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**Senate Bill 790, Printer's Number 950**

**Amending Act 35 of 1953 (pertaining to incorporated towns) –  
Section 2 (Declaring seats of councilmen or presidents of town councils vacant) and  
Section 2.1 (Filling vacancies in office)**

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 from office and would add language that references the Pennsylvania Constitution as the basis for removal. The current provisions have been deemed inoperative by our courts,<sup>1</sup> which have ruled that the Pennsylvania Constitution provides the exclusive grounds for the removal of an elected official. The bill adds the office of mayor to Section 2.1 for the purpose of filling a vacancy, since the bill deletes a similar provision, among other things, from Section 2.0.

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),<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup>*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).

<sup>2</sup> 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).

<sup>3</sup> *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.<sup>4</sup>

- “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 2 of Act 35 of 1953 (Incorporated Towns) provides that whenever any member of the town council or the president of the town council of any incorporated town neglects or refuses to attend two successive regular meetings, unless detained by sickness or prevented by necessary absence from the town; or if a councilman in attendance at any meeting neglects or refuses to vote or by his withdrawal from council or otherwise refuses to act in his official capacity; or if the president of the town council in attendance at any meeting neglects or refuses to cast the deciding vote; the town council may declare the office vacant. The vacancy is filled by the town council, by appointing, by resolution, a registered elector of the town, to hold the office, if the term thereof continues, until the first Monday in January after the first municipal election occurring more than sixty days after the vacancy occurs, at which election an eligible person shall be elected to the office for the remainder of the term. For such actions a majority of the remaining members of the town council shall constitute a quorum.

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.

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

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