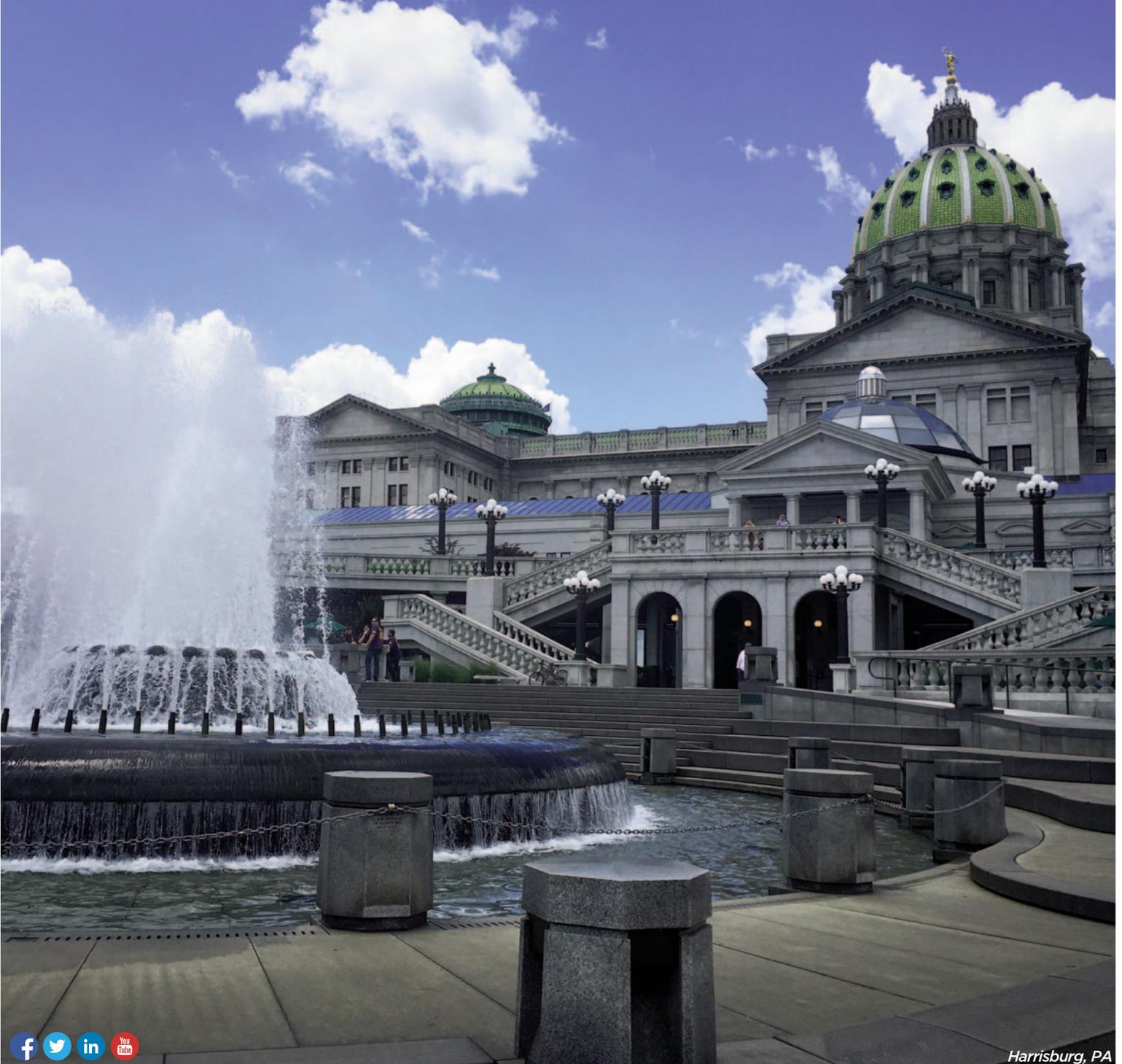


# BOUNDARY CHANGE PROCEDURES

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# I. Evolving Attitudes to Municipal Boundary Change

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The procedures for municipal mergers, annexations and incorporations have changed dramatically in the recent past, reflecting changing popular attitudes and conceptions of the local government system. These popular attitudes are important since municipal boundary change has always been one of the most emotional issues involving local government. Boundary change operates at a critical juncture where political activity at the community level impacts the economic self interest of the individual property owner and taxpayer. The potential personal economic and social consequences not only intensify the political debate, but also expand participation in the issue as persons normally indifferent to local government affairs become involved when they perceive a potential threat.

## Urban Growth Model

The traditional concept of municipal boundary change may be termed the urban growth and development model. This model was based on the assumption of an urban/rural dichotomy. Urban places were seen as intrinsically different from the surrounding rural areas with special governmental needs, requiring different governmental forms.

As Pennsylvania was settled, townships were historically the first form of local government in an area, providing minimal governmental functions for a dispersed population. Township services were generally limited to maintenance of roads, assessment and tax collection.

As urban settlements developed with more complex social and economic activities, they were seen to require separate governments to meet their special needs. In Pennsylvania, boroughs were formed to provide governmental services to these dense settlements, separating the urban centers from the rest of the township. Larger boroughs were often later formed into cities, the culmination of what was seen as a natural progression to a more advanced governmental form. The principle of separate governments for the urban and rural segments of a community became well established in the nineteenth century and has persisted to the present even though there is no longer a clear demarcation between the two.

Since urban oriented municipal services were only provided by boroughs and cities, developing areas on the urban fringe were intermittently added to the municipality's jurisdiction through a process known as annexation. In some cases fringe residents requested extension of municipal boundaries, in other cases the borough or city began the process. Extension of boundaries and municipal services to built up areas on the fringe was seen as a desirable part of the healthy growth of cities and towns. The limitations of an animal based transport kept urban areas compact and helped maintain relatively clear demarcation between rural and urban jurisdictions in the nineteenth century.

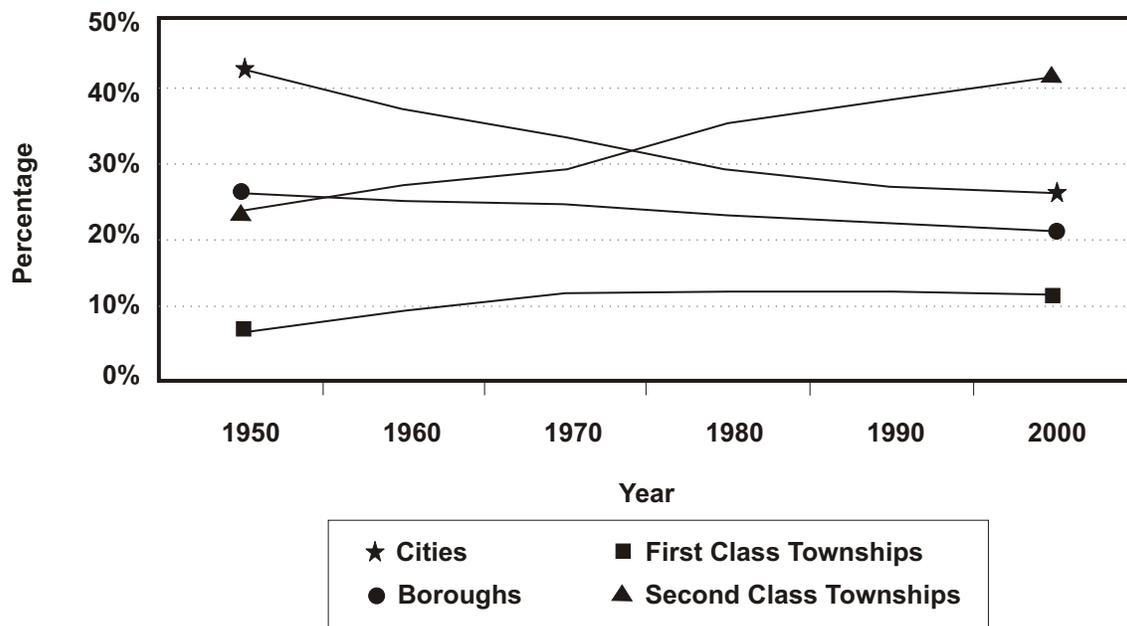
## Emergence of Townships

However, by the end of the nineteenth century settlement patterns had begun to change. Urban growth took a new form in the development of widely scattered residential areas along rail lines providing access to employment centers within cities. This growth was not a direct extension of the urban street grid, but was scattered far into the countryside along railroad and interurban trolley lines. Development along the Main Line of the Pennsylvania Railroad west of Philadelphia is a prime example. The advent of the automobile widened this type of settlement from areas reachable by rail to any area reachable by road.

As a response to this dispersed growth, first class townships were created as a special category in 1899. The legislative intent was to allow townships with relatively dense residential development additional powers to provide municipal services to these areas, hence the requirement for a population density of at least 300 persons per square mile. Lower Merion became the first township to use this legislation in 1900. Over the years first class townships received additional powers and in 1937 gained substantial protection from annexation by neighboring cities and boroughs. This 1937 law required approval of the voters of the entire township in a referendum before annexation of any part of the township.

Due to the Depression and World War II, the full impact of the automobile on urban settlement patterns was not felt until after 1945. The rapid growth and widespread dispersion of the urban population after the war was accompanied by the emergence of the second class township as a full fledged municipal entity with powers comparable to other municipal classifications. Suburban growth was so sudden, large and widespread that the old process of annexation could not keep up with urban expansion. Township governments instituted urban services such as water supply, sewers and police forces. Annexation was no longer necessary to obtain urban services, and townships with rapidly growing tax bases enjoyed significantly lower property tax rates than the urban core. This relatively rapid and large shift in population distribution is demonstrated in the charts below.

**Percentage of Pennsylvania Population Residing in Townships**



## **Municipal Equality Model**

The emergence of the township as a full fledged municipal government gave rise to a new concept of municipal boundary change. It saw townships as equal in municipal powers and services to cities and boroughs, no longer merely the semirural source of land and population for expansion of the urban center. This concept denies the utility of annexation, holding that needed services can be provided by the township governments. Annexations are seen as only a threat to the township tax base, endangering their ability to borrow to extend municipal facilities.

The municipal equality model draws upon some basic American political values, claiming superiority for small, intimate governmental units and limiting legitimacy of local self determination in boundary change procedures to votes of complete existing municipal units. Because boundary lines protect vested social and economic advantages, popular opinion in the outlying areas veered from favoring to opposing inclusion in the urban core.

Renewed growth and expansion of urban areas after World War II brought a conflict between the two boundary change concepts. Cities and boroughs sought to extend their boundaries, while townships fought to protect their areas from encroachment. The result was commonly known as the annexation wars. It was fought on two levels. On the local level annexations were hotly contested in the courts. On the state level, the second class townships sought the same protection from annexation given to first class townships, while cities and boroughs sought liberalized annexation procedures. The townships came close to winning in 1956 when a provision requiring referendum approval for annexation passed both houses of the legislature, but was vetoed by Governor Leader. Further legislative stalemate meant these issues were still unsettled when the Constitutional Convention convened in 1967 to review certain articles of the Pennsylvania Constitution, among them the provisions for local government.

## II. Constitutional Change

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When the Constitutional Convention met in 1967, it did so in the context of two important movements in the field of local government. One was the continued struggle within Pennsylvania over the character of boundary change legislation, focusing on township efforts to secure some protection against annexation. The other trend was rising interest in local government reform, focusing on providing regional governments for the newly expanded metropolitan areas and more home rule powers for counties and municipalities.

### Battle Over Annexation

With renewed activity in private construction after the ending of World War II and the extension and improvement of the highway system, there was renewed interest in annexation as cities and boroughs tried to respond to the dispersing population by extending their borders. Annexation activity in Pennsylvania and other northeastern states was minor compared to large-scale annexations by cities in the South and West. But because Pennsylvania has no unincorporated territory from which cities and boroughs could annex, any addition to a city or borough meant a loss to a township. These losses and the threat of continued loss generated intense opposition to annexation both in the local courts and in the legislature.

In various hearings before legislative committees, representatives of the cities and boroughs emphasized the need for modernized annexation laws to facilitate healthy urban growth, and to allow urban services to be extended to property owners on the fringe of the municipality. Representatives of the second class townships, the prime losers of land under the existing annexation laws, resisted with cries of land grabs and piecemeal annexation, alleging the cities and boroughs were principally interested in adding to their tax bases by selective annexation of prime commercial and industrial parcels.<sup>1</sup>

Two studies of annexations were made during the postwar period. The first discovered 190 annexations during the period 1940-48, with 147 of these occurring during the final three years of the period.<sup>2</sup> The second discovered 292 annexations during the period 1954-64.<sup>3</sup> Most of the annexations were small; only 57 involved land areas exceeding 100 acres, and only two were over 500 acres. Most of the land annexed was existing or potential residential sites and the primary reason given was to secure public services, particularly water and sewer lines. Less than 5 percent of the land annexed had actual or potential industrial use.

In spite of losses of acreage, the studies found townships losing land had property valuation increases exceeding the statewide average of all townships and tax millage increases lower than all townships. Their location on the fringe of expanding urban areas benefitted their financial position as new construction and new residents swelled their tax bases.

Both studies concluded that annexation provided no solution to governmental problems of urban areas and had proved ineffective in simplifying the local government system. These studies did not address the issue of the increased mistrust and disruption of intergovernmental relations by both successful and unsuccessful annexation efforts. As suburban townships grew and began to provide expanded municipal services, their stake in retaining their tax base also grew. Annexation efforts by cities and boroughs became more actively contested in the courts.

## Local Government Reform

The period 1960-75 was marked by renewed interest in reforming and modernizing the local government system. A large part of this effort was directed to the administrative improvement of local government units, increased professionalism, greater planning, improved financial mechanisms and increased home rule powers. Emphasis on intergovernmental relations brought about state agencies for community affairs and culminated in the enactment of the federal general revenue sharing program in 1972.

A good portion of the local government reform movement dealt with the geographic jurisdiction of local agencies. A landmark document in this field was the report of the Committee for Economic Development, a nonprofit group of top academic and business leaders. Their report proposed massive consolidation of existing local government units, reducing the number of local governments in the United States by 80 percent.<sup>4</sup> While such a comprehensive, radical reform never gained widespread public support, a number of significant reforms did occur, both in the United States and abroad.

The first significant postwar reforms were in Canada with the institution of two tier metropolitan governments in Toronto in 1954 and Winnipeg in 1960. The period 1965-75 saw regional governments instituted for urban areas in Ontario and Quebec and for most of Alberta and British Columbia. In the United Kingdom, a Royal Commission was appointed in 1957 to study local government in the London area. A two tier governmental system was recommended in 1960 and implemented by legislation creating the Greater London Council in 1963. Additional Royal Commissions for England and for Scotland recommended new local government structures abolishing the old rural/urban distinctions, reducing the number of units and aligning boundaries to coincide more closely to actual human communities.

In the United States, adoption of a federated form of government in the Miami area in 1957 was followed by creation of the Metropolitan Council for the Twin Cities area of Minnesota. A number of city county consolidations in medium sized urban areas gained national attention: Nashville in 1962, Columbus and Jacksonville in 1968, Indianapolis in 1969 and Lexington in 1972, along with four consolidations in the Tidewater area of Virginia, 1952-72. Adoption of home rule charters in many metropolitan counties provided strengthened county governments during this period.

Statewide local government boundary commissions with varying powers were established in Alaska, Minnesota, Michigan and Iowa, while local level boundary commissions were established in Oregon, Washington and California. Numerous states established commissions to study local government issues. Many of these commissions recommended new legislation for local government boundary changes.

## Legal Setting

When the Constitutional Convention met in 1967, it was generally agreed that responsibility for determining the conditions under which the number or size of local government unit changes rests exclusively with the state government.<sup>5</sup> The state legislature has final authority for enacting procedures governing the combination of local units, formation of new units or changes in their boundaries.

Formulation of basic case law on municipal boundary change occurred in a series of cases involving state legislation enacted for the consolidation of the cities of Pittsburgh and Allegheny at the beginning of the century. This legislation was controversial because it provided for approval in a referendum by a majority of all those voting in both cities, rather than approval by separate majorities in each city.<sup>6</sup>

Although a similar 1905 law had been declared unconstitutional as special and local legislation, the Pennsylvania Supreme Court upheld the validity of the somewhat broader 1906 law. The Court asserted the legislature had power to allow the voters of the larger city to overpower the voters of the smaller city and effect

consolidation even where it was opposed by a majority of the voters of the smaller city. The Court held the state has sovereign powers over municipal corporations.

It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, and overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and even abolish them altogether in the legislative discretion and substitute those which are different.<sup>7</sup>

On appeal to the United States Supreme Court, it found there was no implied contract between a municipal government and its citizens protected by the United States Constitution. The court held that powers over municipal corporations rest in the absolute discretion of the state.

The State, therefore at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest.<sup>8</sup>

The legislature had never addressed municipal boundary change, formation or consolidation on a consistent uniform basis. Provisions were added to each of the municipal codes to provide for some or all of these procedures, or separate general laws were enacted. The various legal provisions were mutually contradictory in some respects. In a leading annexation case the Pennsylvania Supreme Court identified and summarized eight major pieces of legislation dealing with municipal annexation.<sup>9</sup>

Besides being complex and contradictory, boundary change legislation was incomplete, many types of boundary changes could not occur. There was no provision for consolidation of a borough and a township, or even for consolidation of a first class township and a second class township. A contemporary analysis of boundary change law summarized the situation on the eve of the Constitutional Convention

From almost any vantage point Pennsylvania annexation law—constitutional, statutory and judicial—is a hodge podge. Municipal law reflects the will of people arranged in an infinite variety of groupings, political, social and economic. Unlike most other branches of the law it cannot be identified with only a few interests which need to be balanced or regulated. It touches on individuals' preferences concerning living conditions, tastes in character of neighborhood, their friends, their homes, schools and churches—preferences which cannot always be codified in a legal sense or “balanced” in a way that would ensure a communal *modus vivendi*. The city is a society in a nutshell. No wonder that civic disturbances arising out of annexation procedures seem to be tossed at the first opportunity by courts and legislatures alike back into the laps of the people themselves. The courts say the legislature may do as it pleases with municipal boundaries and the legislature, not the least bit comfortable with its freedom, provides that the alignment of municipal boundaries shall turn on the outcome of popular elections.<sup>10</sup>

## **Constitutional Convention Proposals**

Delegates to the Constitutional Convention were presented with materials gathered by a preparatory committee. In hearings before the preparatory committee in July, 1967, statements from public interest groups focused on the need to reduce the number of local government units.<sup>11</sup> The concept of a local boundary commission was advanced as a way to meet this problem. The preparatory committee also summarized boundary change provisions in other states. It identified two critical issues to be addressed by the convention as the degree to which popular self determination was to control boundary change actions and the question of a single, uniform boundary change law for all municipalities.

In public hearings before the convention's committee on local government, various local government interest groups presented their views.<sup>12</sup> The townships pushed for protection from annexation by requirement of a vote of the entire township on any annexation proposal. The concept of a boundary commission was supported by the cities, but there was no solid support for mandatory consolidations bypassing the electoral process. The report of the convention's local government committee was the proposal substantially adopted by the convention. The boundary change provisions are now contained in Section 8 of Article IX, comprised of four subsections.<sup>13</sup>

The first paragraph of Section 8 mandates the General Assembly to enact uniform legislation for boundary change within two years. This section was intended to eliminate the existing hodgepodge of boundary change legislation. It does not prevent piecemeal annexation, but does say that if the General Assembly is going to allow annexation of part of a municipality, it must do so on a uniform basis, treating all municipal classifications alike.

