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**SB 1005 (PN 2026) Executive Summary**

**9/25/2018**

**Revisions to the County Code, the Act of August 9, 1955 (P.L. 323, No. 130),  
and Incorporation of the Second Class County Code, the Act of July 28, 1953  
(P.L. 723, No. 230), into the County Code as the Second Class County Code  
Pertains to Second Class A Counties**

**Prime Sponsor: Senator Eichelberger**

**Background**

In March 2011, Commission staff started providing support to the Pennsylvania State Association of Elected County Officials (PSAECO) County Code Revision Committee with the update and consolidation of the County Code and the Second Class County Code (SCCC), as the latter pertains to second class A counties. The County Code concerns third through eighth class counties. The County Code and the SCCC have not undergone comprehensive updates since their enactments in 1955 and 1953, respectively. PSAECO represents the statewide associations of county commissioners, auditors, controllers, coroners, district attorneys, prothonotaries and clerks of courts, recorders of deeds, registers of wills and clerks of orphans' courts, sheriffs and treasurers.

The purpose of the revision, in addition to integration of the two codes, is to amend the combined code to reflect case law and current practices, standards and requirements, as well as update outdated or archaic language and make provisions of the codes consistent where practicable. The Revision Committee and Commission staff only have included changes for which the stakeholders could reach consensus.

The Revision Committee and staff typically met every three months. In addition, a separate subcommittee on fiscal affairs of county commissioners, controllers, auditors and treasurers met bimonthly for over a year, and a subcommittee of the County Directors of Veterans Affairs convened a number of times as well. Appropriate state agencies, such as the Department of Agriculture, the Department of Community and Economic Development (DCED), the Department of Health, and the Department Military and Veterans Affairs were also consulted as

part of the process. Finally, representatives of the statewide row officer associations that make up PSAECO, including relevant committees of the County Commissioners Association of Pennsylvania (CCAP), reviewed the draft legislation and provided comments, which are incorporated.

### **Article I – Preliminary Provisions (analogous to SCCC Article I)<sup>1</sup>**

The most significant substantive change to this article is modifying the application of the County Code to include counties of the second class A. In conjunction with this change is a modification to the savings provisions of Article I to specify that the County Code shall be considered a continuation of the SCCC with regard to counties of the second class A except where expressly otherwise specified, and any enactment of those counties, or home rule counties formerly of that class, shall not be construed as being affected by the inclusion. Section 108.1, a provision requiring owners to remit rent proceeds for the satisfaction of taxes, is incorporated from the SCCC, and restricted in application to counties of the second class A. Section 109.1, a provision of the SCCC authorizing civil actions for the collection of claims, is incorporated and made applicable to counties of the second class A through the eighth class.<sup>2, 3</sup> Definitions, modernization of language, and cross references are provided.

### **Article II – Names and Corporate Powers; Classification of Counties (analogous to SCCC Article II)**

Given Montgomery County’s 2016 population estimate above 800,000, and unique constitutional and statutory provisions for Allegheny County, the lower population threshold for second class counties is increased by 200,000 to 1,000,000, and the upper population threshold for second class A counties is increased by 200,000 to less than 1,000,000 to maintain Allegheny County as the only second class county. Editorial changes are also provided.

### **Article III – Fixing and Relocating Lines and Boundaries (analogous to SCCC Article III)**

The article is modified to reflect the power of Commonwealth Court to vest a neutral county court with jurisdiction to determine county lines in accordance with the article.<sup>4</sup> The power to redraw county lines because of “inconvenience” is removed as a boundary change rendered inoperative by Article IX, Section 8 of the Pennsylvania Constitution.<sup>5</sup> In terms of boundary procedure, the office charged with maintaining boundary information is changed from the clerk of court to the prothonotary. With regard to oaths of office, a cross reference to Title 53 of the

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<sup>1</sup> An amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, removes a new subsection (c) to Section 110 (Publication of Legal Notices) which specified that counties shall not be precluded by the section from utilizing alternative methods of advertising authorized by the General Assembly.

<sup>2</sup> A close facsimile of this power already exists for counties of the third through eighth class by virtue of Section 19 of the Local Tax Collection Law, Act 394 of 1945.

<sup>3</sup> Both proposed Sections 108.1 and 109.1 were amended on third consideration in the Senate on May 22, 2018, to clarify that the powers contained therein are restricted to claims “owed to the County.”

<sup>4</sup> Act 223 of 1970 provided that Section 301’s reference to the Superior Court is repealed and jurisdiction in this matter lies with Commonwealth Court.

<sup>5</sup> See *Ekin v. Bd. Of Comm. Of Allegheny Cty.*, 502 A.2d 303 (Pa.Cmwlth. 1985).

Pennsylvania Consolidated Statutes (Pa.C.S.), Section 1141 (relating to oaths of office), the provision specifying the proper form of the oath of office for elected municipal officials, is included. Editorial changes are provided and modernized cross references to state agencies and statutory provisions are included.

#### **Article IV – County Officers (analogous to SCCC Article IV)**

Section 401 is amended by adding a subsection specific to certain vacancies in counties of the second class A. Unlike counties of the third through eighth classes, when no successor to an office is elected, or if the elected individual fails to qualify, the incumbent officer stays in office until the first Monday in January following the next municipal election. The new subsection maintains this distinction. Similarly, because officers of second class A counties are not prohibited by the SCCC from simultaneously serving as municipal treasurers and tax collectors, and solicitors<sup>6</sup> of those counties are not subject to the analogous incompatibility provisions, it was also necessary to bifurcate Section 402 (Incompatible Offices). As provided in Article III, a cross-reference to the currently applicable oaths of office provision, Title 53 of Pa.C.S., Section 1141, is provided and all contrary language is repealed.

