

No. 1997-12

AN ACT

HB 329

Amending the act of July 28, 1953 (P.L.723, No.230), entitled, as amended, "An act relating to counties of the second class and second class A; amending, revising, consolidating and changing the laws relating thereto," requiring a jointly appointed tax collector for a certain home rule municipality and school district in counties of the second class; further providing for the membership of boards of managers for monuments and memorials to war veterans; and providing for charters in second class counties.

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

Section 1. The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, is amended by adding a section to read:

Section 1970.3. Joint Tax Collector.—Notwithstanding the provisions of section 10(b) of the act of December 31, 1965 (P.L.1257, No.511), known as "The Local Tax Enabling Act," if a municipality having a population of at least 50,000 and less than 100,000 located in a second class county has adopted a home rule charter under 53 Pa.C.S. Pt. III Subpt. E (relating to home rule and optional plan government), the governing body of the municipality and board of school directors for the school district in which the municipality is located shall annually agree on and jointly appoint a collector or collectors of taxes for taxes levied under "The Local Tax Enabling Act." In the event the governing body of the municipality and the board of school directors for the school district in which the municipality is located cannot agree on the appointment of a collector or collectors of taxes levied under this act within ninety days of the commencement of each ensuing municipal fiscal year, then three arbitrators shall be appointed who by majority vote shall choose a tax collector to collect taxes levied under this act: one person shall be appointed by the governing body of the municipality who is a resident of the municipality and who is not a member of the governing body, one person shall be appointed by the board of school directors who is a resident of the school district and who is not a school director, and one resident shall be appointed by the elected controller of the municipality.

Section 2. Sections 2565 and 2566 of the act, amended June 19, 1961 (P.L.463, No.232), are amended to read:

Section 2565. Personnel.—The board of managers shall consist of:

(a) Ex-officio members (five): the president judge of the court of common pleas of such county; the judge of said court next oldest in commission; the county commissioners of the county.

(b) Elective members ~~[(fifteen): the present elective members representing the Veterans of the Civil War shall be and continue as members of such board until removed by death, resignation, or otherwise. The remaining members of the elective (fifteen) shall be filled by the following organizations out of their membership: (three) by the county organization of the United Spanish War Veterans; (three)]~~ *(twenty-three): the elective members shall be filled by the following veterans' organizations out of their membership: (four) by the county organization of the American Legion; [(three)] (four) by the county organization of the Veterans of Foreign Wars; (three) by the county organizations of the Italian American War Veterans of the United States, Incorporated; (two) by the county organization of the Disabled American Veterans; (ten: one each) by the county organizations of Vietnam Veterans, Incorporated, the American Veterans of World War II, the Jewish War Veterans, the Catholic War Veterans, the Military Order of the Purple Heart, the Paralyzed Veterans of America, the Korean War Veterans Association, the Black Vietnam Veterans Association, the WAVES National Organization and the Military Order of World Wars; within thirty days from the date when this act becomes effective; and they shall certify such election to the secretary of the existing board, whereupon the persons so elected shall be members of the board.*

(c) Additional members: the board may extend its membership by adding one member for each group approved under section 2566.

Section 2566. Vacancies.—Vacancies occurring among the elective members of the board shall be filled by the organization which chose the members whose place it is desired to fill: Provided, however, That whenever it may appear that it is impossible to fill any vacancy in the board caused by the death or resignation of a member thereof **[who represented the Veterans of the Civil War]** because no organization survives to choose such members or no person survives who can qualify for such membership, vacancies so created and existing shall, upon notice from the secretary, be filled by the county organizations of the **[United Spanish War Veterans and the]** American Legion and the Veterans of Foreign Wars and the Italian American War Veterans of the United States, Incorporated. That is to say, the first vacancy so caused shall be filled by the county organization of the **[United Spanish War Veterans, the second by the county organization of the]** American Legion, and the **[third] second** by the county organization of the Veterans of Foreign Wars, *and the third by the Italian American War Veterans of the United States, Incorporated,* and so on in rotation. **[That is to say, that when no member representing the Veterans of the Civil War shall remain on said board, the elective personnel of the board shall be as follows: Elective members sixteen; United Spanish War Veterans (four); American Legion (four); Veterans of Foreign Wars (four); Italian American War Veterans of the United States, Incorporated (four).] If there is a loss of membership on the board or if an additional veterans'**

group seeks membership on the board, the General Assembly shall consider any veterans' group which applies in writing for membership. The General Assembly may admit a group to membership if all of the following apply:

(1) The group is a chartered non-profit veterans' organization whose goals are relevant to the representation of veterans' organizations and whose membership consists solely of honorably discharged veterans of the armed forces of the United States and all components of the armed forces, including reserve and Pennsylvania National Guard forces.

