



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 2073

PRINTERS NO. 3052

PRIME SPONSOR: Moul

### COST / (SAVINGS)

| FUND                       | FY 2019/20          | FY 2020/21          |
|----------------------------|---------------------|---------------------|
| First Class Township Funds | See "Fiscal Impact" | See "Fiscal Impact" |

**SUMMARY:** Rewrites and modernizes the First Class Township Code. This legislation would take effect in 60 days.

**ANALYSIS:** This legislation modernizes and recodifies the First Class Township Code (Code).

#### **Article I - Preliminary Provisions**

Definitions are added for "board of commissioners," "individual," "person," "municipal corporation," "municipality," "municipal authority" or "municipality authority" and "Pennsylvania Municipalities Planning Code." Other changes are editorial.

#### **Article II - Classification, Creation, Reestablishment and Change of Name of Townships**

The provisions for creating a township of the first class from a township of the second class are significantly modified and streamlined to mirror the procedure in reestablishing a second class township from a first class township as found in the Second Class Township Code except the new procedure to become a first class township from a second class township also has the density requirement of 300 or more inhabitants per square mile. The streamlined procedure may be followed at any time and is not triggered by an ascertainment of the population density.

Additionally, current language relating to the procedure to revert back to a second class township from a first class township is deleted and a cross-reference to the Second Class Township Code is added. The revision now contemplates only the Second Class Township Code method of reversion which is not tied to population density determinations and actions of the county commissioners. Language is added, however, to provide that a first class township cannot revert back to a second class township any sooner than five years after becoming a first class township.

#### **Article II.I - Change of Name of Township of First Class (Repealed)**

The provisions of this article have been moved to Article II.

#### **Article III - Township Lines and Boundaries**

Language in Section 302 permitting the court to alter the lines of a township adjoining another municipality "to suit the convenience of the inhabitants" is deleted. However, a court retains jurisdiction to ascertain disputed boundaries when a petition is presented to it.

#### **Article IV - Wards**

The major change to this article is that the township commissioners, by ordinance, are empowered to erect, abolish, and change wards instead of the court of common pleas. Court involvement is limited to hearing a petition filed by the electors if they believe that existing wards are not in compliance with the provisions of the First Class Township Code or constitutional requirements provided in Article IX, Section 11 of the PA Constitution relating to local reapportionment. New Section 402.1 gives the electors the right to petition the board of commissioners to initiate proceedings under Section 401 to create, alter or abolish wards. A new provision in Section 401(d) requires wards to be composed of compact and contiguous territory as nearly equal in population as practicable as officially and finally reported by the last official census. Under new Section 403.1, a copy of the ordinance relating to the changing of the wards along with a plot showing its boundaries is required to be forwarded to the county board of elections. In addition, in new Section 409 the power of the court or the board of elections over election districts is preserved pursuant to Article V of the PA Election Code.

#### **Article V - Election of Officers; Vacancies in Office**

New Section 501(c) provides no individual may hold more than one elective township office at the same time. Language is added in Section 503(a)(2)(ii) to clarify that if a person other than an individual is appointed as a tax collector, no individual employed by the tax collector shall be required to be or become a qualified tax collector or to file criminal history record information. Additionally, Section 530 now provides that the appointed tax collector if other than an individual shall not be required to present a signed residency affidavit to the township secretary prior to the person's appointment. An individual appointed as a tax collector under Sections 4.2 or 4.4 of the Local Tax Collection Law also need not file a residency affidavit.

#### **Article VI - General Provisions Relating to Township Officers**

New Section 602(b) provides insurance as an alternative to the bond required for an officer or employee of the township provided that the insurance covers the same events of loss and insures the township against the same misconduct as the bond. New Section 603(a.1) clarifies that a township treasurer who is the elected tax collector of the township may receive a salary, compensation or emoluments of office for the treasurer's work notwithstanding the limitation for total compensation for tax collectors in first class townships as provided in Section 34 of the Local Tax Collection Law. New Section 605(d) provides that upon the effective date of the new subsection, a township may no longer provide for an annuity in lieu of joining a pension or retirement system although nothing in the new language shall affect the rights of any current or retired township employee or appointee entitled to payments granted in accordance with an annuity entered into prior to the effective date of the subsection. Section 611 was amended to authorize newly elected commissioners to attend training before being sworn in.

This article has switched the order of subdivisions/sections relating to state associations and county associations of township officers so that the subdivision for the state association appears first. The purpose of the state association is broadened and generalized. The powers relating to annual meetings are now clarified to include educational conferences. Expenses of the annual meeting or educational conference may, in whole or in part, be paid by the member townships. The purpose of the county associations for township officers is broadened to advance the interests of the member townships and their inhabitants in place of now deleted narrower language. References to conventions are deleted but reference to conferences is retained. Other than the office of president, specific offices are deleted and a general reference to other officers as determined by the association's bylaws is added.

In the sections relating to civil service for police officers and firefighters, the phrase “reduced in rank” has been changed to “demoted.” New language in Section 625(e) provides that nothing in the subdivision applies to retirement or may be construed to prevent a township from adopting a compulsory retirement age for its employees or for any class of employees and from retiring all employees automatically when they reach that age. In Section 628, the civil service commission now organizes within 30 days of the first Monday of each even-numbered year rather than simply on the first Monday since this day can fall on New Year’s Day or there can be bad weather so a leeway of 30 days is added. Section 629 now states that the commission may appoint its solicitor, but the township pays for the solicitor’s services to the commission subject to a reasonable limit on the amount allowed each year for this cost. Section 630(a) provides that the township commissioners shall not have the power to promulgate rules and regulations, or amendments to them, but may make suggestions for them to the members of the civil service commission who shall weigh the suggestions for possible inclusion. The township commissioners continue to have the authority to approve the rules, regulations and amendments prior to their effective date. New Subsection 630(b) provides that pursuant to an adopted resolution by the township commissioners, the rules and regulations shall reflect any minimum qualifications for officers pertaining to age, educational background, years of experience and areas of desired special expertise or certifications as these qualifications can have cost implications.

