

No. 2014-131

AN ACT

HB 1177

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, providing for appeal of decision by school reform commission; further providing for initiative of electors seeking consolidation or merger with new home rule charter and for investment of authority funds; and providing for local option cigarette tax in school districts of the first class and for local sales tax revenues in cities of the first class.

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 section to read:

§ 303. Appeal of decision by school reform commission.

Notwithstanding the provisions of section 696(i) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or any other provision of law to the contrary, the following shall apply:

(1) A charter school applicant may appeal a decision of a school reform commission to deny an application to establish a charter school in a school district of the first class to the State Charter School Appeal Board established under section 1721-A of the Public School Code of 1949.

(2) Section 1717-A(a), (c), (d), (e), (f), (g), (h) and (i) of the Public School Code of 1949 shall apply to an application to establish a charter school in a school district of the first class.

(3) A school reform commission shall be considered a board of school directors or a local board of school directors as such terms are used in section 1717-A of the Public School Code of 1949.

Section 1.1. Section 735.1(a), (c), (d)(3), (e)(3), (g)(1) and (l)(6) and (7) of Title 53 are amended and subsection (l) is amended by adding a paragraph to read:

§ 735.1. Initiative of electors seeking consolidation or merger with new home rule charter.

(a) General rule.—In order for a commission and consolidation or merger proceedings to be initiated by petition of electors, petitions containing signatures of at least 5% of the number of 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. *The 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) An estimated cost of the study commission.

(4) The number of persons to compose the commission.

(5) *The petition question which shall read as follows:
 Shall a Government Study Commission of (seven, nine or eleven) members be elected to study the issue of consolidation or merger of (municipalities to be consolidated or merged); to provide a recommendation on consolidation or merger; to consider the advisability of the adoption of a new home rule charter; and to draft a new home rule charter, if recommended in the report of the commission*

(6) *The following statement:¹
 Only municipalities voting in the affirmative on the question will be held responsible for the costs of the study commission.*

* * *

[(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 number of persons to compose the commission.

(4) The petition question which shall read as follows:

Shall a Government Study Commission of (seven, nine or eleven) members be elected to study the issue of consolidation or merger of (municipalities to be consolidated or merged); to provide a recommendation on consolidation or merger; to consider the advisability of the adoption of a new home rule charter; and to draft a new home rule charter, if recommended in the report of the commission?]

(d) Filing of petition and duty of election board.—

* * *

(3) At the next general, municipal or primary election occurring not less than the 13th Tuesday after the filing of the petition with the county board of elections, it shall cause the appropriate question *and statement listed under subsection (a)(5) and (6)* to be submitted to the electors of each of the municipalities proposed to be consolidated or merged in the same manner as other questions are submitted under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(e) Election of members of commission.—

* * *

(3) Each elector 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 the commission who shall serve if the question is or has been determined in the affirmative *by the majority of the whole of those voting in all the municipalities impacted by the consolidation or merger.*

* * *

(g) Results of election.—

¹"The petition shall also include the following statement:" in enrolled bill.

(1) The result of the votes cast for and against the question as to the election of a commission and consolidation and merger proceedings shall be returned by the election officers, and a canvass of the election had, as is provided by law in the case of other public questions put to the electors. The votes cast for members of the commission shall be counted and the result returned by the county board of electors of the county in which the municipality, or the greater portion of its territory, is located, and a canvass of the election had, as is provided by law in the case of election of members of municipal councils or boards. ***If a majority of the whole in the municipalities proposed to be consolidated or merged vote in the affirmative on the question, the commission shall be formed to study the issue of consolidation or merger and to make recommendations as set forth in the question.*** The designated number of candidates receiving the greatest number of votes shall be elected and shall constitute the commission. If a majority of **[those] the whole in the municipalities** voting on the question vote against the election of the commission, none of the candidates shall be elected. If two or more candidates for the last seat shall be equal in number of votes, they shall draw lots to determine which one shall be elected.

* * *

(l) Compensation, personnel and commission budget.—

* * *

(6) No later than 15 days after the submission of a budget in accordance with paragraphs (4) or (5), a joint public hearing of the commission and the governing bodies of the municipalities shall be held. The governing bodies of the municipalities to be consolidated or merged may, by agreement, modify any budget submitted by the commission. A governing body of a municipality to be consolidated or merged may approve appropriations to the commission in conformity with its share of the modified budget as determined in accordance with paragraph (7) ***or (7.1)***. Any unreasonable modification of the budget may be subject to an action as provided in paragraph (8) in the court of common pleas of any county wherein a municipality to be consolidated or merged lies.

(7) ***[The] If a majority in each of the municipalities to be consolidated or merged vote in favor of establishing a commission, the municipalities [to be consolidated or merged] may, by agreement, determine the share that each municipality shall appropriate to fund the estimated budget of the commission. If no agreement as to the respective amount that each municipality shall appropriate is reached, each municipality shall appropriate funds equal to its pro rata share of the total estimated budget of the commission based upon its share of population to the total population of the municipalities to be consolidated or merged.***

(7.1) When a commission is formed to study consolidation or merger by a vote of the whole in the municipalities considering the question, the municipalities that vote in the affirmative shall be responsible for funding the budget of the commission. Any municipalities that vote in the negative on the question shall not be responsible for the budget costs of the commission.

