pennsylvania
GOVERNOR'S CENTER FOR
LOCAL GOVERNMENT SERVICES

Referendum Handbook

*Handbooks and Guides
for Local Government Officials*

PADCEDnews

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I. The Role of the Referendum in Pennsylvania Government

Governments in the United States, including Pennsylvania, generally employ the model of representative democracy, in which the people govern themselves through their elected representatives. These representatives are chosen for specific terms by direct popular vote, represent the will of the people, and are delegated the power to make decisions on public matters. The requirement that these representatives periodically face the voters through elections keeps them responsive to the interests of their constituents.

Another model of government is that of direct democracy. This model dates back to the ancient Greek city-states where citizens gathered in the marketplace to vote directly on public issues. The foremost example in the United States of direct democracy is the New England town meeting, where residents annually gather to vote on the municipal budget and other issues.

A referendum is sometimes used to allow an element of direct democracy for citizens in representative democracies. A referendum allows voters to approve by majority vote a question placed on the ballot.[1]

This publication explains the referendum process in general and specific types of referenda that are available to voters throughout the commonwealth.

Development of the Referendum in Pennsylvania

The first known example of a referendum in Pennsylvania was a public vote in 1825 on the question of whether to call for a constitutional convention. Prior to that, all constitutional conventions had been called by the legislature. In 1835, the law was changed to permit a popular vote to adopt a new state constitution; prior constitutions were adopted by the conventions that framed them. The Constitution of 1838 and all subsequent constitutional amendments have been adopted by referendum.

Since 1968, the Pennsylvania Constitution has also authorized referenda on whether to authorize certain types of statewide bond issues.[2] In recent years, voters have approved bonds for parks and open space, farmland preservation, county prison construction, and loans for water and sewer systems, nursing homes, and volunteer fire and ambulance companies.

In addition to constitutional amendments and debt authorizations, the General Assembly may authorize any other type of statewide referendum. From time to time, referenda have been proposed on controversial issues, such as legalizing casinos or selling state liquor stores. However, the General Assembly has not delegated authority for those types of decisions to the voters through a referendum.

Local Referenda

Although there has not been an expansion of statewide referenda, statutory authorizations for local referenda have steadily increased in Pennsylvania. These authorizations are generally limited to a particular subject area or question, except in cities of the third class, where the voters have more broad referendum authority.

The first authorizations for local referenda came in 1874, when the General Assembly enacted laws that required referenda before certain types of municipal debt may be incurred and cities may be incorporated. Over the years, many controversial local issues have been resolved through referenda, such as whether to approve the use of voting machines and liquor licenses.

The General Assembly has also delegated the decision of whether and how to change municipal boundaries to local voters. In 1994, the General Assembly enacted a procedure whereby any municipality may merge or consolidate with the approval of voters in each municipality.

The General Assembly has also granted flexibility to local communities regarding how they organize. Home rule was authorized for Philadelphia in 1949, optional charters for cities in 1957, and home rule charters or optional plans for all counties and municipalities in 1972. All require voter approval at a referendum.

References

1. PA. CONST. Art. 9, § 14.
2. PA. CONST. Art. 8, § 7(a)(3).

II. General Referendum Procedures

There is no single state law that governs the procedures for initiating and conducting a referendum election. Instead, most of the requirements are found in the specific authorizing laws. Many of those laws expressly state that the procedures for how to conduct a referendum election, prepare ballots, provide notice, establish voting procedures, count votes and certify results must be governed by the Pennsylvania Election Code. This section outlines those general requirements.

Role of Election Code

The Election Code is a general law that governs all general, municipal, special or primary elections. The Election Code sets forth the methods for where and when elections must be held, selection of election officers, qualifications of voters, nomination of candidates, use of voting machines, preparation for and conduct of elections, returns of elections, election expenses, recounts and contests and all other matters relating to holding and conducting elections.[1]

Referendum elections are classified as special elections and subject to provisions for the conduct of November elections.[2]

The vast majority of the laws authorizing specific types of referenda make direct reference to the Election Code or election laws generally. Where there is no specific or general reference to the Election Code in the authorizing statute, the referendum still must be conducted under its terms since the Pennsylvania Constitution requires uniform law for the conduct of elections.[3]

Electoral procedures authorized by home rule charters are generally much better defined in terms of procedural requirements for initiating questions, deadlines and other matters. The Home Rule Charter and Optional Plans Law ("Home Rule Law") also makes all home rule municipalities subject to general state law regarding matters relating to registration of electors and the conduct of elections. Therefore, all referenda conducted under authorization of a home rule charter are conducted according to the provisions of the Election Code.[4]

References
1. 25 P.S. § 2600 *et seq.; Commonwealth v. Brown*, 28 A.2d 259, 149 Pa.Super. 130 (1942), *reversed on other grounds,* 29 A.2d 793, 346 Pa. 192 (1943).
2. 25 P.S. § 2602; *Munce v. O'Hara,* 16 A.2d 532, 340 Pa. 209 (1940); *Kram v. Kane,* 8 A.2d 398, 336 Pa. 113 (1939)
3. PA. CONST., Art. 7, § 6.
4. 53 Pa.C.S.A. § 2951.