Section 633(c) provides that if a person is convicted of refusing or neglecting to obey a subpoena issued by the commission, the minimum fine is \$250, and the maximum is \$500. Previously this fine was not to exceed \$100. Section 636 now requires that the necessary information that a person needs to provide on an application be pursuant to the commission’s rules and regulations rather than the current specified information.

Section 637(b) now clarifies that either an applicant or an aggrieved person, who may not necessarily be the same person, may have counsel at a hearing. This subsection is also amended to permit the commission to conduct deliberations on evidentiary or procedural issues in executive session relating to applicants or aggrieved persons who may have been denied placement on the certified eligibility list or refused an examination. The final decision of the commission must occur at a public meeting. Section 645(a) is amended to specify that notwithstanding the requirement that a hearing be held within 10 days from the filing of written charges the failure of the commission to hold the hearing within 10 days will not result in the dismissal of the filed charges. Section 645(d) provides that unless the board of commissioners or a person who is subject to suspension, removal, or demotion requests that a disciplinary hearing before the civil service commission be conducted in public, the hearing will be closed. However, the commission’s disposition of the disciplinary action would be public pursuant to the Sunshine Act. Section 645(e) clarifies that a police officer or firefighter subject to suspension, discharge or discipline has the option of challenging the discipline by using the procedures of the section or by a proceeding in grievance arbitration but not both.

#### **Article VII - Township Commissioners**

Language is added to Section 702(b) to provide that, with exceptions as provided elsewhere in the section, only board members physically present at a public meeting shall be counted in establishing a quorum. New Subsection (b.1) authorizes the board of commissioners, pursuant to an established telecommunications policy, to allow township commissioners not present at the meeting to participate in the meeting provided those members can speak to and hear the comments and votes of the commissioners present and the public at large and vice-versa for those commissioners present in regard

to hearing and speaking to members not in attendance. If a commissioner physically present at the meeting is disqualified from voting due to a conflict, a commissioner participating by telecommunication device may be counted toward maintaining the quorum to allow the meeting to continue. Any changes to the board's established telecommunications policy shall become effective no sooner than 30 days following the vote to change the policy.

Section 703(a) is amended to increase the maximum allowable salary of each township commissioner to adjust for inflation. Moreover, language is added to authorize townships with a population of 45,000 or more, to pay the township commissioners a maximum salary of \$210 per year per 1,000 residents or fraction of 1,000. This section also clarifies that any change in salary, compensation or emoluments of the elected office only become effective at the beginning of the next term of the township commissioner.

Subsection (a.1) is added to Section 703 to provide that commissioners may receive compensation on a per-meeting basis based on attendance at duly advertised public meetings. Total annual compensation may not exceed the amounts specified in Subsection (a). If compensation is provided on a per-meeting basis, the board may provide for the forfeiture of a portion of annual compensation or impose another penalty for each unexcused absence from a regularly scheduled meeting.

#### **Article VIII-A - Appointed Township Treasurer**

Language is added to Section 801-A(a) that the township treasurer shall not be a member of the board of commissioners. New language in Article V prohibits an individual from holding more than one elected township office at the same time, but it does not touch on appointive office. Also, clarification is added to Section 801-A(b) that a township treasurer, who is the elected tax collector of the township, may receive a salary, compensation or emoluments of office for the treasurer's work as the township treasurer notwithstanding the Local Tax Collection Law. New language is added to Section 801-A(c) to require the township treasurer to nominate a person to be appointed as a deputy treasurer by the board of commissioners if the treasurer is unable to perform the duties of office due to sickness, absence or inability to act. The board may, subject to the person meeting the bonding requirements, appoint the nominated person as the deputy treasurer. The board maintains the power to appoint a deputy treasurer if the treasurer is unable to perform the duties of office and had failed to nominate a person for appointment. Section 802-A is amended to provide the bonding requirements also apply to the deputy treasurer. A new Subsection (b) is added to this section to provide that in lieu of a bond for the township treasurer or deputy treasurer other than official duties as a tax collector, the board may purchase insurance as provided in Section 602(b).

Section 806-A(6) is rewritten as surety bonds in current language are no longer commonplace but instead banks and local governments rely on the FDIC insurance for the small amount it covers then appropriate collateral per Act 72. In addition, shall the township desire a more secure position than pooled collateral permitted under Act 72, additional language gives the township discretionary authority to enter into an agreement with the depository in which it can stipulate, among other things, the types of sufficiency of collateral that will be permitted.

#### **Article VIII-B - Tax Collector**

This article was inserted into the Code in 2012, upon the bifurcation of the offices of township treasurer and tax collector, and so only an editorial modification was needed.

### **Article IX - Township Secretary**

Section 901.1 is amended to provide that the assistant secretary may assist the secretary in the performance of the secretary's duties without the secretary being absent or under disability.

### **Article X - Auditors**

This article is subdivided into two subdivisions. Subdivision (a) contains current language, with changes, relating to elected auditors, surcharges and appeals. Subdivision (b) relates to an appointed independent auditor.