An added provision, requiring the authorization of the president judge prior to storage of county records outside the county, is restricted to records of the court, the prothonotary, the clerk of court, the register of wills and the clerk of the orphans' court. A new subsection, applicable to only counties of the second class A regarding the collection of a records management fee, is carried over from the SCCC. The provision requiring the commissioners to provide office space to row officers is modified to require consultation with the officer in question and stipulate that the space be sufficient to perform the duties of the office. Section 406, relating to inspection of county records is amended to reference Act 3 of 2008, the Right-to-Know Law.

Section 409 (Vacancies) is bifurcated to reflect the current mechanism applicable to counties of the second class A, which requires that an appointee to fill a vacancy serves for the balance of the unexpired term. A new subsection is added to reference the provision of the Administrative Code of 1929 applicable to the gubernatorial appointments as provided in this section. This does not change current law, but is instead intended to provide a citation for users of the County Code.

A new Section 416 (Solicitors to County Officers Other Than the Commissioners) contains a relocated Section 1630 (Compensation of Solicitors Appointed by County Officers), along with certain officers' authorizations to appoint a solicitor.<sup>7</sup> These provisions have been made applicable to second class A through eighth class counties in order to provide consistency in the

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<sup>6</sup> An amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, specifies that the county solicitor or solicitor of a row officer could be "one person, or a law firm, partnership, association or professional corporation." Consequently, that same amendment added language to Section 402 (Incompatible Offices) to clarify that the provisions applied only in those cases where the solicitor is an individual.

<sup>7</sup> See *id.* A07280 also amended Section 416 (Solicitors to County Officers Other Than the Commissioners) to authorize "one person, or a law firm, partnership, association or professional corporation" as row officer solicitor.

solicitors' appointment, duties and compensation, and consolidate provisions pertaining to county officers.

Provisions addressing expenses for meetings of county officer organizations are modernized. As provided in the SCCC, public defenders are added as officers eligible to organize an association. The County Code is further amended to permit second deputies to attend with, or in lieu of, their principals. Reimbursement limits for actual expenses are increased to reflect inflation since the last adjustment. Association dues are similarly adjusted, and an annual "indexing" mechanism is added to mitigate the necessity of periodically increasing the amounts by statute. Finally, Section 460 (Meetings Open to the Public) is amended to tie it to the provisions of the "Sunshine Act" found in Title 65 of Pa.C.S. Chapter 7 (relating to open meetings).

#### **Article V – County Commissioners and Chief Clerks (analogous to SCCC Article V)**

Aside from largely editorial changes, the changes of significance in this article involve the procedures for the enactment of ordinances, rules and regulations. Language modeled after the Second Class Township Code is added to protect ordinances from invalidation on the basis that they were not filed with the county law library within the time specified by the statute.

#### **Article VI – Controller (analogous to SCCC Article VI)**

Aside from editorial changes, this article is amended primarily to include counties of the second class A.

#### **Article VII – Auditors (no elected auditors provided for in SCCC)**

Section 701(b) is amended to specify that a vacancy in the office of auditor shall be filled by the court of common pleas sitting en banc with a registered elector of the same political party as the auditor vacating the office. Section 702 (Eligibility) is substantially amended to modify the offices that are incompatible with that of auditor. The amendment prohibits an elected auditor from serving in municipal elected or appointed office or as a municipal manager, and from being employed in any administrative capacity by a school district or any entity that may be audited by the board.

Section 703 (Meetings; Quorum) is amended to authorize the auditors to petition the court of common pleas to grant, upon a showing of due cause, additional time beyond July 1 to complete the audit. The amendment also adds language consistent with case law<sup>8</sup> to require that any hourly or daily auditor compensation as set by the commissioners shall apply to any extension of time granted by the court.

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<sup>8</sup> See *In re Pike County Auditors*, 990 A.2d 127 (Pa.Cmwlth. 2006).

### **Article VIII – Treasurer (analogous to SCCC Article VIII)**

The changes to this article are largely modernizing language, with the exception of the penalty related to misapplication of funds. The amendment ties the penalty for misapplication of funds to 18 of Pa.C.S., Section 3927 (relating to theft by failure to make required disposition of funds received), and repeals the self-contained penalty.

### **Article IX – County Solicitor (analogous to SCCC Article IX)**

Aside from editorial changes and *an amendment authorizing appointment of “one person, or a law firm, partnership, association or professional corporation” as county solicitor,*<sup>9</sup> this article is modified in two sections to recognize that in counties of the second class A the county solicitor is authorized, with the consent of the commissioners, to employ assistants and appoint a deputy solicitor.

### **Article X – Engineer (analogous to SCCC Article X)**

The amendment specifies that the county engineer may be a firm.

### **Article XI – Board of Viewers**

Previously repealed.

### **Article XII – Sheriff and Coroners (Repealed)**

Prior to this amendment, Article XII of the County Code addressed both sheriffs and coroners. The County Code Revision Committee resolved to organize material related to each officer in separate articles.

### **Article XII-A – Sheriff (analogous to SCCC Article XII, in part)**

The new Article XI-A is comprised of old sections 1201 through 1215 of the County Code, applicable only to sheriffs.<sup>10</sup> *The section providing for the chief deputy is amended to require that in the event of a vacancy in the office of sheriff, the ranking deputy shall petition the court of common pleas, and upon the court finding that no other individual can legally discharge the duty of the office, the court shall authorize the deputy to perform the duty during the vacancy. A section providing for real estate deputies is amended to pertain to second class A through eighth class counties.*<sup>11</sup> Provisions related to the appointment of deputies and clerks integrate language consistent with case law, which clarifies that the sheriff’s appointive powers are restricted to

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<sup>9</sup> An amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, specifies that the county solicitor or solicitor of a row officer could be “one person, or a law firm, partnership, association or professional corporation.”

