

SECOND CLASS COUNTY CODE - OMNIBUS AMENDMENTS

Act of Jan. 27, 1998, P.L. 1, No. 1

Cl. 16

Session of 1998

No. 1998-1

SB 382

AN ACT

Amending the act of July 28, 1953 (P.L.723, No.230), entitled, as amended, "An act relating to counties of the second class and second class A; amending, revising, consolidating and changing the laws relating thereto," providing for the appointment and promotion of employees in the office of sheriff in counties of the second class; prohibiting certain political activity by employees of the sheriff's office in counties of the second class; further providing for definitions and for payment to retirement fund; providing for retirement eligibility, for allowance and for alternate contract procedure for adaptive reuse of jail facilities; providing counties of the second class A with the power to make grants to townships, boroughs and nonprofit organizations for parks, recreation areas, open space projects and such other outdoor projects and for historic and museum projects; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, is amended by adding sections to read:

**Section 1216. Sheriff's Employees, Counties of Second Class.--**(a) Appointment and promotion of deputies and other employees in the office of sheriff of a county of the second class shall be made in the manner provided by the act of May 31, 1974 (P.L.296, No.94) , entitled "An act providing for the appointment, promotion, reduction in rank, suspension, furlough, discharge and reinstatement of deputy sheriffs in counties of the second class; extending civil service coverage to such deputies; and providing penalties," except as otherwise provided in this section.

(b) Whenever a vacancy is likely to occur or is to be filled in a permanent position in the office of sheriff, the sheriff shall submit to the civil service commission a statement indicating the position to be filled. The civil service commission shall thereupon certify to the sheriff the names of the three eligibles willing to accept appointment who are highest, according to the results of the written examination, on the appropriate promotion list or employment list, whichever is in existence. If there are less than three eligibles on appropriate eligible lists who are willing to accept appointment, the civil service commission shall certify all the names on these lists. If upon inquiry by the civil service commission any person on any promotion or employment list is found to be not available for promotion or appointment, the person's name shall not for the time being be considered among the names from which a promotion or appointment is to be made.

(c) Appointees shall be selected for each existing vacancy from the eligible list in the order of names of the three

persons thereon who have received the highest average on the written examination. Examinations shall be administered for positions of the rank of captain and below, and appointments shall be made in the order of names of the three persons who have received the highest average.

(d) Civil service examinations to test applicants shall relate to such matters and include such inquiries as will fairly test the merits and fitness of the persons examined to discharge the duties of employment.

(e) Probationary appointments to positions in the force may, notwithstanding section 6 of the act of May 31, 1974 (P.L.296, No.94), be terminated, for cause, prior to completion of the nine-month probationary period.

(f) Notwithstanding the provisions of section 1(c) of the act of May 31, 1974 (P.L.296, No.94), all positions of the rank of captain and below shall be classified as competitive. Persons holding positions of captain or below on the effective date of this section shall continue to occupy those positions. New openings for a vacancy in the position of captain and below shall be classified as competitive on and after the effective date of this section.

(g) In no case shall an applicant for promotion in the sheriff's office be considered until the applicant shall have first served three years in the sheriff's department. No member of the sheriff's office shall be eligible to take any promotional examination until after serving three (3) years in the sheriff's office. Each member of the sheriff's department shall have his examination mark or grade increased by an additional one-half point for each year he served in the sheriff's department, but such additional points shall not exceed ten points.

(h) All applicants for examination shall undergo a physical examination which shall be conducted under the supervision of a doctor of medicine. No person shall be eligible for appointment until a doctor certifies to the commission that the applicant is free from any bodily or mental defects, deformity or disease that might incapacitate him or her from the discharge of the duties of the position desired in the sheriff's department.

Section 1217. Political Activity by Sheriff's Employees in Counties of the Second Class.--(a) No employe shall use his official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) No employe shall take an active part in political management or in a political campaign. Activities prohibited by this subsection include, but are not limited to, the following activities:

(1) Serving as an officer of a political party, a member of a National, State or local committee of a political party or an officer or member of a committee of a partisan political club or being a candidate for any of these positions.

(2) Organizing or reorganizing a political party organization or political club.

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing or accounting for assessments, contributions or other funds for a partisan political purpose.

(4) Organizing, selling tickets to, promoting or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party or political club.

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office.

(6) Becoming a candidate for or campaigning for an elective public office in a partisan election.

(7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office.

(8) Acting as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or a candidate in a partisan election.

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election.

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature or similar material.