In regards to the elected auditors, language is added to Section 1001(b)(3), clarifying that the board of commissioners may direct the auditors to audit and report on the accounts of every officer of the township, upon the death, resignation, removal or expiration of the term of the officer. Section 1002 is modified to provide that if a person refuses or neglects to appear if subpoenaed by an auditor, the auditors shall petition the court of common pleas to issue the subpoena and to require the person to produce documents or to appear and to testify before the court. Section 1003 clarifies it is the secretary of the auditors who files a copy of the audit report with the township secretary. Section 1006 is modified to provide that the auditors need the agreement of the board of commissioners in determining the compensation to be paid to the attorney for the auditors if an attorney is needed. If an agreement cannot be reached regarding the attorney's compensation, the auditors may petition the court of common pleas to establish the compensation.

Section 1006.1 expands and clarifies surcharge provisions. An officer or person may not be surcharged in excess of the actual financial loss to the township. A surcharge must take into consideration as its basis the results of the act, error or omission and the results had the procedure been strictly in accordance with law. The surcharge imposed must be limited to the difference between the costs incurred and the costs that would have been incurred had legal means and authorized procedures been employed. This does not, however, apply to a case involving fraud or collusion. New language provides that an officer may not be surcharged if the officer acted in good faith reliance on a written, non-confidential opinion of the solicitor of the township or on the solicitor's publicly stated opinion at an open meeting and recorded in the official minutes of the meeting. This does not apply if the solicitor's opinion was rendered under duress or if the parties seeking the opinion colluded to purposefully commit a violation of law.

Section 1019, relating to attorney fees, is modified to comport with other municipal codes. The section now clarifies that, in the opinion of the court, if the final determination is more favorable to the officer than that awarded by the auditors, the township shall pay reasonable attorney fees incurred by the officer. If the final determination is more favorable to the township, the officer who is the subject of the surcharge proceeding shall pay reasonable attorney fees incurred by the township, elector or taxpayer. If the final determination finds partly for the township and partly for the officer, the court may order that both pay a portion of the reasonable attorney fees.

New Subdivision (b) of this article applies if the board of commissioners has enacted an ordinance to appoint an independent auditor in lieu of the elected auditors. The independent auditor shall be a certified public accountant or a firm of certified public accountants. An audit shall consist of an examination in accordance with U.S. generally accepted auditing standards. Notice that the annual audit and financial report is available for public inspection must be published once in at least one newspaper of general circulation. A copy, which

may be in electronic format, of the annual audit and financial report, including the accompanying independent auditor's report, must be supplied to the publishing newspaper when the request for publication is submitted by the township secretary. Section 1052(e) clarifies that nothing in Subdivision (b) prohibits a registered elector or taxpayer from appealing an annual audit and financial report of the independent auditor in accordance with and subject to the procedures in Subdivision (a) if the registered elector or taxpayer believes a surcharge should exist against an officer or person.

#### **Article XI - Controller**

The bond requirements for the township controller are changed from \$20,000 to a sum as determined by ordinance by the board of commissioners. Language requiring a controller to justify his bond as to the amount is deleted since the bond and its sufficiency is determined by ordinance. Additionally, Section 1101(c) adds a cross-reference to Section 602(b) which authorizes the board of commissioners to purchase insurance in lieu of the bond required for the faithful performance of official duties by township officers. Language providing that the controller's salary shall not exceed \$5,000 is deleted although the requirement that the salary shall be fixed by ordinance is retained. New language that provides any change in salary, compensation or emoluments of the office shall become effective at the beginning of the next term of the controller is added.

#### **Article XII - Township Solicitor**

Section 1201 is amended to eliminate the two-year term of the solicitor and to now have the appointed solicitor serve at the pleasure of the board of commissioners. Additionally, the board of commissioners may appoint special counsel as needed for a specific matter who also serves at the pleasure of the board. The township solicitor or special counsel may be an individual or a law firm, partnership, association or professional corporation. The bonding requirement for the faithful performance of the solicitor's duty is deleted as Rule 1.15 of the Rules of Professional Conduct (R.P.C. 1.15) governs the handling of client funds. All lawyers are required to certify compliance with the provisions of Rule 1.15 as a part of the annual licensing process with the Disciplinary Board of the Supreme Court of PA. Both R.P.C. 1.15 and general law impose fiduciary duties upon attorneys who hold funds on behalf of clients and other third parties. R.P.C. 1.15 applies to any property that belongs to a client or third party that comes into a lawyer's possession.

#### **Article XIII - Township Engineer**

Section 1301 is amended to eliminate the two-year term of the township engineer and to now have the engineer serve at the pleasure of the board of commissioners. "Engineer" as used in the article means one or more registered professional engineers or a firm of registered professional engineers. The bonding requirement for the faithful performance of the engineer's duty is deleted although Section 602 (relating to bonds) is applicable to any officer or employee of a township. Section 1305 is reworded for clarity and "time of completion" is changed to "date of completion" to better align with the Municipal Claims and Tax Lien Law. Cost and date of completion are needed for purposes of filing liens. All of the sections within Subdivision (b) (relating to real estate registry) are deleted from Article XIII and moved into a new Article XV-A. Section 1316 (relating to conservation district) is moved into a new Section 1502.54 within the article on Corporate Powers.