<sup>10</sup> Section 1260 (Not to Exercise Office Until Commission Granted and Recorded; Penalty), a provision applicable to both sheriffs and coroners, is duplicated in relevant part in Article XII-A as Section 1116-A.

<sup>11</sup> Italics indicate amendment by the Senate Local Government Committee on March 20, 2018.

those positions authorized by the salary board.<sup>12</sup> The power to appoint special deputies in the event of an emergency are expressly restricted to third through eighth class counties, given the lack of an analog for second A counties in the SCCC. A cross reference to Sheriff and Deputy Sheriff Education and Training Act is added to specify the existing training qualifications for sheriffs and deputy sheriffs.

An authorization for sheriffs, deputies, county detectives and other county police officers to engage in outside employment is extended to second class A counties to preserve current policies in those counties and make the provision for all counties consistent. Another provision of the SCCC authorizing county police and other peace officers to receive compensation for assignment to exhibitions, athletic contests and other recreational activities is extended to all counties.

### **Article XII-B – Coroners (generally analogous to SCCC Article XII, in part)<sup>13</sup>**

The second piece to replace Article XII, this article is comprised of material that was contained in House Bill 1931 of 2015, a comprehensive revision of County Code provisions related to coroners advanced by the Pennsylvania State Coroners Association (PSCA). The bill was never passed. PSCA requested integration of the bill into the Code revision in late 2016. Article XII-B does not contain all the provisions of the bill, but a significant portion of the bill in a revised format is included as consistent with the purpose of the Code revision.

Because HB 1931 was intended to apply to all counties except Philadelphia, and was formulated with the support of Allegheny County, this new article is also applicable to counties of the second class.

The article is organized into three subarticles, (a) (preliminary provisions) containing applicability and definitions, (b) (general provisions) containing most of the provisions currently within the County Code and the SCCC, and (c) (fees and cost recovery). Section 1211-B (Deputies) is amended to address salary board involvement in establishing deputy positions in light of applicable case law.<sup>14</sup> Amendments reflecting divergent procedures are also made with regard to the removal of bodies to private facilities, which is authorized for counties of the third through eighth class, but not for counties of the second class A. Section 1214-B is restructured to require that the commissioners provide for the transportation of bodies, and may provide a vehicle for the coroner. The expressly permitted uses of the vehicle are expanded to include administrative, investigative and educational purposes. With regard to autopsies, new language is added related to retention of DNA for official purposes, disposal of medical waste, and civil immunity (Section 1221-B). A new section addressing child deaths is added, requiring that where an autopsy of a child three years old or younger is required, a coroner must use the least

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<sup>12</sup> See *Green v. Tioga Cty. Bd. of Comm.*, 661 A.2d 932 (Pa.Cmwlth. 1995).

<sup>13</sup> An amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, removes the language from new Section 1236-B (Records), replaces it with the current text of Section 1251 of the County Code (Official Records of Coroner), and restricts its application to counties of the third through eighth class as provided in current law.

<sup>14</sup> See *Green v. Tioga Cty. Bd. of Comm.*, 661 A.2d 932 (Pa.Cmwlth. 1995).

invasive manner appropriate. The new Section 1252-B (Fees for Reports),<sup>15</sup> contains the fee schedule previously in Section 1236.1 (Requests for Examinations and Reports). The fees for reports as set forth in this section have been increased per House Bill 1931 to permit a greater recovery of the actual costs of the services.

In the context of certain coroner vacancies,<sup>16</sup> the Governor appoints a replacement to serve the balance of the term in counties of the third through eighth class. In counties of the second class A, the SCCC only permits the appointee to serve until the first Monday in January not less than two months after the occurrence of the vacancy. In counties of the second class, the replacement serves a term proscribed by county ordinance. Section 1250 (Vacancies; No Fees upon Commissions) is subdivided to reflect these distinctions.

### **Article XIII – Prothonotary, Clerks of Courts, Clerk of Orphans’ Court, Register of Wills, Recorder of Deeds (analogous to SCCC Article XIII)**

Generally, Article XIII reflects current provisions in law as they apply to the different classes of counties with two exceptions. The authority for the register of wills to appoint a deputy or deputies is removed since it was repealed by Act 53 of 1978. The provision pertaining to functions in certain offices in counties of the second class A on Saturday is removed since it was seen as antiquated.

### **Article XIV – District Attorney, Assistants and Detectives (analogous to SCCC Article XIV)**

Generally, Article XIV reflects current provisions in law as they apply to the different classes of counties. In consultation with the Pennsylvania District Attorneys Association, revisions added a commission in the Pennsylvania Guard or the Pennsylvania National Guard as an exception to eligibility requirements for a district attorney, and removed part-time to full-time district attorney transitional provisions as established by Act 57 of 2005, which are no longer operative. Provisions specific to second class A counties are added, including those relating to the appointment of county detectives of certain grades and ranks, and the method of fixing salaries and the procedure for payment of salaries and expenses of county detectives of every grade and rank.

### **Article XV.2 – Salaries of County Officers (analogous to SCCC Article XVIII, in part)**

Article XV.1 is repealed in its entirety and is replaced by a new Article XV.2, containing only two remaining sections. Article XV.1 sections specifying annual salaries of county officers of the third through the eighth class counties are repealed since those provisions are superseded by and expressly delineated in Act 113 of 1971 (relating to setting salaries in second to eighth class

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<sup>15</sup> *The amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, removes a new subsection which would have specified that the section should not be construed as authorizing disclosure of a record exempt from public access under Act 3 of 2008, known as the Right-to-Know Law.*

<sup>16</sup> Referenced coroner vacancies are essentially those related to a failure to assume office or qualify within two months of election. *See* Section 1250-B.

counties); only a single section in Article XV.2 cross referencing Act 113 remains. The last section pertaining to insurance and other employee benefits also remains.