The second paragraph is a guarantee giving the voters of local units the right to consolidate, merge and change boundaries without the approval of any governing body. This procedure is in addition to any boundary change legislation enacted by the General Assembly. It was intended to avoid situations where local elected officials could thwart the wishes of a majority of the voters in a boundary change action. A member of the committee stated "we wish to guarantee to people that if they did wish to consolidate, merge or change boundaries, no one should be allowed to stop them at any time."<sup>14</sup>

The third paragraph directs the General Assembly to designate an agency of the Commonwealth to study boundary change proposals, advise municipalities and place proposals on the ballot for voter decision after a study is completed. The committee felt the many small units of government could not afford expert assistance to conduct studies of the effects of boundary change proposals and therefore the state should provide this service. The designated agency was to have the power to study and advise and place proposals on the ballot for voter decision, but not to mandate changes without voter approval. The power to initiate referenda was controversial, but the convention supported the committee's proposal, accepting their reasoning: "the last part was put in concerning initiate local referendum to put teeth into it so that a study would not be made and then end up in desk drawers; that it could be placed on the ballot for a vote of the people if they so desired."<sup>15</sup> However the committee did not go so far as to require the boundary change agency be given power to mandate consolidations "nothing in this Constitution should, by implication, say that you must consolidate, you must merge, without the approval of the voters."<sup>16</sup>

The fourth paragraph was placed in Section 8 to make clear that the legislature's fundamental power to provide for local boundary actions remained unimpaired. This paragraph guarantees the power of the General Assembly to provide additional methods for consolidation, merger or boundary change. It was intended to preserve the existing power of the legislature over municipal boundary change methods.

The committee's proposal was adopted by the constitutional convention on February 23, 1968. The new local government article, Article IX of the Pennsylvania Constitution, containing the boundary change section was adopted by the voters on April 23, 1968.

## **Fight Over Implementation**

The Constitution now required the General Assembly to adopt uniform boundary change legislation. The development of implementing legislation for the boundary change section became an extension of the old legislative battle over annexation procedures.

Two major forces developed in this battle. One group focused on the cities, boroughs and the state chamber of commerce urged a boundary change bill based on the ability to provide public services. They emphasized

flexible annexation procedures to allow urban growth and development. They held local government existed fundamentally to provide public services and local government boundaries should be flexible in order to permit the furnishing of public services to the areas lacking them.<sup>17</sup> They proposed a boundary commission with the power to review and approve annexation of parts of municipalities with the approval of the people only in the area to be annexed.

The opposition came from the second class townships. They vigorously opposed any authorization for annexation without the approval of the voters of the entire municipality in a referendum.<sup>18</sup> They favored a weaker boundary commission, limited to the powers of making boundary studies, advising and initiating local referenda.

Failure of these two groups to come to any sort of compromise position placed individual legislators in an untenable position. Because most represented districts including both boroughs and townships, they could ill afford to antagonize either group. The result was legislative stalemate, as the General Assembly could not pass any uniform boundary change legislation before the 1970 deadline.

After 1968, annexation proceedings continued under the old boundary change laws. These were challenged on the basis of the new constitutional mandate for uniformity in a series of court cases. State appellate courts first held annexation proceedings pending at the time of adoption of the constitution were not affected by the new provision.<sup>19</sup> They next ruled the old annexation laws remained in effect for two years after adoption of the new constitution, and boundary change actions begun under those laws during that period were still valid.<sup>20</sup>

The next series of challenges arose on annexation actions begun after the two-year deadline for enactment of uniform legislation. In 1973 the Commonwealth Court ruled that the language of Article IX, Section 8 of the Constitution was mandatory requiring the legislature to adopt uniform legislation within the two year period. Failure of the legislature to act necessarily abrogated all preexisting nonuniform legislation. This failure to act caused the constitutional provision for initiative and referendum to be the sole remaining procedure for changing boundaries.<sup>21</sup> On appeal to the Pennsylvania Supreme Court, the Court upheld the Commonwealth Court's interpretation, invalidating all nonuniform boundary change procedures.<sup>22</sup>

This landmark decision has had the effect of bringing annexation actions to a practical standstill in Pennsylvania. While limited to the nearly 400 cities and boroughs with populations exceeding 2,500, a Census Bureau study reveals the effect of the court's ruling.<sup>23</sup> It recorded 74 annexations by these municipalities during the period 1970-79; 45 were reported during 1970-72 reflecting actions initiated under the old provisions; 14 reported during 1973-75 reflecting the concluding of activity; only two were reported during 1976-79 when initiative and referendum remained the sole procedure. In the period, 1980-98 only 10 annexations to cities and boroughs of over 2,500 population were effected using the initiative and referendum procedure. This is an 86 percent decrease from activity in the 1970s.

The court's decision provided what the townships had long sought—protection from annexation through requiring a referendum in the entire township. Having gained this point through legislative stalemate and judicial invalidation of the old annexation laws, the township interests successfully opposed any boundary change legislation threatening this position.<sup>24</sup> The result has been continued legislative inaction. Although boundary change legislation was introduced into several succeeding sessions of the General Assembly, no legislation covering annexation was ever enacted. However, in 1994 the General Assembly passed legislation providing for merger or consolidation of municipalities. This new law also replaced 1987 legislation providing merger or consolidation procedures for financially distressed municipalities.

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## III. Annexation

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In this discussion, annexation is defined to include boundary change actions where a portion of one municipality is detached and added to another municipality. It always involves a plot of land constituting only a portion of an existing municipality. Any boundary change action involving addition of an entire municipality to another municipality is considered a merger or consolidation and discussed under that heading.

In Pennsylvania, like New England and New Jersey, all land is located within municipal boundaries. There is no unincorporated territory not served by any municipal government as there is in western and southern states. There, annexation is widely used as a tool to extend municipal government and services to newly built up areas. In Pennsylvania, all territory is already covered by municipal governments with the powers to provide needed services. As a result, annexation is not widely employed to extend municipal services. According to a U.S. Census Bureau survey,<sup>1</sup> during the ten year period, 1980-90, 75,571 annexations occurred in the United States as a whole, involving 9,186 square miles and a population of almost 2.6 million. However, during the same ten year period, only 18 annexations occurred in Pennsylvania, involving less than one square mile and fewer than 500 persons. Only eight states had fewer annexations: Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island and Vermont.

### Procedure

Due to the failure of the legislature to enact uniform boundary change legislation, all preexisting annexation provisions still found in the municipal codes have been invalidated by the courts.<sup>2</sup> The initiative and referendum procedure established in the Constitution remains the sole method of effecting annexations. Article IX, Section 8 of the Pennsylvania Constitution guarantees the right of voters to change boundaries of municipalities by initiative and referendum without the approval of any governing body. This guarantee is operative even without the passage of any implementing legislation: “No enabling law shall be required for initiative.”<sup>3</sup> The validity of this guaranteed procedure was recognized immediately by the state's courts: “the second paragraph of Section 8 became effective immediately on approval by the electorate.”<sup>4</sup>

The initiative and referendum procedure can be used to change boundaries of any county, municipality or similar future general purpose unit of local government.<sup>5</sup> It does not apply to school districts, municipal authorities or other special purpose units.

**Initiative Petition.** Boundary change actions are initiated by filing a petition for the change desired. The petition must be signed by registered voters comprising five percent of the total number of votes cast for the office of governor in the last gubernatorial general election within the municipality.<sup>6</sup> A separate petition must be filed for each municipality affected by the proposal. The petition must be filed with the county board of elections at least 90 days prior to the next primary or general election. Boundary change referenda may be placed on the ballot at any spring primary or the November election in even numbered years.

In the absence of any further details, it is advisable to draw up petitions following the form for candidate petitions specified in the Pennsylvania Election Code.<sup>7</sup> These are available from county election offices. However, at least one county court has upheld initiative petitions not meeting the Election Code requirements for affidavits of the circulators.<sup>8</sup> The petition should fairly state the proposal to be placed on the ballot. It should include a description of the area to be annexed or refer to an attached description. It should also include an effective date for the change, if approved by the voters, as well as a procedure to make any necessary adjustment of municipal assets and liabilities. Because there is no implementing legislation, the petition itself serves as the only legal document governing how parties are to proceed if the question is approved.

**Election Procedure.** The county board of elections is to place the proposal on the ballot in a manner fairly representing the content of the petition.<sup>9</sup> The question is placed on the ballot in each municipality affected by the proposal. All questions to be voted on by electors of political subdivisions are to be considered special elections, and conducted by election officials in accordance with the Election Code provisions governing November elections.<sup>10</sup>

The county board of elections must publish the question in its official notice of the election.<sup>11</sup> For each referendum appearing on a county or municipal ballot, the county board of elections is to prepare an explanation of the ballot question.<sup>12</sup> It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place.

**Results.** To be approved, any question must receive a majority of the votes cast in each municipality, tallied separately, voting on the proposal. The county board of elections should certify the results of the voting on the proposal in every municipality affected. The county board of elections is to certify the results of any local referendum to the Department of Community and Economic Development within ten days of the election.<sup>13</sup>

**Notifications.** Within ten days after the effective date of any annexation proceeding, the municipal secretary must report the proceedings to the Department of Community and Economic Development.<sup>14</sup> The report is to include a plot of the territory to be annexed and certified copies of the petition and question approved by the electorate. Although not required by law, it is also advisable for the municipal secretary to notify the county assessment office and the county planning commission of the completed boundary change action.

**Restrictions.** The Constitution prohibits submission of initiative proposals on similar questions more often than once in five years.<sup>15</sup> This prohibition works to prevent re-submission of a boundary change proposal defeated by the voters for a period of five years. It also would prevent submission of a question to reverse an approved boundary change for a period of five years.

There is no restriction on the type of boundary change action that can be submitted with this procedure. For instance, it can be used to transfer land from county to county, or parts of cities may be annexed to townships as well as vice versa. There is no requirement that the land to be transferred to another unit be contiguous to the unit's existing boundary. However, there remains the unwritten need to formulate a proposal acceptable to the voters of the municipalities involved. Political practicalities and plain common sense provide effective limits to the nature of the proposal.

## **Annexation Referenda**

During the period 1970 through 2007, 76 annexation proposals have appeared on the ballot using the constitutional initiative and referendum procedure. Each of the proposals involved the transfer of land from one municipality to another. Of the proposals presented to the voters, 42, or 55 percent, have been approved and 34, or 45 percent, defeated.

Annexation referenda during this period have involved only cities, boroughs and townships. No boundary change proposals involving counties have been submitted to the voters.

<b>Type of Transfer</b>	<b>Number</b>	<b>Percent of Proposals</b>	<b>Approved</b>	<b>Defeated</b>	<b>Percent Approved</b>
Township to borough	12	81%	34	28	55%
Township to township	5	5%	4	1	80%
Borough to township	4	6%	1	0	25%
Borough to borough	3	4%	2	1	67%
Township to city	1	1%	—	1	0%

Of the 69 boundary change proposals, land area information was available for 52. These proposals involved small areas, the largest being half a square mile.

<b>Land Area of Proposals</b>	<b>Total Number</b>	<b>Approved</b>	<b>Defeated</b>
Under 10 acres	22	16	6
10 to 49 acres	16	6	10
50 to 99 acres	7	5	2
100 acres and over	7	3	4

Information on the use or ownership of the land involved was available in 49 of the 69 proposals. Of those 49, 57 percent involved publicly-owned land, including schools, roads, firehouses or parks.

<b>Type of Land Use</b>	<b>Total Number</b>	<b>Approved</b>	<b>Defeated</b>
Public property	28	23	5
Residential	18	8	10
Commercial	2	—	2
Agricultural	1	—	1
Unspecified	20	9	11

The residential areas approved for annexation involved only a handful of houses. These were proposed to allow one municipality to provide services adequately to an entire subdivision where municipal boundaries cut across natural service areas. Two of the defeated residential area proposals appear to have involved sizeable developments with larger numbers of houses.

A major key to the success of a boundary change effort appears to be obtaining the support, or at least the acquiescence, of officials of the municipality losing territory in advance of the effort. When Juniata Terrace Borough wanted to annex 42 acres of borough owned land in 1986, it first approached the supervisors of Granville Township, seeking their support. The supervisors decided to stay neutral and let the voters decide. The borough mounted a publicity campaign, emphasizing there would be no loss of taxes to the township and succeeded in winning approval for the change from township voters. A 1987 proposal by Tyrone Borough to annex 3,900 acres of watershed property in Snyder Township was placed on the ballot at the last minute with no prior notice to the supervisors. The lack of communication compounded by a past history of annexation efforts resulted in township opposition and even a challenge to the petitions. An opposition committee was organized by township residents. In 1994, a developer sought to annex an 11 acre subdivision in Eldred Township to Eldred Borough so that lots could be connected to the borough sewer system. The voters defeated the proposed annexation after township officials claimed the township would lose real estate taxes.

Residents of a small residential subdivision in Woodward Township approached the supervisors in 1986 about road repairs and other services. Because of the township's inability to meet their demands, they asked the supervisors to agree to their annexation to Brisbin Borough. The township acquiesced to the change and the question was approved by voters in both municipalities. The township suffered minimal loss of tax base and the borough will face a major expenditure in repaving the street. A 1994 proposal to annex three lots in Troy

Township to Troy Borough was approved. The on-lot sewers in the township malfunctioned and owners wanted to connect with the borough sewer system. The borough already maintained the street and served the properties with water. The borough asked the property owners to come into the borough, the owners agreed and the township did not object.

## References

1. Joel C. Miller, "Annexations and Boundary Changes in the 1980s and 1990 91," *The Municipal Year Book* 1993. International City Management Association, Washington, D.C., 1995, pp. 106 7.
2. *Middle Paxton Township v. Borough of Dauphin*, 326 A.2d 343, 458 Pa. 396, at 400, 1974.
3. Pennsylvania Constitution, Article IX, Section 14.
4. *Lower Macungie Township Annexation Case* (No. 1), 248 A.2d 58, 213 Pa.Super. 313, at 319, 1968.
5. Pennsylvania Constitution, Article IX, Section 14.
6. *Ibid.*
7. 25 P.S. 2869; Pennsylvania Election Code, Section 909.
8. *In re: Petition of Electors in Township of Williams and City of Easton*, No. 1989-CM-6276, C.P. Northampton Co.
9. Pennsylvania Constitution, Article IX, Section 14; 25 P.S. 2963(g); Pennsylvania Election Code, Section 1003(g).
10. 25 P.S. 3069; Pennsylvania Election Code, Section 1229.
11. 25 P.S. 3041; Pennsylvania Election Code, Section 1201.
12. 25 P.S. 2621.1; Pennsylvania Election Code, Section 201.1.
13. 71 P.S. 966.3; 1949 P.L. 873, Section 3, as amended.
14. 71 P.S. 966.5; 1949 P. L. 873, Section 5.
15. Pennsylvania Constitution, Article IX, Section 14.

## IV. Disputed Boundary Determination

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Boundary determination is another class of local government boundary action similar to, but historically distinguished from, annexation. The city and borough codes contain provisions for establishing disputed boundaries in addition to provisions for annexing land. The county and township codes contain no provision for annexing land from one township to another or from one county to another, but do have provisions for determining boundaries.

### Procedure

Determination of disputed boundaries is a judicial procedure, involving a petition to the court, appointment of commissioners to determine the boundary and decree by the court after hearing any exceptions filed. The borough and township provisions are almost identical, with the city and county provisions containing slight variations.<sup>1</sup>

This is the proper procedure for determining disputed boundaries. Minor boundary disputes do not have to be handled through the initiative and referendum process.<sup>2</sup> However, the procedures of the municipal codes should be followed. Municipalities have no authority to settle boundary disputes through bilateral contracts. Tax assessment appeals are improper actions in which to determine disputed boundary lines; the statutory boundary determination procedure must be used.<sup>3</sup>

For boroughs and townships, this procedure allows: (1) boundary lines to be ascertained and established, or (2) disputed boundaries to be ascertained and established. For cities, the procedure is limited to ascertaining and establishing disputed boundaries. For counties, the procedure allows boundary lines to be determined, surveyed, relocated or marked.

The action is initiated by petition. For boroughs and second class townships, there are no restrictions on the nature of the petitioner. For first class townships, the petition must be signed by 50 resident freeholders of the township. For cities, petitions can be filed by any interested political subdivision. For counties, the petition can be filed by any taxpayer, the county commissioners or by the corporate authorities of any political subdivision.

For boroughs and townships, the court appoints a commission of three persons, one of whom must be a surveyor or professional engineer. The commission gives notice to the affected parties, holds a hearing on the boundary in question, views the lines and makes a report back to the court including a plot of the boundary proposed to be established. The legal duty of the commission and the court is to determine the legally correct boundary. Neither is restricted to a proposed boundary put forward by one of the interested parties.<sup>4</sup> Notice is made to the affected parties, and there is a 30-day period to file exceptions to the report. If exceptions are filed, the court holds a hearing. After the hearing, the court can sustain the exceptions, dismiss the exceptions and confirm the report, or refer the report back to the same or a new commission for a further study. Where no exceptions are filed, the court confirms the report. After a report is confirmed absolutely, the court enters a decree establishing the lines contained in the report.

For cities, a petition can be filed by any interested political subdivision. The court appoints a commission composed of three qualified voters who need not be surveyors or engineers, but have the power to employ a surveyor or engineer. After giving notice to affected parties by publication in a newspaper, the commission views the disputed boundary. They make a recommendation to the court, including a plot of the proposed line. Any person affected may appeal to the court for a review of the report or file exceptions.

For counties, a petition can be filed with the Commonwealth Court by any taxpayer, the county commissioners or any political subdivision. The Commonwealth Court designates a neutral court of a county not affected by the issue nor adjoining any of the affected counties to act in the proceeding. This court appoints a commission of three surveyors or professional engineers. After notice, the commission conducts a hearing, then ascertains the location of the old boundary line. If it is found to be the proper line, the old line is surveyed and marked with monuments. If the commission decides it must fix a new county boundary line, it must first get permission from the court. The commission files a report with the court, including a plot of the boundary line established. After approval by the court, it is certified to each county affected and to the Department of Community and Economic Development. The appointment of a commission is discretionary. It is needed only to resolve a disputed boundary. Where there is no dispute, the court can affirm an established boundary line.<sup>5</sup>

## Limitations

Boundary determination procedures had been historically used to effect transfer of substantial areas from one township to another in the absence of any annexation procedure.<sup>6</sup> This practice was ended by a new decision of the Supreme Court in 1953. It found annexation could not be accomplished through proceedings providing merely for the alteration of boundary lines. It drew a distinction between alteration of boundaries and annexations.

Ordinarily the desire to alter a boundary line arises because of some dispute in regard to it, or because it may be uncertain, or may happen to divide an owner's land, or may so awkwardly meander in its course as to require straightening, the change in each of these cases involving but a comparatively negligible detachment of territory on the one side and its addition to the other side of the original boundary. Where, however, the avowed purpose to be accomplished is to detach from the one political subdivision a substantial portion of its territory and to annex it to the other, the reason for the change being based on some such consideration as relative school facilities, questions of taxation and assessed valuations of property, social conveniences, or the like, the proceeding becomes obviously one of annexation and the alteration in the boundary line merely incidental to the accomplishment of the larger objective.<sup>7</sup>

This decision was based on an action to transfer between 350 and 500 acres of Indiana Township to Shaler Township, Allegheny County, with a population of over 300 and an assessed valuation of \$500,000, and a second action to transfer four square miles from Buffalo Township to East Buffalo Township, Union County, with a population of 140 persons and an assessed valuation of \$130,000.

Subsequent county court cases followed the Indiana Township Lines precedent to deny boundary change actions brought under the boundary determination procedures. In Bucks County, a transfer involving 425 acres and 1,165 houses in three municipalities was denied.<sup>8</sup> In Lancaster County a proposal to transfer between 300 and 400 acres comprising half a substantial village was denied.<sup>9</sup>

Use of boundary determination procedures to alter boundaries has been further restricted by court cases interpreting the new boundary change provisions of the Pennsylvania Constitution. Prior authority to make minor alterations in boundaries to suit the convenience of the inhabitants has been invalidated by the constitutional mandate for uniform legislation.<sup>10</sup> Courts are now restricted to settling boundary disputes or ascertaining uncertain boundaries.