#### **Article XIII-A - Township Manager (New)**

The sections in this article, although slightly reorganized with a few substantive modifications, are derived from Section 1502(IV) which had been added by Act 73 in 2011. The substantive modifications

include adding language on appointing an individual, partnership, limited partnership, association or a professional corporation as the township manager; an employment or professional services agreement with a township manager executed on or after a municipal election but before the first meeting in January the year after the municipal election shall be void; authorizing insurance pursuant to Section 602(b) as an alternate to bonding; and providing that no township manager may be eligible to hold the office of township commission. If the township manager is other than an individual, the incompatibility restriction shall apply to all officers and those employees directly providing services as required or authorized by the agreement.

#### **Article XIII-B - Veterans' Affairs (New)**

This new article is a consolidation of corporate powers Section 1502(XL), (XLI), (XLII), (XLVI), (XLVII), (XLVII.I), (XLVIII) and (XXXVI) as it relates to township support of the PA National Guard and veteran's organizations and memorials. A substantive change is that current law only provides for appropriations for the expenses of services for Memorial Day but this is now expanded to include Veterans' Day or for a similar day provided for by Federal or State law.

#### **Article XIV - Police**

Language in Section 1502(V) in the Corporate Powers article provides that the board of commissioners has the power to establish a police force implying, but not expressly stating, that the board of commissioners is authorized but not required to establish a police force. Language in Section 1401 provides that the board of commissioners shall, subject to the civil service provisions of the act, appoint and fix the number and rank of members of the township police force. Thus, it is clarified that a township is not required to maintain a police force but in lieu thereof, may contract with and purchase police services from another municipal corporation or become part of or establish a regional police department. Language which allowed a police officer to at the same time be a constable, health officer or specified school board member has been deleted so that now, no police officer may at the same time hold any public office which will include both elected or appointed officers whether within or outside the township. Language is also added that prohibits a police officer from participating in any political or election campaign while on duty or in uniform or while using township property other than to exercise the officer's right of suffrage. This language is also within the civil service subdivision in Article VI, but the language here in Article XIV will apply to police covered under the Police Tenure Act if the township had less than three members and was not covered by civil service.

Section 1401 was amended to revert the provisions of the section back to current law which allows police officers in first class townships in a Second Class county to serve as a school director.

Section 1409 relating to a police pension fund is reorganized and expanded to include the substance of now deleted Sections 1410 through 1415. Language is added to require the board of township commissioners to appoint by resolution a chief administrative officer who shall oversee the administrative affairs of the pension plan under the direction of the board. Clarifying language is added that no person entitled to receive a benefit from the pension fund may be deprived of their equal and proportionate share upon the basis upon which the person first became entitled to the benefit. Language is deleted that kept a person from getting a pension for failing to comply with a general regulation relating to the management of the fund. Language is added to provide that the Municipal Police Pension Law, sometimes referred to as Act 600 shall govern any township police pension fund not established under the provisions of Section 1409.

## **Article XV – Corporate Powers**

Under Section 1501(2), language has been added that authorizes a township to have and use a corporate seal and to alter the seal. Other municipal codes authorize such a seal. The corporate powers provisions throughout the article have been renumbered, and the provisions of Section 1501 relating to the purchase, exchange, lease, or sale of real and personal property have been bifurcated into Section 1501.1 (real property) and Section 1501.2 (personal property). The threshold value that requires advertising and bidding for the sale of real property has been increased to \$6,000 and a new provision provides that the board of commissioners need to estimate the value of the real property based upon receipt of an appraisal by a qualified real estate appraiser. Section 1501.1(f) is a new provision that will permit townships, by resolution, to exchange township-owned real property for property of equal or greater value if the property being acquired is used for municipal purposes. Notice of the resolution, including a description of the properties to be exchanged, will be required to be published in a newspaper of general circulation not more than 60 nor less than 7 days prior to adoption of the resolution. Advertising and bidding are not required if the newly acquired real or personal property is subsequently sold to public entities as provided in Section 1501.3. Newly added to the list of exceptions to advertising and bidding is an authority or industrial and commercial authority as defined by the Economic Development Financing Law (Act 102 of 1967).

In relation to the specific powers of a township, the following are notable changes:

Section 1502.4. Rewards – The board of commissioners is authorized to offer rewards for information leading to the arrest and conviction of individuals guilty of crimes within the township. Other municipal codes have a similar provision.

Section 1502.7. Fire Protection – This power is clarified that townships may purchase fire engines and fire apparatus in addition to the current powers of operation and maintenance of the same. In addition, new language provides that the township may contract with or make grants to other municipal corporations or volunteer fire companies for fire protection within the township.

Section 1502.10. Regulation of Business – This new section is an amalgamation of several paragraphs within Section 1502 plus new material. Paragraph (2) clarifies that townships may prohibit, license and regulate businesses unless prohibited by law. Paragraph (3) provides a cross-reference to Act 217 of 1963 which regulates fire sales and is applicable to first class townships.

Section 1502.11. Nuisances and Dangerous Structures – This section adds reference to dangerous structures as well as language relating to the prohibition and removal of weeds, accumulations of municipal waste and the storage of abandoned or junked automobiles.

Section 1502.12. Municipal Waste – Delineates regulation of the accumulation of municipal waste on public and private property by consolidating various pertinent sections of the First Class Township Code and adding similar language from other municipal codes.

Section 1502.13. Fireworks and Inflammable Articles – This provision is expanded and is similar to provisions in the other municipal codes. This section provides, in conformity with Federal and State laws and regulations, for the granting of permits for display fireworks and for the imposition, by

ordinance, of other safeguards concerning fireworks and inflammable articles as necessary for the health, safety and welfare of the public.