* * *

Section 2. Section 5611(d) of Title 53 is amended by adding a paragraph to read:

§ 5611. Investment of authority funds.

* * *

(d) Types.—Authorized types of investments for authority funds shall be:

* * *

(7) Commercial paper rated in the highest rating category, without reference to a subcategory, by a rating agency. This paragraph shall only apply to an airport authority board in a county of the second class.

* * *

Section 3. Title 53 is amended by adding sections to read:

§ 8722. *Local option cigarette tax in school districts of the first class.*

(a) Authorization.—The following shall apply:

(1) A school district may, if authorized by ordinance of the governing body of a city of the first class adopted prior to or after the effective date of this section, impose and assess an excise tax upon the sale or possession of cigarettes within the school district at a rate of 10¢ per cigarette. Only one sale shall be taxable and used in computing the amount of tax due, whether the sale is of individual cigarettes, packages, cartons or cases.

(2) The governing body of the city of the first class and school district may amend, respectively, the ordinance authorizing the imposition of the tax and the resolution imposing the tax authorized by this section to reflect the provisions of this section in the fiscal year in which this section takes effect.

(b) Exception.—The tax authorized under subsection (a) may not be levied upon the possession or sale of any cigarette that is exempt from, or which is otherwise not subject to, levy under Article XII of the Tax Reform Code and the regulations promulgated under that article.

(c) Collection.—

(1) The tax authorized under subsection (a) shall be collected and remitted to the department in the same manner as the tax imposed under Article XII of the Tax Reform Code. The regulations promulgated under section 1291 of the Tax Reform Code shall be applicable to the tax authorized under subsection (a) insofar as the regulations are consistent with this section.

(2) Unless the department promulgates regulations to the contrary under subsection (d), any stamp affixed under section 1215 of the Tax Reform Code shall also reflect payment of any tax authorized under this section.

(3) The provisions of section 1216 of the Tax Reform Code shall not apply to any tax authorized under this section.

(d) Administration.—The department shall administer and enforce the provisions of this section and may promulgate and enforce any rules and regulations not inconsistent with the provisions of this section.

(e) Reimbursement of costs.—From the tax collected under this section, the department may retain a sum of the costs of collection and shall, on a monthly basis, notify in writing the school district imposing the tax of the sum retained and the costs of collection under this section.

Annually, the department shall estimate its cost of collection under this section for the next succeeding fiscal year and shall provide the estimate to the school district.

(f) Certified copy of resolution to department.—A school district that adopts a resolution:

(1) To impose the tax authorized under this section or to change the rate of the tax shall provide a certified copy of the resolution to the department not later than 20 days prior to the effective date of the tax or change to the tax.

(2) To repeal the tax authorized under this section shall provide a certified copy of the resolution to the department not later than 30 days prior to the effective date of the repeal.

(g) Effective date.—The effective date of any tax authorized under this section or change to the tax shall be no earlier than 30 days after the adoption of the resolution or ordinance.

(h) Local Cigarette Tax Fund.—

(1) The Local Cigarette Tax Fund is established in the State Treasury and the State Treasurer shall be custodian of the fund. The fund shall be subject to the provisions of law applicable to funds listed in section 302 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(2) The tax imposed under subsection (a) shall be received by the department and paid to the State Treasurer and, along with interest and penalties, less any collection costs allowed under this section and any refunds and credits paid, shall be credited to the fund not less frequently than every two weeks. During any period prior to the credit of moneys to the fund, interest earned on moneys received by the department and paid to the State Treasurer under this section shall be deposited into the fund.

(3) Moneys credited to the fund shall be property of the school district and shall be distributed as provided in this section. The money in the fund, including, but not limited to, money credited to the fund under this section, prior year encumbrances and the interest earned thereon, shall not lapse or be transferred to any other fund, but shall remain in the fund and must be used exclusively as provided in this section.

(4) Pending their disbursement to the school district, moneys received on behalf of or deposited into the fund shall be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. The earnings received from the investment or deposit of the funds shall be credited to the fund.

(i) Disbursement to school district.—On or before the 10th day of every month, the State Treasurer shall disburse to the school district imposing the tax under this section the total amount of moneys which are, as of the last day of the previous month, contained in the fund.

(j) Prohibition.—Money from a tax imposed under this section may not be used for the issuance or repayment of bonds.

(k) Expiration.—This section shall expire June 30, 2019.

(l) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Cigarette." As defined in section 1201 of the Tax Reform Code.

"Department." The Department of Revenue of the Commonwealth.

"Fund." The Local Cigarette Tax Fund established under this section.

"Sale." As defined in section 1201 of the Tax Reform Code.

"School district." A school district of the first class coterminous with a city of the first class.

"Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

§ 8723. Local sales tax revenues in cities of the first class.

Notwithstanding the provisions of section 696 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, an increase in grants to a school district of the first class by a city of the first class based on debt service to be paid as authorized under section 201-B(f)(1) of the Tax Reform Code shall not require a comparable increase in grants by the city in subsequent years.

Section 4. This act shall take effect as follows:

- (1) The following provisions shall take effect immediately:
 - (i) The addition of 53 Pa.C.S. §§ 8722 and 8723.
 - (ii) This section.
- (2) The addition of 53 Pa.C.S. § 303 shall take effect in 45 days.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 24th day of September, A.D. 2014

TOM CORBETT