The boundary determination procedure is not exclusive so as to prevent the court from determining the location of particular properties in relation to the boundary line where no petition was filed to ascertain and establish boundary lines.<sup>11</sup> The court had jurisdiction to determine the location of a taxpayer's property in a suit to recover taxes inadvertently paid due to a mistaken assertion of the boundary line.

## Constitutional Change

The effect of the legislature's failure to implement uniform boundary change legislation has invalidated the boundary determination procedures as a method for altering municipal boundaries.<sup>12</sup> The only constitutionally valid procedure for making boundary alterations is initiative and referendum.

In a second case, the Commonwealth Court held the boundary determination procedures are not invalid as far as they relate to the ascertainment and establishment of disputed boundaries. It distinguished between annexation and determination.

An annexation necessarily involves some change of existing known boundaries. In a boundary line dispute, on the other hand, the true boundary may not be known. Moreover, resolution of the dispute need not necessarily result in any change of existing boundaries, but could simply be a confirmation of a known boundary.<sup>13</sup>

## Adverse Possession

Rules that relate to private property are not applicable to public boundaries. In one case, the Supreme Court upheld a determination of the boundary between Ross and McCandless Townships as established in 1809, although a different line had been accepted in practice for 150 years.<sup>14</sup> It held rules of adverse possession and prescriptive easement are not applicable between municipalities. Likewise, the doctrine of acquiescence in private boundary disputes does not apply to municipal boundaries. Providing municipal services across a boundary does not imply agreement to the location of that boundary by the other party.<sup>15</sup>

In a case to determine an uncertain boundary, the Somerset County Court of Common Pleas confirmed a commission finding in spite of the fact another boundary had been long accepted. "The key fact is that the record is clear and unambiguous and cannot therefore be changed by subsequent action or inaction of property owners and assessment officials, no matter how long continued."<sup>16</sup>

In an action to determine a disputed boundary, the Commonwealth Court upheld award of the land in question to Jenkins Township over the objections of Yatesville Borough. The residents of the area had paid their taxes to Yatesville, and the borough provided street cleaning, garbage collection, snow removal, fire hydrants, police protection and street light services to the area.<sup>17</sup>

## Initiative and Referendum

The initiative and referendum procedure in the Pennsylvania Constitution has been used in at least two instances to establish defined boundary lines between municipalities. In November, 1979, voters of East Buffalo Township and Lewisburg Borough, Union County approved the establishment of a defined boundary line. In this case, the metes and bounds appeared on the ballot question. In April, 1980 voters of Lehighon Borough and Mahoning Township, Carbon County, approved establishment of a boundary line as described in petitions filed with the Board of Elections to initiate the question.

## References

1. 16 P.S. 301; County Code, Section 301; 53 P.S. 35602; Third Class City Code, Section 602; 53 P.S. 45502; Borough Code, Section 502; 53 P.S. 55302; First Class Township Code, Section 302; 53 P.S. 65302, Second Class Township Code, Section 302.
2. *Connoquenessing Township v. Butler Township*, 491 A.2d 288, 88 Pa.Cmwlth. 530, 1985.
3. *Storey v. Susquehanna County Board of Assessment*, 567 A.2d 768, 130 Pa.Cmwlth. 180, 1989.
4. *Moon Township v. Findlay Township*, 553 A.2d 500, 123 Pa.Cmwlth. 172, 1989, appeal dismissed 587 A.2d 311.
5. *Ekin v. Board of Commissioners of Allegheny County*, 502 A.2d 303, 93 Pa.Cmwlth. 528, 1985.
6. *In the Matter of the Division Line of Clay, West Cocalico and Ephrata Townships*, 33 Pa. 366, 1859.

7. *Indiana Township Lines Alteration Case*, 95 A.2d 776, 373 Pa. 316, at 323, 1953.
8. *Bristol Township Lines Alteration Case*, 3 Bucks 163, 1953.
9. *In re Change of Boundary between West Donegal and Mount Joy Townships*, 54 Lanc. 307, 1956.
10. *Ekin*, supra, at 307; *Storey*, supra.
11. *Hartzfeld v. Snyder Township School District*, 170 A.2d 355, 403 Pa. 632, 1961.
12. *In re Establishment of Boundary Between Collier Township and Robinson Township*, 360 A.2d 841, 25 Pa.Cmwlth. 230, at 233, 1976.
13. *Laflin Borough v. Yatesville Borough v. Jenkins Township*, 404 A.2d 717, 44 Pa.Cmwlth. 402, at 406, 1979.
14. *McCandless Township Appeal*, 165 A.2d 23, 401 Pa. 428, 1960.
15. *Moon Township*, supra.
16. *In re Milford, Middlecreek and Jefferson Township Boundary Line*, 28 Som. 252, at 256, 1973.
17. *Laflin Borough v. Yatesville Borough v. Jenkins Township*, 422 A.2d 1186, 54 Pa.Cmwlth. 566, 1980.

## V. Consolidation and Merger

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This chapter discusses boundary change actions proposing to combine two or more entire local government units into one. In past decades, these actions had been accomplished through procedures scattered in various sections of state law with different names and differing rules. As now defined in state law, combining two units is done through either a consolidation or a merger. Merger is a boundary change where one unit goes out of existence and is absorbed by another, usually larger unit. Consolidation is a boundary change action where the corporate lives of two or more units terminate upon their combination to create a new and different municipal corporate entity.

### Background

Pennsylvania has a very large number of very small municipalities. The 2002 census showed only 243 municipal units with populations exceeding 10,000; 78.8 percent of the state's municipalities have populations under 5,000; and 30 percent of the units have populations under 1,000. The generally small size of local government was not a problem in an era of limited services and functions. With growing responsibility for safeguarding the quality of life of the community and meeting the challenges of increased complexity, interest in combining municipal governments is on the upswing since 2002.

From 1920 to 1972, 54 combinations of local government units have occurred in Pennsylvania: 30 of those occurred during the 1920's and 1930's; 15 in the period 1945-72; and 9 since the nonuniform procedures were declared unconstitutional in 1973. The actions between 1945 and 1972 were accomplished by various provisions found in the respective municipal codes, including annexation, consolidation and annulment of borough charters. Each of these procedures was applicable to limited situations, had varying procedural requirements and differing implementing provisions. From 1973 to 2005, 14 combinations of local governmental units occurred in Pennsylvania.

### Municipal Combinations 1945-72

- 1945 Grand Valley Borough merged into Eldred Township, Warren County
- 1947 Somerfield Borough merged into Addison Township, Somerset County
- 1949 Mount Morris Borough merged into Perry Township, Greene County
- 1950 Gearhart Township merged into Riverside Borough, Northumberland County
- Livermore Borough merged into Derry Township, Westmoreland County
- Lackawanna Township merged into Scranton City, Lackawanna County
- 1952 Eden Park Borough merged into McKeesport City, Allegheny County
- 1954 East Pike Run Township merged into California Borough, Washington County
- 1956 East Mauch Chunk and Mauch Chunk Boroughs consolidated as Jim Thorpe Borough, Carbon County, Lebanon Independent Borough merged into Lebanon City, Lebanon County
- 1958 Curlsville Borough merged into Monroe Township, Clarion County
- 1965 Corydon and Kinzua Townships merged into Mead Township, Warren County
- 1966 Barclay Township merged into Franklin Township, Bradford County
- 1971 Rahn Township merged into Tamaqua Borough, Schuylkill County
- Pleasant Gap Borough merged into Spring Township, Centre County

The lack of a single, uniform and simple procedure for combining municipalities was one of the reasons for the new constitutional mandate for uniform boundary change legislation in 1968. Due to continuing controversy over annexation powers, attempts at enacting implementing legislation were stalemated. The first breakthrough came when a procedure for consolidation or merger of municipalities determined to be financially distressed was included within the Municipalities Financial Recovery Act of 1987. A boundary change procedure limited to the consolidation or merger of entire municipalities proved to be more politically workable. Enacted in 1994, the Municipal Consolidation or Merger Act now provides the first uniform statutory process for combining municipalities. The first four merger proposals using the procedures of this Act were presented to the voters in 1995.

### **Municipal Combinations 1973-2007**

- 1974 Washington Borough merged into Manor Township, Lancaster County
- 1978 East Springfield Borough merged into Springfield Township, Erie County
- 1991 Benzinger Township and St. Marys Borough consolidated as City of St. Marys, Elk County  
Elkland Township merged into Nelson Township, Tioga County
- 1992 Jacksonville Borough merged into Black Lick Township, Indiana County
- 1994 Fairview Borough and Fairview Township consolidated as Fairview Township, Erie County
  
- 1998 West Fairview Borough merged into East Pennsboro Township, Cumberland County
- 1998 Temple Borough merged into Muhlenberg Township, Berks County
- 2000 Spangler/Barnesboro Boroughs consolidated to form Northern Cambria Borough,  
Cambria County
- 2002 Wyomissing/Wyomissing Hills Borough merged into and became part of Wyomissing,  
Berks County
- 2004 East Fork Township/Wharton Township merged into and became part of Wharton Township,  
Potter County
- 2006 Spring Township/West Lawn Borough merged into and became part of Spring Township,  
Berks County
- 2007 Rush Township/South Philipsburg Borough will merge into and will become part of Rush  
Township effective 01/01/07, Centre County

### **Pennsylvania Constitution Procedure**

Because of the Constitution's requirement for a uniform boundary change procedure, the Pennsylvania Supreme Court invalidated all preexisting merger and consolidation provisions found in the municipal codes in 1974.<sup>1</sup> The existing procedure for annulment of a borough charter was also termed a nonuniform merger procedure and invalidated by the courts.<sup>2</sup> Therefore, between 1974 and 1994, the sole method for combining municipal units was the initiative and referendum procedure found in the Constitution itself. Article IX, Section 8 guarantees the right of voters to consolidate or merge municipalities by initiative and referendum without the approval of any governing body. This guarantee was found to be operative even without the passage of any implementing legislation.<sup>3</sup> Although the constitutional mandate for a uniform boundary change procedure has now been implemented for mergers and consolidations, the constitutional guarantee remains available as an alternate procedure.

The initiative and referendum procedure in the Constitution can be used to consolidate or merge any two or more counties, municipalities or similar future general purpose units of local government.<sup>4</sup> It does not apply to mergers of school districts, municipal authorities or other special purpose units. Under the Constitution, mergers or consolidations are initiated by filing a petition for the change desired. The petition must be signed by registered voters comprising at least five percent of the total number of votes cast for the office of governor in the last gubernatorial general election within the municipality.<sup>5</sup> To be approved, any question must receive a majority of votes cast in each municipality, tallied separately, voting on the proposal.

## **Municipal Consolidation or Merger Act**

The Municipal Consolidation or Merger Act, Act 90 of 1994, partially implements the constitutional mandate for uniform boundary change legislation by providing statutory procedures for the merger or consolidation of two or more municipalities.<sup>6</sup> The Act repeals sections of the municipal codes relating to consolidation, the special law for consolidation of cities, and most sections of the Municipalities Financial Recovery Act relating to merger of financially distressed municipalities. However, the Act covers only merger and consolidation, that is the combination of two or more entire units of local government. The initiative and referendum procedure in the Constitution remains the only method to annex territory.

In many respects, the Act parallels the initiative and referendum procedure of the Constitution, but there are some significant changes. All counties and municipalities, except Philadelphia and Pittsburgh, are eligible to use the procedures. The definitions distinguish between merger and consolidation. Merger happens when one municipality is absorbed into another, with the surviving municipality maintaining its continuous existence. Consolidation happens when two or more municipalities go out of existence and a completely new government is created.

There are no restrictions on the number or type of municipalities that can be combined, but they must be contiguous to at least one other of the municipalities included in the proposal. There is a wide range of possibilities for the type, class and form of government of the resulting municipality.

There are four basic phases in the process established by the Municipal Consolidation or Merger Act. First, the issue of merger or consolidation can be placed on the ballot either by joint agreement of the governing bodies of the municipalities or by voter initiative petition. Second, the proposal must be submitted to the voters of each municipality. The question must be approved by a majority of voters in each municipality involved. Third, where a voter-initiated question has been approved in the election, the governing bodies must adopt a consolidation/merger agreement. Finally, a newly consolidated municipality begins to function after new officers are elected and take office. The former municipalities consolidated into it are abolished. A newly merged municipality continues to function under its existing officers, and the former municipality merged into it is abolished on the effective date.

## **Initiation by Joint Agreement**

A merger or consolidation can be initiated through a joint agreement, in the form of an ordinance of the governing bodies of the municipalities involved in the proposal. The joint agreement must be filed with the county board of elections at least 13 weeks before the next primary, municipal or general election. The contents of the joint agreement are to include the following.

1. The names of the municipalities involved.
2. The name and territorial boundaries of the consolidated or merged municipality.
3. The type and class of the resulting municipality.
4. The way the resulting municipality will be governed, one of the following.

- a. The municipal code appropriate to its designated class.
- b. A home rule charter or optional plan already in place in one of the constituent municipalities.
- c. A new home rule charter or optional plan approved by each municipal governing body.
5. The number and boundaries of districts if some or all members of the governing body are to be elected by district.
6. If an optional charter city is the surviving unit in a merger, whether the resulting unit will continue to use the optional charter.
7. Financial arrangements including the following.
  - a. Disposition of the assets of the existing municipalities.
  - b. Liquidation of existing indebtedness of constituent municipalities.
  - c. Assumption, assignment or disposition of existing liabilities.
  - d. Implementation of a legally consistent uniform tax system.
8. The elected officers required by the form of government.
9. A transition plan and schedule for elected officers.
10. Common administration and uniform enforcement of ordinances within the resulting municipality.

## **Voter Initiative by Petition**

The second method for placing a merger/consolidation question on the ballot is by voter initiative petitions. A petition must be submitted for each municipality involved in the effort. The petition must be signed by registered voters comprising at least five percent of the number of votes cast for the office of governor in the last gubernatorial general election in the municipality. The petitions may be circulated only between the 20<sup>th</sup> and 13<sup>th</sup> Tuesdays before the election and filed by the 13<sup>th</sup> Tuesday. Petitions should be drawn up following the form for candidate petitions specified in the Pennsylvania Election Code.<sup>7</sup> When a petition is found to be in proper order, the board of elections must send a copy of the petitions to the governing bodies of the affected municipalities. The contents of the petition are to include the following.

1. The name of the municipality of the signers
2. The names of the municipalities proposed to be merger or consolidated.
3. The name of the consolidated or merged municipality.
4. The type and class of the resulting municipality.
5. The way the resulting municipality will be governed, one of the following.
  - a. The municipal code appropriate to its designated class.
  - b. A home rule charter or optional plan already in place in one of the constituent municipalities.
  - c. An optional plan selected by the petitioners.
6. If an optional charter city is the surviving unit in a merger, whether the resulting unit will continue to use the optional charter.
7. The number of districts if some or all members of the governing body are to be elected by district.

## **Voter Initiative by Petition for Home Rule Charter**

Act 2003-29 provides a third method of placing a merger/consolidation question on the ballot. Electors of the municipalities initiate or compel a merger or consolidation with a new home rule charter by filing a petition with the county board of elections to place a referendum on the ballot. Prior to the Act, a new home rule charter could be drafted only in situations in which the governing bodies of the municipalities to be consolidated or merged jointly drafted or agreed upon a new home rule charter and then subsequently agreed to merge or consolidate using the charter as the new governing document.

In brief, the referendum would determine whether a commission should be formed to:

1. Study the issue of consolidation or merger,
2. Provide a recommendation on consolidation or merger,
3. Consider the advisability of the adoption of a new home rule charter, and
4. If recommended, to draft and recommend to the voters a new home rule charter.

The Act provides for a two-election cycle. In the first election, electors would vote on the question of studying consolidation or merger with a new home rule charter and would also elect the study commission members. If both a sufficient number of commissioners are elected and the electorate approves conducting the study, the commission is elected and begins considering consolidation or merger with a new home rule charter. If the question fails, a similar question could not again be put before the voters for five years.

The commission's purpose would be to compare a new home rule charter form of government with other available forms of government under the laws of the Commonwealth and determine, in its judgment, which form of government is more clearly responsible or accountable to the people and its operation more economical and efficient. If the commission determines that a new home rule charter is the most advisable form of government, it would draft and recommend to the voters a new home rule charter for the proposed consolidated or merged municipality. The charter would contain a transition plan and schedule applicable to the elected officials.

If a new home rule charter is not recommended, then the commission would be discharged upon the filing of its report.

The commission would hold one or more public hearings, sponsor public forums and generally provide for the widest public information and discussion regarding the purposes and progress of its work. It would report its findings and recommendations to the citizens within nine months from the date of its election, except that it should be provided another nine months if it elects to prepare and submit a proposed new home rule charter.

After approximately eighteen months (the time depends upon the recommendations of the commission) and after a report from the study commission recommending consolidation or merger with a new home rule charter, a second "election" or referendum would be held on the question of merger or consolidation with a new home rule charter as drafted by the commission.

If the new home rule charter called for all or any part of the governing body to be elected on a district or ward basis, an appendix to the charter shall contain the district or ward boundaries, district and ward number designations and the number of members of the governing body to be elected from each district or ward.

The commission shall prepare and suggest for adoption by the governing body of the newly consolidated or merged municipality recommendations on the:

1. disposition of surplus assets after the consolidation or merger
2. the liquidation, assumption or other disposition of existing indebtedness
3. a legally consistent uniform tax system which provides the revenue needed to fund the required municipal services of the consolidated or merged municipality, and
4. ordinances to be enforced uniformly throughout the new municipality.

The commission shall prepare and submit to the governing body of each of the municipalities being considered for consolidation or merger budget estimates of the amount of money necessary to meet expenditures to be incurred by the commission in carrying out its functions. The municipalities to be consolidated or merged may determine the share that each municipality shall appropriate to fund the estimated budget of the commission. If no agreement is reached, each municipality shall appropriate funds equal to its share of the total estimated budget based upon its share of population to the total population of municipalities to be consolidated or merged.

## Referendum

A merger or consolidation question must be placed on the ballot by the county board of elections at the next primary, municipal or general election occurring at least 13 weeks after either the date of the joint agreement or the date of filing the voter petitions with the county. The county board of elections is to place the proposal on the ballot in a manner fairly representing the content of the petition.<sup>8</sup> The question must be approved by separate majority votes in each municipality affected.

All questions to be voted on by electors of a political subdivision are to be considered special elections, and conducted by election officials in accordance with the Election Code provisions concerning November elections.<sup>9</sup> For each referendum appearing on a county or municipal ballot, the county board of elections is to prepare an explanation of the ballot question.<sup>10</sup> It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place. The county board of elections is to certify the result of any local referendum to the Department of Community and Economic Development within ten days of the election.<sup>11</sup>

If a merger or consolidation is defeated by the voters, the same question may not be voted on again for a period of five years. However, the five year moratorium does not apply if a subsequent question is different or dissimilar in any way.

## Consolidation/Merger Agreement

Where the question was initiated by voter petition, within 60 days after the certification of a favorable referendum, the governing bodies of the affected municipalities must meet and make a consolidation or merger agreement. The merger/consolidation agreement must contain the following.

1. The number and boundaries of districts if some or all members of the governing body are to be elected by district.
2. Financial arrangements to include the following.
  - a. Disposition of the assets of the existing municipalities.
  - b. Liquidation of existing indebtedness of constituent municipalities.
  - c. Assumption, assignment or disposition of existing liabilities.
3. The elected officers required by the form of government and a transition plan and schedule for elected officers.
4. Common administration and uniform enforcement of ordinances within the resulting municipality.
5. Implementation of a legally consistent uniform tax system.

