



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 497

PRINTERS NO. 1703

PRIME SPONSOR: Eichelberger

COST / (SAVINGS)

FUND	FY 2013/14	FY 2014/15
Third Class City Funds	\$0	\$0

SUMMARY: Modernizes and recodifies the Third Class City Code. Removes obsolete provisions, incorporates updated language, consolidates common subjects and adds language that has become part of recodifications of the Second Class Township Code and the Borough Code. This legislation would take effect in 60 days.

ANALYSIS: This legislation would modernize and recodify the Third Class City Code. Below are the substantive changes to the Code:

Article IV - Creation and Division of Wards: The provisions of this article are changed to provide that wards will be created, divided, or detached by council, with or without petition of the voters, subject to approval of the electors at a referendum. The courts will no longer be involved in dividing, creating, or detaching wards since this is deemed to be a legislative act in conformance with Article IX, Section 11 of the PA Constitution. Wards will continue to be required to have a population threshold of at least 300 voters according to the last election and be compact and contiguous as nearly equal in population as practicable.

Article VII - Elected Officers and Elections: A new provision is added to permit cities of the third class to increase their membership on city council from five to seven (one of whom shall be the mayor) and to return to five from seven, if desired. The increase or decrease in membership can be initiated by 5% of the voters of the city or by resolution of city council. The increase or decrease is subject to approval by the voters at a referendum.

Article IX - General Provisions Relating to City Officers and Employees: Language is added in Section 901 to specify that elected officials will be removed from office in accordance with the PA Constitution, including by impeachment, by the Governor for reasonable cause and full hearing on the advice of two-thirds of the Senate, or upon conviction of misbehavior in office or any infamous crime. In the case of appointees, they may be removed by the appointing power except as limited by the Constitution or by law or upon conviction of misbehavior in office or any infamous crime.

Section 903 is amended to add new language confirming that changes in salary and compensation of city elected officials shall not become effective until the beginning of the next term of the official.

Article X - The Council: Quorum requirements are modified to require that only members physically present for a meeting may be counted when establishing a quorum but once it is established, council may conduct business and permit the participation of a member not in attendance but who wishes to participate by means of telecommunication devices. If a member present at the meeting is disqualified from voting due to a conflict of interest but a quorum remains present, council members participating by telecommunication device shall be counted to maintain the quorum. Participation by telecommunication device is limited to a closed set of reasons as determined by council. They include: illness or disability of the member, care for the ill or newborn of the member's immediate family, an emergency, or family or business travel.

Ordinances are defined as legislative enactments including, but not limited to, taxes, general appropriations, execution of police powers, imposition of standard codes, and those that otherwise regulate the conduct of persons and entities within the city. They are distinguished from resolutions, which are expressions of good will from council, statements of policy, approval of formal agreements (other than purchasing agreements), approval of acquisition, disposal, and leasing of real property, and the adoption of administrative rules and regulations arising under state statutes or city ordinances.

If eminent domain proceedings are instituted by resolution, the resolution describing the properties must be published in a newspaper of general circulation.

Article XI - The Executive Department: Currently, the Third Class City Code provides for the following five city departments: Public Affairs, Accounts and Finance, Public Safety, Streets and Public Improvements, and Parks and Public Property. Under this legislation, city council is authorized to create various departments, including the department of administration, by ordinance. Absent any such ordinance, the five current departments will remain. Regardless of the configuration of departments, including the lack of a department of public affairs, the mayor will retain the same authority over the police as exists under current law (Section 1103).

Article XII - The Mayor: Permits the mayor to receive an honorarium, fee, or reimbursement of expenses related to performing marriage ceremonies subject to a cap of \$150 for each ceremony performed and to reporting requirements [Section 1208(d)].

Article XVII - The City Controller and Independent Auditor: This article bifurcates the responsibilities of the city controller by transferring the controller's current auditing and financial reporting duties to an appointed independent auditor who may be a certified public accountant or a firm of certified public accountants. The controller, as a public office, will not be abolished. The controller's duties will be to: (1) countersign all documents authorizing the payment of moneys from the city treasury; (2) administer oaths or affirmations in relation to accounts, claims, or demands of or against the city; (3) issue and enforce subpoenas; and (4) examine city accounts.