Provisions for certain officers in counties of the seventh and eighth class to annually pay to the county treasurer a determined amount of fees received is repealed for reasons of irrelevance, obsolescence and questionable legality. Similarly, provisions establishing fees of coroners in counties of the sixth, seventh and eighth class are repealed for reasons of irrelevance and obsolescence.

**Article XVI – Fees of Salaried County Officers; Salary Boards; Payment of Solicitors Appointed by County Officers (analogous to SCCC Article XVIII, in part)**

Article XVI modifications pertain to retention, return and collection of fees and taxes; county representation in labor deliberations; structure, function and effect of the salary board; and compensation of solicitors of county officers. A qualification delineating whether fees belong to the county based on a county population threshold of 150,000 or less and whether an officer is salaried is eliminated as obsolete. Further on, reference to possible statutory authorization for an officer, as an agent of the Commonwealth, to retain part of money collected for his or her own use is also deleted. Returns of taxes and fees to the Commonwealth on a quarterly basis are revised to provide that they shall be paid over as required, but no more than monthly unless law or regulation stipulates otherwise. Rights of action and remedies for the collection of fees are extended to second class A counties. Separately, the proviso that the county commissioners shall have the sole power and responsibility to represent the county, its judges and its officers before the Pennsylvania Labor Relations Board and in collective bargaining negotiations is extended to second class A counties. In creation of salary boards, a provision is added for the controller, or treasurer in counties without a controller, to serve as the secretary of the board. A qualification of the salary board's function and effect in the County Code is extended to second class A counties. Provision for compensation of solicitors appointed by county officers is made uniform for second class A through eighth class counties and relocated to Article IV (County Officers), and "Payment of Solicitors Appointed by County Officers" is deleted from the article title.

**Article XVII – Fiscal Affairs (analogous to SCCC Article XIX)**

Given the extent of Article XVII, the summary is divided into the subdivisions provided in the article.

**Subdivision (a) (Section 1701 et seq.) Fiscal Policy and Systems** – For clarification and consistency, the function of the County Commissioners provision is extended to second class A counties. Separately, in third through eighth class counties, vesting the county treasurer with collection of county and institution district taxes in third class cities is conditioned upon certain notification and effective date requirements made evident in case law.<sup>17</sup> Language is added to provide for coordination with the Local Tax Collection Law provisions pertaining to a vacancy in the office of the local tax collector, and compensation and expenses for collection of county and institution district taxes. Under functions of the controller, the scope of the controller's

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<sup>17</sup> See *Bullock v. County of Lycoming*, 859 A.2d 518, 521 (Pa.Cmwlt. 2004).

discretionary powers and policies is clarified, and his or her recourse upon discovery of default or delinquency associated with assets as provided in the County Code is made applicable to second class A counties. Also, provisions for a request for proposals to contract with an independent certified public accountant (CPA) for preparing a report or audit of fiscal affairs, an opportunity for the controller to comment on the contract before it is executed, and clarification on the function of the CPA contract relative to the controller's official duties are added. Under custody of documents, retention and form requirements are added, and under books of fiscal affairs, language is modernized.

The section on investment of funds is substantially modified. Provisions from the SCCC pertaining to creation of an investment board, provision of an investment program, and authorization to make investments are incorporated for second class A counties. Authorized types of investments or financial products in the County Code are modified to incorporate, by reference, Act 53 of 1973 as amended by Act 10 of 2016, which together provide for the products in the Code plus new products, the latter being repurchase agreements, negotiable certificates of deposit, bankers' acceptances, and savings or demand deposits, along with qualifications for each; authorized investments in the Code that are also in Act 53 of 1973 are repealed from the Code. Separate authorizations for purchase of certificates of deposit from institutions having their principal place of business within and outside the Commonwealth, respectively, are consolidated by deleting an obsolete collateralization option for institutions having their principal place of business within the Commonwealth, being the only substantive difference. A restriction that the treasurer shall not invest in commercial paper more than the county investment policy has prescribed is expanded to negotiable certificates of deposit and bankers' acceptances. Authorizations for investment of county funds for community and economic development are extended to second class A counties. A requirement for income earned from authorized investments to inure to the benefit of the county and be placed in the general fund, as provided in the SCCC, are added with clarifying exceptions and extended to third through eighth class counties.

**Subdivision (b) (Section 1720 et seq.) Accounts, Audits and Reports by Controller or Auditors<sup>18</sup>** – Two largely duplicative sections for the controller's or auditors' settlement of accounts, report to the court of common pleas, publication, and report to DCED are merged into one, with added clarifications, and broken into subsections to improve readability. The due date for submission of the report to DCED is reconciled with the due date for the same report in the Municipalities Financial Recovery Act. Four sections pertaining to audit of the accounts of parole and probation officers and of appropriations to national guard units; audit of accounts of minor judiciary; accounts, audits and payments of moneys collected for taxing units within the county; and audit of accounts of Commonwealth money are combined into a new section with no substantive changes, except the addition of a catch-all provision to audit, settle and adjust the accounts of other funds as may be prescribed by law. A provision for the audit of insurance and escrow accounts in the County Code is extended to second class A counties. The power to issue

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<sup>18</sup> An amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, adds the technical phrase "of general circulation" after the word "newspaper" in Sections 1782 (Adoption of Budget; Publication of Proposed Budget and Notice of Final Action Date) and Section 1782.1 (Amending Budget; Notice).

subpoenas for officers whose accounts the controller or auditors are required to adjust and to compel their attendance by attachment in accordance with the Pennsylvania Rules of Civil Procedure is clarified, and the authority to serve and execute the subpoena is given to any constable of the county, instead of the coroner, as well as the sheriff. A provision for refusing to obey a subpoena is added.