Date of Election

Where an authorizing law requires a particular date or restricts a referendum to a particular type of election and the referendum is conducted on a date other than that directed by law, the referendum is invalid.[1] If the authorizing law does not stipulate a date or a type of election, then the question may be placed on the ballot on any election day. Pennsylvania courts liberally construe the Election Code to maximize participation by candidates and voters in the electoral process.[2]

When a referendum is placed on the ballot at a primary election, every qualified voter must be given an opportunity to vote on the question without regard to the party requirements for voting for candidates in the primary. Therefore, the county board of elections must provide a separate ballot for independent voters or adjust voting machines to permit voting on the question separately.[3]

References
1. *Fetterman v. County Bd. of Elections of Blair County,* 175 A.2d 81, 405 Pa. 286 (1961).
2. *In re Nader,* 858 A.2d 1167, 580 Pa. 22 (2004).
3. *Kram v. Kane,* 8 A.2d 398, 336 Pa. 113 (1939).

Expenses of Election

When a referendum question appears on the regular ballot, the county is liable for all expenses. If special ballots must be printed for a question that will be voted on at a regular election day, the jurisdiction affected by the referendum is responsible for the costs to print the separate ballots. When a referendum is held on a day other than a regular election day, the jurisdiction must pay for all the costs to conduct the election.[1]

Reference

1. 25 P.S. § 2645.

Petition Requirements

The provisions in the Election Code governing nomination petitions constitute the only detailed, authoritative source for requirements governing the process for circulating, signing, filing, reviewing, and contesting petitions. Some laws authorizing referenda specifically state that referendum petitions are governed by the Election Code. However, other laws are silent. In such cases, it is advisable to follow the Election Code requirements, which are set forth below.

Circulating Period. The Election Code requires nomination petitions to be circulated between the thirteenth and tenth Tuesdays before the primary election.[1]

Form of Petition. Referendum petitions generally resemble nomination petitions in that they have introductory material at the top and spaces for signatures at the bottom. The petition must identify the referendum at issue. The statutory authority for the referendum should be cited. There is no requirement that the petition contain the full text of the question to be submitted to the voters.[2] However, the full text is usually provided to establish that the signers were completely aware of the issue being placed on the ballot.

Petitions may consist of more than one sheet if they are bound together when filed and the pages are consecutively numbered. Courts have been very tolerant of minor irregularities.[3]

Signatures. Each signer must be a registered voter of the political district and provide his or her occupation and address.[4] Individuals must be registered at the time of signing; subsequent registration is not a remedy.[5] The usual and customary information adequate for mailing purposes satisfies the residency requirement; use of R.D. numbers is acceptable.[6]

Affidavit. Each sheet of a petition must include the circulator's affidavit, which must include the following: a statement that the circulator is a registered voter of the political district, the circulator's address, a statement that the signers signed with full knowledge of the petition's contents, their residences are correctly stated, they reside in the county, they signed on the date set opposite their names, and that, to the best of the circulator's knowledge and belief, the signers are registered voters of the political district.[7] The affidavit requirement is a safeguard intended to assure the genuineness of the petitions.[8] The affidavit requirement is mandatory even when the statute authorizing the referendum does not mention such a requirement.[9] In a case where affidavits were sworn prior to the time most signatures were applied to the petition, the petition was ruled to be invalid.[10] While the person actually circulating the petition does not have to be the signer of the affidavit, the signer must have personal knowledge of the facts being sworn to in the petition. Where this is not the case, the petition is invalidated.[11]

