

No. 1994-90

AN ACT

HB 162

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, providing procedures for the consolidation or merger of municipalities; establishing procedures for allocation of assets and liabilities; and making repeals.

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

Section 1. Title 53 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 7
ALTERATION OF TERRITORY OR CORPORATE
ENTITY AND DISSOLUTION

SUBCHAPTER C
CONSOLIDATION AND MERGER

Sec.

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§ 731. Short title of subchapter.

This subchapter shall be known and may be cited as the Municipal Consolidation or Merger Act.

§ 732. Definitions.

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

“Consolidated or merged municipality.” A municipal entity resulting from successful consolidation or merger proceedings under this subchapter.

“Consolidation.” The combination of two or more municipalities which results in the termination of the existence of each of the municipalities to be

consolidated and the creation of a new municipality which assumes jurisdiction over all of the municipalities which have been terminated.

“Contiguous territory.” A territory of which a portion abuts the boundary of another municipality, including territory separated from the exact boundary of another municipality by a street, road, railroad or highway or by a river or other natural or artificial stream of water.

“Election officials.” The county boards of election.

“Governing body.” The council in cities, boroughs and incorporated towns; the board of commissioners in counties and townships of the first class; the board of supervisors in townships of the second class; or the legislative policymaking body in home rule municipalities.

“Initiative.” The filing with applicable election officials of a petition containing a proposal for a referendum to be placed on the ballot of the next election. The petition shall be:

(1) Filed not later than the 13th Tuesday prior to the next election in which it will appear on the ballot.

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

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

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

“Merger.” The combination of two or more municipalities which results in the termination of the existence of all but one of the municipalities to be merged with the surviving municipality absorbing and assuming jurisdiction over the municipalities which have been terminated.

“Municipality.” Every county other than a county of the first class, every city other than a city of the first or second class, and every borough, incorporated town, township and home rule municipality other than a home rule municipality which would otherwise be a city of the first or second class.

“Referendum.” A vote seeking approval by a majority of electors voting on a question of consolidation or merger placed on the ballot by initiative or otherwise.

§ 733. Procedure for consolidation or merger.

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

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

(2) Initiative of electors.

§ 734. Joint agreement of governing bodies.

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

(b) Elements.—The joint agreement shall include, but not be limited to:

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

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

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

(4) Whether a consolidated or merged municipality shall be governed solely by the code and other general laws applicable to the kind and class of the consolidated or merged municipality; whether it shall be governed by a home rule charter or optional plan of government previously adopted pursuant to the act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law, by one of the municipalities to be consolidated or merged; or whether it shall be governed by a home rule charter or optional plan of government that has not been previously adopted in accordance with the Home Rule Charter and Optional Plans Law by any of the municipalities to be consolidated or merged, but which, in the case of an optional plan of government, has been selected and approved by the governing body of each of the municipalities to be consolidated or merged from among the options provided for in the Home Rule Charter and Optional Plans Law or, in the case of a home rule charter, has been formulated and approved by the governing body of each of the municipalities to be consolidated or merged; provided, however, that nothing in this subchapter shall be construed as authorizing a municipality adopting a home rule charter or optional plan of government pursuant to this subchapter to exercise powers not granted to a municipality adopting a home rule charter or an optional plan of government pursuant to the Home Rule Charter and Optional Plans Law.

(5) The number of districts or wards, if any, into which the consolidated or merged municipality will be divided for the purpose of electing all or some members of its governing body, and the boundaries of wards or districts shall be established to achieve substantially equal representation.

(6) In the case of a merger, where the surviving municipality is a city which had previously adopted an optional charter pursuant to the act of July 15, 1957 (P.L.901, No.399), known as the Optional Third Class City Charter Law, whether the resulting merged municipality will continue to operate under the optional charter.

(7) Terms for:

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

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

(iii) The assumption, assignment or disposition of existing liabilities of each municipality, either jointly, separately or in certain defined

proportions, by separate rates of taxation within each of the constituent municipalities until consolidation or merger becomes effective pursuant to section 738 (relating to effectuation of consolidation or merger).

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

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

(9) A transitional plan and schedule applicable to elected officers.

(10) The common administration and enforcement of ordinances enforced uniformly within the consolidated or merged municipality.

§ 735. Initiative of electors.