Surcharge provisions associated with the controller’s or auditors’ reports are extended to second class A counties, and an absent surcharge “judgment” mechanism is added. Under appeals from the controller’s or auditors’ reports, a bonding requirement is added to discourage frivolous appeals. Moreover, requirements of the controller or auditors, in appeal of the surcharge, are made applicable to second class A counties, and a clarification is added that, if the surcharge is upheld, the officer shall only pay the county the extent of the actual loss; these changes address constitutional concerns raised in case law.<sup>19</sup> In reference to allowance of attorney fees for appeal of the controller’s or auditors’ reports, current provisions are replaced to more equitably authorize the apportionment of legal fees, and, for other adjudications of official actions of the controller or auditors, an authorization is added for the court to award just and equitable attorney fees.

**Subdivision (c) (Section 1750 et seq.) Disbursals of County Moneys** – Subdivision (c) of the SCCC largely comports with this subdivision of the County Code. Given the former apparently has *not* been updated since 1953, where the latter has been updated in 2002, the two subdivisions are merged, primarily using language from the County Code. Under claims for payment for goods and services, a cross-reference qualification is added, pertaining to interests of officers or agents of the county, to provide consistency with the Ethics Act and related terms and conditions cited in Article XVIII (Contracts). A more prescriptive and detailed procedure for approval of claims in the County Code is made applicable to second class A counties. Procedures addressing claims not approved by the controller are extended to second class A counties and the timeframe for the controller to notify the commissioners of disapproval and reasons therefor, is reduced from 30 days to 15 days. Provisions relating to payment of fees of witnesses and jurors are deleted, thus defaulting to provisions for claims against the county and giving some flexibility to validate current and widely varying practices. The SCCC solely contains a provision authorizing any additional designated clerks to countersign warrants. However, it appears unnecessary given provisions in Article IV (County Officers) and Article VI (Controller) of the County Code pertaining to deputies.

**Subdivision (d) (Section 1760 et seq.) County Treasury and County Depositories** – Procedures in the County Code for receiving and disbursing moneys due or accruing to the county, and associated recordkeeping and reporting, are made applicable to second class A counties, given that the corresponding provisions in the SCCC generally comport with those in the County Code, and the County Code is more up-to-date and reflects more contemporary accounting principles. The section pertaining to money paid for the redemption of unseated land sold for taxes, which originated in 1840 and is unique to the County Code, is repealed since it is archaic.

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<sup>19</sup> See *In re 1983 Audit Report of Beharry*, 544 A.2d 514 (Pa.Cmwlth. 1988).

With respect to county depositories, the provisions for designation and qualification of depositories in the County Code are made applicable to second class A counties, considering that they simplify the method for designating a depository, yet achieve the same purpose of more prescriptive SCCC provisions. Current provisions for collateralization of deposits and earnings are replaced with a cross reference to Act 72 of 1971, pertaining to standardizing the procedures for pledges of assets to secure deposits of public funds, which provides for greater efficiency, consistency and security, and monthly reporting requirements are added. To give counties the option for a more secure position than pooled collateral permitted under Act 72, an authorization is added for a county to enter into an agreement with the depository in which it could stipulate, among other things, the types and sufficiency of collateral that would be permitted.<sup>20</sup> Separately, provisions authorizing withdrawals by the treasurer by commercially accepted methods of electronic funds transfer, and holding harmless the commissioners, treasurer and their surety or sureties, who are complying with this article, from losses of county funds caused by failure or negligence of the depository or depositories, currently in the County Code, are made applicable to second class A counties.

**Subdivision (e) (Section 1770 et seq.) County Taxation, Borrowing and Transfer of Funds –**

Tax levy provisions from the SCCC, which pertain to second class A counties, are integrated into, but kept separate from like provisions in the County Code without any substantive changes to either code’s language, except that the authorized income threshold for exemption from the per capita tax for third through eighth class counties is deleted but cross referenced with the like threshold in the Local Tax Enabling Act for consistency. Regarding additions and revisions to property tax duplicates, requirements for notice of reassessment of a building or buildings, not otherwise exempt as a dwelling, constructed after January 1 of any year are cross referenced to relevant provisions in the Consolidated County Assessment Law. Provisions for temporary loans are made consistent with the Local Government Unit Debt Act. A new section in this subdivision is added to combine current provisions pertaining to transfer of funds, and annual budget and control of expenditures in the SCCC with like provisions in the County Code pertaining to supplemental appropriations, transfers of funds and appropriation limits, while generally maintaining the language from both codes. A section from the SCCC, which authorizes certain county officers to designate a bank, savings bank, bank and trust company, trust company or national banking association located within the county as a deputy county tax collector, is added, but made to apply only to second class A counties. Provisions in the SCCC pertaining to discount on taxes and homestead property tax exclusion procedure are not included in that they are no longer applicable or have expired.

**Subdivision (f) (Section 1780 et seq.) Budgets –** Fiscal year and preparation of annual budget

provisions from the SCCC are integrated with like provisions in the County Code to provide a consolidated budget process. With respect to budget adoption provisions, which are for the most part analogous to those in the SCCC, public notice requirements are clarified, and a vague threshold of a revised expenditure increase of more than 25 percent “in any function” as requiring additional notice is deleted. An authorization for amending the budget in the County Code is extended to second class A counties, with clarifying language on public notice and

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<sup>20</sup> The PFM Group suggested this added option.

adoption requirements provided, and a vague limitation of no increase in excess of 25 percent for “an individual function” deleted. A requirement and procedure for delivery of tax duplicates in the County Code are made applicable to second class A counties, with the timeframe for delivery of duplicates to respective tax collectors together their warrant for collection being reduced from 30 days to 15 days.