References

1. 25 P.S. § 2868.
2. *Rack v. Wentworth,* 76 D.&C. 445 (Crawford C.C.P. 1951); *Commonwealth ex rel. McLaughlin v. Franklin County Commissioners,* 70 D.&C. 31 (Franklin C.C.P. 1949); *Hollidaysburg Borough Election,* 69 D.&C. 538 (Blair C.C.P. 1949).
3. 25 P.S. § 2869; *In re Blair Tp., Blair County, Retail Malt and Brewed Beverage Referendum,* 114 A.2d 148, 382 Pa. 295 (1955); *Long v. Cochran,* 56 A.2d 105, 358 Pa. 129 (1948); *In re Election of Two Additional Sup'rs in Birmingham Tp.,* 549 A.2d 620, 120 Pa.Cmwlth. 586 (1988).
4. 25 P.S. § 2868.
5. *Aukamp v. Diehm,* 8 A.2d 400, 336 Pa. 118 (1939).
6. *In re Catherine Tp., Blair County, Retail Liquor Referendum,* 114 A.2d 145, 382 Pa. 291 (1955); *In re Creighton,* 899 A.2d 1166 (Pa.Cmwlth. 2006), *affirmed,* 896 A.2d 583, 586 Pa. 652 (2006).

7. 25 P.S. § 2869; *In re Nomination of Flaherty,* 770 A.2d 327, 564 Pa. 671 (2001).
8. *In re Street,* 539 A.2d 923, 115 Pa.Cmwlth. 189 (1988).
9. *Petition of Werner,* 662 A.2d 35 (Pa.Cmwlth. 1995).
10. *In re Referendum Petition of Union Tp.,* 45 Erie 132 (1961).
11. *In re City of Pittsburgh Home Rule Charter,* 694 A.2d 1128 (Pa.Cmwlth. 1997); *In re Local Option Election in Slippery Rock Borough,* 406 A.2d 1168, 46 Pa.Cmwlth. 260 (1979).

Petition Filing

Filing Date. The Election Code establishes the tenth Tuesday before the primary election as the deadline for filing nomination petitions.[1] Therefore, where the authorizing law specifically adopts the provisions of the Election Code relating to nomination petitions, that date becomes the deadline for filing referendum petitions.[2] Where the authorizing law sets a specific filing date for petitions, that deadline governs.[3] If the authorizing legislation contains no filing deadline and there is no specific reference to the Election Code, the filing deadline for referenda petitions may be set by the county board of elections.

Examination. The county board of elections is permitted a reasonable time to examine petitions.[4] A petition must be rejected if it or the accompanying affidavit contains material errors or defects apparent on its face, material alterations made after signing, or does not contain a sufficient number of signatures. Any rejected petition must be returned to the circulator.[5] The deliberations of the board of elections regarding whether to accept or reject petitions and whether questions will be placed on the ballot are subject to the requirements of the Sunshine Law and must be conducted at a public meeting.[6]

Challenges. Objections to petitions must be filed with the court of common pleas within seven days after the last day for filing the petitions unless otherwise noted in the authorizing statute.[7] The period runs from the last day for filing petitions regardless of when the petitions were actually filed.[8] Pennsylvania courts have held this time limit to be absolute; petitions cannot be challenged after that date.[9]

References

1. 25 P.S. § 2873(d).
2. *Appeal of Fairview Associates, Inc.,* 433 A.2d 929, 61 Pa.Cmwlth. 404 (1981).
3. *Wagner v. Cumberland County Commissioners,* 85 D.&C. 38 (Cumberland C.C.P. 1953).
4. *Boord v. Maurer,* 22 A.2d 902, 343 Pa. 309 (1942).
5. 25 P.S. § 2936.
6. *Lower Saucon Tp. v. Election Bd. of Northampton County,* 27 D.&C.3d 387 (Northampton C.C.P. 1983).
7. 25 P.S. § 2937.
8. Petition of Werner, 662 A.2d 35 (Pa.Cmwlth. 1995).
9. *In re Referendum for Sunday Motion Picture Exhibitions in Borough of Waynesboro,* 117 A.2d 699, 383 Pa. 162 (1955); *Petition for Sunday Movie in City of Pottsville,* 70 A.2d 651, 363 Pa. 460 (1950); *In re Motion Picture Exhibitions on Sunday in Borough of Hellertown,* 47 A.2d 273, 354 Pa. 255 (1946).

Conduct of Election

Because all referenda are considered special elections, they must be conducted in accordance with the provisions of the Election Code relating to November elections. They are conducted by the same election officers, using the same equipment, facilities, and procedures applicable to regular elections.[1]

Ballot Wording. Except for statewide questions, the county board of elections is responsible for determining the wording of all questions. On voting machines, the question must not exceed 75 words.[2] All questions must be followed by the words "yes" and "no" with squares for making cross marks.[3] If the authorizing statute requires specific language, that wording must be used; any variation from the statute renders the election invalid.[4] Referenda may be invalidated where the form of the ballot does not conform with the law and is so confusing that voters cannot intelligently express their intentions.[5]

Explanation of Ballot Question. For referenda that affect only one county or a portion of a county, the county board of elections must prepare an explanation of the ballot question. This statement must be in plain English and indicate the purpose, limitations and effects of the ballot question. The statement must be included in the notice of the election and three copies must be posted at each polling place. For statewide questions, the Attorney General prepared the explanation, which is then certified to the counties by the Secretary of the Commonwealth.[6]

Notice. The text of any referendum question must be included in the county board of elections' official notice of the November election, which must be published between three and ten days before the election.[7] When questions are to appear on the primary election, the county board of elections must publish a notice with the text of the question between three and ten days before the primary. Many of the laws authorizing referenda require additional notice, often by municipal officers.