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

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

(c) Contents.—A petition shall set forth:

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

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

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

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

(5) Whether a consolidated or merged municipality shall be governed solely by the code and other general laws applicable to the kind and class of the consolidated or merged municipality; whether it shall be governed by a home rule charter or optional plan of government previously adopted pursuant to the act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law, by one of the municipalities to be consolidated or merged; or whether it shall be governed by an optional plan of government that has not been previously adopted in accordance with the Home Rule Charter and Optional Plans Law by any of the municipalities to be consolidated or merged, but which has been selected from among the options provided for in the Home Rule Charter and Optional Plans Law and is identified in the petition; provided, however, that nothing in this subchapter shall be construed as authorizing a municipality adopting an optional plan of government pursuant to this subchapter to exercise powers not granted to a municipality adopting an

optional plan of government pursuant to the Home Rule Charter and Optional Plans Law.

(6) In the case of a merger, where the surviving municipality is a city which had previously adopted an optional charter pursuant to the act of July 15, 1957 (P.L.901, No.399), known as the Optional Third Class City Charter Law, whether the resulting merged municipality will continue to operate under the optional charter.

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

(d) Filing of petition.—The consolidation or merger petition shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. The petition and proceedings on the petition shall be conducted in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as the provisions are applicable, except that no referendum petition shall be signed or circulated prior to the 20th Tuesday before the election, nor later than the 13th Tuesday before the election.

§ 736. Conduct of referenda.

(a) Duty to place on ballot.—Following initiation of proceedings for consolidation or merger by the procedures set forth either in section 734 (relating to joint agreement of governing bodies) or 735 (relating to initiative of electors), the question of consolidation or merger as set forth in the joint agreement or initiative petition shall be placed before the electors of each of the municipalities proposed to be consolidated or merged. A referendum shall be held at the first primary, municipal or general election occurring at least 13 weeks after either:

- (1) the date of the general agreement entered into under the provisions of section 734; or
- (2) the date of filing of the petition filed under the provisions of section 735.

(b) Approval.—Consolidation or merger shall not be effective unless the referendum question is approved by a majority of the electors voting in each of the municipalities in which the referendum is held. If in any one of the municipalities in which the referendum is held a majority vote in favor of consolidation or merger does not result, the referendum shall fail and consolidation or merger shall not take place. The same question described in the consolidation or merger proposal shall not be voted on again for a period of five years.

(c) Subsequent referenda.—The five-year moratorium on voting the same consolidation or merger question as provided in subsection (b) shall be deemed not to apply to any subsequent referendum question involving a consolidation or merger of any combination of two or more contiguous municipalities if the referendum question differs or is dissimilar in any way

from a previous referendum question which was not approved as provided for in subsection (b).

§ 737. Consolidation or merger agreement.

(a) Form.—Upon favorable action by the electorate on consolidation or merger, in cases where consolidation or merger was initiated by petition of electors under section 735 (relating to initiative of electors), the governing bodies of the municipalities to be consolidated or merged shall meet within 60 days after the certification of the favorable vote and shall within a reasonable time after certification make a consolidation or merger agreement as follows:

(1) If the governing body, or part of the governing body, of the consolidated or merged municipality is to be elected on a district or ward basis, the agreement shall set forth the district or ward boundaries and the district or ward designation, by number, and the number of members of the municipal governing body to be elected from each district or ward. The boundaries of the districts or wards shall be established to achieve substantially equal representation.

(2) The agreement shall set forth terms for:

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

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

(iii) The assumption, assignment and disposition of the existing liabilities of each municipality, either jointly, separately or in certain defined proportions, by separate rates of taxation within each of the constituent municipalities until consolidation or merger becomes effective pursuant to section 738 (relating to effectuation of consolidation or merger).

(3) The agreement shall set forth the governmental organization of the consolidated or merged municipality insofar as it concerns elected officers and shall contain a transitional plan and schedule applicable to elected officers.

(4) The agreement shall provide for common administration and uniform enforcement of ordinances within the consolidated or merged municipality.

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

(b) Filing.—A copy of the consolidation or merger agreement under this section or the joint agreement under section 734 (relating to joint agreement of governing bodies) after approval by the electorate shall be filed with the Department of Community Affairs, the Department of Transportation, the Governor's Office of Policy Development or its successor, the Department of Education, the State Tax Equalization Board and the Legislative Data Processing Committee. A copy shall also be filed with the court of common

pleas and the board of county commissioners of the county or counties in which municipalities affected are located.

§ 738. Effectuation of consolidation or merger.

