

No. 2003-29

AN ACT

HB 77

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, further providing for definitions relating to consolidation or merger, for initiative of electors seeking consolidation or merger without home rule; providing for initiative of electors seeking consolidation or merger with a new home rule charter; further providing for conduct of referenda and for consolidation or merger agreement; and making editorial changes.

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

Section 1. The definition of "initiative" in section 732 of Title 53 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding definitions to read:

§ 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.*

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

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"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 persons] *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.

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“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.

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Section 2. Sections 734(b)(4) and 735 of Title 53 are amended to read:
 § 734. Joint agreement of governing bodies.

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(b) Elements.—The joint agreement shall include, but not be limited to:

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(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 **[the Home Rule Charter and Optional Plans Law] 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 **[the Home Rule Charter and Optional Plans Law] Subpart E of Part III**.

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§ 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 [the Home Rule Charter and Optional Plans Law] *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 [the Home Rule Charter and Optional Plans Law] *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.

Section 3. Title 53 is amended by adding a section to read:

§ 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).

(l) 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.

Section 4. Sections 736, 737, 738, 739(a), 740(a) and 741 of Title 53 are amended to read:

§ 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.—[Consolidation] 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).

§ 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 [Affairs] *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.

§ 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)[. New], *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.

§ 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.

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§ 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.

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§ 741. Court review of transitional plan.

[After] (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).

Section 5. This act shall take effect in 60 days.

APPROVED—The 23rd day of October, A.D. 2003.

EDWARD G. RENDELL