(11) Serving as a delegate, alternate or proxy to a political party convention.

(12) Addressing a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office.

(13) Initiating or circulating a partisan nominating petition.

(14) Soliciting, paying, collecting or receiving a contribution at or in the workplace from any employee for any political party, political fund or other partisan recipient.

(15) Paying a contribution at or in the workplace to any employee who is the employing authority of the person making the contribution for any political party, political fund or other partisan recipient.

(c) An employee or individual to whom subsection (a) or (b) applies retains the right to vote and to express an opinion on political subjects and candidates and may engage in the following activities:

(1) Register and vote in any election.

(2) Express an opinion as an individual privately and publicly on political subjects and candidates.

(3) Display a political picture, sticker, badge or button when not on duty and at locations other than the workplace.

(4) Participate in the nonpartisan activities of a civic, community, social, labor or professional organization or of a similar organization.

(5) Be a member of a political party or other political organization or club and participate in its activities to the extent consistent with this section.

(6) Attend a political convention, rally, fund-raising function or other political gathering.

(7) Sign a political petition as an individual.

(8) Make a financial contribution to a political party or organization.

(9) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character.

(10) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise efficiency or integrity as an employee or the neutrality, efficiency or integrity of the sheriff's office.

(d) Notwithstanding anything in this section or any other act to the contrary, no person shall be deemed ineligible for the office of school director solely on the basis that such

person's political activities are otherwise restricted under this section.

(e) Subsection (c) does not authorize an employee to engage in political activity while on duty or while in a uniform that identifies him as an employee. The sheriff of a county of the second class may prohibit or limit the participation of an employee or class of employees of the sheriff's office in an activity permitted by subsection (c) if participation in the activity would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interests.

(f) An employee who violates this section shall be removed from employment, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual: Provided, That the civil service commission created under section 1503 of this act at its discretion may impose a penalty of suspension without pay for at least thirty (30) days, but not more than one hundred twenty (120) days, if it finds that the violation does not warrant termination.

(g) An employee who is currently an officer in a political party or who holds a political office on the effective date of this section may fulfill the remainder of his term. Upon completion of the term, the provisions of this section shall apply.

(h) The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan or by pledge or promise, whether or not enforceable, or otherwise.

"Election" means a primary, municipal, special and general election.

"Employee" means a person employed in the office of sheriff of a county of the second class. The term includes management employees, deputy sheriffs and clerical employees. The term does not include a sheriff of a county of the second class.

"Employing authority" means an employee's supervisor.

"Partisan" when used as an adjective refers to a political party.

"Political fund" means any fund, organization, political action committee or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee or any other entity.

Section 2. The definition of "county employee" in section 1701 of the act, amended July 6, 1984 (P.L.638, No.131), is amended to read:

Section 1701. Definitions.--The following words and phrases as used in this article shall be construed to have the following meaning:

\* \* \*

"County employee," any person employed by the county, including all elected or appointed county officers, and agricultural extension association, county institutions district, county prison, any county correctional institution, law library and county retirement board, employees whose compensation is paid out of county funds, **and any person**

employed by an authority formed after January 1, 1998, or any such other second class county entity when approved by the board and the county commissioners and whose compensation is paid by an authority or such other entity, except employees employed by any board of trustees of a community college of which the county is a local sponsor pursuant to the act of August 24, 1963 (P.L.1132, No.484), known as the "Community College Act of 1963," as amended, county institution district funds or county retirement system funds or any department created by the office of the county commissioners, and any person receiving compensation for accidental injuries in accordance with the provisions of The Pennsylvania Workmen's Compensation Act: Provided, That the injured county employee during the period of his or her disability shall pay each month a sum equal to the last monthly contribution paid into the retirement fund when said county employee was in employment and shall not include any participant in on-the-job training, work experience or public service employment whose employment with the county is funded in whole or in part by the Federal "Comprehensive Employment and Training Act," as amended, unless the retirement board has provided for the membership of such participants in accordance with the provisions of section 1710.1. It shall not include any time spent by a county employee on furlough or leave of absence without compensation, a person reemployed as a county employee subsequent to the thirty-first day of May, one thousand nine hundred fifty-three, in accordance with the provisions of subsection (c) of section 1712, except such county employees who may be in active military service in accordance with the provisions of subsection (d) of section 1710 and former county employees whose monthly contributions are paid into the retirement fund in accordance with the provisions of section 1713. In all cases of doubt the board shall determine who is an employee within the meaning of this article.

