled by election by the voters of the municipality rather than by appointment when recommended by the government study commission and adopted by the voters. If the office of controller is to be filled by appointment, a controller shall be appointed for an indefinite term by a majority of the members of the municipal governing body.

Section 6. Section 1261 of the act is amended to read:

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 *occurring after the next succeeding primary election*, except as provided in section 213 (c) of this act.

Section 7. This act shall take effect immediately.

APPROVED—The 3rd day of July, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 149.



Secretary of the Commonwealth.