Adherence to notice requirements is mandatory. Failure to give statutorily required notice may render the referendum invalid.[8]

Returns. The results are computed and canvassed and returns made in the same method as returns for offices at November elections.[9] In cases where questions are presented to two or more counties, the board of elections of each county certifies the returns to the county having the majority of the registered voters, which then certifies the entire vote.[10]

Challenges. Courts have long held that election contests are limited to five classes of public officers under the Election Code. Because referenda are not included, courts have no jurisdiction to hear election contests relating to referenda.[11]

Although referenda are not subject to election contests, they are subject to the recount procedures of the Election Code.[12] Such actions can include issues regarding improper marking of individual ballots or improper printing of cards for voting machines.[13] A court of equity also has the power to intervene and nullify a referendum election where some positive and material requirement of the law has been disregarded or ignored.[14]

Campaign Expenditure Reporting. All political committees organized for the purpose of supporting or opposing referendum questions must register within twenty days of receiving accumulated contributions of more than $250.[15] If the amount of expenditures exceeds $250, then the treasurer of the committee must also file campaign expenditure reports.[16] Pre-election reports must be filed by the second Friday before the election and post-election reports by not later than thirty days after the election. In addition, any other person independent of a political committee who makes expenditures in excess of $100 and expressly advocates for the support or defeat of referendum questions must file a campaign finance report by the same dates.[17]

References

1. 25 P.S. § 2787.
2. 25 P.S. § 3010(b).
3. 25 P.S. § 2963(g).
4. *Stem v. Bethlehem Borough,* 80 A. 984, 231 Pa. 461 (1911).
5. *Oncken v. Ewing,* 8 A.2d 402, 336 Pa. 43 (1939).
6. 25 P.S. § 2621.1.
7. 25 P.S. § 3041.
8. *Mt. Lebanon v. County Bd. of Elections of Allegheny County,* 368 A.2d 648, 470 Pa. 317 (1977); *Appeal of Frederick H. Harper Jr., Inc.,* 29 A.2d 236, 150 Pa.Super. 569 (1942)
9. 25 P.S. § 3069.
10. 25 P.S. § 3160.
11. *In re Granting Malt Beverage Licenses in Greene Tp., Franklin County,* 1 A.2d 670, 331 Pa. 536 (1938).
12. *In re Recount of Ballots of Rome Tp., Crawford County,* 155 A.2d 361, 397 Pa. 331 (1959).
13. *In re Petitions to Open Ballot Boxes,* 188 A.2d 254, 410 Pa. 62 (1963).
14. *Gunnett v. Trout,* 112 A.2d 333, 380 Pa. 504 (1955); *Reese v. County Bd. of Elections of Lancaster County,* 308 A.2d 154, 10 Pa.Cmwlth. 448 (1973).
15. 25 P.S. § 3244.
16. 25 P.S. § 3246(a).
17. 25 P.S. § 3246(g).

III. Laws Authorizing Specific Types of Referenda

There are approximately two dozen laws authorizing referenda on various issues. Many of those laws are described below, but some, such as those enacted to address a one-time issue, have been omitted.

Area Government

The Pennsylvania Constitution permits the General Assembly to enact laws establishing and dissolving governments covering the areas of two or more municipalities.[1]

Voters in two or more municipalities may initiate a referendum on whether to create an environmental improvement compact, which is merely a structure of government and powers concerning one or more municipal functions.[2] The petition must be signed by voters totaling at least two percent of the number of voters voting for the office of Governor in the last gubernatorial general election in each municipality involved. The petition must be filed at least 90 days before the next primary held in any even-numbered year or general election.[3]

The governing bodies of the municipalities, by ordinance of each, may approve of a referendum on the question of adopting an environmental improvement compact.[4] The ordinances must be filed with the county board of elections at least 90 days prior to the next primary or general election.[5]

The board of elections must provide each municipality with at least 30 days' notice of the referendum election date.[6] The mayors and/or chairmen of boards of county commissioners, township commissioners, and/or township supervisors must provide at least 30 days' notice by proclamation. A copy of the proclamation must be posted at each polling place and published once in at least one newspaper of general circulation during the 30-day period prior to the election.[7]

References
1. PA. CONST., Art. 9, § 6.
2. 53 Pa.C.S.A. § 2511.
3. 53 Pa.C.S.A. § 2512.
4. 53 Pa.C.S.A. § 2521.
5. 53 Pa.C.S.A. § 2522.
6. 53 Pa.C.S.A. § 2523.
7. 53 Pa.C.S.A. § 2524.