## Transition

When new officials are required to be elected they take office on the first Monday of January following the municipal election designated in the transition plan and schedule. The consolidated or merged municipality begins to function when officials take office and the former municipalities consolidated or merged into it are abolished. Except for employees protected by tenure of office, civil service or collective bargaining contracts, all appointive offices and positions are subject to the terms of the consolidation or merger agreement. The agreement also has to provide for duplication of positions, varying length of employee contracts, different civil service regulations, differing ranks and position classifications.

A new ordinance book shall be used by the municipality after consolidation becomes effective. The first document recorded in the book will be the consolidation agreement. Codification of ordinances must be completed within two years, but only for a consolidated municipality. All rights of component municipalities

are vested in the new merged or consolidated municipality. This includes real estate titles, liens, rights of creditors, agreements, contracts, debts, liabilities and duties.

The Act gives the courts of common pleas power to review transitional plans. Any resident may petition the court to enforce implementation of a transitional plan or to amend the plan and schedule if it unreasonably perpetuates the existing governments.

## Consolidation and Merger Referenda

### Consolidation and Merger Proposals 1975-2005

<b>Election</b>	<b>County</b>	<b>Proposal</b>	<b>Result</b>
Nov. 1978	Erie	merger of East Springfield Borough into Springfield Township	approved
Nov. 1980	Bradford	consolidation of Athens Borough, Athens Township, Sayre Borough and South Waverly Borough	defeated
Nov. 1982	Lackawanna	consolidation of Clarks Summit Borough and Clarks Green Borough	defeated
Nov. 1984	Elk	consolidation of Benzinger Township and St. Mary's Borough	defeated
Nov. 1989	Cameron	consolidation of Shippen Township and Portage Township	defeated
	Clearfield	consolidation of DuBois City and Sandy Township	defeated
May 1991	Monroe	consolidation of East Stroudsburg Borough, Hamilton Township, Middle Smithfield Township, Price Township, Smithfield Township, Stroud Township and Stroudsburg Borough	defeated
Nov. 1991	Elk	consolidation of Benzinger Township and St. Marys Borough	approved
	Cambria	consolidation of Casandra Borough, Portage Borough and Portage Township	defeated
	Tioga	merger of Elkland Township into Nelson Township	approved
Nov. 1992	Indiana	merger of Jacksonville Borough into Black Lick Township	approved
Nov. 1993	Cambria	consolidation of Barnesboro Borough and Spangler Borough	defeated
	Butler	merger of Seven Fields Borough into Cranberry Township	defeated
Nov. 1994	Beaver	consolidation of East Rochester Borough, Rochester Borough and Rochester Township	defeated
	Erie	consolidation of Fairview Borough and Fairview Township	approved
May 1995	Centre	consolidation of College Township, Patton Township and State College Borough	defeated
	Clearfield	consolidation of DuBois City and Sandy Township	defeated
	Schuylkill	consolidation of Tower City Borough and Porter Township	defeated

Nov. 1995	Clinton	merger of South Renovo Borough into Renovo Borough	defeated
Nov. 1997	Cambria	consolidation of Barnesboro Borough and Spangler Borough	approved
	Cumberland	merger of West Fairview Borough into East Pennsboro Township	approved
Nov. 1998	Berks	merger of Temple Borough into Muhlenberg Township	approved
Nov. 2001	Berks	merger of Wyomissing Hills Borough into Wyomissing	approved
Nov. 2002	Clearfield	consolidation of DuBois City and Sandy Township	defeated
Nov. 2003	Potter	merger of East Fork Township into Wharton Township	approved
Nov. 2004	Cambria	consolidation of Portage Borough and Portage Township	defeated
	Mercer	consolidation of Shenango Valley (Sharon, Farrell, Hermitage Cities; Sharpsville and Wheatland Boroughs)	defeated
	Berks	merger of West Lawn Borough into Spring Township	approved
May 2005	Erie	consolidation of Edinboro Borough and Washington Township	defeated
	Washington	consolidation of Burgettstown Borough and Smith Township	defeated
Nov. 2005	Centre	merger of S. Philipsburg Borough into Rush Township	approved
	Washington	merger of California Borough and Coal Center Borough	defeated
May 2007	Cambria	merger of South Fork Borough and Ehrenfeld Borough	defeated
Nov. 2008	Mercer	consolidation of West Middlesex Borough and Shenango Township	defeated
Nov. 2008	Washington	merger of West Alexander Borough into Donegal Township	approved
May 2013	Beaver	merger of Fallston Borough into Patterson Township	defeated
May 2013	Clearfield	merger of Lumber City Borough into Township of Ferguson	approved

## Factors Influencing Success/Failure of Proposals

Review of recent consolidation and merger activity has pointed to several factors that encourage or inhibit the successful outcome of proposals to combine two or more municipalities.

**Local Leadership.** Effective local leadership is critical to success, especially leadership from elected members of the governing body. These are the people who must present the vision of what the community's government could become and the advantages that will accrue for the future. Effective and total communication of the proposal to the public is crucial. Public meetings to explain all aspects of the proposal and answer questions are necessary, both to provide information, but also to build consensus in the community. At such meetings, citizens get the answers to their questions and also are able to evaluate the degree of commitment from their leadership. Proposals advanced without the active support of elected officials or against their opposition have little chance for success. Support of elected officials confers legitimacy on the proposal. An exception to this may be when there is a low level of public trust in the current officials. The existence of a professional manager in at least one of the communities is very helpful to a good outcome. A manager can help define issues, ensure that information is available to the public, apply for state funding for transition costs and plan and implement the transition process.

**Sense of Commonality.** A well-developed sense of commonality contributes to success. This requires recognition by the voters of each municipality that they already share a high degree of social and economic interaction. Being in the same school district, having the same post office, working together in civic, fraternal, veterans, religious and service organizations, and recognizing that the person on the other side of the municipal boundary could be a close friend, schoolmate, coworker or even family member makes combination of municipal governments seem more natural and continuation of separate governments more questionable. In some circumstances, the sense of commonality is enforced by perceived challenges from outside elements, including state and federal agency actions, plans by corporations to locate or close facilities with high economic impact, and attaining sufficient influence to compete effectively for economic development or political impact.

**History of Constructive Cooperation.** Although intergovernmental cooperation is almost always the alternative to combining municipal units, it is clear that a merger or consolidation proposal benefits from past positive experiences with cooperation. This includes direct shared municipal operations such as joint recreation programs, area economic development activities, contracted or regional police forces or joint code enforcement agencies. It is also achieved by joint agreements to support quasi-public institutions, such as libraries, volunteer fire companies and ambulance and rescue squads, and through the formation of joint authorities to provide area water and sewer services. A history of intermunicipal conflict and contention is difficult to overcome. Even a poorly devised and ill-prepared merger or consolidation proposal can work to undermine public receptiveness to any future proposal.

**Resolving Critical Issues Early.** Leaving issues open and unresolved is a prelude to defeat. The first Barnesboro/Spangler proposal did not include a name for the new entity. In the second attempt, choosing a new name was used as a way to generate interest and support for the proposal. Clearly defining the effect the combination will have on other community institutions is critical. Often the most important is the status of the volunteer fire companies, but questions about other institutions, such as schools, post offices and libraries must be addressed and settled early to preclude misinformation. Securing volunteer fire company support has proven pivotal in the success of a number of proposed combinations. Outstanding debt can be another critical issue, so that a combination proposal does not appear as a bailout of one municipality by the taxpayers of another.

**Framing A Credible Proposal.** Combining two or more municipal governments involves many complex issues that must be resolved in a way understandable and acceptable to the ordinary voter who is not accustomed to giving much thought to local government. Simplicity is usually the best policy. Mergers are easier to devise, promote and implement than consolidations. Typically, the merger process takes less than a year, while a consolidation process can take three or more years. Limiting the number of changes to be made makes it easier to accept. A consolidation with a new municipal name, new form of government and new elected officials is the most difficult to accept and implement.

The proposal must also be credible in terms of finances and service improvements. Most combinations do not result in large savings. Voters find it difficult to accept a promise of tax cuts based on loss of jobs by many long-time municipal employees. Mergers of cost-ineffective small municipalities into larger ones can and do produce significant savings, but this is not the case in consolidation of nearly equal units. The long-range benefits through increased professionalism of the municipal staff, improved quality of municipal services and growth of the tax base through economic development can be significant, but are impossible to quantify. The vision of an improved quality of life for the community has to be held up before the voters.

## **Springfield/East Springfield Merger**

In 1976, a proposed new steelmaking facility was announced by United States Steel Corporation for an area straddling the Ohio/Pennsylvania border on the shore of Lake Erie. Anticipation of a drastic impact on the local community led to the proposal to merge Springfield Township and East Springfield Borough to allow a unified response to the situation. In May 1978, borough and township officials met with Department of Community Affairs staff to explore procedures for merger. In June, both municipalities created merger study committees. The committees met jointly during the summer; a public hearing was held in July. There was no serious opposition to the merger proposal. Although taxes for borough residents would be raised from 1 mill to the 2 mill rate of the township, they were assured that a tax increase was inevitable anyway.

The borough and township already had a joint planning commission, jointly operated a park and the borough purchased public works services from the township. They were served by the same volunteer fire company and were located within the same school district. Both faced future construction costs for new municipal buildings and planning for public water and sewer facilities.<sup>12</sup> The elected officials of the two municipalities led the merger effort.

The proposal was placed on the ballot at the November 1978 election and was approved by a 76 percent yes vote in the borough and a 77 percent yes vote in the township. After the election, the township supervisor/roadmaster announced his retirement and resignation from office. The borough mayor was appointed to fill the vacancy on the township board of supervisors.

The success of this merger can be attributed to a challenge from the outside (the proposed steel mill), strong support from local elected officials, a feeling of community between the residents of the borough and township, and a lack of disparity in the tax rates and services of the two municipalities. Their merger restored the political unity the area had enjoyed before East Springfield was separated from the township in 1887.

## **Benzinger/St. Marys Consolidation**

A deteriorating local employment situation led to the creation of the St. Marys Area Chamber of Commerce early in 1984. One of the first proposals of the new organization to promote economic activity was the combination of the two local government units in the area.

The borough and township had a long history of cooperation and shared municipal services including joint water and sewer systems. Both were served by the same school system and volunteer fire department. Disagreement over sharing the costs of sewer treatment plant expansion had led to friction between the two governing bodies.

A consolidation committee was formed in April 1984 with three representatives of the borough, three from the township and three from the chamber. The committee met a number of times to discuss the issues involved, gather information and formulate a proposal to be presented to the voters. In June, public meetings on the proposal were held separately by the borough and township. In July, a combined public meeting was sponsored by the chamber.

Following the constitutional initiative and referendum procedure, petitions were circulated in both borough and township and filed with the county board of elections on August 7. The petitions called for consolidation of the borough and township into a new third class city to be known as the City of St. Marys, with a council manager form of government operating under the terms of the Home Rule Charter and Optional Plans Law.

The Board of Elections placed the question on the ballot over the objections of the borough solicitor. A legal challenge on behalf of a group of borough employees was filed by the borough solicitor. The court dismissed the challenge, stating it had been filed after the deadline for filing objections to petitions established in Section 977 of the Election Code.<sup>13</sup>

At the November 1984 election, the proposal was defeated by the voters. While the proposal received a 62 percent yes vote in the township, it was supported by only 46 percent of the borough voters. It was generally perceived that the borough would have more to lose financially, and most borough officials opposed consolidation although council took no formal position.

The issue of consolidation did not die with the first referendum. The example of neighboring communities incorporating as cities and receiving increased community development block grant allocations and the 1987-89 consolidation effort in nearby DuBois helped keep the issue alive. In February 1989, the governing bodies of both Benzinger Township and St. Marys Borough decided to reconsider consolidation. They formed a joint study commission, with four members from each municipality. The study commission met for a 22-month period. It commissioned two studies by the Pennsylvania Economy League, one on the financial effects of consolidation, and the other on procedural approaches. The commission reported in March 1991, recommending consolidation to the borough council and township supervisors. The study commission found that consolidation was essential to the future development of the community, stating “the perpetuation of a town within a town makes little sense from a growth standpoint.”<sup>14</sup>

Borough council took official action in support of the proposal; however, the township board of supervisors took no formal action one way or the other. The question was placed on the ballot by voter initiative petitions. A series of public meetings was held on the issue, sponsored by the chamber of commerce and other community groups. In November 1991, the question appeared on the ballot. The vote was strongly in favor of consolidation, with 58 percent yes votes in the township and 77 percent yes votes in the borough.

The initiative petitions had an attached schedule for consolidation. The new City of St. Mary's came into legal existence as of the date of the certification of the vote by the board of elections. A transition committee was formed to prepare a plan and recommendation for consolidation of the assets and services of the two constituent municipalities. Almost all the considerable amount of work was done by local people. Outside consultants were contracted for public works studies and ordinance codification. Some departments were combined during the transition process.

Both borough and township had long operated under the council-manager form and there was consensus to retain it after consolidation. The question of electing a government study commission was placed on the ballot and approved by the voters at the April 1992 primary election. The government study commission prepared a home rule charter for the consolidated city. At the November 1992 election, voters of St. Marys approved a new home rule charter with a council manager form of government. New city officers were chosen at the 1993 municipal election. The City of St. Marys began functioning as a consolidated government on January 3, 1994. In 1994 the real estate tax rate dropped from 26.5 to 18.36 mills for former borough properties and increased from 14.55 to 18.36 mills for former township properties.

## **Elkland Township/Nelson Township Merger**

In contrast to the organized process followed in larger communities, the merger process in these two rural Tioga County townships was quite informal. The merger came as a response to a leadership crisis in Elkland Township. The population of the township had dropped to 61 in the 1990 census. The township was unable to find individuals willing to serve in its elected offices. By the summer of 1991, the township had only two supervisors, and the supervisor whose term expired in 1991 was not willing to continue to serve. The township secretary was also unwilling to remain in office. The tax collector had resigned and Elkland Township taxes had been collected by the Nelson Township tax collector since midsummer.

The Nelson Township Board of Supervisors agreed to the merger and supported it. Initiative petitions were circulated in both townships by township officials. There was general support from the citizens of both municipalities. Some opposition arose from people who thought the proposal was for merger with Elkland Borough, not realizing there was an Elkland Township as well. There was no organized campaign.

At the November 1991 election, the question was approved in both townships, receiving a 75 percent yes vote in Elkland and a 73 percent yes vote in Nelson. Elkland Township went out of existence January 1, 1992, when its territory became part of Nelson Township. The merger added only a little over a mile of township roads to Nelson Township. Former Elkland property owners saw their real estate millage increase from 2.75 to 4.0 after merger, while the Nelson millage dropped from 4.5 in 1991 to 4.0 in 1992.

## **Jacksonville Borough/Black Lick Township Merger**

The effort to merge Jacksonville Borough into Black Lick Township, Indiana County, was prompted mainly by the small size of the borough. According to the 1990 Census, Jacksonville had only 89 residents living in a one square mile area. Many of its residents were senior citizens. Neighboring Black Lick Township had 1,225 residents. The borough had a budget of only \$8,000. Jacksonville was hard pressed for funds. No money was available for needed street repairs. Jacksonville was also under order from the Department of Environmental Resources to install sewers.

Another serious problem for Jacksonville was the difficulty in getting citizens to serve in public office. Elective positions were frequently filled by write in candidates. The five member council had trouble making a quorum. Many council members were elderly. Borough meetings were held in people's houses. Local leaders concluded there was little choice but to dissolve the borough.

At the November 1992 election, voters approved merger of Jacksonville Borough and Black Lick Township. There was a 66 percent yes vote in Jacksonville and a 74 percent yes vote in Black Lick. The merger was effective January 1, 1993, when Jacksonville went out of existence and became part of Black Lick Township. All its assets and liabilities were transferred to the township. The population and land area of the former borough were added to Black Lick Township. The township continued to operate under the same form of government with the same elected officials. Real estate tax rates in Black Lick continued at 6.5 mills in 1993, a drop from the 15.0 mills for former Jacksonville properties in 1992.

## **Fairview Borough/Fairview Township Consolidation**

In mid 1992, officials of Fairview Borough and Fairview Township formed a task force to study the operations of the two governments and to make recommendations regarding possible joint provision of services or merger or consolidation. The task forces entered into an agreement with the Pennsylvania Economy League to provide research and analysis for the group. After nearly two years of study the task force issued a report in 1994 recommending consolidation of the two municipalities into a single second class township.

In the 1990 Census, Fairview Borough had a population of 1,988 in a 1.34 square mile area and Fairview Township had a population of 7,839 in a 27.36 square mile area. The two municipalities are located in a suburban area in Erie County. Fairview Township completely surrounds the borough. However, the borough is the hub of most commercial and educational activities.

The citizen task force concluded the two municipalities constitute one geographic and economic community. The present governmental division results in unnecessary duplication of services and inefficiencies. It was believed the creation of a single municipal government could produce savings, enable efficiencies and higher levels of service without increasing taxes or instituting new taxes. The analysis done by the task force indicated the real estate tax rate for a new municipality would be dramatically lower than the 1993 rate in the borough and approximately the same as the 1993 rate in the township. According to the report, consolidation would present an image of a dynamic and progressive community to people seeking to locate residences, businesses or industries.

At the November 1994 election, voters approved the consolidation of the two municipalities into a single second class township. The consolidation proposal received a 67 percent yes vote in the borough and a 56 percent yes vote in the township.

The new township began to operate as one government in January 1998. The township and borough governments continued to operate in 1995, 1996 and 1997. A Transition Planning Committee began functioning in January 1995 and made plans and recommendations for combining services, ordinances, assets and budgets. Voters of the entire area nominated and elected those township officers up for election in 1995. At the municipal election in 1997, citizens elected the remaining new officers for the consolidated township. In 1998, the township real estate tax rate remained unchanged at 8.0 mills. For borough property owners, millage dropped from 25.0 in 1996 to 20.0 in 1997 and to 8.0 with consolidation in 1998.

## **Barnesboro-Spangler Consolidation**

Barnesboro and Spangler are two adjoining boroughs in northwestern Cambria County. In 1990, Barnesboro had a population of 2,530 and Spangler 2,068. Together, they form a small urban center in an otherwise rural area. There is a local AM radio station and weekly newspaper. A small retail area serves residents of both communities and the surrounding area with stores and various services. The two boroughs appear outwardly to be a single community. They developed and grew with the lumbering industry and then with coal mining. With declines in both industries, the community faced rising unemployment, a stagnating local economy and isolation from the main growth centers of the state.

The idea for combining the two boroughs goes back at least to 1985 when in response to local interest, the county planning commission prepared a comprehensive report on the possible consolidation of the two boroughs plus adjoining Susquehanna Township. The report outlined their common development and shared challenges, along with potential financial advantages. Although the report failed to stir enough interest to generate follow-through from either officials or voters, it did define the issues of consolidation.

The issue of consolidation surfaced again in 1993, but this time limited solely to the two boroughs. A citizen committee comprised of residents of both boroughs mounted a petition drive to place the consolidation question on the November 1993 ballot. A few of the elected officials became involved in the effort. The Pennsylvania Economy League became deeply involved with the committee providing technical advice, facilitating meetings and promoting approval of the question. Proponents of consolidation held a series of public information meetings, citing benefits from cost savings, improved municipal services, lower taxes, increased intergovernmental revenue and higher political clout. The major opposition came from the volunteer fire companies, which mistakenly felt that consolidation would mean the automatic merger of the two fire companies. Other negatives were the perception of too much outside influence by the PEL and the failure to agree on a name for the new entity. The proposal was defeated at the polls. The 60 percent yes vote in Barnesboro was negated by the 39 percent yes vote in Spangler.

The logic of consolidation remained powerful, particularly the annual \$118,000 CDBG entitlement the community would have received after combining to reach the 4,000-population threshold to qualify under state law. Encouraged by the enactment of the state enabling legislation, a second citizens committee was formed in 1996. Building on the lessons learned in the prior effort, they avoided some of the pitfalls. The role of outside agencies was relegated to providing information. The group was put under the leadership of a single individual and the new Consolidation Committee included elected officials and citizens from both boroughs. Both volunteer fire companies had a change of leadership and now understood municipal consolidation would not threaten their independence. They were enlisted to help as proponents of consolidation.

