



Senate Box 203078
Harrisburg, PA 17120-3078
(717) 787-7680
Fax (717) 772-4524
www.lgc.state.pa.us

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House Bill 1719, Printer's Number 3275

**Borough Code – Incorporating the Provisions of the Borough Code
into Title 8 (Boroughs and Incorporated Towns) of the Pennsylvania Consolidated Statutes**

This bill would incorporate the provisions of the Borough Code, the act of February 1, 1966 (1965 P.L. 1656, No. 581), as amended and reenacted by Act 43 of 2012, into Title 8 (Boroughs and Incorporated Towns) of the Pennsylvania Consolidated Statutes. Act 43 was a several year effort of Pennsylvania State Association of Boroughs and the Local Government Commission to modernize the Code. Working with the Legislative Reference Bureau, this bill places the language of the Borough Code into Consolidated Statute format and adds the following technical and substantive changes as noted.

Substantive Change. Section 200, Page 12, lines 14-16. Adds the definition of “freeholder” that emphasizes that a freeholder is a person that has continuous and permanent possession and ownership of property in relation to eligibility to sign a petition for borough incorporation. Current language that describes that a freeholder must establish evidence of domicile in a permanent structure is deleted since it could be interpreted as including freeholders who do not have permanent ownership in property (for example, owners of time-shares.)

Technical Change. Section 210(a), Page 17, line 28. Corrects a reference relating to the notification of a decree issued by the court incorporating a borough will be done by the clerk of courts rather than the recorder of deeds.

Technical Change. Section 801(a), Page 43, line 27. Clarifies that the residency affidavit which borough officers are required to sign and present prior to being sworn into office must specify that they meet the ward residency requirements.

Substantive Change. Section 801(b), Pages 44, lines 1-3. At the request of the Pennsylvania State Association of Boroughs (PSAB), provides that a trustee of a charter school, similar to that of a school director, would be ineligible for elected borough office.

Technical Change. Section 801(c), Page 44, lines 5-8. Removes a reference to a date (January 1, 1964) regarding boroughs with less than a population of 150. In these boroughs, residents are not required to live in the borough for one year prior to election to be eligible for elected borough office.

Substantive Change. Section 901(a) and new subsection 901(a.1), Page 59, line 2 and lines 20-29. Specifies that a vacancy by resignation from a borough office is only created after a written resignation is accepted by council through a majority vote of a quorum at a public meeting, which is required to take place within 45 days; if council does not accept the resignation within the allotted time, and the resignation is not withdrawn by the resignee, a resignation will be deemed effective after 45 days.

Substantive Change. Section 902, Page 61, lines 18-22. References Sections 4.2 and 4.4 of the Local Tax Collection Law that permits a municipal governing body to provide, by agreement, for collection of real estate taxes either by a neighboring municipality or by the county treasurer when there is a vacancy in the office of tax collector.

Substantive Change. New Section 904.1, Page 62, lines 5-15. Act 43 removed language deemed to be unconstitutional that had permitted council to remove members for failure to attend two successive meeting without cause or if the councilmember failed to vote on a matter pending before council. In concert with legislation being sponsored this session by the Local Government Commission as amendments to the other municipal codes, Section 904.1 is added to specify that elected borough officials may only be removable through current Constitutional means – impeachment, by the Governor for reasonable cause upon two-thirds vote by the Senate, or by the court upon conviction of misbehavior in office or for conviction of an infamous crime. The Constitutional procedures do not impact quo warranto proceedings in which a person’s qualification for office may be challenged.

Substantive Change. Section 1104, Page 104, line 15. At the request of PSAB, a prohibition on elected or appointed borough officials from being compensated for serving on a board, commission, or an agency created by the borough is removed (for example, a member of council serving on a municipal authority board).

Substantive Change. New paragraph 1104(f)(3), Page 105, lines 15-19. In addition to current restrictions found in Section 1104 (f), subsection (3) is added to prohibit a borough resident from seeking elected borough office when that resident is employed as a police officer or firefighter in a municipality that has a contract with the borough to provide police or fire services.

Substantive Change. New paragraph section 1121(a)(5), Page 114, lines 21-22. Restores pre-Act 43 language that was inadvertently removed that again would give council the right to determine employment hours for police officers.

Technical Change. New subparagraph section 1202(20)(C)(iii), Page 160, lines 12-18. Amends the specific powers section to clarify that boroughs may issue licenses under the Act 217 of 1963 (which relates to the authorization to hold fire sales).