(2) The group supports and promotes the Constitution of the United States and policies and laws of the United States and this Commonwealth.

Section 3. The act is amended by adding an article to read:

ARTICLE XXXI-C

Second Class County Charter Law

Section 3101-C. Legislative Findings and Declarations.—The General Assembly hereby determines, declares and finds that there is a need for greater efficiency, economy and effectiveness in the governance of second class counties.

Section 3102-C. Definitions.—Unless the context clearly indicates otherwise, the following words and phrases when used in this article shall have the following meanings:

“Charter,” a county home rule charter as authorized by sections 2 and 4 of Article IX of the Constitution of Pennsylvania.

“Commission” or “apportionment commission,” the body that shall initially apportion the county into legislative districts.

“Committee” or “charter drafting committee,” the body composed of appointees who shall draft the initial charter of the county.

“County,” a county of the second class.

“Governing body,” the board of commissioners of the county.

“Proposed charter,” the charter prepared and written by the charter drafting committee and presented to the electors of the county for adoption by referendum.

Section 3103-C. Construction of Article.—(a) The terms and provisions of this article are to be liberally construed to best achieve and effectuate the goals and purposes of this article.

(b) This article shall be considered and construed in pari materia with 53 Pa.C.S. Pt. III Subpt. E (relating to home rule and optional plan government), except that:

(1) The charter drafting committee responsible for proposing a charter for the county shall serve in lieu of a government study commission and shall be appointed pursuant to this article rather than elected pursuant to 53 Pa.C.S. Ch. 29 Subch. B (relating to procedure for adoption of home rule charter or optional plan of government).

(2) Any vacancy in the membership of the charter drafting committee shall be filled by appointment by the body that made the appointment that

has been vacated: Provided, however, That, if the body fails to fill a vacancy within twenty (20) calendar days of the occurrence of the vacancy, the vacancy may be filled in the manner otherwise provided by law.

(3) The function of the charter drafting committee shall be to prepare a proposed charter for the county which provides for an elected county executive, an appointed professional county manager and an elected county legislative council.

(4) An ordinance may not be passed and a petition may not be filed for the election of a government study commission pursuant to 53 Pa.C.S. § 2911 (relating to submission of question for election of government study commission) while proceedings to prepare and adopt a charter are pending pursuant to this article.

(5) Notwithstanding the provisions of 53 Pa.C.S. § 2921 (relating to report of findings and recommendations), the charter drafting committee shall prepare a charter and report it to the citizens of the county within the time set forth by this article.

(6) Notwithstanding the provisions of 53 Pa.C.S. § 2921, the apportionment commission shall apportion the county into legislative districts pursuant to this article following the approval of the charter by the electors of the county.

(7) Any vacancy in the membership of the apportionment commission shall be filled by appointment by the governing body following the provisions for nomination made for the appointment that has been vacated: Provided, however, That if the body fails to fill a vacancy within twenty (20) calendar days of the occurrence of the vacancy, the remaining members of the commission shall fill it by appointing some other properly qualified elector of the county.

(c) This article shall not apply to counties of the second class A.

Section 3104-C. Charter Drafting Committee.—(a) The governing body may by ordinance establish a charter drafting committee.