Article XX - Police Force: Under Section 2002, the mayor will continue to designate the police chief from the current police force. However, if no qualified officer from within the ranks have applied for the designation, the chief of police shall be appointed by the mayor from outside of the current police

department. Current law requires that the appointment be made only from the existing city police department.

Regarding the designation by the mayor of other police officers who are promoted in rank, reference is made to Article XLIV, relating to civil service. Specifically, Section 4406.1(a) requires council to notify the civil service board of any vacancy to be filled by promotion and to request the certification of an eligibility list. Once the list of up to three candidates is certified, council is empowered to promote one of the candidates based solely on merit and fitness. Thus, in a commission form of government, the mayor is no longer permitted to promote police officers other than the chief of police pursuant to Section 2002.

Article XXI - Fire Bureau: If no qualified employee of the fire bureau has applied for appointment as fire chief, the chief may be appointed from outside the current department. Although current language in Section 2103 is removed that relates to limiting the amount of time a firefighter may work during a two-week period or hours per day, existing schedules of work as negotiated through a collective bargaining contract are preserved and no firefighter may work more than 24 hours per day unless there is an emergency or as otherwise agreed to by the collective bargaining contract. Work schedules in existence prior to the effective date of this section are grandfathered to the extent that if the schedule provided a work shift less than 24 hours, a member of a fire department shall not be required to work for a consecutive period of 24 hours except in the case of an emergency or unless otherwise voluntarily agreed through collective bargaining. For those grandfathered, if a collective bargaining contract is modified, work schedules may not return to a continuous schedule of less than 24 hours.

Article XXIII - Public Health: If a health officer makes sanitary inspections pursuant to Section 2306(b), the inspections are subject to the administrative warrant provisions in Section 2308. Under this section, if entry is refused by an owner, an agent of an owner, or a tenant, the board of health must obtain an administrative search warrant from a magisterial district judge. Elements to support the issuance of the warrant include evidence of: (1) reasonable standards and that an administrative plan exists for conducting inspections; (2) the condition of the premises and the passage of time since the last inspection; and (3) the facts obtained by oath or affirmation alleging that probable cause exists that a law, regulation, or ordinance subject to enforcement by the board has been violated.

Article XXIV - Corporate Powers: In new Section 2402.1(b), real estate may be sold by resolution of council. If the real estate is estimated to be above \$1,500, it must be sold to the highest bidder after advertising and bidding or public auction. Council may exchange city real property for real property of equal or greater value if it is used for municipal purposes without complying with the bidding and public auction requirements. In relation to the sale of personal property, if the estimated value is more than \$1,000, council must advertise the items to be sold and sale shall be to the best responsible bidder. A city may utilize an online electronic auction procedure to dispose of the property [Section 2402.1(d)]. New Section 2404(b) is added to permit cities to create an operating reserve fund to minimize revenue shortfalls and deficits in future years.

Article XXV - Taxation: Section 2531(a)(1) increases the levy for general tax purposes from 25 mills to 30 mills. Section 2531(a)(3) will add a new 5-mill tax for street lighting. Provisions for land value taxation are retained in Section 2531(c)(3). Language in Section 2531(c)(5)(i) prohibits the application of revenue derived from special tax levies for use toward any purpose other than that for which they were collected. This prohibition is derived from Section 706 of the Second Class Township Code. The income limit to qualify for an exemption from payment of the city per capita tax is raised from \$5,000 to \$12,000 [Section 2531.1].

Article XXVI - Licenses and License Fees: Section 2601 removes a reference to a license tax for general revenue, while retaining, with certain exceptions, a general license registration fee of a maximum of \$100 now found in Section 2601.1. This eliminates confusion and supports the principle that the actual amount of licensing a permitted activity should relate to the actual cost of administering a registration program.

Article XXVII Nuisance Abatement: For nuisances generally, a city is empowered to utilize an abatement procedure including: (1) determining the owner of the property; (2) giving notice to the owner that a nuisance exists; (3) posting the property upon which abatement will occur; (4) notifying the owner that he/she is responsible for abating the nuisance; and (5) determining the cost to eradicate the nuisance. Also, the city is empowered to utilize a summary abatement procedure without notice to the owner of the property or any lienholders only under limited specified criteria, with identification of and notice to the owner or any lienholders, and posting of the property to follow within 15 days of the summary abatement.