Section 1502.15. Prohibition of Fire Producing Devices and Smoking – No ordinance or resolution adopted under this section may regulate smoking in a manner that conflicts with the Clean Indoor Air Act (Act 27 of 2008).

Section 1502.29. Intergovernmental Cooperation – Expands reference to the use of intergovernmental cooperation agreements, particularly as it applies to public safety services.

Section 1502.34. Operating Reserve Fund - This is a new provision that will permit first class townships to create an operating reserve or “rainy day” fund. However, the amount in the reserve fund cannot exceed 25% of the estimated revenue of the township’s general fund for the current fiscal year.

Section 1502.39. Insurance – This section is comprised of two existing paragraphs (XXIII and LXIII) both relating to insurance.

Section 1502.53. Mines and Quarries – The board of commissioners may require the owner, operator or superintendent of a mine or quarry to furnish to the township maps, plans and drawings of workings, excavations and surface support.

Section 1502.56. Storm Water – This section is new and authorizes a township, by ordinance, and after obtaining any required permit from the Department of Environmental Protection (DEP) or other Federal or State entity, to acquire, operate and maintain areas for the infiltration, detention or retention of storm water and for other methods of storm water management authorized by DEP.

#### **Article XV-A – Real Estate Registry (New)**

Provisions related to the real estate registry are moved from Subdivision (b) of Article XIII and specifically provide for conformance with the Uniform Municipal Deed Registration Act, Act 110 of 2008.

#### **Article XVI – Public Health**

Section 1601 is altered to specifically clarify that a township may, by ordinance, establish either a board of health or the office of health officer. The health officer, if appointed, must be certified by the Department of Health within six months of the officer’s appointment. Currently, there is no time limit within which the health officer must be certified. Subsection (c) is added to permit the township to dissolve, by ordinance, the board of health or the office of health officer and thereby subject the township to the jurisdiction of a county or joint county health department.

Section 1602 will permit the board of commissioners to appoint a board of health comprised of three members in lieu of the current five-member board and provide for their initial term of service. In addition, this section is changed to permit the board of commissioners to appoint a defined professional health care provider to the board of health instead of a physician and specifies that if no professional health care provider can be identified to serve on the board, that an individual who has experience in or is knowledgeable of public health issues may be appointed.

Section 1604 requires the secretary of the board of health to keep and retain records in accordance with the Municipal Records Act, and Section 1607 is amended to add a provision permitting the board of health or health officer, if refused entry by an owner or tenant of real property, to seek and obtain an administrative search warrant from a magisterial district judge in order to examine and abate an infectious or contagious disease or nuisance on the property. Upon the respective order from the board of health or health officer, an employee or agent of the board of health or health officer, may also seek and obtain an administrative search warrant to abate the disease or nuisance.

In relation to health inspections, Section 1608 is amended to grant the board of commissioners the power to seek injunctive relief from a nuisance or threatened nuisance. Section 1611 pertaining to the powers of the Secretary of Health is changed to reference the Department of Health's responsibilities under Article XXI of the Administrative Code of 1929 which permits the Department to take full charge and control of township health regulations under certain conditions and to abate necessary nuisances at the expense of the township.

#### **Article XVII – Finance and Taxation**

Section 1701 is extensively reorganized to clarify the budget preparation process. New Subsection (b.1) provides that the township shall publish a notice in a newspaper of general circulation that the proposed budget is available for public inspection. The proposed budget shall be on file with the secretary for at least 20 days prior to the time fixed for the adoption of the budget. Subsection (d) deletes the provision that two-thirds of the township commissioners need to approve transfers of over 5% of an appropriation item within the fund or from one fund to another fund.

Subsection (a.1) in Section 1705.1 is new and authorizes the board of commissioners to invest township sinking funds pursuant to the Local Government Unit Debt Act. Subsection (d) regarding authorized types of investments is modified by cross-referencing Act 53 of 1973 which also authorizes specified investments. The currently authorized investment of shares of an investment company in Subsection (d)(v) is modified to provide that this investment must also meet specified conditions regarding the management and rating of the investment company. Subsection (d)(vi) is modified by deleting language that certificates of deposit shall be collateralized by a pledge or assignment of assets of the institution for amounts above the insured maximum since this is no longer used. Instead new language is inserted that for these certificates of deposit, approved collateral as provided by law shall be pledged by the depository for amounts above the insured maximum.

Section 1709(a)(1) streamlines the procedure when a petition has been filed to exceed the maximum levy of thirty mills for general township purposes although the court still directs public notice and provides for a hearing on the petition.

#### **Article XVIII – Contracts**

Reference to the lowest responsible bidder is moved from Section 1802 to Section 1801. Section 1801 now provides that the lowest responsible bidder need not be the bidder submitting the lowest dollar amount bid as the township may also consider the quality of goods or services supplied, ease of repair, compatibility with other township equipment or services, responsiveness, past performance of the bidder and any other reasonable factors specified in the advertisement for bids.

Section 1802(a) is amended to reduce from twice to once the number of times publication needs to be made for contracts or purchases over the base amount. Reference to the first advertisement needing to be made not more than 45 days prior to the bid opening is consequently deleted, but reference to the requirement of the second advertisement being not less than 10 days prior to the bid opening is retained while deleting reference to it being the second advertisement. The phrase “not less than 10 days” still allows the advertisement to be published earlier for complicated projects. Section 1802(a.1) clarifies that written price quotations include electronic mail. Section 1802(b)(1) is reorganized with new language added to provide that at the board of commissioners’ request, advertised bids must be accompanied by cash, money order, a certified or cashier’s check, other irrevocable letter of credit or by a bond. A record shall be maintained of each bid, the name of the bidder and any other specified relevant information. At a public meeting, the board of commissioner shall either award the contract or reject all bids.