Authorizations in the County Code for amending the budget and the levy and tax rate, and revising the tax duplicate; adopting appropriation measures and fixing the rate of taxation upon the valuation of the property; accepting money or property by gift, grant, devise or bequest; and creating and maintaining a capital reserve fund and an operating reserve fund are extended to second class A counties. For the operating reserve fund, the threshold for an annual appropriation to the fund is increased from 10 percent to 25 percent of the current fiscal year general fund revenues, and an authorization is added for appropriations from the fund to counterbalance potential budget deficits resulting from increases in anticipated costs of goods or services. Separately, the section on the committee to prepare uniform forms only substantively differs between the two codes in the composition of the committee, which is more comprehensive in the County Code and therefore made applicable to second class A counties.

**Subdivision (g) (Section 1790 et seq.) Sinking Fund Commission** – Sinking fund commission provisions in the SCCC are identical to the County Code and therefore, are made retained in current form for second class A through eighth class counties. The only modification is that application of this subdivision is changed from a mandate to an authorization given that not all counties appear to have a sinking fund commission or a sinking fund.

### **Article XVIII – Contracts (analogous to SCCC Article XX)**

The contracts article retains the overall contract and bid limit requirements, and methods of opening and accepting bids as they currently apply by class of county. Changes are made to the types of security for bids received so as to remove outdated forms of security and match current practices. Exceptions to advertising, bidding or quotations from the SCCC involving “tangible client services provided by nonprofit agencies” and “purchase of milk” are added, with the former made applicable to all counties and the latter to second class A counties, and a new one added for contract or purchase with a council of government. Provisions from the SCCC that refer to shared contract compensation and kickbacks are integrated into Article XVIII and made to apply to all classes of counties. Evasion of advertisement provisions that apply to counties of the third through eighth class are retained and made to apply to second class A counties as well. Finally, the procedures that apply to the disposition of personal property and surplus farm products are made uniform for all counties; the value of personal property or surplus farm products below which a county need not publicly advertise for bids is increased from \$1,000 to \$2,000; and a uniform procedure for conducting auctions of personal property through the Internet is added, modelled after similar provisions that have been enacted in the Borough Code.<sup>21</sup>

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<sup>21</sup> *An amendment to PN 1782 of Senate Bill 1005 (A07280), passed by the House Local Government Committee on June 20, 2018, adds language to specify that the record of electronic auctions shall be accessible in accordance with the Right-to-Know Law and changes a reference to “additional public notice of the sale” to “additional notice of the sale.”*

**Article XIX – Special Powers and Duties of Counties (analogous to SCCC Article XXI, in part)**

Subdivisions (a) (Appropriations for Military Purposes), (b) (Burial of Deceased Service Persons and Surviving Spouses), and (c) (Memorial Observances) of Article XIX, Sections 1901 through 1923, are relocated from Article XIX into a new Article XIX-A (Veterans Affairs). Separately, throughout Article XIX, maximum appropriation dollar amounts and prescriptive procedures for appropriations are removed and left to the discretion of the Commissioners.

Beginning with Sections 1928 through 1931 under county histories, the qualifications of a county historical society as requisite to receive county funds are replaced with those recommended by the Pennsylvania Historic and Museum Commission (PHMC), and an eligible historic site is redefined, as also recommended by PHMC, for the purpose of a county appropriating funds to a nonprofit corporation to restore and preserve historic sites.

In Sections 1935 through 1937, pertaining to animal and plant husbandry, services provided by, and the purposes for which the commissioners may make an appropriation to, the Penn State Cooperative Extension are updated as recommended by the Extension. An authorization to make additional appropriations to agricultural or horticultural societies anywhere within the Commonwealth is extended to second class A counties.

In Section 1947 on prevention and control of floods, the power of eminent domain is extended to second class A counties for the purpose of acquiring property to prevent and control floods. In Section 1948, concerning disaster emergency aid to municipalities in third through eighth class counties, the restriction of only appropriating money from the county's operating reserve fund is removed. Provisions relating to aid to fire training schools in Section 1952 are made applicable to second class A counties.

A SCCC authorization for a county to assist any political subdivision or subdivisions within the county, if requested, in any negotiations or contest with a public utility is extended to third through eighth class counties in Section 1957.

Section 1972, entitled "Bounties for Destruction of Rattlesnakes, Copperhead Snakes and Porcupines," is repealed since it is addressed elsewhere in law and regulation.

Under the subdivision on garbage and refuse disposal, Section 1975 is amended to update authorizations pertaining to county municipal waste processing and disposal facilities and add means for acquiring real property necessary for the facilities as similarly provided in the SCCC. Various other related provisions in Sections 2176 through 2192 of the SCCC are not included because they are superseded by other laws (e.g., Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101 of 1988), Solid Waste Management Act (Act 97 of 1980)).

Section 1980, pertaining to the appointment and duties of a county board of visitors for charitable reform and penal institutions, and sections in the SCCC pertaining to smoke control are omitted,

given that they are superseded by other laws. Also, Section 1991, pertaining to the adoption and funding administration of a food stamp program, is repealed as it is essentially obsolete.

Under the subdivision on historical property, the qualification of a historical property for the purpose of county acquisition, repair and maintenance is revised as recommended by PHMC (Section 1995), and an authorization for contributions to museums of fine art or natural history from the SCCC is added (Section 1995.1). Separately, under a new subdivision, an authorization from the SCCC for appropriations for legal aid services is added as well (Section 1996).