(b) The committee shall consist of eight members, each of whom shall be a resident and registered voter of the county for at least five (5) years, appointed by unanimous vote of the governing body. One member shall be nominated by the President pro tempore of the Senate, who shall be a person submitted by a member of one of the Senate's legislative caucuses duly elected from the county. One member shall be nominated by the President pro tempore of the Senate, who shall be a person submitted by a member of the other of the Senate's legislative caucuses duly elected from the county. One member shall be nominated by the Speaker of the House of Representatives, who shall be a person submitted by a member of one of the House of Representatives' legislative caucuses duly elected from the county. One member shall be nominated by the Speaker of the House of Representatives, who shall be a person submitted by a member of the other of the House of Representatives' legislative caucuses duly elected from the county. It is the intent of this legislation that no more than two of the

remaining four appointees shall be of the same party. No member of the charter drafting committee shall be a candidate for nomination or election to the office of elected county executive for a period commencing with the member's appointment to the charter drafting committee and continuing until five (5) years following the effective date of the charter. In making the appointments, the governing body of the county shall consider the racial, geographic, age and gender diversity of the county.

(c) Any vacancy in the membership of the charter drafting committee shall be filled by nominations, if required, and appointment as was the case for original appointments under subsection (b): Provided, however, That if the body fails to fill a vacancy within twenty (20) calendar days of the occurrence of the vacancy, the vacancy may be filled in the manner otherwise provided by law.

(d) The members of the committee shall serve without compensation, but shall be reimbursed by the county for necessary expenses incurred by them in the performance of their duties. The governing body of the county shall appropriate moneys necessary for such purpose.

Section 3105-C. Proposed Charter.—(a) The charter drafting committee shall prepare a charter and report it to the citizens and the governing body of the county within three (3) months from the date of its appointment. By an affirmative vote of at least five members of the committee, the committee may, one time only, extend the time to prepare the charter for up to an additional three (3) months. Adoption of the charter by the committee shall require an affirmative vote of at least six members of the committee.

(b) The charter shall provide for an elected county executive, an elected county legislative council and an appointed professional county manager. The charter shall limit the elected county executive to three consecutive terms of office. The county council shall consist of thirteen to fifteen members elected by district and one to three members elected at large so that the number of council members taken as a whole shall be an odd number. In the event that the number of at-large members shall be either one or two, each political party or body shall be entitled to nominate one candidate, and each qualified elector shall vote for no more than one at-large member. In the event that the number of at-large members shall be three, each political party or body shall be entitled to nominate two candidates, and each qualified elector shall vote for no more than two at-large members. No council member shall be a candidate for nomination or election to any political office except for the office of member of council unless the member shall have first resigned from council. Council members shall not be salaried, but the charter may provide reimbursement for expenses and a per-meeting stipend. The charter shall provide reasonable limits on council staff and office expenses. The charter shall provide that there shall be no paid personal staff for individual council members.

(c) The charter adopted by the county shall not eliminate any elected county officers other than the county commissioners. The charter shall be

subject to 53 Pa.C.S. Ch. 29 Subch. E (relating to general powers and limitations of home rule charter municipalities).

Section 3106-C. Public Hearings.—*At least five public hearings shall be held by the charter drafting committee within four (4) weeks of the organization of the committee. At least five public hearings shall be held by the charter drafting committee within four (4) weeks of the adoption of the proposed charter by the committee. At a minimum, a public hearing shall be held in the northern, southern, eastern and western parts of the county and in the largest municipality in the county. Public hearings conducted under this section shall be considered an open meeting for which public notice must be given in accordance with the act of July 3, 1986 (P.L.388, No.84), known as the “Sunshine Act.” Public notice of any hearing shall be given at least one (1) week in advance and shall be adequately announced to inform the general public. Expenses incurred in conducting the public hearings shall be borne by the county.*

Section 3107-C. Charter Limitations.—*(a) The charter shall be subject to any limitations established by the Constitution of the United States and the Constitution of Pennsylvania.*

(b) The charter shall include the property tax rate limits for the county that are in effect at the effective date of this article. These limits are for general county purposes under section 1970 of this act, county institution districts under section 307 of the act of June 24, 1937 (P.L.2017, No.396), known as the “County Institution District Law,” and community colleges under section 1909-A of the act of March 10, 1949 (P.L.30, No.14), known as the “Public School Code of 1949.”

(c) The charter shall include the assessment limitation provisions of section 3110-C as they apply to the county.

(d) The charter shall not affect the hotel room rental tax under section 1970.2 or the sales and use tax under section 3152-B.