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Section 3. Section 1709 of the act, amended June 1, 1973 (P.L.37, No.19), is amended to read:

Section 1709. Appropriation and Payment to Retirement Fund.--At their annual budget session, the county commissioners shall make such an appropriation as will enable them to pay, and there shall be paid out of county taxes and county institution district taxes, a sum of money, each month, which shall be equal to the amount paid into the retirement fund by the county employees, **less any sum of money required to be paid by an authority or any such other second class county entity**, during the preceding month or bi-weekly pay periods in accordance with the provisions of section 1708[.]: **Provided, That an authority or any such other second class county entity operating in the county shall make such an appropriation as will enable either of them to separately pay, and there shall be paid out of each of their respective funds, a sum of money, each month, which shall be equal to the amount paid into the retirement fund by those employees who are employed by an authority and any such other second class county entity during the preceding monthly or bi-weekly pay periods in accordance with the provisions of section 1708.**

The county commissioners shall appropriate such amounts as are certified by the State Employees' Retirement Board as necessary to establish reserves for the benefit of any former member of the county employees' retirement system, whose employment with the county was terminated because of the incorporation into the State highway system of all or any county

highways, or sections thereof, bridges, tunnels, viaducts, or sections thereto, in counties of the second class, and who became a member of the State Employees' Retirement System and who elected to receive credit in the State Employees' Retirement System for service as a member of the county employees' retirement system. Such appropriations shall be made at the annual budget session next succeeding the year in which certification is received from the State Employees' Retirement System and payment to the State Employees' Retirement Fund shall be made within ninety (90) days of the adoption of the budget.

It shall be the duty of the county commissioners to appropriate annually sufficient funds, necessary to guarantee payment of all administrative costs, benefit commitments and legal obligations of the Employees' Retirement Board.

Section 4. Section 1710(a), (b) and (h) of the act, amended February 9, 1984 (P.L.12, No.6), May 9, 1984 (P.L.261, No.61) and December 4, 1992 (P.L.776, No.121), are amended to read:

Section 1710. Employees Eligible for Retirement Allowances.--(a) Every **present or future** county employe [who was initially hired on or prior to the effective date of this amendatory act,] who has reached the age of sixty years or upwards and who has to his or her credit a period of service of eight years, but less than twenty years[, or every county employe who was hired after the effective date of this amendatory act, who has reached the age of sixty-five years or upwards and who has to his or her credit a period of service of ten years, but less than twenty years] shall, upon application to the board, be eligible for retirement from service, and shall thereafter receive, during life, except as hereinafter provided, a retirement allowance computed on a service period of twenty (20) years which shall equal one twentieth ( $1/20$ ) of such amount as he or she may be eligible to receive in accordance with the provisions of subsection (a) of section 1712, for each year's service which such county employe may have to his or her credit during the aforesaid period of time. The time spent in the employ of the county or county institution district need not necessarily have been continuous. The aforesaid retirement allowance shall be subject to a suspension thereof in accordance with the provisions of subsection (h) of this section 1710 and subsection (c) of section 1712.

(b) Every **present or future** county employe, other than a member of the police force or the fire department or a fire inspector or a sheriff or deputy sheriff, [who was initially hired on or prior to the effective date of this amendatory act,] who has reached the age of sixty years or upwards and who has to his or her credit a period of service of [eight years, but less than] twenty years **or more**, [or every county employe, other than a member of the police or the fire department or a fire inspector, who was hired after the effective date of this amendatory act, who has reached the age of sixty-five years or upwards, and who has to his or her credit a period of service of ten years, but less than twenty years,] and every county employe who is a member of the police force or the fire department or a fire inspector, and who shall have been a county employe during a period of twenty or more years and has reached the age of fifty years or upwards shall, upon application to the board, be eligible for retirement from service, and shall thereafter receive, during life, except as hereinafter provided, a retirement allowance plus a service increment if any, in accordance with the provisions of section 1712. Every county officer or employe who is a sheriff, deputy sheriff or prison

guard who shall have been a county officer or employe during a period of twenty or more years and has reached the age of fifty-five years or upward, shall, upon application to the board, be eligible for retirement from service and shall thereafter receive, during life, except as hereafter provided, a retirement allowance in accordance with section 1712. The time spent in the employ of the county or county institution district need not necessarily have been continuous: Provided, That when any county employe has twenty or more years service, not necessarily continuous, and has **not** reached the age of [fifty] **sixty** years or upwards, and shall be separated from the service of the county or county institution district by reason of no cause or act of his or her own, upon application to the board he or she shall thereafter receive, during life, except as hereinafter provided, a retirement allowance plus a service increment if any, in accordance with the provisions of section [1712] **1713**. The aforesaid retirement allowance plus a service increment if any, shall be subject to a suspension thereof in accordance with the provisions of subsection (h) of this section 1710 and subsection (c) of section 1712.