In Section 1997, a provision for entering into transportation contracts and long range programs with authorities and, in Section 1998, an authorization for funding municipal traffic control devices from SCCC are added. Somewhat similarly, in Section 1999, an authorization for appropriations for recreation and historic and museum projects to authorities, nonprofit organizations and municipal corporations is added and purposes for which funds may be used are made more comprehensive as provided in the SCCC. Section 1999a is revised to authorize appropriations to not only the State System of Higher Education universities and the Pennsylvania State University, but also all the other state-related universities within their respective counties.

For Section 1999b, pertaining to agreements with federal government for the promotion of health or welfare, and Section 1999c, pertaining to appropriations for reservoirs and water resources, language from the County Code is made applicable to second class A counties since it is more explicit and comprehensive than that in the SCCC. Section 1986 (Appropriations to Tourist Promotion Agencies) is consolidated into Section 1999d (Tourist Promotion Agencies; Appropriations) with updated references to the Tourism Promotion Act.

An authorization for establishing a commission on the status of women in the County Code (Section 1999i) is extended to second class A counties. Separate authorizations in the SCCC to establish a civil service system for certain employees, and a lot and block system, are added, but only made applicable to second class A counties (Sections 1999j, and 1999l and 1999m, respectively). Identical provisions in the County Code and SCCC pertaining to insuring a county against loss or liability are relocated into this article (Section 1999k) and updated, and the specified general fund source for cost is omitted.

#### **Article XIX-A – Military and Veterans Affairs (analogous to SCCC Article XXI, in part)**

Article XIX-A is a new article derived from subdivisions (a), (b) and (c) of article XIX.

Subdivision (a) of Article XIX-A, Appropriations for Military Purposes, is largely unchanged but for some editorial revisions. The subdivision contains predominantly antiquated authorizations allowing counties to support the national guard. The provisions, however, are retained to maintain a status quo for counties to rely upon should future circumstances warrant.

Subdivision (b) retains the provisions related to the interment benefits of deceased service persons and surviving spouses. The subdivision leaves the substantive benefits available to

deceased service persons intact while adopting clarifying and modern language as well as integrating certain benefits that were previously adopted in the SCCC, including an option in second class A counties, where the family of a deceased service person may request a memorial certificate in lieu of a flag holder. A mandate on various public officials and private citizens placing a duty to notify the commissioners that a serviceperson has died is repealed as it is antiquated and inconsistent with current practice. A person who knowingly is making a false application for benefits under this subdivision commits a misdemeanor. Provisions dictating the metallurgic composition of bronze memorial markers are replaced with an authorization for the commissioners to determine appropriate marker materials. A requirement that commissioners bear responsibility for care of deceased serviceperson graves and markers is replaced with an authorization to provide care consistent with existing practice.

In subdivision (c), the provisions relating to memorial observances and county directors of veterans' affairs are retained. The commissioners are authorized to determine what veterans' organizations will be recognized by the county for the purpose of making appropriations for county memorial observances. Provisions for flags placed annually by the county on veterans' graves on Memorial Day are updated to stipulate that flags remain on the graves until after Veterans' Day, *or, as amended, until they are removed as a part of a cemetery's maintenance program, which may not occur prior to Independence Day. Flags removed prior to Veterans' Day are to be stored by the cemetery and made available to families and service organizations for Veterans' Day recognition.*<sup>22, 23</sup> A veterans' organization that accepts the remains of a deceased veteran under law is required to notify the county director of veterans' affairs as to the final disposition of the veteran's remains. The duties of the county director of veterans' affairs are amended to incorporate duties listed under Title 51 of Pa.C.S. and to reflect current practice that county records be made available to the Deputy Adjutant General of the Commonwealth.

### **Article XXI – Public Health (analogous to SCCC Article XXIII, in part)**

The Public Health Article is amended to address as many outdated provisions as possible, which may conflict with other laws and statewide regulatory programs. To do so, subdivisions relating to tuberculosis sanitaria, contagious diseases, and unutilized boards of health in third class counties, are repealed. Authorizations to cooperate with local governments on water and sewer projects, and conduct insect spraying are updated to reflect appropriate state agency participation and remove unnecessary procedural mandates. Finally, portions of subdivision requiring fourth through eighth class counties to provide care for dependents are amended to remove conflicts with Department of Human Services programs, but allow a county to provide services at its discretion that do not conflict.

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<sup>22</sup> An amendment to PN 1782 of Senate Bill 1005 (A07817), passed by the House Local Government Committee on June 20, 2018, adds language authorizing counties to coordinate with local veterans' organizations to ensure that cemeteries comply with the flag placement provisions of Section 1922-A. Amendment A07817 also authorizes cemeteries to request replacement flags prior to Veterans' Day if they are available, and family members to take and keep flags after Veterans' Day.

<sup>23</sup> An amendment to PN 1896 of the bill (A09274), passed on the House floor on September 25, 2018, modifies the previous revisions by adding an option for cemetery operators to store flags and make them available for Veterans' Day activities, extending veteran grave protections, and clarifying maintenance issues.

**Article XXII – Aeronautics and Transportation (analogous to SCCC Article XXIV and Article XXII, in part)**

Aside from updates to terminology and cross-references, including referencing Title 74 of Pa.C.S. rather than the “Aeronautical Code,” there is limited substantial change to the article. The article is renamed from “Aeronautics” to “Aeronautics and Transportation” because a provision of the SCCC pertaining to the establishment of Transit and Traffic Commissions in counties of the Second Class A is included as subdivision (b), without substantial changes aside from continuation mechanisms. Certain authorizations applicable only to second class A counties are expanded to second class A through eighth class counties, including the authorization to condemn less than a fee simple estate for airport purposes, and expanded lease authorizations to include permits, licenses and concessions. A provision restricting leases to 50 years from the SCCC is added, but restricted to second class A counties because of lack of an existing analog in the County Code. Section 2209.1 is newly added as another existing express power of second class A counties, without an analog in the County Code; it authorizes issuance of revenue bonds for airport purposes, and contains a clause stipulating that it shall not be interpreted as restricting the borrowing power of any other county under existing law.