Article XLI-A - Uniform Construction Code, Property Maintenance Code, and Reserved Powers (New): Section 4101-A recognizes the primacy of the Uniform Construction Code (UCC), adopted pursuant to section 301 of the PA Construction Code Act (Act 45 of 1999), regarding regulation of the construction, alteration, repair and occupancy of buildings. Any city ordinance adopted pursuant to this article is to be read together with the UCC. A city may adopt an ordinance that is equal to or exceeds the minimum required by the UCC; however, such ordinances are subject to review by the Department of Labor and Industry as specified in Section 503 (j)(2) of that Act. Section 4104-A permits cities to adopt property maintenance ordinances including any standard or nationally recognized property maintenance code. Ordinance publication requirements and penalties and fines for violating the property maintenance code are specified in Section 4104-A(b) and Section 4104-A(c), respectively. If council designates property maintenance inspectors and they enter upon property to conduct inspections, they are subject to administrative search warrant standards in Section 2308. The powers of the city provided under the property maintenance provisions are in addition to any other remedies available to the city under statutes such as the Abandoned and Blighted Property Conservatorship Act (Act 135 of 2008), the Neighborhood Blight Reclamation and Revitalization Act (Title 53 Chapter 61), and Title 68 Part II, Subpart A (relating to creation of Land Banks.) Section 4105-A reserves the historical powers of a city in relation to the adoption of standard codes and health and safety regulations if, by some legislative act, the UCC or any replacement code is no longer made applicable to cities.

Article XLIV - Civil Service: Upon the effective date of this article, there will be one civil service board operative for both police officers and firefighters.. Civil service will apply to police officers and firefighters other than the chief of police and the fire chief, and existing non-uniformed civil service employees will be grandfathered and protected by civil service provisions and procedures. Non-uniformed employees who are not grandfathered will be considered employees at-will, unless they are covered by collective bargaining agreements.

Current Article XLV - Charities and Welfare: This article is repealed and some of its provisions have been moved to Section 2447 (relating to charitable purposes). Cities, by ordinance, will continue to be empowered to create a bureau to administer support for the impoverished residents of the city. A current special tax of up to 10 mills for support of this bureau is repealed since apparently none of PA's 53 third class cities, including those with home rule charters or optional plans, levy the tax.

FISCAL IMPACT: According to the Local Government Commission, this legislation would have no adverse fiscal impact on third class city funds.

According to the Commission, there are a few items of importance relating to revenue enhancements in the legislation. First, a special dedicated tax for charitable purposes of up to 10 mills is being repealed. The millage is being refocused to the areas of greatest need, 5 mills for general taxing purposes and 5 mills for street lighting. According to the Commission, it could not find a third class city levying a charitable tax. The general millage limit is thus increased from 25 mills to 30 mills in concert with the millage limits established for boroughs and first class townships. Second, Section 2601 is modified by removing a reference to a license tax for general purposes by retitling it a general license fee. Transient retail merchants would continue to be licensed by the city; however, the cost of the license is raised from \$200 for each month or a fraction part thereof during which sales are conducted to up to \$250 per month or fraction thereof. License fees likely would generate some additional revenue. Finally, some minimal revenue could also be realized for third class cities as mayors, already authorized to perform marriages, could now receive an honorarium, fee, or expense reimbursement of up to \$150.

The Commission also suggests that savings could occur as a result of this legislation. Savings would occur with the fire civil service commission being abolished and uniformed employees being under one civil service commission. For third class cities conducting their own assessments (Chester and Wilkes-Barre), the procedures are simplified and the cities could utilize the assessment practices of the county assessment office and realize some savings.

The Commission suggests that there are certain items that could increase costs for third class cities within the legislation. There is the potential to increase membership on city council from 5 to 7 which could increase the compensation amounts paid to city council members. Also, the office of city controller would continue, but the annual audit and financial report would be conducted by an

independent auditor which would cause an increase in the amount a city expends for its yearly financial reporting. Under the legislation, if city real estate for sale is estimated to be above \$1,500, it must be sold to the highest bidder after advertising and bidding. This would add some additional costs for advertising the sale.

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House Appropriations Committee (R)

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.