Various paragraphs in Section 1802(d) are amended in regard to those contracts or purchases exempt from advertising and bidding or price quotations. Additionally, language is added that nothing in Subsection (d) prohibits the board of commissioners from advertising, bidding or receiving price quotations if the board determines that it is in the public interest.

Section 1804, which now cross-references the Public Works Contractors’ Bond Law (Act 385 of 1967), is also amended to require that if the contract price for a public work or improvement exceeds \$10,000, a payment bond is required for 100% of the contract price. This bond requirement is in addition to any other bond requirement that is or may be required by law. Previously, a payment bond was required in a sum not less than 50% and not more than 100% of the contract price for a public work or improvement if the contract price was in excess of \$1,500. Section 1805 is amended to provide that the board of commissioners may request that separate specifications for plumbing, heating, ventilating, and electrical work be prepared. Previously, this section mandated that separate specifications be prepared.

Section 1805 was amended to revert language that would have made the Separations Act optional. The section will now keep the current mandate of separate bids.

#### **Article XIX – Eminent Domain; Assessment of Damages and Benefits**

The changes to Section 1901 are primarily editorial or are added for clarification. The term “storm water facilities” which will include a pond, is substituted for “storm water drains.” Section 1902.1 relating to declaration of intention by ordinance or resolution is new. The current language in the First Class Township Code, other than Section 2804 relating to public buildings, does not mandate an ordinance for condemning land. Thus, Section 1902.1 provides for either an ordinance or resolution. Procedural aspects of condemnation are linked to the Eminent Domain Code (Title 26 Pa.C.S.).

#### **Article XX – Streets and Highways**

Section 2002 is new and is comprised of definitions moved from elsewhere in the Code. Section 2003, relating to township street plans, recognizes that streets planned before 1968 may not comport with the provisions of the Municipalities Planning Code (MPC), but requires that future street plans correspond with the MPC. Section 2004 is new and provides that a street that has been used for public travel and maintained and kept in repair continuously by the township for at least 21 years is a public street even if there is no public record of the laying out or dedication for public use. Section 2011.1 is

new and authorizes a petition of a majority of property owners abutting on the proposed improvement or vacation to be filed with the board of commissioners. The petition must be accompanied by payment of reasonable and necessary fees established by resolution in a form acceptable to the township. Section 2011.2 provides for notice of the petition. Section 2012 clarifies the minimum width of township streets shall not be less than 24 feet.

Section 2014(a)(1) now provides that in cases of emergency when immediate action is required to protect public safety, the police, an authorized fire official or other authorized public employee may, in addition to the current authorization of the board of commissioners, authorize the temporary closing of a street. Section 2020(a) now clarifies that the board of commissioners may, by ordinance or resolution, accept in the name of the township any land dedicated by deed for street purposes. Section 2020(c) provides that the MPC applies to the construction, security requirements and dedication of streets and connected drainage facilities if the street proposed to be constructed is part of a plan required by an ordinance adopted under the MPC.

Section 2020(j) provides that approval of plans by the board of commissioners does not obligate or require the township to construct, reconstruct, maintain, repair or grade the streets. Section 2027 is added to permit aggrieved parties to seek a court order to compel a hearing as required by the Article. Section 2029 authorizes the board of commissioners to provide for the construction and maintenance of bike paths. Section 2080.2 is new, although based partly on relocated language, and would permit a township to provide streetlights and ornamental lighting as well as authorize the board of commissioners to provide for traffic control signals and devices in accordance with the Vehicle Code. Sections 2097 through 2099.1 are new and are derived from now deleted Article XXI relating to boundary streets.

#### **Article XXI - Boundary Roads and Streets (Repealed)**

The provisions of this article have been incorporated into Article XX.

#### **Article XXII - Bridges**

Section 2201 is reworded and restructured and is a combination of several sections from this article. Section 2201(c) provides that nothing in the article is to affect the powers or duties of the PA Public Utility Commission to the extent otherwise provided by law. Reference to viaducts is removed from this article as this term is now incorporated into the new definition of bridge in Section 2201(e). Section 2220 is clarified that in relation to boundary bridges between a township and another municipal corporation, the township may enter into an intergovernmental cooperation agreement to construct and maintain the bridge, and that the cost will be apportioned as per the agreement.

#### **Article XXIII - Sidewalks**

Section 2301 is amended to remove reference to the ability of the township to "ordain," layout and establish sidewalks and substitute that townships may, by ordinance, lay out and establish sidewalks, curbs, gutters and surface water drains along streets. Section 2303(c) provides that the lien for the cost of any work incurred by the township, if the owner fails to complete the work after notice to do so, may include a penalty of 10% of the costs and all charges and expenses. Section 2303(d) provides for the notice requirements.

In relation to emergency repairs to sidewalks in new Section 2305, if an officer or designated individual of the township determines that a substantial and immediate danger exists to public health, safety and welfare, the township may make the emergency repairs at the owner's expense if the property owner does not make the repairs within the 48-hour notice period. Failure of the owner to make the necessary repairs will result in a lien charged against the owner of the property in question. The amount of the claim may also be collected from the owner by an action in assumpsit.