A very systematic process of community education was pursued and committee members were personally active in presenting their case to the community. Articles of Agreement were drafted and presented as a

blueprint for implementing consolidation if approved at the polls. The law now required a name for the consolidated entity, so this issue could not be left hanging as it was in 1993. In a highly publicized contest residents submitted ideas for the new name. The name Northern Cambria was chosen because it was a common denominator for both boroughs and also the name of the school district. Potential cost savings and improvements in public services were emphasized as well as the benefits of status as a CDBG entitlement grantee. At the November 1997 election, the proposal was approved by a 59 percent yes vote in Barnesboro and a 63 percent yes vote in Spangler.

A two-year transition period began in January 1998. At a joint meeting of both borough councils, eight persons were appointed to a transition committee to make recommendations to the councils on matters to be addressed for the formation of the new borough. The transition committee formed seven subcommittees to deal with functional areas. Technical assistance was obtained from county and state agencies and regional nonprofits. The first transition grant from the state, \$7,500 for codification of ordinances, was awarded. Further grants are in the application process. Through February 1999 the transition committee has made 24 recommendations for implementation by the existing councils or the new consolidated council. One of these is the retention of all current employees of both boroughs. Because neither Barnesboro nor Spangler has municipal managers, the bulk of the planning for the new borough government has fallen on the transition committee. Officers for the new borough were elected in 1999 and Northern Cambria Borough began operating January 2000.

## **East Pennsboro Township/West Fairview Borough Merger**

Located in the Harrisburg West Shore suburban area of Cumberland County, West Fairview Borough had a population of 1,403 and East Pennsboro Township 15,185 in 1990. Confronted with the almost impossible task of meeting increasing costs for services with a stagnant tax base, West Fairview suffered recurring financial crises, but had all outstanding debt repaid by 1997. Led by former and current elected officials, a merger with neighboring East Pennsboro was proposed as a long-term solution. Both municipalities appointed study committees and held public meetings for citizen input. A joint merger agreement was worked out and adopted by both governing bodies in July 1997. Public meetings were held in October in both the borough and township to answer questions about the merger proposal. State grant funds were vigorously pursued to offset transition costs. These included \$15,000 for zoning for West Fairview (which previously had none), \$22,000 to cover the local match for a federal grant for hiring two additional police officers and \$210,000 as a first-year installment of a phased 3-year infrastructure improvement program. Additional grant funds were awarded in 1999 and 2000.

Under the merger agreement, West Fairview's volunteer fire company was to join the five existing volunteer companies in the township as part of the East Pennsboro Fire Department with increased municipal funding. The borough's single voting precinct was to become the fifth precinct of the township. The existing borough contract with a recreation league was continued by the township. The township was to assume maintenance of the borough park and extend township recreation programs and access to the township's seven parks. Borough streets and sewers were to be brought up to township standards and the township's building code extended to the borough.

At the November 1997 election, the proposal was approved by a 71 percent yes vote in East Pennsboro and an 80 percent yes vote in West Fairview. The vote reunified the community that had been split when West Fairview was carved out of East Pennsboro in 1910. The merger became effective January 1, 1998 when the borough government went out of existence. Borough property owners saw a drop in their real estate tax rates from 33 mills to 14 mills. There were slight increases in sewer and garbage charges. During 1998, township crews paved 4 miles of West Fairview streets and recycling containers were distributed to households in the former borough. Round-the-clock police protection was extended to West Fairview. West Fairview never had full-time police protection before the merger. East Pennsboro hired the lone full-time borough employee, a street maintenance worker. A letter from West Fairview residents summarizes reaction to the merger.

*When I take a look at the vast increase in services offered by East Pennsboro over what we had in West Fairview, one has to wonder why this merger did not take place years ago. With the lower tax rate and a slight increase in sewer and refuse rates, my outlay for these things is \$90 less than in the past. While that is nice, it is the increase in services that I appreciate the most. You said that would happen and you were right.*

## **Muhlenberg Township/Temple Borough Merger**

Located just north of Reading in Berks County, Temple had a population of 1,491 in 1990 while Muhlenberg had a population of 12,636. Temple was an enclave completely surrounded by Muhlenberg. Both municipalities, along with Laureldale Borough formed the Muhlenberg School District. Temple's limited land area meant its tax base was stagnant. Temple weathered a severe financial crisis between 1994 and 1997. To overcome accumulated deficits, taxes were increased, capital spending suspended and services reduced. The borough sold its water system to the Muhlenberg Township Authority in 1994, and in 1997 the borough's police department was disbanded and police protection contracted from Muhlenberg Township. By the beginning of 1998, all debt had been paid off and the borough was again financially stable.

In March 1998, with the goal of reducing property taxes, the Temple council president proposed merger with Muhlenberg Township. The initial response from the township commissioners was positive and both bodies appointed committees in April to undertake merger talks. The first joint meeting of elected officials was held in May with DCED staff attending. Procedures were reviewed, the sewer systems and fire service were identified as initial issues to be addressed, the solicitors were directed to draft a merger agreement and Berks County was asked to fund a fiscal analysis by the Economy League. Later in May, a meeting was held between Temple officials and the Muhlenberg Township Authority board to discuss transfer of the borough sewer system. A further meeting was held with borough and township officials and representatives of the two volunteer fire companies.

Completed in July, the fiscal review indicated that the merger could be done with while still maintaining Muhlenberg's 1.9 mill tax rate. Muhlenberg commissioners adopted a letter of understanding in July outlining future fire company funding under the merger. Both municipalities adopted ordinances approving a joint merger agreement, placing the merger question on the ballot at the November 3, 1998 election.

The agreement called for merger of Temple into Muhlenberg with Temple's government abolished and Muhlenberg continuing under the First Class Township Code. Temple's voting precinct became the 8th precinct of Muhlenberg. The township hired both borough road workers and the borough secretary was taken on a part-time basis for six months to assist in the transition. Other borough employees were eligible for current and future township vacancies. Temple Fire Company joined Goodwill Fire Company as part of the Muhlenberg Township Fire Department. Current fire company funding was maintained, both companies made eligible for surplus township vehicles and a new incentive payment program for volunteer firefighters was implemented. Temple parking, traffic and zoning ordinances were maintained until included in a new codification of Muhlenberg ordinances to occur within 2 years. The real estate tax rate for Temple property was dropped from 4.45 mills to the township rate of 1.9 mills. All assets and liabilities of the borough were transferred to the township. The township honored unexpired borough contracts for garbage collection, street lighting and signal maintenance. The Temple water rate was reduced to the township rate and debt of the authority to the borough for purchase of the borough water system was cancelled. The borough sewer system was transferred to the authority and rates reduced to those charged in the township. The borough payment for township police protection ceased as of the merger date.

During October, five public information meetings were held, three in the borough and two in the township, to explain the terms of the merger agreement and to answer questions. Elected officials took the leadership in these meetings. The question was approved at the November election by a 74 percent yes vote in Temple and a 78 percent yes vote in Muhlenberg. The merger reunified the community split by the incorporation of Temple in 1920. When the merger became effective January 1, 1999, real estate tax rates in Temple dropped 57 percent to the township's 1.9 mill rate, water rates dropped 49 percent and sewer rates dropped marginally depending on usage. For 1999, Muhlenberg repealed its \$10 per capita tax, giving a tax cut to both former borough and township residents. Muhlenberg was preparing a grant application to the state to help fund transition costs, including ordinance codification and infrastructure improvements in the newly merged area.

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3. *Lower Macungie Township Annexation Case (No. 1)*, 248 A.2d 58, 213 Pa.Super. 313, at 319, 1968.
4. Pennsylvania Constitution, Article IX, Section 14.
5. *Ibid.*
6. 53 Pa.C.S. 733; Municipal Consolidation or Merger Act.
7. 25 P.S. 2869; Pennsylvania Election Code, Section 909.
8. Pennsylvania Constitution, Article IX, Section 14; 25 P.S. 2963(g); Pennsylvania Election Code, Section 1003(g).
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13. *Weichman v. Elk County Board of Elections*, Civil Action No. 84 440, C.P. Elk Co., 1984.
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## VI. Formation of New Local Government Units

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This discussion is centered on the processes used to create an entirely new local government unit out of a portion of an existing unit. It includes incorporations involving divisions of entire units, and in the past included erection of new counties and formation of new townships. It does not include new units created through consolidation or mergers, treated in Chapter V. It also excludes incorporations of entire townships or boroughs as boroughs or cities, since these do not alter boundaries, but merely change the classification of the unit. During the period 1920-1999, 40 incorporations or disincorporations altered the classification of entire municipalities; these actions are not considered for purposes of this discussion, but are summarized below for purposes of information. Most of the incorporations of entire boroughs as townships in the 1950s and 1960s occurred in suburban areas in Western Pennsylvania and were primarily motivated by a desire to halt annexations by adjoining municipalities. This was also the motivation for an additional approximately 40 reclassifications of suburban townships from second to first class in the same period.

### Change of Status of Entire Municipalities

	<u>1920-44</u>	<u>1945-69</u>	<u>1970-99</u>	<u>Total</u>
Borough to city	9	1	2	12
Borough to township	5	0	0	5
Township to borough	3	17	1	21
Township to city	0	1	1	2

From 1920 to 1999, 89 completely new local government units were formed from portions of existing municipalities, including 71 boroughs and 18 townships. Since 1945, only 29 boroughs have been created from portions of existing townships. Only two boroughs have been created in the last 15 years (1984-2005).

### New Municipalities Formed from Portions of Existing Units

	<u>1920-44</u>	<u>1945-69</u>	<u>1970-05</u>	<u>Total</u>
Boroughs	42	16	13	71
Townships	18	0	0	18

### Cities, Counties and Townships

Cities can be created only through the incorporation of one or more entire boroughs or townships, and thus are the result of a combination or change of status action.

Counties were historically erected by special act of the state legislature. This process gave rise to abuse as the General Assembly proved amenable to erecting new counties for the benefit of real estate speculators selling lots in newly designated county seats. An 1857 constitutional amendment set 400 square miles as the minimum area of a new county. The 1874 Constitution added a population minimum of 20,000 persons and prohibited a county line from passing within ten miles of the seat of the county to be divided. The legislature was further prohibited from passing local or special laws erecting new counties or changing county lines. A general law was passed in 1878 for creation of new counties.<sup>1</sup> Lackawanna County in 1878 was the only county formed under this authority before it was repealed in 1895. Since 1895, there has been no procedure for creating new counties by dividing existing ones.

Townships were also first formed by special act of the legislature, but in 1803 the county courts were given the power to erect townships within their jurisdictions. The authorization for creation of new townships by dividing existing townships was carried down in the various townships laws and codes until repealed in 1937.<sup>2</sup> Since 1937, there has been no procedure for creation of a township by dividing an existing township.

## Borough Incorporation

Although splitting townships to create new ones ended in 1937, incorporation of boroughs from portions of townships has continued. The traditional urban growth model of local government conceived boroughs as providing needed municipal controls and services to emerging urban areas beyond those the existing township could, or would provide. The earliest boroughs were created by the legislature, but in 1834 county courts were given the authority to incorporate villages of 300 population or more as boroughs. This population minimum had been dropped by 1915. Incorporation by special legislative act ceased with the 1874 Constitution, but incorporation by judicial action continued.

With the rapid outward spread of urban development following the advent of the automobile, changes began to occur in the borough incorporation process. A 1941 amendment to the Borough Code allowed first class townships with a population of 8,000 or more to incorporate as boroughs upon a petition filed by the township commissioners.<sup>3</sup> Courts were beginning to interpret the incorporation provisions more broadly. A leading case authorized the incorporation of six villages with intervening farmland into a single borough,<sup>4</sup> but many courts held to a strict view of the requirement for the existence of a defined settlement.<sup>5</sup> When the Borough Code was reenacted in 1947, the special provision for incorporation of entire first class townships was dropped, and the eligible area increased from “any town or village” by adding the words “or any two or more towns or villages.” This language was stretched to allow incorporation of entire townships.<sup>6</sup> With the 1966 reenactment of the Borough Code, any reference to an urban settlement was dropped and courts were authorized to incorporate “any area within their jurisdiction.” This opened the way for incorporation of tracts of land with scant populations. At the time the original incorporation petition was filed for Seven Fields, the proposed borough had no residents whatsoever.

**Constitutional Change.** The voters adopted the new local government article, Article IX of the Pennsylvania Constitution, in 1968. While Section 8 requires uniform legislation for merger, consolidation or boundary change, it does not specifically include the word *incorporation*. An early case held this provision did not affect the incorporation of boroughs.<sup>8</sup> A second case held that annexations were the real target of the amendment in its use of the words *boundary change*, and the constitutional procedures could not be applied to incorporation. The court ruled Article IX, Section 8 of the Constitution does not apply to the incorporation of boroughs and the Borough Code provisions for incorporation were not repealed by the new Constitution and were not in conflict with it.<sup>9</sup> This ruling was endorsed by the Commonwealth Court in a later case.<sup>10</sup>

However, in the May 1985 primary election, the Allegheny County Board of Elections accepted petitions and placed on the ballot a question proposing the reestablishment of the First Ward of the City of Clairton as the Borough of Wilson. The petition was filed invoking the authority of Article IX, Section 8 of the Constitution. The Board of Elections accepted the petition and ruled that the question must appear on the ballot for the entire city. The proposal was defeated by the voters, but if approved it would have resulted in the creation of a new municipality using the constitutional initiative and referendum procedure.

**Statutory Change.** As borough incorporations continued, the character of some of the new boroughs began to raise concerns. The absence of any legislative criteria for formation of new boroughs led to use of incorporation as a tool to obtain liquor licenses for resorts located in otherwise dry townships. A 1981 amendment to the Borough Code added additional steps to the incorporation procedure to ensure detailed consideration of incorporation proposals as well as the existence of popular support.<sup>11</sup> The courts are now

required to establish a Borough Advisory Committee to make a report on the incorporation proposal. Any proposal must now receive a majority vote in a referendum before the incorporation can be granted.

As the borough incorporation procedure became used more and more by property owners and developers as a tool to circumvent township zoning and subdivision regulations and evade township taxes, concern for reducing the potential for misuse grew. Finally in 1992, the Borough Code was amended to set a minimum population limit of 500 residents for a new borough.<sup>12</sup> This change was to assure that the area to be incorporated would already be a community with a need for borough government. In addition, the 1992 amendment clarified the procedures. Now the court clearly must find that the incorporation is desirable before it certifies the question for referendum. The court must find a preponderance of evidence submitted in the report of the borough advisory committee and in the subsequent hearing on its report supports the desirability of incorporation.

**Recent Incorporations.** Since 1945, 47 new boroughs have been incorporated, including 29 formed by splitting townships and 18 incorporations of entire townships (not considered in this chapter).

### **Boroughs Incorporated from Portions of Townships, 1945-95**

<u>Year</u>	<u>Borough</u>	<u>County</u>	<u>2000 Population</u>
1945	Brookhaven	Delaware	7,985
	Chester Heights	Delaware	2,481
1946	East Petersburg	Lancaster	4,450
1947	Pleasant Hills	Allegheny	8,397
	Whitehall	Allegheny	14,444
1952	Newell	Fayette	551
1953	Perryopolis	Fayette	1,764
1956	Ehrenfeld	Cambria	234
1960	Baldwin	Allegheny	19,999
1961	Bonneauville	Adams	1,378
1964	Seven Springs	Somerset	1
1965	McClure	Snyder	975
1966	Harvey's Lake	Luzerne	2,888
	Indian Lake	Somerset	450
1967	Barkeyville	Venango	237
	Juniata Terrace	Mifflin	502
1970	Callimont	Somerset	51
	New Stanton	Westmoreland	1,906
1974	Carroll Valley	Adams	3,291
	Penn Lake Park	Luzerne	269
1977	Pennsbury Village	Allegheny	738
	S.N.P.J.	Lawrence	0
1978	Green Hills	Washington	18
1979	Ernest	Indiana	501
1980	Valley Hi	Fulton	20

1981	Laurel Mountain	Westmoreland	185
1983	Seven Fields	Butler	1,986
1991	New Morgan	Berks	35
1993	Bear Creek Village	Luzerne	284

The 12 boroughs incorporated before 1966 average 5,444 population. In 1966, the Borough Code was changed to remove the requirement for the existence of a village or town; the 17 boroughs incorporated from 1966-93 average 596 population. Since the requirement for a population of at least 500 for incorporation was added in 1992, no boroughs have been incorporated. The Bear Creek Village incorporation was not affected by the amendment because it was commenced in 1990.

## Procedure

The procedure for incorporation of a borough is complex and somewhat confusing, since the 1981 and 1992 amendments grafted new steps into the existing procedure, resulting in some duplication. The various sections of Article II of the Borough Code must be read together to determine the proper procedure.

**Petition.** Incorporation is initiated by filing a petition with the Court of Common Pleas.<sup>13</sup> The petition must be signed by a majority of freeholders residing within the limits of the proposed borough and by freeholders owning a majority of the land within the limits of the proposed borough. Where the proposed borough is composed of portions of more than one township, the petition must be signed by a majority of the resident freeholders in each of the township portions and by freeholders owning a majority of the land in each of the township portions. The requirement of freehold status is somewhat archaic: “This provision limiting the petitions to freeholders residing in the area is a relic of colonial days when only freeholders were allowed to vote.”<sup>14</sup> However, the stipulation that only freeholders may sign a petition for incorporation was upheld as constitutional.<sup>15</sup> A freeholder is one who has actual possession of land for life or a greater estate; corporations may qualify as freeholders.<sup>16</sup> All signatures must be obtained within a three month period prior to the date of the filing. At least one of the signers, usually the circulator, must sign an affidavit attached to the petition.

**Boundaries.** The petition is to include the name of the new borough and a description of the boundaries with a plot. If the area is less than an entire existing political subdivision, the description is to include courses and distances.<sup>17</sup> The area to be incorporated cannot include any part of an already incorporated municipality.<sup>18</sup> It is commonly accepted that boroughs can only be incorporated out of township territory. The old distinction between incorporated and unincorporated units is no longer valid for most purposes in Pennsylvania municipal law, but because the Borough Code incorporation procedures were enacted before 1975, for the purposes of this legislation, townships are not considered municipal corporations.<sup>19</sup>

The boundary as described in the petition must be accurate. The courts traditionally held they had no authority to modify the boundaries as set forth in the petition, with the sole exception of excluding farmland.<sup>20</sup> A flaw in the boundary description meant the court must deny the petition. A more relaxed approach to this issue has been evident in recent cases. In the incorporation of Franklin Township as Franklin (later Murrysville) Borough, the Commonwealth Court allowed the amendment of the incorporation petition to exclude areas annexed by other boroughs between the circulation and filing of the petition, distinguishing it from the Whitehall case as an insubstantial, rather than a substantial, change in boundaries.<sup>21</sup> In extended litigation over the incorporation of Valley Hi, the Commonwealth Court agreed the defective boundary description was a procedural error and would have served as grounds for the lower court to dismiss the original petition, but this irregularity was waived by the parties by their failure to raise an objection in timely fashion.<sup>22</sup>

**Filing; Notice.** The petition is to be filed with the clerk of courts. Notice is to be given by publication in a newspaper of general circulation in the county and in the county legal journal, if any, once a week for four

weeks. The notice is to state when and where the petition was filed and the time during which exceptions may be filed.<sup>23</sup>

**Exceptions; Requests to Exclude Farmlands.** Persons interested in the proposal may file exceptions within a period of 30 days from the date of the filing of the petition; the purpose of exceptions is to challenge the validity of the petition. The court has discretion, on the appeal of any party aggrieved, to alter the boundaries of the proposed borough to exclude lands exclusively used for the purposes of farming or other large and unsettled lands. The court is to make a determination if these lands properly belong to the borough.<sup>24</sup>

**Borough Advisory Committee.** Upon receipt of a petition to incorporate a borough, the court is to establish a Borough Advisory Committee. This action is mandatory; the court must establish a borough advisory committee and await its advice before deciding the issue on the merits.<sup>25</sup> The committee is to be composed of two residents of the proposed borough, two residents of the existing unit residing outside the proposed borough and recommended by the governing body of the unit, and a chairperson residing within the county outside the immediate area involved. The members are to serve without compensation, but may be reimbursed for expenses. The director of the county planning commission is to serve as an advisor to the committee. However, participation by the planning director is directory, not mandatory. Failure of the planning director to participate is not fatal to the incorporation process.<sup>26</sup>

The committee has 60 days to study the proposal and report back to the court with expert advice and findings of fact on the desirability of the incorporation. Findings of fact are to be reported in at least the following three areas, and can cover other considerations: (1) the proposed borough's ability to provide adequate and reasonable services and facilities for the community; (2) the existing and potential development of the area; (3) the financial or tax effect on the proposed borough and the existing governmental unit.

