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SB 589 (Printer's No. 714) Analysis

Date: May 24, 2021

**Amending the Home Rule Charter and Optional Plans Law –
Provide for Distressed Municipalities Pursuing Home Rule**

Prime Sponsor: Senator Kearney

A. Synopsis of Bill

This bill amends the Home Rule Charter and Optional Plans Law to allow a distressed municipality to form a government study commission directly and include a specific role for the Act 47 coordinator study and recommendation process; in addition it encourages the public's adoption of the charter by clarifying the power of a charter to contain taxpayer protection provisions.

B. Summary and Analysis of Bill

Government Study Commission for Distressed Communities

This bill introduces an alternative process to form a government study commission to consider and potentially propose a new, or amend an existing, home rule charter in a municipality that is currently in the Municipalities Financial Recovery Act Program ("Act 47"), *see* Act of July 10, 1987 (P.L. 205, No. 47). To be eligible, a municipality must have adopted a plan, which recommends the adoption of a home rule charter, under Chapter 2 of Act 47 to address fiscal distress, or to facilitate the municipality's exit from the program, and must currently be served by a coordinator appointed by the Department of Community and Economic Development ("DCED").

An eligible municipality may vote to organize a commission by resolution composed of each member of the governing body, or that member's designee. Where the municipality has a mayor that does not sit as a member of the governing body, the commission membership would also include the mayor or the mayor's designee, and the coordinator would be designated as an *ex officio* member of the commission. Once organized, the commission would have the same powers, duties, and responsibilities as a government study commission

formed by the existing referendum provisions, with three additional responsibilities to study and consider elements specific to the municipality's fiscal distress:

1. The recommendations contained in the municipality's recovery plan.
2. The municipal services currently provided in the distressed municipality and whether the same services should be provided as a home rule municipality.
3. The sources of fiscal and managerial dysfunction that exist under the current form of government, and how the dysfunction could be improved under a new form of government.

The coordinator would have an additional responsibility to hold a public hearing after the government study commission publishes its findings and recommendations. At the hearing the coordinator is required to provide testimony as to the suitability of the proposals to address the causes of fiscal distress in the municipality.

Reporting Requirements

The bill would require each government study commission to file a copy of its final report containing its findings and recommendations with the Local Government Commission in addition to the existing requirement to file the report with DCED.

Charter Taxpayer Protection Provision Restoration

The bill clarifies that the governing body of a home rule municipality is constrained from violating provisions contained in the municipality's home rule charter imposing limits on the rates of taxation which may be imposed on the municipality's residents.

The tax rate clarification provisions of this act would take effect immediately, the remaining provisions would take effect in 60 days.

C. Relevant Current Law

The Home Rule and Optional Plans Law currently allows a municipality, following an ordinance by a governing body, or in response to a valid petition, to propose a ballot question where the residents of a municipality both elect whether to form a government study commission, and select candidates nominated to service on the commission. The commission fulfills its responsibilities to study its current form of government and other available forms of government to determine whether the municipality's operation could become more economical or efficient under a changed form of government. The commission produces a report of its findings and recommendations, and may submit a proposed home rule charter to be considered by the residents of the municipality by referendum at the next primary, municipal or general election held in the municipality. A copy of the commission's report is filed with DCED.

D. Background of Bill

Municipalities in fiscal recovery in the Act 47 program frequently consider the adoption of a home rule charter to reorganize the municipality's form of government, diversify its revenue structure, or pursue professionalism and financial controls to address some of the causes of the financial distress. The process in current law does not help the study commission consider the recovery objectives of the distressed municipality, and the requirement for two separate elections may cause the process to be lengthier and more complex than the distressed municipality's limited time to participate in the recovery program would allow.

Additionally, many existing home rule charters adopted in municipalities throughout the Commonwealth include taxpayer protection provisions which contain tax rate limitations on the taxes which are authorized in the municipality, and similar restrictions such as a maximum percentage increase which could be authorized in a single year. In 2006, a Pennsylvania court ruled that the Home Rule and Optional Plans Law be interpreted so that rate limitations in the residents' adopted home rule charter could not be enforced. The provisions of this bill are intended to restore the effect of taxpayer protection provisions which have been adopted by referendum and increase public confidence in the charter presented to residents for adoption.

The Local Government Commission Committee on Act 47 conducted a stakeholder survey with recovery coordinators, consultants, municipal associations, the Governor's Center for Local Government Services and others to identify areas of improvement for the Act 47 program and advise the committee accordingly. The resulting feedback demonstrated a need to make the home rule process more efficient for distressed municipalities, and help a distressed municipality adopt a charter more consistent with the goals of the municipality's recovery.

E. Effect of Bill

This bill would facilitate the home rule process to work more directly with the fiscal recovery process in distressed municipalities, provide the Local Government Commission with more information to study home rule in Pennsylvania, and permit the enforcement of voter adopted taxpayer protection provisions contained in a home rule charter. Tax rates adopted prior to the clarification language in this bill would be grandfathered.

F. Issues, Policy Questions and Stakeholder Feedback

This legislation is supported by the Pennsylvania League of Municipalities and the Governor's Center for Local Government Services and the Pennsylvania State Association of Boroughs are both neutral on the bill.

G. Bill History

In the 2019-2020 Session, this bill was introduced as Senate Bill 988. Senate Bill 988 was referred to the Senate Local Government Committee on January 17, 2020 where it remained upon sine die adjournment. This legislation was also introduced in the House during the 2019-2020 session as House Bill 2141. House Bill 2141 was passed by the House on July 13, 2020 (201-0). The bill was referred to the Senate Local Government Committee on August 10, 2020 where it remained upon sine die adjournment.