(e) The charter shall maintain the integrity of municipal boundaries and shall prohibit the county from forcing annexation, merger or consolidation of municipalities.

(f) The charter shall prohibit the county from exercising any power or function within a municipality that is being exercised by that municipality if the municipality elects by ordinance to be excluded from the county exercise of that power or function.

(g) The charter shall be subject to 53 Pa.C.S. Ch. 29 Subch. E (relating to general powers and limitations of home rule charter municipalities).

(h) With respect to the following subjects, the charter shall not give any power or authority to the county contrary to or in limitation or enlargement of powers granted by acts of the General Assembly which are applicable to counties of the second class:

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

(2) The procedure 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) The 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 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."

(i) No county shall:

(1) Engage in any proprietary or private business except as authorized by the General Assembly.

(2) Exercise powers contrary to, or limitation or enlargement of, powers granted by acts of the General Assembly which are applicable in every part of this Commonwealth.

(3) Be given the power to diminish the rights or privileges of any former employe entitled to benefits or any present employe in that former or present employe's pension or retirement system.

(4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods or services subject to any Commonwealth laws or regulations unless such ordinance or regulation is uniform in all respects with such Commonwealth laws and regulations. Nothing contained in this article shall be construed to in any way affect the power of any county to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto.

(5) Enact any provision inconsistent with any statute heretofore enacted by the General Assembly affecting the rights, benefits or working conditions of any employe of a political subdivision of the Commonwealth.

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

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

(l) No county which adopts a home rule charter may retroactively increase any fee or charge for any service which has been provided.

Section 3108-C. Referendum.—The chief clerk of the county shall certify a copy of the report and proposed charter to the county board of elections within five (5) days of its public report by the charter drafting committees, which shall cause the question of the adoption or rejection of the proposed charter to be placed upon the ballot or voting machines at the next general, municipal or primary election, as the case may be, occurring not less than sixty (60) days following the filing of a copy of the committee's report with the county board of elections. At the election, the question of adopting the charter shall be submitted to the electors of the county in the same manner as other questions are submitted to the electors under the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code." The committee shall frame the question to be placed upon the ballot as provided for in 53 Pa.C.S. § 2925 (relating to form of question on form of government) and, if it deems appropriate, an interpretative statement to accompany the question. If the committee frames an interpretive statement, such statement shall be deemed to fulfill the requirements of section 201.1 of the "Pennsylvania Election Code," and such statement shall be published and posted pursuant to the requirements for statements contained in section 201.1.

Section 3109-C. Apportionment Commission.—(a) If the proposed charter is approved by the electors as provided in this article, the governing body shall by ordinance establish an apportionment commission to apportion the county into legislative districts to effect the provisions of section 3105(b).

(b) The apportionment commission shall consist of five members, each of whom shall be a resident and registered voter of the county for at least five (5) years, appointed by unanimous vote of the governing body. One member shall be nominated by the President pro tempore of the Senate, who shall be a person submitted by a member duly elected from the county and of the same Senate legislative caucus as the President pro tempore of the Senate. One member shall be nominated by the Minority Leader of the Senate, who shall be a person submitted by a member duly elected from the county and of the same Senate legislative caucus as the Minority Leader of the Senate. One member shall be nominated by the Speaker of the House of Representatives, who shall be a person submitted by a member duly elected from the county and of the same House legislative caucus as the Speaker of the House of Representatives. One member shall be nominated by the Minority Leader of the House of Representatives, who shall be a person submitted by a member duly elected from the county and of the same House legislative caucus as the Minority Leader of the House

of Representatives. The fifth member shall be nominated by the other four members. In the event that the four members fail to nominate the fifth member within twenty (20) days, the governing body of the county shall unanimously appoint the fifth member of the commission. No individual who has served as a member of the charter drafting committee shall be appointed to serve as a member of the apportionment commission.

(c) Any vacancy in the membership of the apportionment commission shall be filled by appointment by the governing body following the provisions for nomination made for the membership that has been vacated: Provided, however, That if the body fails to fill a vacancy within twenty (20) calendar days of the occurrence of the vacancy, the remaining members of the commission shall fill it by appointing some other properly qualified elector of the county.