**Court Actions.** After receipt of the report, the court is to hold a hearing. The court is to make a determination on the advisability of the incorporation based on the considerations listed above. It is to make a determination of whether or not the conditions prescribed by the Borough Code have been complied with. These conditions are the requirements for petition signatures in Section 202(a) and the three numbered conditions listed in Section 202(c).<sup>27</sup> If the court finds incorporation undesirable, it must refuse the petition. The court must be convinced the conditions in the law have been complied with and that the desirability of the proposed incorporation is supported by a preponderance of evidence. If the court finds the conditions have been met, it is to certify the question of incorporation to the county board of elections for a referendum vote of the residents of the area proposed for incorporation. Results of the referendum must be certified to the court and to the Department of Community and Economic Development.<sup>28</sup> After receipt of certified election results, the court is to enter a final decree either incorporating the borough or denying the petition. The decree of the court incorporating the borough must be certified to the state departments of Transportation and Community and Economic Development.<sup>29</sup>

The Borough Code now requires the court to take into consideration the advice of the borough advisory committee and statements of objectants at a hearing and then rule on the desirability of the proposed incorporation. Only after a judicial determination that the incorporation meets the prescribed conditions is the matter referred to the voters of the area for their approval or rejection in a referendum. Courts have the discretion not to grant a petition for incorporation even if statutory requirements are met and there are no technical objections. Courts may evaluate a petition based on considerations not in the Borough Code. Where a trial court rejected the recommendation against incorporation by the advisory committee and ordered a referendum, Commonwealth Court reversed the decision.<sup>30</sup> The appellate court ruled the trial court abused or failed to exercise its discretion appropriately when interpreting the requirement for incorporation. In another case, the advisory committee voted in favor of incorporation, but both the trial court and Commonwealth Court rejected this advice and ruled against incorporation.<sup>31</sup>

## Standards for Incorporation

Standards for desirability of incorporation derive from two sources. Judicial standards have been developed through case law. Legislative standards have been added to the Borough Code in the 1981 and 1992 amendments. To a great extent these standards parallel each other. The standards are to be applied to local conditions.

**Population Minimum.** A significant change to the borough incorporation process occurred in 1992 when the General Assembly amended the Borough Code to require that any new borough have at least 500 residents. While the legislation was enacted on December 18, 1992, it applied to applications and petitions presented on or after March 15, 1992.

Commonwealth Court applied the new provision when ruling against the incorporation of the proposed Borough of Ashcombe.<sup>32</sup> The court determined the petitioners had no fixed or vested right that was retroactively affected by the change in the Borough Code. In two other court cases, petitioners were not directly affected by the change in the law. Nevertheless, Commonwealth Court took notice of the new 500 resident requirement when ruling against the two incorporations.<sup>33</sup> The court apparently was influenced by the new legislation and the trend away from incorporation of minimally populated areas. The lack of substantial progress toward development of the proposed boroughs was critical in the reasoning of the court.

The judicial standards have been established by the Commonwealth Court.

Those factors or considerations are: whether the area proposed for incorporation is one harmonious whole with common interests and problems which can be properly served by borough government; whether public services, such as police, fire protection, water, and sewage disposal are to be provided by borough government; and whether the incorporation disadvantages the remaining township.<sup>34</sup>

The legislative standards are set forth in the Borough Code.

(1) the proposed boroughs ability to obtain or provide adequate and reasonable community support services such as police protection, fire protection and other appropriate community facility services; (2) the existing and potential commercial, residential and industrial development of the proposed borough; and (3) the financial or tax effect on the proposed borough and existing governmental unit or units.<sup>35</sup>

**Harmonious Whole.** The area is to form a recognizable community with common interests and problems that can be addressed by borough government. The finding of facts on the existing and potential commercial, residential and industrial development of the proposed borough is to demonstrate the existence of a balanced, self-sustaining community. A resort community with problems of roads, lake maintenance and water supply distinct from the two surrounding rural townships was held to be a separate community with interests and problems of its own.<sup>36</sup>

**Service Capability.** The area is to have a sufficient population and tax base to support a separate government capable of providing needed services to its residents. The borough advisory committee is now directed to determine the proposed borough's ability to provide services such as police and fire protection and to provide community facilities, such as water supply, sewerage and streets.

**Effects on the Remaining Township.** Courts must consider the financial effect of the incorporation both on the proposed borough and the remaining township. The financial effects are now one of the areas where the borough advisory committee is to make findings of fact and render advice in its report.

Effects on the remaining township other than financial can also be considered. Where the effect of an incorporation proposal was to separate the white from the black population of the existing township, the court ruled that racial discrimination was an improper motive.<sup>37</sup> Likewise, courts also considered the impact of a

proposed incorporation on the geographic integrity of the remaining township. Where a proposed borough would have left isolated portions of the township within borough limits and cut off a substantial remaining portion of the township, the court found this was a valid consideration for denying the incorporation.<sup>38</sup>

Courts have also considered the effect of the proposed incorporation on the township's zoning and land development regulations. Commonwealth Court cited the fair share principle when it rejected the proposal to incorporate the Borough of Chilton. The fair share principle requires a local political subdivision to plan for and provide land use regulations that meet the legitimate needs of all categories of people who may desire to live within the boundaries. Where a proposed land use plan is exclusionary, it is an appropriate objection to incorporation.<sup>39</sup> In ruling against incorporation of the Borough of Pocono Raceway, Commonwealth Court expressed concern the proposed borough would result in a thin, isolated strip of land remaining in the township, virtually surrounded by the proposed borough, and with no control over zoning and development in the borough.<sup>40</sup>

## **Bridgewater Proposal**

Residents sought the incorporation of a portion of Chester Township, Delaware County as a separate borough. The proposed borough would contain .25 square mile (18 percent of township total), 3,231 population (59 percent of township total) and assessed value of \$2.4 million (50 percent of township total). The proposed borough contained 80 percent of the township white population, with the remaining portion containing 75 percent of the black population and all the public housing units. The Bridgewater area is separated from the rest of the township by Chester Creek; there is no direct connection between the two portions without going through another municipality.

A committee to work for a separate borough was formed in 1978. Incorporation petitions were circulated and filed in July 1979, signed by 88 percent of the resident homeowners of the area. The township and school district filed exceptions, but because of changes in legal representation, the issue fell into abeyance for two years. An amended incorporation petition was circulated and refiled in June 1981. After a hearing, the court ordered creation of a borough advisory committee, even though the petition was filed before the effective date of the amendment to the Borough Code.

A borough advisory committee was appointed in December 1981. It held four public hearings in January, February and March 1982, receiving evidence from the petitioners and the township. Legal counsel for each party presented proposed findings of fact and briefs to the committee. The committee filed its 29 page report with the court in July 1982, recommending against incorporation by a 3-2 vote. The report contained 30 separate findings of fact covering location, population, land area and uses, existing and proposed municipal services, proposed financing of the borough and the financial effects on the township. The borough advisory committee offered the court advice on the three areas stipulated in Section 202(c) of the Borough Code as well as adding a fourth category covering other considerations.

1. The proposed borough could provide community support services, but the level of administrative and police services would decline.
2. The proposed borough is an almost fully developed residential area, with minimal commercial and no industrial land uses and no potential for growth.
3. Retaining the present township boundaries is more desirable because it ensures a balanced tax base for both sections; the proposed borough would have a very limited tax base.
4. The township already provides reasonable and adequate community services; the necessity for creation of another form of government does not exist.

In January 1983, the court handed down its ruling denying the petition for incorporation. The court found the disadvantages to both the proposed borough and the remainder of the township outweighed the advantages, and the separation would be destructive to the remaining portion of the township. The court questioned the motives for incorporation: “These several but significant facts reveal one inescapable conclusion, the proposed Borough seeks to throw off that portion of the Township which presently has financial problems, and carries the responsibility for low income housing.”<sup>41</sup> The court found boroughs were historically created to obtain municipal services that would not otherwise be properly provided, but the proposed borough's needs and services were already being properly provided by the township.

The court's ruling meant the question was not placed on the ballot. The court's decision to deny the petition was appealed to the Commonwealth Court and upheld.

## **Englewood Proposal**

A proposal to incorporate a portion of Butler Township, Schuylkill County as the new borough of Englewood was initiated in 1981. The proposed borough would have an area of 371 acres (2 percent of township), a population of 638 (15 percent of township) and an assessed valuation of \$2.3 million (22.1 percent of township).

In November 1981, a public meeting of residents of the area expressed the general desire to separate from the township. In November 1981, a petition to incorporate was filed with the court, signed by 80 percent of the residents of the area. Following the new procedure of the Borough Code, a borough advisory committee was appointed by the court in February 1982. After objections by Butler Township, the court ruled that the petitioners had failed to comply with the statutory requirements in petitioning for appointment of the borough advisory committee by failing to give notice to the township. The court ruled the borough advisory committee must include two township residents recommended by the township board of supervisors.

The court appointed a new borough advisory committee in August 1982. In September 1982, two public hearings were conducted by the advisory committee which received testimony and heard witnesses. The witnesses were cross-examined by counsel for the petitioners and the township, as well as members of the committee. The testimony covered the boundaries, existing land uses, tax base, budget and services to be provided by the proposed borough. Information was presented on the present township services to the area, the assets of the township and effect of incorporation on township finances.

In October 1982, the borough advisory committee met privately to review the testimony and memoranda of counsel for each party. It submitted its report to the court, voting 3-2 against incorporation of the borough. The committee report of sixteen pages included 66 findings of fact. The findings covered items such as boundaries, area, population, geographical situation, land use and assessed valuation of the proposed borough, the budget proposed by petitioners and services to be provided, the services currently provided by the township, the township assets, and the potential for development of the borough.

The borough advisory committee found that the petitioners had failed to show that the residents of the proposed borough would benefit, either financially or in terms of the services they would receive; they would be faced with a decrease in the quality of services and an increase in taxes. It recommended denial of the petition. The committee presented its findings of fact on the conditions prescribed in Section 202(c) of the Borough Code.

1. The general governmental, police and road services to the residents of the proposed borough would be less than adequate and reasonable, especially in view of the fact that Butler Township is presently providing services in all ways superior to those proposed by the Petitioners.
2. The proposed borough is almost exclusively a residential district with two (2) industries and very few commercial establishments. There is very limited potential for industrial or commercial development and even future residential development is speculative and limited.

3. The projected budget as presented by the Petitioners is unrealistic and would result in increased taxation and undue hardship to the taxpayers of the proposed borough and would result in an economic disaster to the residents and taxpayers of the remainder of Butler Township.<sup>42</sup>

In January 1983, counsel for the petitioners and the township both filed briefs in response to the committee report. The Court held hearings in April 1984 on the committee report and gave the parties opportunity to file additional briefs. The court's decision was handed down in September 1985. The opinion reviewed the conditions prescribed by the Borough Code and found the proposed incorporation did not meet the conditions. The court adopted the conclusions of the advisory committee and denied the petition for incorporation.<sup>43</sup>

## **New Morgan Incorporation**

The proposal to incorporate the Borough of New Morgan in Berks County is the first instance of an incorporation reach to final approval since the 1981 amendment to the incorporation procedure. New Morgan is the site of the former Bethlehem Mines complex at Morgantown. The property has a single owner, Morgantown Properties, a limited partnership, although condemnation proceedings had begun by Berks County to acquire a portion of the property as the site of an incinerator and negotiations were under way for sale of additional land for use as a sanitary landfill.

The owner proposed a massive development on the property located close to the junction of the Pennsylvania Turnpike and I-176. This was to include a Victorian village resort served by horse drawn vehicles, a hotel, two golf courses, a commercial area, a cultural center and a planned residential development. Other areas would be retained as agricultural land and open space. The property had an area of 5.7 square miles, 3.7 square miles in Caernarvon Township and 2.0 square miles in Robeson Township. The current population was 17, all resident in the Caernarvon portion and all with some connection to the developer.

Morgantown Properties filed a petition for incorporation August 11, 1987 as the sole freeholder. Caernarvon Township filed exceptions to the petition. The court appointed a Borough Advisory Committee in November. The committee held hearings for 16 days in December, January and February, taking testimony. Counsel for the townships and the developer filed briefs and cross-examined witnesses. The committee deliberated five days in February and March 1988, and submitted its report to the court on March 11, 1988. The report includes 134 separate findings of fact and 20 conclusions of law.

The Borough Advisory Committee recommended for incorporation. It found the proposed large-scale development needed unified control of land use. The development as completed would require a higher level of services than presently provided by the two townships. Although current tax revenues are minimal, it found projected development would provide sufficient revenue to fund community services. It also found any loss to the townships was not significant, although it did express concern over the potential impact of extremely heavy traffic on township roads that would be access roads to the resort, incinerator and landfill. It made no finding concerning the potential revenues generated by host community fees at the incinerator and landfill or the effect of their loss to the township.

After the filing the report, the court scheduled a hearing, but refused to take additional testimony. On March 30, 1988, the court issued a one line opinion declaring the petitioner had met the requirements for incorporation and ordered a referendum. The referendum was conducted at the April 26, 1988 primary election. The vote of the residents in the area proposed for incorporation was 9 yes to 1 no. On May 10, 1988, the court issued a decree incorporating the Borough of New Morgan. The decision was appealed to Commonwealth Court and upheld there.<sup>44</sup> The Court found the proposed borough would constitute a harmonious whole, and the prospective loss of host community fees to the townships would be offset by the benefits of spillover development from the resort. On appeal to the Supreme Court, the incorporation was upheld.<sup>45</sup> In a groundbreaking opinion, the Court ruled that the desire of the incorporator to avoid existing zoning and land

use restrictions was not prohibited by statute or case law. It also upheld the plan for development as a harmonious whole. In considering the financial effects of the incorporation on the township, the Court rejected consideration of future loss of host community fees from the landfill and incinerator and restricted it to loss of current tax revenues. The borough began operating in 1991. By May 1999, the only facilities actually in place were a privately owned landfill and a small recreation facility around an already existing lake.

## **Chilton Proposal**

A petition to incorporate a portion of Monaghan Township, York County as the borough of Chilton was filed in November 1990. The area contains 492 acres of mostly undeveloped land, with only two residents. Two developers planned a golf course and two housing developments for the land. Their previous attempts to develop had been frustrated by zoning restrictions, litigation and opposition from the township and local residents.

Developers desired incorporation to qualify for a liquor license for the golf course in the dry township and to permit enactment of zoning ordinances specifically designed for their development plans. Developers also contended residents of the new borough would want recreational facilities not desired by existing township residents. The incorporators asserted the proposed borough would be able to provide adequate services and would have no adverse effects on the township. The Monaghan Township supervisors and an environmental group filed exceptions to the petition. The township argued the incorporation was a transparent attempt to evade local land use regulations, the proposed boundaries were gerrymandered to exclude all residents but one of the developers and his wife, and that extensive development would damage the ecologically sensitive floodplains and wetlands along Yellow Breeches Creek. The township asserted the small size of the site would not permit generation of sufficient revenues to provide public services.

A borough advisory committee was established in accordance with the Borough Code. A further order by the court in July 1991 ordered the committee to delay a final vote on the issue while the township and developers were continuing negotiations on a possible settlement. However, negotiations failed to resolve the dispute. The borough advisory committee subsequently voted 3-2 against incorporation of the new borough. The county planning director also voiced opposition to incorporation.

In October 1992, the trial court, rejecting the advice of the committee, ruled in favor of incorporating the new borough. The trial court judge concluded there was no choice under the law but to approve the incorporation even though the judge thought it would be far better if the proposed development were part of the township. For economic and social reasons, municipal services would be better regionalized, rather than fragmented.

In December 1992, a special election was held on the issue of incorporation. The developer, his wife and their tenant were the only eligible voters. They voted 3-0 to incorporate the Borough of Chilton. The trial court then issued an order allowing the borough to incorporate.

Monaghan Township appealed the trial court's decision to Commonwealth Court. In July 1994, Commonwealth Court reversed the decision of the trial court and ruled against incorporation of Chilton.<sup>46</sup> The court concluded the trial court erred in failing to exercise its discretion and to adopt recommendations of the advisory committee and the county planning director. The court also was concerned the proposed borough lacked sufficient residents to form a borough government. The court mentioned the 1992 amendment to the Borough Code requiring at least 500 residents. While the law was changed after the Chilton petition was filed, the court nevertheless appears to have been influenced by the action of the legislature. Moreover, the court found the proposed land use plan for the borough exclusionary based on the unavailability of any low income housing.

## Bear Creek Village Incorporation

A petition to incorporate the borough of Bear Creek Village from Bear Creek Township, Luzerne County was filed in August 1990. The area consists of a private residential community built around Bear Creek Lake, served by private roads and private recreational facilities. A borough advisory committee was appointed, but the two representatives of the township were replaced following objections by the township supervisors. The advisory committee held a single public hearing in September 1990. Bear Creek Township filed exceptions to the petition, challenging signatures, questioning boundaries and alleging irregularities in the appointment of the borough advisory committee. The borough advisory committee filed its report in January 1991, recommending incorporation by a 3-2 margin. The report concluded municipal services to be provided by the new borough would be adequate and that the land area of the proposed borough constituted an harmonious whole. Briefs were filed with the court by attorneys for the petitioners and for the township.

On September 19, 1991, the court ruled in favor of the petitioners. The court found Bear Creek Village is a community within a community. The court dismissed the procedural objections of the township. It found that adequate community services would be provided by the new borough. It declared that the proposed borough is, in fact, presently operating as a de facto harmonious whole that would only be further benefited upon incorporation. The court found Bear Creek Village was a self supporting private community, with only fire service being provided through the township tax millage. The court held that the benefit of incorporation outweighed the loss to the township of 17 percent of its total assessed valuation. The court issued a decree of incorporation before the referendum. The referendum appeared on the ballot at the November 5, 1991 election. The question on incorporation received 107 yes votes to 71 no votes.

The township filed an appeal of the decision and incorporation decree with the Commonwealth Court in December 1991. In September 1992, Commonwealth Court ruled in favor of incorporation of Bear Creek Village Borough.<sup>47</sup> The court concluded sufficient evidence was present to find the proposed borough constituted a harmonious whole as required by the Borough Code. An appeal by the township to the Supreme Court was denied. The new borough commenced operations in August 1993.

