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ACT 52 OF 2015 (House Bill 906, Printer's Number 1103)

**Amending the First Class Township Code –
Section 604 (Failure of officer to perform duties)**

PROPOSAL/SUMMARY: This bill is part of a package of bills that would amend provisions relating to the removal of elected officers in laws applicable to incorporated towns, first class townships, and second class townships. It would delete current language that provides, generally, failure to perform duties as cause for removal and would add language that references the Pennsylvania Constitution as the basis for removal. The current provisions have been deemed inoperative by our courts,¹ which have ruled that the Pennsylvania Constitution provides the exclusive grounds for the removal of an elected official.

Removal requires the elected official's conviction of an infamous crime or the common law crime of misbehavior in office. The relevant provisions of the Pennsylvania Constitution are Article II, Section 7 (relating to ineligibility by criminal conviction of an infamous crime),² Article VI, Section 6 (relating to officers liable to impeachment for misbehavior in office), and Article VI, Section 7 (relating to removal of civil officers for conviction of an infamous crime, misbehavior in office, or reasonable cause). These provide the exclusive methods for removing elected officials, including elected local officials, thereby nullifying contrary statutory provisions. In conformity with the Constitution, a court is authorized to remove an elected official upon his or her conviction of an infamous crime.³

¹*South Newton Tp. Electors v. South Newton Tp. Supervisor, Bouch*, 575 Pa. 670, 838 A.2d 643 (2003); *In re Petition to Recall Reese*, 542 Pa. 114, 665 A.2d 1162 (1995).

² It could be argued that Article II, Section 7, is not a removal provision in the strict sense of removing a validly elected public official from office. It could be considered a disqualification provision upon which quo warranto (challenges of right or title to office) have been based. *See, e.g., Com. ex rel. Baldwin v. Richard*, 561 Pa. 489, 751 A.2d 647 (2000).

³ *See* 665 A.2d at 1167, *citing Citizens Committee to Recall Rizzo v. Board of Elections*, 470 Pa. 1, 35, 367 A.2d 232, 250-51 (1976) (Nix, J., concurring).

This document is for information purposes only. It is not an official restatement of the complete contents of the bill and existing law, and should not be construed as a legal opinion concerning the content or meaning of either.

Amendments to the following laws are contained within the package.⁴

- “The First Class Township Code,” the act of June 24, 1931 (P.L. 1206, No. 331)
- “The Second Class Township Code,” the act of May 1, 1933, (P.L. 103, No. 69)
- “Incorporated Towns,” the act of May 27, 1953 (P.L.249, No. 35)

EXISTING LAW: Section 604 of the First Class Township Code provides for the removal of elected officials by the county court of common pleas whenever an officer refuses or neglects to perform their duties. The process is initiated when the court receives a written complaint by 100 citizens, who are owners of real estate and reside in the township. The court may require the officer to show cause why the office should not be declared vacant. The court must give two weeks notice prior to conducting a hearing to ascertain if the facts alleged are true. The court may declare the office vacant and appoint another to fill the vacancy for the unexpired term.

The Pennsylvania State Association of Boroughs requested the removal of Section 904 (Right of Council to Declare Seat of Councilman Vacant for Failure to Attend Meetings, Etc.) from the Borough Code and the law related to incorporated towns. The Pennsylvania State Association of Township Supervisors and the Pennsylvania State Association of Township Commissioners agreed to similar legislation to remove analogous provisions in the Second Class Township Code and the First Class Township Code, respectively.

⁴ The contents of this legislation have been incorporated into the Borough Code and the Third Class City Code in their recent recodifications.