**Article XXIII – Grounds and Buildings (analogous to SCCC Article XXV)**

Subdivisions (a) through (l) are amended pursuant to a section by section review; the remaining subdivisions, relating to vehicle rental tax in Philadelphia and the Third Class County Convention Center Authority Act, are substantively not amended within the scope of the County Code revision. *However, the Third Class County Convention Center Authority Act is amended only to prevent a third class county with a convention center authority from losing its statutory authorization for the convention center if it were to become a second class A county in the future.*<sup>24</sup> Provisions relating to industrial development organizations and construction contracts under the Economic Development Financing Law are adopted from the SCCC and extended to all counties. Authorizations to insure property and own waste disposal facilities are removed from this article and incorporated in Article XIX, which broadly provides for special powers and duties of counties. The authorization to sell or lease real property adds public and nonprofit entities that may lease or purchase land from county without putting sale to bid, more consistent with other municipal codes. Amendments to pertaining to memorial halls replace an antiquated and mandate-based set of requirements for establishment, operation and maintenance of memorial halls with greater discretion by the Commissioners’ ability to establish rules and form a board of control governing memorial halls. A new subdivision is added for housing juveniles awaiting trial in second class A counties, and related provisions for all counties are amended to be made consistent with the Pennsylvania Judicial Code (Title 42 of Pa.C.S.) and Federal law provisions pertaining to incarceration of juveniles. Antiquated or repetitive provisions relating to courthouses constructed by the defunct General State Authority, committing the crime of disorderly conduct in a courthouse, and substantive requirements for morgues, refuse disposal, and contagious disease hospitals are repealed.

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<sup>24</sup> Italics indicate amendment by the Senate Local Government Committee on March 20, 2018.

#### **XXIV-A – Eminent Domain and Injury to Property (analogous to SCCC Article XXVI)**

The eminent domain article is completely repealed and replaced by Article XXIV-A because existing provisions conflict with the provisions of the Eminent Domain Code (Title 26 of Pa.C.S.), which preempts conflicting procedural requirements for the exercise of eminent domain by the Commonwealth or its political subdivisions. The new article authorizes the exercise of eminent domain for any purpose conferred upon the county. Counties are required to comply with limitations on taking property from burial sites, places of worship and railroads, which are reenacted from the previous article and the SCCC, as applicable.

#### **Article XXV – Recreation Places (analogous to SCCC Article XXX)**

Because of the new inclusion of a definition for “recreation places” in section 102, reference to specific recreational uses is removed in this article. Aside from editorial and organizational changes, this article contains integration of provisions restricted to second class A counties because of a lack of an analog within the County Code, including strict maintenance of the distinction between second class A counties and third through eighth class counties with regard to the subjects of the power of eminent domain and taxation. It was the intent of the revision process, not only in this article but throughout the Code, to generally maintain the status quo with regard to existing powers of taxation and eminent domain. In terms of procedure, existing requirements in the Eminent Domain Code requiring municipal approval of extra-territorial takings is reflected in the revision by expanding a provision to include counties of the second class A. The article also similarly expands County Code provisions governing the powers and duties of employees/police with regard to county-owned property generally and the duties of police to include second class A counties in order to promote consistency and reflect authorizations contained elsewhere in the Code.

#### **Article XXVI – Bridges, Viaducts and Culverts (analogous to SCCC Articles XXVII and XXVIII)**

Aside from editorial changes, this article is amended largely to preserve existing county powers to provide for county bridges by consolidating sections, adding the definition of “joint county bridge,” and reconciling existing disparity between the County Code and the SCCC as it applies to counties of the second class A. Act 186 of 2004 amended Article XXVII of the SCCC, which is the analog to this article. Because of the relatively recent nature of the amendment, and the lack of any requests to change current procedures as they apply to second class A counties, the more substantively distinct Act 186 changes are carried over for second class A counties into the County Code. For example, the requirement that the county obtain the consent of a municipality prior to undertaking county bridge work was repealed as to second class A counties by Act 186. Consequently that requirement in the revision is restricted to third through eighth class counties. Similarly, a section involving the optional county construction and acquisition of embankments and causeways deemed too expensive for municipalities was removed by Act 186, but is retained for third through eighth class counties. This same procedure is applied with regard to joint county bridges where one county is a county of the second class A, and a limitation exists in the SCCC of

the amount (30%) that a second class A county may contribute to a municipal bridge crossing rail lines or private property.

In a few cases where the distinctions between second class A counties and third through eighth class counties are largely procedural or authorizations rather than mandates or significant substantive differences, they were applied universally. For example, a provision of the SCCC requiring that persons dedicating a private bridge that crosses county lines provide notice to each county is included in the revision. Similarly, a SCCC provision authorizing bridge contracts between municipal corporations and counties to include optional provisions regarding maintenance is carried into the revision.

#### **Article XXVII – Roads (analogous to SCCC Article XXIX)**

Act 186 of 2004, the same act discussed in the summary of revisions to Article XXVII, also amended Article XXIX (Roads) of the SCCC. In large part, that amendment removed court involvement in county road proceedings. This change brought counties of the second class A more in line with the powers and procedures of municipal corporations with regard to road construction, repair and maintenance, and represented a more efficient use of both municipal and judicial resources. Consequently, the revision amends the County Code road provisions to similarly remove reference to court involvement in county road provisions, with the exception of road vacation proceedings. The revision also consolidates sections, makes editorial changes, expands application of certain provisions to all municipal corporations, and, in a manner identical to what occurred in Act 186, removes reference to a county road caretaker.