## References

1. 1878 P.L. 17, repealed 1895 P.L. 398.
2. 1937 P.L. 548; 1937 P.L. 2798.
3. 1941 P.L. 881.
4. *Eden Park Borough Incorporation*, 43 A.2d 527, 158 Pa.Super. 40, 1945.
5. *In re Incorporation of the Borough of Leipersville*, 37 Del. 201, 1950; *In re Borough of Fallsboro*, 9 D.&C.2d 532, C.P. Bucks Co., 1955.
6. *In re Borough of Economy*, 19 Beaver 237, 1958.
7. 53 P.S. 45201; Borough Code, Section 201.
8. *In re Incorporation of the Borough of New Stanton*, Dec. 9, 1968, C.P. Westmoreland Co., affirmed per curiam 272 A.2d 207, 218 Pa.Super. 742, 1970.
9. *Carroll Valley Borough Incorporation* (No. 2), 60 D.&C.2d 536, at 544, C.P. Adams Co., 1972.
10. *Bear Creek Township v. Borough of Penn Lake Park*, 340 A.2d 642, 20 Pa.Cmwth. 77, at 79, 1975.
11. 53 P.S. 45202; Borough Code, Section 202, amended 1981 P.L. 247, No. 80.
12. 53 P.S. 45201, 45202; Borough Code, Section 201, 202.
13. 53 P.S. 45202(a); Borough Code, Section 202(a).
14. *In re Harvey's Lake Borough Incorporation*, 57 Luz.L.Reg. 45, at 48, 1966.
15. *In re Incorporation of the Borough of Bear Creek Village*, 616 A.2d 111, 150 Pa.Cmwth. 595, appeal denied, 625 A.2d 1196, 533 Pa. 664.
16. *Canterbury Village, Inc. Appeal*, 462 A.2d 865, 75 Pa.Cmwth. 334 at 340, 1983.
17. 53 P.S. 45203; Borough Code, Section 203.
18. 53 P.S. 45201; Borough Code, Section 201; *Franklin Borough's Incorporation Case*, 289 A.2d 503, 5 Pa.Cmwth. 85, at 90, 1972.
19. 1 Pa.C.S. 1991; Statutory Construction Act; *Patrick Media Group v. Commonwealth, Department of Transportation*, 620 A.2d 1125, Pa., 1993.

20. *Whitehall Borough Incorporation Case*, 54 A.2d 833, 161 Pa. Super. 388, at 405, 1947; *In re Borough of West Wyomissing*, 35 D.&C. 513, at 518, Q.S. Berks Co., 1939; *Leiperville*, supra, at 205.
21. *Franklin Borough's Incorporation Case*, 298 A.2d 266, 7 Pa.Cmwlth. 119, at 130, 1973.
22. *In re the Incorporation of the Borough of Valley-Hi*, 420 A.2d 18, 54 Pa.Cmwlth. 49, at 57, 1980.
23. 53 P.S. 45204; Borough Code, Section 204.
24. 53 P.S. 45206; Borough Code, Section 206.
25. 53 P.S. 45202(b); Borough Code, Section 202(b); *In re Incorporation of the Borough of Two Ponds*, 489 A.2d 939, 87 Pa.Cmwlth. 324, 1985.
26. *Bear Creek Village*, supra, at 117.
27. *In re Incorporation of Borough of Bridgewater*, 488 A.2d 374, at 376; 599 Pa.Cmwlth. 1985; *Two Ponds*, supra.
28. 71 P.S. 966.3; 1949 P.L. 873, No. 237, amended by 1967 P.L. 1351.
29. 53 P.S. 45210; Borough Code, Section 210.
30. *In re Incorporation of the Borough of Chilton*, 646 A.2d 13, Pa.Cmwlth., 1994.
31. *In re Incorporation of Borough of Pocono Raceway*, 646 A.2d 6, Pa.Cmwlth., 1994.
32. *In re Incorporation of the Borough of Ashcombe*, 646 A.2d 606, Pa.Cmwlth., 1994.
33. *Chilton*, supra; *Pocono Raceway*, supra.
34. *Canterbury Village*, supra, at 342.
35. 53 P.S. 45202(c); Borough Code, Section 202(c).
36. *Bear Creek Township*, supra, at 85.
37. *Bridgewater* supra.
38. *In re Incorporation of the Borough of Glen Mills*, 558 A.2d 592, 125 Pa.Cmwlth. 604, 1989.
39. *Chilton*, supra, at 17 and 18.
40. *Pocono Raceway*, supra, at 12.
41. *Bridgewater*, supra.
42. Petition for Establishment and Incorporation of a Separate Municipality from a Portion of Butler Township, Schuylkill County, Pennsylvania, to be known as "Englewood Borough." Report and Recommendation of the Borough Advisory Committee, October 11, 1982. No. 5 Misc. Term, C.P. Schuylkill Co., 1982.
43. *Petition for Establishment and Incorporation of . . . Englewood Borough*, No. 5, Misc. Term, 1982, C.P. Schuylkill Co., 1985.
44. *In re Incorporation of Borough of New Morgan*, 562 A.2d 402, 127 Pa.Cmwlth. 519, 1989, appeal granted 577 A.2d 545, 525 Pa. 614.
45. *In re Incorporation of Borough of New Morgan*, 570 A. 2d 274, 527 Pa. 226, 1991; cert. denied 112 S.Ct. 179, 116 L.Ed.2d 141.
46. *In re Incorporation of the Borough of Chilton*, 646 A.2d 13, Pa.Cmwlth., 1994.
47. *Bear Creek Village*, supra.

## VII. Municipal Consolidation or Merger Act

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### Pennsylvania Consolidated Statutes

#### Title 53 Municipalities Generally

#### Part II. Creation , Territory, Alteration and Dissolution

#### Chapter 7. Alteration of Territory or Corporate Entity and Dissolution

#### Subchapter C

#### *Consolidation and Merger*

53 Pa.C.S. 731 (2005)

#### § 731. Short title of subchapter.

This subchapter shall be known and may be cited as the Municipal Consolidation or Merger Act.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days.

#### § 732. Definitions

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"COMMISSION."** A board of members elected under the provisions of section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter) to consider the advisability of the adoption of a new home rule charter for the proposed consolidated or merged municipality and, if advisable, to draft and recommend a new home rule charter to the electorate.

**"CONSOLIDATED OR MERGED MUNICIPALITY."** A municipal entity resulting from successful consolidation or merger proceedings under this subchapter.

**"CONSOLIDATION."** The combination of two or more municipalities which results in the termination of the existence of each of the municipalities to be consolidated and the creation of a new municipality which assumes jurisdiction over all of the municipalities which have been terminated.

**"CONTIGUOUS TERRITORY."** A territory of which a portion abuts the boundary of another municipality, including territory separated from the exact boundary of another municipality by a street, road, railroad or highway or by a river or other natural or artificial stream of water.

**"ELECTION OFFICIALS."** The county boards of election.

**"ELECTORS."** The registered voters of a municipality involved in proceedings relating to the adoption and repeal of optional forms of government.

**"GOVERNING BODY."** The council in cities, boroughs and incorporated towns; the board of commissioners in counties and townships of the first class; the board of supervisors in townships of the second class; or the legislative policymaking body in home rule municipalities.

**"INITIATIVE."** The filing with applicable election officials of a petition containing a proposal for a referendum to be placed on the ballot of the next election. The petition shall be:

- (1) Filed not later than the 13th Tuesday prior to the next election in which it will appear on the ballot.
- (2) Signed by voters comprising 5% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality where the proposal will appear on the ballot.
- (3) Placed on the ballot by election officials in a manner fairly representing the content of the petition for decision by referendum at the election.
- (4) Submitted not more than once in five years.

**"MERGER."** The combination of two or more municipalities which results in the termination of the existence of all but one of the municipalities to be merged with the surviving municipality absorbing and assuming jurisdiction over the municipalities which have been terminated.

**"MUNICIPALITY."** Every county other than a county of the first class, every city other than a city of the first or second class, and every borough, incorporated town, township and home rule municipality other than a home rule municipality which would otherwise be a city of the first or second class.

**"NEW HOME RULE CHARTER."** A written document that defines the powers, structure, privileges, rights and duties of the proposed consolidated or merged municipality, the limitations thereon and that provides for the composition and election of the governing body chosen by popular elections.

**"REFERENDUM."** A vote seeking approval by a majority of electors voting on a question of consolidation or merger placed on the ballot by initiative or otherwise.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 1, approved Oct. 23, 2003, eff. in 60 days.

### **§ 733. Procedure for consolidation or merger**

Two or more municipalities may be consolidated or merged into a single municipality, whether within the same or different counties, if each of the municipalities is contiguous to at least one of the other consolidating or merging municipalities and if together the municipalities would form a consolidated or merged municipality. Consolidation or merger may be commenced by one of the following:

- (1) Joint agreement of the governing bodies of the municipalities proposed for consolidation or merger approved by ordinance.
- (2) Initiative of electors.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days.

### **§ 734. Joint agreement of governing bodies**

- (a) **GENERAL RULE.--** The governing body of each municipality to be consolidated or merged shall enter into a joint agreement under the official seal of each municipality to consolidate or merge into one municipality.
- (b) **ELEMENTS.--** The joint agreement shall include, but not be limited to:
  - (1) The name of each municipality that is a party to the agreement.
  - (2) The name and the territorial boundaries of the consolidated or merged municipality.

- (3) The type and class of the consolidated or merged municipality.
- (4) Whether a consolidated or merged municipality shall be governed solely by the code and other general laws applicable to the kind and class of the consolidated or merged municipality; whether it shall be governed by a home rule charter or optional plan of government previously adopted pursuant to the act of April 13, 1972 (P.L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law, or Subpart E of Part III (relating to home rule and optional plan government), by one of the municipalities to be consolidated or merged; or whether it shall be governed by a home rule charter or optional plan of government that has not been previously adopted in accordance with the Home Rule Charter and Optional Plans Law or Subpart E of Part III by any of the municipalities to be consolidated or merged, but which, in the case of an optional plan of government, has been selected and approved by the governing body of each of the municipalities to be consolidated or merged from among the options provided for in Subpart E of Part III or, in the case of a home rule charter, has been formulated and approved by the governing body of each of the municipalities to be consolidated or merged; provided, however, that nothing in this subchapter shall be construed as authorizing a municipality adopting a home rule charter or optional plan of government pursuant to this subchapter to exercise powers not granted to a municipality adopting a home rule charter or an optional plan of government pursuant to Subpart E of Part III.
- (5) The number of districts or wards, if any, into which the consolidated or merged municipality will be divided for the purpose of electing all or some members of its governing body, and the boundaries of wards or districts shall be established to achieve substantially equal representation.
- (6) In the case of a merger, where the surviving municipality is a city which had previously adopted an optional charter pursuant to the act of July 15, 1957 (P.L. 901, No. 399), known as the Optional Third Class City Charter Law, whether the resulting merged municipality will continue to operate under the optional charter.
- (7) Terms for:
  - (i) The disposition of existing assets of each municipality.
  - (ii) The liquidation of existing indebtedness of each municipality.
  - (iii) The assumption, assignment or disposition of existing liabilities of each municipality, either jointly, separately or in certain defined proportions, by separate rates of taxation within each of the constituent municipalities until consolidation or merger becomes effective pursuant to section 738 (relating to effectuation of consolidation or merger).
  - (iv) The implementation of a legally consistent uniform tax system throughout the consolidated or merged municipality which provides the revenue necessary to fund required municipal services.
- (8) The governmental organization of the consolidated or merged municipality insofar as it concerns elected officers.
- (9) A transitional plan and schedule applicable to elected officers.
- (10) The common administration and enforcement of ordinances enforced uniformly within the consolidated or merged municipality.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 2, approved Oct. 23, 2003, eff. in 60 days.

**§ 735. Initiative of electors seeking consolidation or merger without new home rule charter**

- (a) **GENERAL RULE.--** In order for consolidation or merger proceedings to be initiated by petition of electors, petitions containing signatures of at least 5% of the number of electors voting for the office of Governor in the last gubernatorial general election in each municipality proposed to be consolidated or merged shall be filed with the county board of elections of the county in which the municipality, or the greater portion of its territory, is located.
- (b) **NOTICE TO GOVERNING BODIES AFFECTED.--** When election officials find that a petition is in proper order, they shall send copies of the initiative petition without the signatures thereon to the governing bodies of each of the municipalities affected by the proposed consolidation or merger.
- (c) **CONTENTS.--** A petition shall set forth:
  - (1) The name of the municipality from which the signers of the petition were obtained.
  - (2) The names of the municipalities proposed to be consolidated or merged.
  - (3) The name of the consolidated or merged municipality.
  - (4) The type and class of the consolidated or merged municipality.
  - (5) Whether a consolidated or merged municipality shall be governed solely by the code and other general laws applicable to the kind and class of the consolidated or merged municipality; whether it shall be governed by a home rule charter or optional plan of government previously adopted pursuant to the act of April 13, 1972 (P.L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law, or Subpart E of Part III (relating to home rule and optional plan government), by one of the municipalities to be consolidated or merged; or whether it shall be governed by an optional plan of government that has not been previously adopted in accordance with the Home Rule Charter and Optional Plans Law or Subpart E of Part III by any of the municipalities to be consolidated or merged, but which has been selected from among the options provided for in Subpart E of Part III and is identified in the petition; provided, however, that nothing in this subchapter shall be construed as authorizing a municipality adopting an optional plan of government pursuant to this subchapter to exercise powers not granted to a municipality adopting an optional plan of government pursuant to Subpart E of Part III.
  - (6) In the case of a merger, where the surviving municipality is a city which had previously adopted an optional charter pursuant to the act of July 15, 1957 (P.L. 901, No. 399), known as the Optional Third Class City Charter Law, whether the resulting merged municipality will continue to operate under the optional charter.
  - (7) The number of districts or wards, if any, into which the consolidated or merged municipality will be divided for the purpose of electing all or some members of its governing body.
- (d) **FILING OF PETITION.--** The consolidation or merger petition shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. The petition and proceedings on the petition shall be conducted in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination

petitions insofar as the provisions are applicable, except that no referendum petition shall be signed or circulated prior to the 20th Tuesday before the election, nor later than the 13th Tuesday before the election.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 2, approved Oct. 23, 2003, eff. in 60 days.

### **§ 735.1. Initiative of electors seeking consolidation or merger with new home rule charter**

- (a) **GENERAL RULE.--** In order for a commission and consolidation or merger proceedings to be initiated by petition of electors, petitions containing signatures of at least 5% of the number of electors voting for the office of Governor in the last gubernatorial general election in each municipality proposed to be consolidated or merged shall be filed with the county board of elections of the county in which the municipality, or the greater portion of its territory, is located.
- (b) **NOTICE TO GOVERNING BODIES AFFECTED.--** When election officials find that a petition is in proper order, they shall send copies of the initiative petition without the signatures thereon to the governing bodies of each of the municipalities affected by the proposed consolidation or merger.
- (c) **CONTENTS.--** A petition shall set forth:
  - (1) The name of the municipality from which the signers of the petition were obtained.
  - (2) The names of the municipalities proposed to be consolidated or merged.
  - (3) The number of persons to compose the commission.
  - (4) The petition question which shall read as follows:  
Shall a Government Study Commission of (seven, nine or eleven) members be elected to study the issue of consolidation or merger of (municipalities to be consolidated or merged); to provide a recommendation on consolidation or merger; to consider the advisability of the adoption of a new home rule charter; and to draft a new home rule charter, if recommended in the report of the commission?
- (d) **FILING OF PETITION AND DUTY OF ELECTION BOARD.--**
  - (1) A commission and consolidation or merger proceedings petition under this section shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election.
  - (2) The petition and proceedings on the petition shall be conducted in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as the provisions are applicable, except that no referendum petition shall be signed or circulated prior to the 20th Tuesday before the election, nor later than the 13th Tuesday before the election.
  - (3) At the next general, municipal or primary election occurring not less than the 13th Tuesday after the filing of the petition with the county board of elections, it shall cause the appropriate question to be submitted to the electors of each of the municipalities proposed to be consolidated or merged in the same manner as other questions are submitted under the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.

(e) **ELECTION OF MEMBERS OF COMMISSION.--**

- (1) A commission of seven, nine or eleven members, as designated in the question, shall be elected by the qualified voters at the same election the question is submitted to the electors.
- (2) Each candidate for the office of member of the commission shall be nominated and placed upon the ballot containing the question in the manner provided by and subject to the provisions of the Pennsylvania Election Code, which relate to the nomination of a candidate nominated by nomination papers filed for other offices elective by the voters. Each candidate shall be nominated and listed without any political designation or slogan, and no nomination paper shall be signed or circulated prior to the 13th Tuesday before the election nor later than the tenth Tuesday before the election. No signature shall be counted unless it bears a date within this period.
- (3) Each elector shall be instructed to vote on the question and, regardless of the manner of his vote on the question, to vote for the designated number of members of the commission who shall serve if the question is or has been determined in the affirmative.
- (4) If an insufficient number of nominating papers is filed to fill all of the designated positions on the commission, the question of establishing the commission shall be placed on the ballot and, unless a sufficient number of commission members are elected by receiving at least as many votes as signatures are required to file a nominating petition, then the question of creating the commission shall be deemed to have been rejected.

(f) **NOMINATION OF CANDIDATES.--**

- (1) All candidates for a commission shall be electors. Each candidate shall be nominated from the area of the proposed consolidated or merged municipality by nomination papers signed by a number of electors equal at least to 2% of the number of electors voting for the office of Governor in the last gubernatorial general election in each municipality proposed to be consolidated or merged or 200 electors from each municipality, whichever is less, and filed with the county board of elections of the county in which the municipality, or the greater portion of its territory, is located not later than the tenth Tuesday prior to the date of the election.
- (2) Each nomination paper shall set forth the name, place of residence and post office address of the candidate thereby nominated, that the nomination is for the office of commissioner and that the signers are legally qualified to vote for the candidate. An elector may not sign nomination papers for more candidates for the commission than he could vote for at the election. Every elector signing a nomination paper shall write his place of residence, post office address and street number, if any, on the petition.
- (3) Each nomination paper shall, before it may be filed with the county board of elections, contain under oath of the candidate an acceptance of the nomination in writing, signed by the candidate therein nominated, upon or annexed to the paper or, if the same person be named in more than one paper, upon or annexed to one of the papers. The acceptance shall certify that the candidate is an elector, that the nominee consents to run as a candidate at the election and that, if elected, the candidate agrees to take office and serve.
- (4) Each nomination paper shall be verified by an oath of one or more of the signers, taken and subscribed before a person qualified under the laws of this Commonwealth to administer an oath, to the effect that the paper was signed by each of the signers in his proper handwriting, that the signers are, to the best knowledge and belief of the affiant, electors and that the nomination paper is prepared and filed in good faith for the sole purpose of endorsing the person named therein for election as stated in the paper.

(g) **RESULTS OF ELECTION.--**

- (1) The result of the votes cast for and against the question as to the election of a commission and consolidation and merger proceedings shall be returned by the election officers, and a canvass of the election had, as is provided by law in the case of other public questions put to the electors. The votes cast for members of the commission shall be counted and the result returned by the county board of electors of the county in which the municipality, or the greater portion of its territory, is located, and a canvass of the election had, as is provided by law in the case of election of members of municipal councils or boards. The designated number of candidates receiving the greatest number of votes shall be elected and shall constitute the commission. If a majority of those voting on the question vote against the election of the commission, none of the candidates shall be elected. If two or more candidates for the last seat shall be equal in number of votes, they shall draw lots to determine which one shall be elected.
- (2) If, in accordance with subsection (e)(4), there has been an insufficient number of nominating papers filed to fill all of the designated positions on the commission and a sufficient number of commission members are not elected by receiving at least as many votes as signatures are required to file a nominating petition, the question as to the election of a commission and consolidation and merger proceedings shall be deemed to have been rejected and shall fail, and none of the candidates shall be elected.

(h) **OATH OF OFFICE OF MEMBERS OF COMMISSION.--** As soon as possible and in any event no later than ten days after its certification of election, the members of a commission elected on other than a countywide basis shall, before a judge or a district justice, make oath to support the Constitution of the United States and the Constitution of Pennsylvania and to perform the duties of the office with fidelity.