#### **Article XXIV – Sanitary Sewers and Drains**

Section 2401(c) clarifies that regulations on the use and maintenance of the sanitary sewer system and treatment works may include specifications on materials and substances that may enter the sewer system, may require that certain types of waste be subjected to treatment or reduction in size prior to entering the sewer system and may restrict the quantity of waste that may enter within any time interval. Section 2401(d) clarifies that unpaid rates for use of the sanitary sewer system may be recovered through an action in assumpsit against the owner of the property or by a lien filed in the nature of a municipal lien. Reference is made in Section 2401(h) that if required by other law, a township must seek approval of the Department of Environmental Protection, any other State agency (including the PA Turnpike Commission), or a Federal or county entity for the laying out and construction of sanitary sewer lines or treatment works. Assessment of benefits for sewer construction has been moved to new Article XXV-A. Extensions of sewer lines beyond the boundaries of a township are subject to 26 Pa.C.S. § 206 (relating to extraterritorial takings).

Section 2401.1 provides for mandatory connection to a sanitary sewer system established or constructed by not only a municipal authority as is provided in current law, but now also by the township itself or by a joint sanitary sewer board. Properties whose principal building is within 150 feet from the sanitary sewer may now also be required to connect with and use the system. If a property owner fails to connect with and use the sanitary sewer for a period of 60 days after notice to do so has been served either by personal service or by registered mail, the board of commissioners or their agents may enter the property and construct the connection. An itemized bill for this cost shall be sent and if unpaid, a municipal lien may be filed. New Section 2401.2 provides that a sanitary sewer system may only be constructed if the commissioners publish the authorization once in a newspaper of general circulation. Section 2407 provides that the proportion of costs for a sanitary sewer system now be charged to each district via resolution rather than by ordinance. Section 2435 now clarifies that a township may connect with the existing sanitary sewer of a municipal authority for either sewer collection or treatment purposes, in addition to the existing authorization of connection with an adjacent municipal corporation.

#### **Article XXV – Collection by Instalment of the Cost of Street, Curb, Sidewalk and Sewer Improvements (Repealed)**

Provisions of this article have been moved to new Article XXV-A.

#### **Article XXV-A – Assessments for Public Improvements (New)**

This new article consolidates the current methods for the assessing of benefits on real property owners for various public improvements. The definition of public improvement is found in Section 2501-A, and Section 2502-A provides that a township may pay for improvements from:

- (1) the general fund;
- (2) special township funds created for a specified purpose; or

(3) by either the front foot method or benefit conferred method of assessment.

Notice of assessments is found in Section 2506-A, and calculation of assessments on both the front foot basis and benefits conferred basis is found in Section 2503-A. Section 2505-A provides for a petition to the court of common pleas for the appointment of viewers by property owners whose property is being assessed for a benefit and who allege that the assessment insufficiently represents the benefits accruing to abutting, benefited or accommodated properties. Section 2504-A provides for a petition to the court by the board of commissioners for viewers to assess the total cost of an improvement on the benefited properties, or as much of the cost of the improvement as may be just and reasonable.

#### **Article XXVI - Revolving Fund for Street and Sewer Improvements (Repealed)**

Provisions of this article have been moved to Section 1709(a)(8).

#### **Article XXVII - Water Supply**

Section 2701.1 provides that nothing in this article may be construed to repeal or supersede any of the provisions in the Public Utility Code. Section 2701.2 is also new and authorizes the board of commissioners to fix the rates for water supplied by the township and to provide for the collection of the rates. The initial imposition of the rate must be established by ordinance but any subsequent rate adjustment may be by resolution provided that the ordinance establishing the rate allows for future rate adjustments by resolution. Section 2707 provides that the board of commissioners, by ordinance, can require property owners to connect to a water system of the township, municipal authority or joint water system in either of the following cases:

- (1) if the nearest property line is located within 150 feet of a water system or any part or extension of the system, or
- (2) if the property has no supply of water which is safe for human consumption.

However, with respect for water supplied for human consumption, a property owner, who after the effective date of the new subsection, is subject to mandatory connection will not be required to connect to the water system if all of the following conditions exist:

- (1) the water system or part of the system that is within 150 feet of the nearest property line was in existence on the effective date of the subsection;
- (2) the property has its own water supply which is safe for human consumption; and
- (3) prior to the effective date of the subsection, the property owner was not required to connect to the existing system.

Under current law, any property owner whose land "abuts" a water supply system can be required to connect to the system without regard to distance from the main. Clarifying language is added in regards to those industries and farms which have their own supply of water for uses other than human consumption through installed and operating wells existing as of the date of the amendatory language may continue to use their preexisting wells for that purpose but are required to use the water system of the township or municipal authority to provide water for human consumption. Section 2707 also adds a stipulation that a township may require an owner to install and maintain a backflow prevention device based on the degree of potential hazard of the connected property in accordance with other applicable law. Additionally, the interest rate for repaying the cost of construction of water connections in installments is reduced from seven to six percent to coincide with the interest rate for payment of assessments for public improvements by installments.

### **Article XXVII-A - Manufacture and Sale of Electricity**

Only editorial changes have been made to this article.

### **Article XXVIII - Public Buildings**

Section 2801 clarifies how the board of commissioners may procure a lot or lots of ground for township purposes by purchase, gift, exchange or the exercise of eminent domain. Section 2806 provides that a court need only provide notice in one newspaper of general circulation rather than notice by two newspapers of the county when the board of commissioners desire to take any public land previously granted or dedicated to a use or purpose for which it is no longer used.