(d) The members of the commission shall serve without compensation but shall be reimbursed by the county for their necessary expenses incurred in the performance of their duties. The governing body of the county shall appropriate moneys necessary for such purpose and for necessary staff and support services, including, but not limited to, necessary funds for the defense of the apportionment plan and the defense and indemnification of the apportionment commission.

(e) In order to assist the apportionment commission in its understanding of the geographic diversity within the county, the apportionment commission shall appoint and consult with an apportionment advisory committee. The advisory committee shall consist of appointees who are residents and registered electors of the county and are appointed from nominations provided by each of the governing bodies of the councils of government within the county, three appointees nominated by the city council of any city of the second class within the county that is not a member of a council of governments and one appointee who shall be a resident and registered elector of any borough, township or city of the third class that is not a member of a council of governments.

(f) Within four (4) weeks following the publication of a draft apportionment plan, the apportionment commission shall hold five hearings throughout the county to present the apportionment plan and receive comments prior to final adoption of the apportionment. At a minimum, a public hearing shall be held in the northern, southern, eastern and western parts of the county and in the largest municipality in the county. Public hearings conducted under this section shall be considered an open meeting for which public notice must be given in accordance with the act of July 3, 1986 (P.L.388, No.84), known as the "Sunshine Act." Public notice of any hearing shall be given at least one (1) week in advance and shall be adequately announced to inform the general public. Expenses incurred in conducting the public hearings shall be borne by the county.

(g) The commission shall complete the apportionment within one hundred twenty (120) days of electoral approval of the charter. The final

apportionment shall require an affirmative vote of a majority of the members of the commission.

(h) The county shall be divided into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable as officially and finally reported in the most recent Federal census, decennial or special. Unless absolutely necessary, no city, borough, township or ward shall be divided in forming legislative districts. No city block shall be divided into more than one district. No "election district," as defined in section 102(g) of the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code," shall be divided into more than one district. A municipality shall be divided into as few districts as possible. The number of wards whose territory is divided into more than one district shall be as small as possible. The aggregate length of all district boundaries shall be as short as reasonable and practicable.

(i) Subsequent reapportionment of the county shall be governed by 53 Pa.C.S. Ch. 9 (relating to municipal reapportionment).

Section 3110-C. Assessment Limits on Counties of the Second Class.—Notwithstanding any provisions of the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law, to the contrary, when a county of the second class makes its annual reassessment at values based upon an established predetermined ratio, as required by law, or when a county of the second class changes its predetermined ratio, the county, which hereafter levies its real estate taxes on that revised assessment or valuation, shall for that year reduce its tax rate if necessary for the purpose of having a total amount of property tax revenue received exclusively as a result of the reassessment or change in ratio not to exceed one hundred five per centum (105%) of the total amount of property tax revenue received in the preceding year, notwithstanding the increased valuations of properties under the annual reassessment system. For the purposes of determining the total amount of revenue received exclusively as a result of the reassessment or change in ratio for the year, the amount to be levied on newly constructed buildings or structures or on increased valuations based on new improvements made to existing structures shall not be considered.

Section 3111-C. Transition.—(a) The election of the county executive and the county legislative council shall occur at either the municipal election occurring in 1999 or at the next municipal election, as the case may be, following approval of the charter and apportionment as provided in this article.

(b) Except as provided in subsection (a) and in the charter, all provisions of the charter shall be effective on either January 1, 2000, or on the next January 1 following the election at which the county executive and county council are elected, whichever occurs later.

(c) The question of changing the form of government approved by the electors as set forth in the charter may not be submitted to the electors

earlier than five years (5) after the date which the charter was approved by referendum.

Section 3112-C. Severability.—If any provision of this article or the application of such provision to any person or circumstance shall be invalid, the remainder of this article and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 3113-C. Expiration.—This article, with the exception of sections 3107-C and 3111-C(c), shall expire upon the publication in the Pennsylvania Bulletin of notice of the swearing-in of the first official elected pursuant to a charter adopted under this article.

Section 4. The addition of section 1970.3 of the act shall be implemented no later than July 1 of the first year following the effective date of this act.

Section 5. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 6. This act shall take effect immediately.

APPROVED—The 20th day of May, A.D. 1997.

THOMAS J. RIDGE