\* \* \*

(h) **(1)** Option I. Any present or future county employe who has **not** reached [fifty] **sixty** years of age [but less than sixty or sixty-five, whichever is applicable], and who has to his or her credit a period of at least the minimum number of years of service specified in subsection (a) of this section but less than twenty years of service, shall upon application to the board be eligible to receive at age **sixty years** [or sixty-five years, whichever is applicable,] a retirement allowance computed on a service period of twenty years, which shall equal one-twentieth of such amount as he or she may be eligible to receive in accordance with the provisions of subsection (a) of section 1712 for each year's service which such county employe may have to his or her credit during the aforesaid period of time. The time spent in the employ of the county or county institution district need not necessarily have been continuous.

**(2)** Option II. Any present or future county employe who has **not** reached [fifty] **sixty** years of age [but less than sixty or sixty-five, whichever is applicable], and who has to his or her credit a period of the minimum number of years of service specified in subsection (a) of this section but less than twenty years of service, shall upon application to the board be eligible to receive thereafter, a retirement computed on a service period of twenty years, which shall equal one-twentieth of such amount as he or she may be eligible to receive in accordance with the provisions of subsection (a) of section 1712 for each year's service which such county employe may have to his or her credit during the aforesaid period of time. Further, the above retirement allowance shall be subject to a reduction of one-half of one per centum for each month under the age of **sixty years** [or sixty-five years, whichever is applicable]. In no event shall a retirement allowance be paid until the age of fifty-five years is attained. The time spent in the employ of the county or county institution district need not necessarily have been continuous. The aforesaid retirement allowance elected under Option I shall become null and void if said county or county institution district employe is reemployed prior to age sixty in accordance with the provisions of subsection (c) of section 1712.

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Section 5. Section 1712(b.1) of the act, amended December 10, 1980 (P.L.1165, No.213), is amended to read:

Section 1712. Amount of Retirement Allowances.--\* \* \*

(b.1) In addition to the retirement allowance which is authorized by this article and notwithstanding the limitations therein placed upon retirement allowances, any present or future county employee who upon retirement shall be eligible to receive payment of a retirement allowance and who has been employed as such for [twenty-one] **twenty** or more years during which period of time he or she shall have made monthly contributions into the retirement fund, shall also be eligible to the payment in addition to a retirement allowance a service increment of two per centum per year computed upon the annual retirement allowance to which he or she is entitled. Said service increment shall be the sum obtained by computing the number of **full years, and any portion of a year**, in excess of twenty years during which period of time he or she shall have made monthly or bi-weekly contributions into the retirement fund. No service increment shall be paid for more than twenty (20) such excess service years [nor shall a service increment be paid for a fraction of such service year]. **Effective as of January 1, 1989, in the event an employee, on the effective date of employment termination, shall have less than a full year of service for the purpose of computing the employee's service increment, then the amount of the service increment which would have been computed had the employee completed a full twelve-month period for the year of the termination of employment shall be prorated upon a full completed month basis for said last year of service increment.**

Section 6. Section 1713(d) of the act, amended June 29, 1976 (P.L.461, No.116), is amended to read:

Section 1713. Retirement Allowances After Leaving Service.--\* \* \*

(d) Option I. Any person who, after twenty or more years' service as a county employee resigns from his or her office position or employment before reaching the age of sixty years when he or she attains the age of sixty years, when such former county employee shall be eligible to receive a retirement allowance which shall be computed on the average monthly compensation as received by the former county employee prior to his or her separation from the service of the county or county institution district in accordance with the provisions of subsection (a) of section 1712. Such former county employee shall be eligible to receive, in addition to a retirement allowance, a service increment, if any, in accordance with the provisions of subsection (b) of section 1712 only to the time of his or her separation from the service of the county or county institution district.

Option II. Employee may elect to receive immediate retirement allowance benefits under the age of sixty years provided that said retirement allowance be reduced by one-half of one per centum for each month under the age of sixty years. Option I or Option II election shall be final upon separation of his or her service from the county.