### **Article XXIX - Licenses and License Fees**

Section 2901 now provides that license fees for businesses regulated under the section must bear a reasonable relationship to the cost of administering the ordinance and regulating, inspecting and supervising each business. Previous language that provided a license may not exceed \$200 for each month or fractional part thereof during which any sale is continued is deleted.

### **Article XXX - Parks, Recreation Centers, Shade Trees and Forests**

Section 3009 clarifies that a recreation board may be established that possesses those powers and duties as delegated to it by ordinance. Section 3010 now provides that the composition of a park or recreation board is comprised of persons who are residents of or property owners in the township. Section 3024 provides that regulations of a shade tree commission to be published once in a newspaper of general circulation rather than twice in not more than two newspapers. Section 3026 provides that notice of a meeting where specified work relating to shade trees will be considered shall be published once in a newspaper of general circulation rather than in not more than two newspapers as specified. One publication was deemed sufficient since all meetings of a recreation board are already published at the beginning of the calendar year.

### **Article XXX-A - Land Subdivision (Article Number and Title Repealed)**

Since the sections within this article were repealed by the enactment of the PA Municipalities Planning Code, Act 247 of 1968, the article number and title are removed from the Code.

### **Article XXXI - Zoning (Article Number and Title Repealed)**

Since the sections within this article were repealed by the enactment of the PA Municipalities Planning Code, Act 247 of 1968, the article number and title are removed from the Code.

### **Article XXXI-A - Uniform Construction Code, Property Maintenance Code and Reserved Powers**

No modifications have been made to this article which was added to the First Class Township Code by Act 51 of 2015.

### **Article XXXII - Township Planning Commission (Article Number and Title Repealed)**

Since the sections within this article were repealed by the enactment of the PA Municipalities Planning Code, Act 247 of 1968, the article number and title are removed from the Code.

### **Article XXXIII - Enforcement of Ordinances (Repealed)**

Provisions of this article have either been repealed or have been moved to subdivision (b) (relating to enforcement) in new Article XXXIII-A.

### **Article XXXIII-A - Ordinances (New)**

This article codifies all provisions related to ordinances including: publication of proposed ordinances; effective date of ordinances; recording, advertising and proof of ordinances; and codification and appeals from an ordinance. These sections have been moved from Section 1502(I). Section 3301-A(b) requires that every legislative act be accomplished by ordinance. These include but are not limited to legislation exercising the police power of the township, land use regulations, imposing assessments on benefited property for public improvements and increasing the rate of taxation from the previous fiscal year. Resolutions will consist of ceremonial and congratulatory expressions of good will of the board of commissioners, statements of policy, approval of formal agreements (other than purchasing), approval of administrative rules, regulations and bylaws arising out of state statutes or township ordinances and levying taxes at the same rate as or a rate lower than the previous fiscal year.

Provisions for enforcement of ordinances are moved from Section 1502(II). In essence, new Section 3321-A bifurcates the method of enforcement by providing that most ordinances will be enforced through civil enforcement proceedings before a magisterial district judge while delineated ordinance violations will be considered summary offenses. Existing ordinances, with the exception of the previous identified ordinances, are deemed to be automatically amended so that they are enforced through civil enforcement proceedings. Ordinances may provide for separate offenses for each day or each applicable section of the ordinance in which a violation is found to exist, and the court may assess costs and reasonable attorney fees (Section 3321-A(a)(2),(3)).

### **Article XXXIV - Actions by and Against Townships**

An action in assumpsit to collect municipal claims shall now be commenced within six years as opposed to three years.

### **Article XXXV - Repeals**

In addition to updating outdated references to statutes and executive agencies, this article was amended to enumerate three specific repeals:

- The act of April 9, 1931 (P.L.22, No.20), entitled "To validate and confirm tax levies made for general township purposes, in excess of ten mills, by boards of township commissioners of townships of the first class, when such excess was for the purpose of the payment of interest on indebtedness and sinking fund charges," absolutely.
- The act of July 2, 1937 (P.L. 2803, No. 588), entitled "Providing a method of annexation of townships of the first class, and parts thereof, to cities and boroughs, and regulating the proceedings pertaining thereto," absolutely.
- The act of July 18, 1935 (P.L. 1172, No. 381), entitled "Requiring tax collectors of townships of the first class to secure from banks, banking institutions or trust companies a bond to secure payment of deposits of all township tax money deposited therein by such tax collector, secured by a surety company authorized to transact business within the Commonwealth of PA, or a depository agreement secured by the deposit of bonds or interest bearing securities of the United States, the Commonwealth of PA, or any city, borough, township or school district in the Commonwealth of PA," absolutely.

**FISCAL IMPACT:** According to the Local Government Commission, this legislation would likely save taxpayer money for all first class townships since newspaper publication requirements for purchases and contracts over the threshold amount will be reduced from two times in a newspaper of general circulation to once. Some townships may experience further taxpayer savings since the bidding and advertising threshold for the sale of real property is being increased from \$1,500 to \$6,000. Further, additional exceptions to bidding and advertising are added if the property is to be sold to or the purchase is from specified public entities. For those townships that will levy the annual tax rate at the same or lower rate than the previous fiscal year, further advertising savings will be realized since these townships will only need to pass a resolution rather than enact an ordinance. Any estimate of those advertising savings is indeterminable at this point. For those townships that choose to increase the maximum allowable salary for township commissioners, a slight increase in local costs would occur at the beginning of a commissioner's next term in office.

This legislation would have no adverse fiscal impact on Commonwealth funds.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** January 13, 2020

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