(i) **FIRST MEETING OF COMMISSION.--**

- (1) As soon as possible and in any event no later than 15 days after its certification of election, a commission shall organize and hold its first meeting and elect one of its members chairman and another member vice chairman, fix its hours and place of meeting and adopt rules for the conduct of business it deems necessary and advisable.
- (2) A majority of the members of the commission shall constitute a quorum for the transaction of business, but no recommendation of the commission shall have any legal effect unless adopted by a majority of the whole number of the members of the commission.

(j) **VACANCIES.--** In case of a vacancy in a commission, the remaining members of the commission shall fill it by appointing thereto some other properly qualified elector.

(k) **FUNCTION AND DUTY OF COMMISSION.--**

- (1) A commission shall study the issue of consolidation or merger of the municipalities.
- (2) The commission shall study the advisability of a new home rule charter form of government for the proposed consolidated or merged municipality and compare it with other available forms under the laws of this Commonwealth and determine in its judgment which form of government is more clearly responsible or accountable to the people and its operation more economical and efficient.
- (3) If a new home rule charter is found to be the most advisable form of government for the proposed consolidated or merged municipality, the commission shall:

- (i) Draft and recommend to the electorate a new home rule charter for the proposed consolidated or merged municipality containing a transitional plan and schedule applicable to elected officers, provided, however, that nothing in this section shall be construed as authorizing a consolidated or merged municipality adopting a new home rule charter pursuant to this section to exercise powers not granted to a municipality adopting a home rule charter pursuant to Subpart E of Part III (relating to home rule and optional plan government).
- (ii) If the new home rule charter calls for all or any part of the governing body of the consolidated or merged municipality to be elected on a district or ward basis, prepare and set forth as an appendix to the new home rule charter:
  - (A) The district or ward boundaries established to achieve substantially equal representation.
  - (B) The district or ward designation by number.
  - (C) The number of members of the municipal governing body to be elected from each district or ward.
- (iii) Prepare and suggest for adoption by the governing body of the newly consolidated or merged municipality recommendations concerning:
  - (A) The disposition of assets that may be surplus or unneeded as a result of the consolidation or merger.
  - (B) The liquidation, assumption or other disposition of existing indebtedness of the consolidated or merged municipalities.
  - (C) A legally consistent uniform tax system to be implemented throughout the consolidated or merged municipality which provides the revenue necessary to fund required municipal services.
  - (D) Ordinances to be uniformly enforced throughout the consolidated or merged municipality, which may be adopted by the new governing body of the consolidated or merged municipality at its organizational meeting, provided that codification of all ordinances shall be completed as specified in section 740 (relating to procedures).

**(1) COMPENSATION, PERSONNEL AND COMMISSION BUDGET.--**

- (1) Members of the commission shall serve without compensation but shall be reimbursed by the municipalities proposed to be consolidated or merged for their necessary expenses incurred in the performance of their duties.
- (2) The commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix reasonable compensation therefor to be paid the consultants and clerical and other assistants.
- (3) In accordance with this subsection, the commission shall prepare and submit, to the governing body of each of the municipalities being considered for consolidation or merger, budget estimates of the amount of money necessary to meet the expenditures to be incurred by the commission in the carrying out of its functions in accordance with this section, including, but not limited to, reasonable estimations of the necessary expenses of commission members, compensation of consultants, clerical personnel and other assistants and other expenditures incident to work of the commission.

- (4) The commission shall prepare and submit an initial budget submission that estimates expenses for the first nine-month phase of the commission's work. The initial budget estimate shall be submitted as soon as possible and in any event no later than 45 days after the commission's certification of election.
- (5) If, during the first nine-month phase of its work, the commission elects to prepare and submit a new home rule charter for the proposed consolidated or merged municipality, a final budget shall be submitted to the governing body of each of the municipalities being considered for consolidation or merger that estimates expenses to be incurred in the completion of the commission's work.
- (6) No later than 15 days after the submission of a budget in accordance with paragraphs (4) or (5), a joint public hearing of the commission and the governing bodies of the municipalities shall be held. The governing bodies of the municipalities to be consolidated or merged may, by agreement, modify any budget submitted by the commission. A governing body of a municipality to be consolidated or merged may approve appropriations to the commission in conformity with its share of the modified budget as determined in accordance with paragraph (7). Any unreasonable modification of the budget may be subject to an action as provided in paragraph (8) in the court of common pleas of any county wherein a municipality to be consolidated or merged lies.
- (7) The municipalities to be consolidated or merged may, by agreement, determine the share that each municipality shall appropriate to fund the estimated budget of the commission. If no agreement as to the respective amount that each municipality shall appropriate is reached, each municipality shall appropriate funds equal to its pro rata share of the total estimated budget of the commission based upon its share of population to the total population of the municipalities to be consolidated or merged.
- (8) The commission may bring an action in the court of common pleas of the county where a municipality is located requesting that the court determine whether the municipality has failed to reasonably modify an estimated budget or to appropriate moneys in accordance with this subsection. The court may provide appropriate relief, including, but not limited to, ordering appropriation of funds in accordance with the budget:
  - (i) as submitted by the commission or as modified by the municipalities; or
  - (ii) as modified by the court.
- (9) In all cases, the costs and fees of any action brought by the commission under this subsection shall be paid by the municipality or municipalities named as defendants.
- (10) A municipality shall be entitled to a proportionate reimbursement or offset of its share of the budget by any publicly or privately contributed funds or services made available to the commission.
- (m) **HEARINGS AND PUBLIC FORUMS.--** A commission shall hold one or more public hearings and sponsor public forums and generally shall provide for the widest possible public information and discussion respecting the purposes and progress of its work.
- (n) **REPORT OF FINDINGS AND RECOMMENDATIONS.--**
  - (1) A commission shall report its findings and recommendations to the citizens of the proposed consolidated or merged municipalities within nine months from the date of its election, except that it shall be permitted an additional nine months if it elects to prepare and submit a proposed new home rule charter and an additional two months if it chooses to provide for the

election of its governing body by districts. It shall publish or cause to be published sufficient copies of its final report for public study and information and shall deliver to the municipal clerk or secretary of each municipality proposed to be consolidated or merged sufficient copies of the report to supply it to any interested citizen upon request. If the commission recommends the adoption of a new home rule charter, the report shall contain the complete plan as recommended.

- (2) There shall be attached to each copy of the report of the commission, as a part thereof, a statement sworn to by the members of the commission listing in detail the funds, goods, materials and services, both public and private, used by the commission in the performance of its work and the preparation and filing of the report and identifying specifically the supplier of each item thereon.
- (3) A copy of the final report of the commission with its findings and recommendations shall be filed with the Department of Community and Economic Development.
- (4) All the records, reports, tapes, minutes of meetings and written discussions of the commission shall, upon its discharge, be turned over to the municipal clerk or secretary of each municipality proposed to be consolidated or merged for permanent safekeeping and made available for public inspection at any time during regular business hours.

(o) **DISCHARGE OF PETITION AND AMENDED REPORTS.--**

- (1) A commission shall be discharged upon the filing of its report, but, if the commission's recommendations require further procedure in the form of a referendum on the part of the electors, the commission shall not be discharged until the procedure has been concluded. At any time prior to 60 days before the date of the referendum, the commission may modify or change any recommendation set forth in the final report by publishing an amended report.
- (2) Whenever the commission issues an amended report pursuant to paragraph (1), the amended report shall supersede the final report, and the final report shall cease to have any legal effect.
- (3) The procedure to be taken under the amended report shall be governed by the provisions of this subpart applicable to the final report of the commission submitted pursuant to subsection (n).

(p) **TYPES OF ACTION RECOMMENDED.--** A commission shall report and recommend in accordance with this section:

- (1) That a referendum shall be held that submits to the electors the question of consolidating or merging the named municipalities under a new home rule charter as prepared by the commission.
- (2) That no referendum shall be held because consolidation or merger of the named municipalities under a new home rule charter is not recommended by the commission.
- (3) That the named municipalities consider such other action as the commission recommends and deems advisable consistent with its functions as set forth in this section.

(q) **SPECIFICITY OF RECOMMENDATIONS.--**

- (1) If a commission recommends the adoption of a new home rule charter, it shall specify the number of members to be on the governing body, all offices to be filled by election and whether elections shall be on an at-large, district or combination district and at-large basis.
- (2) Notwithstanding any other provisions of this subpart, if an approved new home rule charter adopted pursuant to the provisions of this subpart specifies that the election of the governing

body should be on an at-large, district or combination district and at-large basis and the basis recommended differs from the existing basis and therefore requires the elimination of districts or the establishment of revised or new districts, then election of municipal officials shall not take place on the new basis until the municipal election following the next primary election taking place more than 180 days after the election at which the referendum on the question of a consolidation or merger and new home rule charter has been approved by the electorate. The consolidation or merger and new home rule charter shall not go into effect until the first Monday in January following the election of municipal officials on the new basis as provided in section 738 (relating to effectuation of consolidation or merger). New or revised districts shall be established by the commission and included in the proposed charter.

- (r) **FORM OF QUESTION ON CONSOLIDATION OR MERGER AND NEW HOME RULE CHARTER.--** If a commission recommends consolidation or merger and the adoption of a new home rule charter for the municipalities to be consolidated or merged, the question to be submitted to the voters for the adoption of consolidation or merger and a new home rule charter shall be submitted in the following form or such part as shall be applicable:  
  
Shall the municipalities of (insert names of municipalities consolidating or merging) be (insert consolidated or merged) to become (insert name of new municipality, type and class of municipality) under a new home rule charter contained in the report, dated (insert date), of the commission?
- (s) **SUBMISSION OF QUESTION ON CONSOLIDATION OR MERGER AND NEW HOME RULE CHARTER.--** If a commission recommends that the question of adopting consolidation or merger and a new home rule charter authorized by this subpart should be submitted to the electors, the municipal clerk or secretary of each municipality proposed to be consolidated or merged shall, within five days thereafter, certify a copy of the commission's report to the county board of elections of the county in which the municipality, or the greater portion of its territory, is located, which shall cause the question of adoption or rejection to be placed upon the ballot or voting machines at the time as the commission specifies in its report. The commission may cause the question to be submitted to the electors at the next primary, municipal or general election occurring not less than 60 days following the filing of a copy of the commission's report with the county board of elections, at the time the commission's report directs. At the election, the question of adopting consolidation or merger and a new home rule charter recommended by the commission shall be submitted to the electors by the county board of elections in the same manner as other questions are submitted to the electors under the Pennsylvania Election Code. The commission shall frame the question to be placed upon the ballot as provided for in subsection (r) and, if it deems appropriate, an interpretative statement to accompany the question.
- (t) **AMENDMENT OF NEW HOME RULE CHARTER.--** The procedure for amending the new home rule charter of the consolidated or merged municipality created under this subpart shall be through the initiative procedure and referendum or ordinance of the governing body as provided for in Subchapter C of Chapter 29 (relating to amendment of existing charter or optional plan).
- (u) **GENERAL POWERS AND LIMITATION OF CONSOLIDATED OR MERGED MUNICIPALITY UNDER NEW HOME RULE CHARTER.--** Nothing in this section shall be construed as authorizing a consolidated or merged municipality adopting a new home rule charter to exercise powers not granted to a municipality adopting a home rule charter pursuant to Subpart E of Part III.
- (v) **DEFINITION.--** As used in this section, the term "municipality" shall not include a county of any class.

**HISTORY:** Act 2003-29 (H.B. 77), § 3, approved Oct. 23, 2003, eff. in 60 days.

### § 736. Conduct of referenda

- (a) **DUTY TO PLACE ON BALLOT.**-- Following initiation of proceedings for consolidation or merger by the procedures set forth either in section 734 (relating to joint agreement of governing bodies) or 735 (relating to initiative of electors seeking consolidation or merger without new home rule charter), the question of consolidation or merger as set forth in the joint agreement or initiative petition shall be placed before the electors of each of the municipalities proposed to be consolidated or merged. A referendum shall be held at the first primary, municipal or general election occurring at least 13 weeks after either:
  - (1) the date of the general agreement entered into under the provisions of section 734; or
  - (2) the date of filing of the petition filed under the provisions of section 735.
- (A.1) **REFERENDA UNDER SECTION 735.1.**-- Referenda authorized under section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter) shall be placed on the ballot in accordance with section 735.1(d)(3) and (s).
- (b) **APPROVAL.**-- Pursuant to sections 734, 735 and 735.1, consolidation or merger shall not be effective unless the referendum question is approved by a majority of the electors voting in each of the municipalities in which the referendum is held. If in any one of the municipalities in which the referendum is held a majority vote in favor of consolidation or merger does not result, the referendum shall fail and consolidation or merger shall not take place. The same question in accordance with sections 734 or 735, or the same question described in the proposal for consolidation or merger with a new home rule charter in accordance with section 735.1, described in the consolidation or merger proposal shall not be voted on again for a period of five years.
- (c) **SUBSEQUENT REFERENDA.**-- The five-year moratorium on voting the same consolidation or merger question as provided in subsection (b) shall be deemed not to apply to any subsequent referendum question involving a consolidation or merger of any combination of two or more contiguous municipalities if the referendum question differs or is dissimilar in any way from a previous referendum question which was not approved as provided for in subsection (b).

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 4, approved Oct. 23, 2003, eff. in 60 days.

### § 737. Consolidation or merger agreement

- (a) **FORM.**-- Upon favorable action by the electorate on consolidation or merger, in cases where consolidation or merger was initiated by petition of electors under section 735 (relating to initiative of electors seeking consolidation or merger without new home rule charter), the governing bodies of the municipalities to be consolidated or merged shall meet within 60 days after the certification of the favorable vote and shall within a reasonable time after certification make a consolidation or merger agreement as follows:
  - (1) If the governing body, or part of the governing body, of the consolidated or merged municipality is to be elected on a district or ward basis, the agreement shall set forth the district or ward boundaries and the district or ward designation, by number, and the number of members of the municipal governing body to be elected from each district or ward. The boundaries of the districts or wards shall be established to achieve substantially equal representation.

- (2) The agreement shall set forth terms for:
    - (i) The disposition of the existing assets of each municipality.
    - (ii) The liquidation of the existing indebtedness of each municipality.
    - (iii) The assumption, assignment and disposition of the existing liabilities of each municipality, either jointly, separately or in certain defined proportions, by separate rates of taxation within each of the constituent municipalities until consolidation or merger becomes effective pursuant to section 738 (relating to effectuation of consolidation or merger).
  - (3) The agreement shall set forth the governmental organization of the consolidated or merged municipality insofar as it concerns elected officers and shall contain a transitional plan and schedule applicable to elected officers.
  - (4) The agreement shall provide for common administration and uniform enforcement of ordinances within the consolidated or merged municipality.
  - (5) The agreement shall also provide, consistent with existing law, for the implementation of a uniform tax system throughout the consolidated or merged municipality which shall provide the revenue necessary to fund required municipal services.
- (b) **FILING.**-- A copy of the consolidation or merger agreement under this section or the joint agreement under section 734 (relating to joint agreement of governing bodies) after approval by the electorate shall be filed with the Department of Community and Economic Development, the Department of Transportation, the Governor's Office of Policy Development or its successor, the Department of Education, the State Tax Equalization Board and the Legislative Data Processing Committee. A copy shall also be filed with the court of common pleas and the board of county commissioners of the county or counties in which municipalities affected are located.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 4, approved Oct. 23, 2003, eff. in 60 days.

### **§ 738. Effectuation of consolidation or merger**

Municipalities consolidated or merged shall continue to be governed as before consolidation or merger until the date stipulated in the transitional plan and schedule provided for in sections 734 (relating to joint agreement of governing bodies) and 737 (relating to consolidation or merger agreement), or the transitional plan provided for by a study commission pursuant to section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter). Subject to the provisions of section 735.1(q), new officials required to be elected shall take office on the first Monday of January following the municipal election designated in the transitional plan and schedule. At that municipal election, the necessary officers of the consolidated or merged municipality shall be elected in accordance with the terms of the general law affecting municipalities of the kind or class of the consolidated or merged municipality or, in case of a consolidated or merged municipality operating under a home rule charter or optional plan of government, in accordance with the charter or optional plan or with general law affecting home rule or optional plan municipalities, as applicable. The officers elected at that municipal election shall be elected for terms of office under the plan and schedule set forth in the consolidation or merger agreement authorized by section 734 or 737, or the transitional plan provided for by a commission pursuant to section 735.1, as the case may be. They shall take office as officers of the consolidated or merged municipality on the first Monday of January following the municipal election at which they were elected, and upon assumption of office, the consolidated or merged municipality shall begin to function and the former municipalities consolidated or merged into it shall be abolished.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 4, approved Oct. 23, 2003, eff. in 60 days.

**§ 739. Effect of transition on employees of consolidated or merged municipality**

- (a) **TRANSITION.--** As of the date when a consolidated or merged municipality shall begin to function, except for those officers and employees which are protected by any tenure of office, civil service provisions or collective bargaining agreement, all appointive offices and positions then existing in all former municipalities involved in the consolidation or merger shall be subject to the terms of the consolidation or merger agreement or transitional plan as provided for in section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter). Provisions shall be made for instances in which there is duplication of positions, including, but not limited to, chief of police or manager, and for other matters such as varying length of employee contracts, different civil service regulations in the constituent municipalities and differing ranks and position classifications for similar positions.
- (b) **EXCEPTION.--** Nothing in this section shall be deemed to apply to a consolidated or merged municipality if one or more of the consolidating or merging municipalities has been declared distressed under the act of July 10, 1987 (P.L. 246, No. 47), known as the Municipalities Financial Recovery Act. In such case, the provisions of section 408 of that act shall control.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 4, approved Oct. 23, 2003, eff. in 60 days.

**§ 740. Procedures**

- (a) **ORDINANCE BOOK.--** After consolidation becomes effective, a new ordinance book shall be used by the municipality, and, except for a municipality consolidated or merged under section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter), the first document to be recorded in it shall be the consolidation agreement.
- (b) **ORDINANCE CODIFICATION.--** No later than two years after consolidation goes into effect, codification of all the ordinances of the municipality shall be completed. The codification shall include tabulation or indexing of those ordinances of the component municipalities that are of permanent effect in the consolidated municipality.
- (c) **VESTING OF RIGHTS, PRIVILEGES, PROPERTY AND OBLIGATIONS.--** All rights, privileges and franchises of each component municipality and all property belonging to each component municipality shall be vested in the consolidated or merged municipality. The title to real estate vested in any of those municipalities shall not revert or be in any way impaired by reason of the consolidation or merger. All liens and rights of creditors shall be preserved. Agreements and contracts shall remain in force. Debts, liabilities and duties of each of the municipalities shall be attached to the consolidated or merged municipality and may be enforced against it.

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 4, approved Oct. 23, 2003, eff. in 60 days.

## § 741. Court review of transitional plan

- (a) **GENERAL RULE.**-- Except as provided in subsection (b), after the approval of a referendum pursuant to section 736 (relating to conduct of referenda), any person who is a resident of a municipality to be consolidated or merged may petition the court of common pleas to order the appropriate municipal governing bodies to:
- (1) implement the terms of a transitional plan and schedule adopted pursuant to section 734 (relating to joint agreement of governing bodies) or 737 (relating to consolidation or merger agreement); or
  - (2) adopt or amend a transitional plan or schedule if the court finds that the failure to do so will result in the unreasonable perpetuation of the separate forms and classifications of government existing in the affected municipalities prior to the approval of the referendum.
- (b) **EXCEPTION.**-- After consolidation or merger pursuant to section 735.1 (relating to initiative of electors seeking consolidation or merger with new home rule charter), any person who is a resident of the newly consolidated or merged municipality may petition the court of common pleas to order the governing body of that municipality to act to accept or provide alternatives to the recommendations of the commission in accordance with section 735.1(k)(3)(iii).

**HISTORY:** Act 1994-90 (H.B. 162), § 1, approved Oct. 13, 1994, eff. in 90 days; Act 2003-29 (H.B. 77), § 4, approved Oct. 23, 2003, eff. in 60 days.

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