Municipalities consolidated or merged shall continue to be governed as before consolidation or merger until the date stipulated in the transitional plan and schedule provided for in sections 734 (relating to joint agreement of governing bodies) and 737 (relating to consolidation or merger agreement). New officials required to be elected shall take office on the first Monday of January following the municipal election designated in the transitional plan and schedule. At that municipal election, the necessary officers of the consolidated or merged municipality shall be elected in accordance with the terms of the general law affecting municipalities of the kind or class of the consolidated or merged municipality or, in case of a consolidated or merged municipality operating under a home rule charter or optional plan of government, in accordance with the charter or optional plan or with general law affecting home rule or optional plan municipalities, as applicable. The officers elected at that municipal election shall be elected for terms of office under the plan and schedule set forth in the consolidation or merger agreement authorized by section 734 or 737, as the case may be. They shall take office as officers of the consolidated or merged municipality on the first Monday of January following the municipal election at which they were elected, and upon assumption of office, the consolidated or merged municipality shall begin to function and the former municipalities consolidated or merged into it shall be abolished.

§ 739. Effect of transition on employees of consolidated or merged municipality.

(a) Transition.—As of the date when a consolidated or merged municipality shall begin to function, except for those officers and employees which are protected by any tenure of office, civil service provisions or collective bargaining agreement, all appointive offices and positions then existing in all former municipalities involved in the consolidation or merger shall be subject to the terms of the consolidation or merger agreement. Provisions shall be made for instances in which there is duplication of positions, including, but not limited to, chief of police or manager, and for other matters such as varying length of employee contracts, different civil service regulations in the constituent municipalities and differing ranks and position classifications for similar positions.

(b) Exception.—Nothing in this section shall be deemed to apply to a consolidated or merged municipality if one or more of the consolidating or merging municipalities has been declared distressed under the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act. In such case, the provisions of section 408 of that act shall control.

§ 740. Procedures.

(a) Ordinance book.—After consolidation becomes effective, a new ordinance book shall be used by the municipality, and the first document to be recorded in it shall be the consolidation agreement.

(b) Ordinance codification.—No later than two years after consolidation goes into effect, codification of all the ordinances of the municipality shall be completed. The codification shall include tabulation or indexing of those ordinances of the component municipalities that are of permanent effect in the consolidated municipality.

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

§ 741. Court review of transitional plan.

After the approval of a referendum pursuant to section 736 (relating to conduct of referenda), any person who is a resident of a municipality to be consolidated or merged may petition the court of common pleas to order the appropriate municipal governing bodies to:

(1) implement the terms of a transitional plan and schedule adopted pursuant to section 734 (relating to joint agreement of governing bodies) or 737 (relating to consolidation or merger agreement); or

(2) adopt or amend a transitional plan or schedule if the court finds that the failure to do so will result in the unreasonable perpetuation of the separate forms and classifications of government existing in the affected municipalities prior to the approval of the referendum.

Section 2. (a) The following acts and parts of acts are repealed:

Act of February 7, 1906 (Sp.Sess., P.L.7, No.1), entitled "An act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each."

Act of May 6, 1915 (P.L.260, No.152), entitled "A supplement to an act approved the seventh day of February, one thousand nine hundred and six, entitled 'An act to enable cities that are now or may hereafter be contiguous or in close proximity, to be united with any intervening land, other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of

debts and claims due to or from each,' by providing that the indebtedness of each city and intervening land, heretofore or hereafter united or consolidated under the provisions of said act, shall be paid by the consolidated city, and for the levying of a uniform tax, upon all the territory included within the consolidated city, for the payment of the same."

Sections 210, 211, 212, 213, 214, 216, 217, 218 and 219 of the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code.

Sections 205, 206, 207, 208, 209, 210, 211, 211.1, 212, 213, 214 and 215 of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code.

Sections 221, 222, 223, 224, 225, 226, 227 and 228 of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code.

As much of section 103 as relates to "consolidated or merged municipality," "consolidation or merger," "contiguous territory," "election officials," "initiative" and "referendum"; as much of section 241(7) as reads as follows: "pursuant to Chapter 4"; all of sections 401, 402, 403, 404, 405, 406, 407 and 409 of the act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act.

(b) Article II of the act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code, is repealed insofar as it is inconsistent with this act.

(c) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 3. This act shall take effect in 90 days.

APPROVED—The 13th day of October, A.D. 1994.

ROBERT P. CASEY