Option III. Any employee under sixty years of age who has served twenty years or more and who was dismissed through no fault of his own may elect to receive immediate retirement allowance benefits **plus a service increment, if any**, equal to seventy per centum of the benefits he would be entitled to receive had he continued to be employed until age sixty. **The service increment shall be effective as of January 1, 1989.**

Section 7. Section 2001 of the act is amended by adding a subsection to read:



Section 2001. County Commissioners to Make Contracts.--The County Commissioners may make contracts for lawful purposes and for the purposes of carrying into execution the provisions of this section and the laws of the Commonwealth.

\* \* \*

(g) (1) The board of commissioners may, in its sole discretion, elect to use an alternative contracting procedure to achieve the adaptive reuse of former jail facilities. If the board of commissioners elects to utilize an alternative contracting procedure, the board shall adopt a resolution that the use of an alternative contracting procedure is the most efficient, economical and timely method to secure an adaptive reuse of former jail facilities. Upon adoption of a resolution, the board of commissioners shall request written proposals from proposers for the adaptive reuse of former jail facilities under an alternative contracting method. In its request for proposals, the board shall include such terms, conditions and requirements which it deems necessary to protect the interests of the county.

(2) In reviewing and evaluating the proposals for the adaptive reuse of former jail facilities, the board of commissioners shall, in addition to compliance with the terms, conditions and requirements set forth in the request for proposals, consider the following criteria:

- (i) the cost of the proposer's adaptive reuse proposal;
- (ii) experience of the proposer;
- (iii) preservation of the distinct architectural design and integrity of the former jail facilities;
- (iv) adherence to prevailing wage laws and other work force standards;

(v) commitment to enter into voluntary contract with disadvantaged business enterprises.

After due consideration of proposals under the criteria described above, the board of commissioners may, in its discretion, select a proposal and award a contract to a responsible proposer for the adaptive reuse of former jail facilities under an alternative contracting procedure. The award of a contract for the adaptive reuse of former jail facilities need not be awarded to the lowest bidder.

(3) Any contract for the adaptive reuse for former jail facilities awarded under this subsection shall be exempt from and not be subject to sections 2517 and 2520 of this act or the act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings."

(4) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Adaptive reuse." The alteration, renovation, remodeling, modification or reconstruction of former jail facilities for reuse as courtrooms, office space or such other facilities and uses as the board of commissioners shall from time to time deem necessary and appropriate.

"Alternative contracting procedure." A procedure under which a proposer would be responsible for all aspects or phases necessary to achieve the development of a parcel of property. Such aspects or phases of development shall include, but not necessarily be limited to, the planning, design, finance, construction and management of property. The term "alternative contracting procedure" shall be similar in all respects to the commonly understood term in the real estate development and construction industry known as a "turnkey."

"Former jail facilities." A building or group of buildings with related facilities owned by a county of the second class

which are more than one hundred years old and which were previously used as jail facilities.

"Proposer." A firm, organization or company or a combination of firms, organizations or companies acting as a partnership, joint venture, consortium or similar joint relationship with sufficient knowledge, expertise and experience in the areas of architectural design, construction, financing of real estate development or construction and real estate management.

Section 8. Section 2199.12 of the act is amended to read:

Section 2199.12. Appropriations to Municipalities for Parks, Recreation Areas, etc.--The board of commissioners of any county of the second class A may appropriate from county funds moneys for grants to assist boroughs or townships within the county **as well as nonprofit organizations** in the purchase [or], acquisition, **improvement, equipping or landscaping, including the planting of shrubs and shade trees,** of lands [or], buildings [or both] **and facilities, and in the case of buildings and facilities, demolition of such,** for parks, recreation areas, open space projects and other such outdoor projects and for historic or museum projects. **For the purposes of this section, the term "nonprofit organizations" shall mean entities which are tax exempt under section 501(a) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501 (a)), as amended (or any successor provision thereto); not operated for profit; and organized to:**

(1) **preserve or conserve open space, natural resources or natural habitats;**

(2) **promote outdoor recreation and the acquisition and development of facilities related thereto; or**

(3) **preserve sites of historical significance.**

Section 9. The act of May 31, 1974 (P.L.296, No.94), entitled "An act providing for the appointment, promotion, reduction in rank, suspension, furlough, discharge and reinstatement of deputy sheriffs in counties of the second class; extending civil service coverage to such deputies; and providing penalties," is repealed insofar as it is inconsistent with this act.

Section 10. The amendment of sections 1710, 1712 and 1713 of the act shall be retroactive to November 1, 1997.

Section 11. This act shall take effect immediately.

APPROVED--The 27th day of January, A. D. 1998.

THOMAS J. RIDGE