Substantive Change. Section 1202(23), page 161 line 30, and page 162, lines 1-2, and line 12. Authorizes an increase, from 5% to 25%, in the operating reserve fund to be maintained from of the estimated revenues of

the Borough's general fund, which would be available for use, in addition currently authorized purposes, to counterbalance potential budget deficits resulting from increases in anticipated costs for goods or services.

Technical Change. Section 1202(24), Page 162, line 23. For consistency purposes, removes "city, borough, and town" and replaces with the term "municipal corporation" in relation to authority to enter into intergovernmental cooperation agreements for public safety.

Technical Change. Section 1202(35), Page 168, line 28. For consistency purposes, removes "city, borough, and town" and replaces with the term "municipal corporation" in relation to appropriations for fire training involving intergovernmental cooperation agreements.

Technical Change. Section 1202(46), Page 171, lines 1-3. *Language related to authorization to issue nondebt revenue bonds for gas works was amended in the Senate to comport with changes made in Section 1202(60) (ii) that restricts the operation of gas plants and distribution systems to the Borough of Chambersburg, the sole borough currently producing and distributing gas service for its own municipal purposes and that of its residents.*

Substantive Change. Section 1202(60)(ii), Page 174, lines 24-30, Page 175, lines 1-4. Original language amended Section 1202 (60) by permitting boroughs to purchase, use, own, operate, and control natural gas works. This language was requested by PSAB on behalf of the Borough of Chambersburg which owns and operates gas works within the Borough. The Borough in written correspondence believes that several separate provisions of Pennsylvania law, when taken together, provide the requisite authority to own and operate its natural gas works. The Borough wishes to add language to the Code that would provide one express provision directly relating to its authority to own and operate a gas distribution system. *However, the Senate amended this corporate power to restrict the ability of the boroughs to purchase, own, use and operate a municipal gas distribution system to a borough which on the effective date of this section provided such service. Thus, the Borough of Chambersburg was grandfathered but no other borough will have the ability to provide natural gas production and distribution service.*

Technical Change. New paragraph 1302(a)(10), Page 180, lines 19-23. Relocates previously authorized tax levy for recreational purposes to the tax levy section.

Technical Change. Section 1315(a)(4), Page 189, lines 28-30. The Senate amended provisions relating to authorization for capital improvement nondebt revenue bonds for gas works, by specifying that gas plants or distribution systems are only for municipal purposes to be consistent with 1202(60).

Substantive Change. Section 21A06, Page 259, line 4. Clarifies that resolutions may not be used to levy assessments against benefited property for public improvements. (The word "resolution" is removed from the pertinent sentence.) Such assessments will now be accomplished through the passage of an ordinance which gives more transparency to the process. See substantive change reference. According to the Legislative Reference Bureau, as a matter of statutory construction, requiring assessments for public improvements to be imposed by ordinance is prospective. Any assessment that had been previously imposed by resolution under current law would be valid.

Substantive Change. Section 2456(b)(3), Page 279, lines 12-13. For consistency with other Code provisions relating to borough contracts, adds the phrase “and responsible” to the phrase “lowest qualified bidder.”

Technical Change. Section 2701(e), Page 305, lines 20-22. Inserts a cross reference to tax levy authorization for recreational purposes in section 1302(a)(10).

Substantive Change. Section 2708, Page 307, line 7. At the request of PSAB, removes subsection (b) of Section 2708, added by Act 43, which restricts council from delegating the power to maintain accounts and expend funds to the recreation board.

Substantive Change. New paragraph 3301.1(b)(5), Page 347, lines 28-30. In concert with the proposed amendment to page 258, line 28, this amendment clarifies that imposing assessments on benefited property will be done by ordinance.

Substantive Change. Section 3301.2(a)(2) and (c), Page 348, line 30; Page 349, lines -12; Page 350, lines 12-13. Specifies that proposed borough ordinances are to be maintained in the borough office or place where borough records are kept rather a vague reference to keeping such proposed ordinances in a “place in the borough.”

Substantive Change. Section 3301.2(b)(2), Page 349, lines 9-30; Page 350, lines 1-6. Language is added that would permit boroughs, as an option, to electronically submit copies of adopted ordinances to the county law library or the office in the county where ordinances are retained providing the county has a method available for such storage. An ordinance stored electronically must be able to be accessed by the public during regular business hours. In addition, the borough would be required to retain a printed copy of the e-mail and ordinance transmitted to the county.