Boundary Change

Annexations. Annexation of portions of counties, cities, boroughs, towns and townships may be accomplished through a referendum. This procedure is found in the Pennsylvania Constitution, which guarantees the right of the voters of any county or municipality to consolidate, merge or change the boundaries of their unit by a majority vote without the approval of any governing body.[1] Because the General Assembly has enacted a uniform law for municipal consolidation or merger, but not for annexation, this procedure remains the only method available for boundary change actions involving transfer of a portion of one municipality to another.[2]

Constitutional boundary change actions are initiated by a petition signed by registered voters totaling at least five percent of the total votes cast for the office of Governor in the last gubernatorial general election within the municipality. 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 ninety days prior to the next primary or general election.

The board of elections must place the proposal on the ballot in a manner that fairly represents the content of the petition. The question must be placed on the ballot in each municipality affected by the proposal. To be approved, the question must receive a majority of the votes cast in each municipality, tallied separately, of those voting on the proposal. Petitions on a particular question may only be submitted once every five years.

There is no restriction on the type of boundary change action that can be proposed by the voters and approved in a referendum. 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 be contiguous with the unit's existing boundary.

Consolidation or Merger. In 1994, the General Assembly enacted the Municipal Consolidation or Merger Act, which provides procedures for the merger or consolidation of counties and municipalities, with some exceptions. There are no restrictions on the number or type of municipalities that can be combined, but the resulting unified entity must be contiguous.[3]

A merger or consolidation can be initiated by adoption of a joint agreement by the governing bodies, but still must be approved by the voters at a referendum. The joint agreement must be filed with the county board of elections at least thirteen weeks before the next primary, general or municipal election. There is a detailed list in the statute of the items that must be included in the joint agreement.[4]

Another option is for the merger or consolidation proposal to be placed on the ballot through voter petitions that are signed by registered voters totaling at least five percent of the total number of votes cast for the office of Governor at the last gubernatorial general election in the municipality. The petition can be circulated only between the twentieth and thirteenth Tuesdays before the election and must be filed with the county board of elections by the thirteenth Tuesday. The statute details the required contents of the petition.[5] There are similar procedures for petitions involving municipalities that will have new home rule charters if the referendum is successful.[6]

A third option is a combination of the two, meaning that one or more municipalities can start the process through a joint agreement while the others may initiate the process through voter petitions.

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 thirteen weeks after the filing of either the joint agreement or the voter petitions with the board of elections. The question must be approved by separate majority votes in each municipality affected.

If a merger or consolidation is defeated, 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.[7]

References
1. PA. CONST., Art. 9, §§ 8 and 14.
2. *Derry Tp. Sup'rs v. Borough of Hummelstown,* 326 A.2d 342, 458 Pa. 396 (1974).
3. 53 Pa.C.S.A. §§ 733 and 736.
4. 53 Pa.C.S.A. § 734.
5. 53 Pa.C.S.A. § 735.
6. 53 Pa.C.S.A. § 735.1.
7. 53 Pa.C.S.A. § 736.

Community Courts
The Pennsylvania Constitution authorizes the establishment or discontinuance of a community court within any judicial district through a referendum process.[1] If established by the voters, the community court replaces the existing system of magisterial district judges for the purpose of hearing charges on minor offenses and presiding over arraignments. The question may be placed on the ballot only during a primary election.

The question must be initiated by a petition signed by a number of registered voters totaling at least five percent of the total votes cast for all candidates for the office occupied by a single official for whom the highest number of votes was cast in the judicial district at the last preceding general or municipal election.

The petition is governed by the provisions of the Election Code relating to candidate petitions. A question on establishing or discontinuing a community court cannot be placed on the ballot in a judicial district more than once in five years.[2]

References
1. PA. CONST., Art. 5, § 6.
2. 42 Pa.C.S.A. § 1102(a).

Debt Authorization

There are two laws authorizing referenda that address whether local government units may incur debt. One applies to all counties, school districts and municipalities, while the other applies exclusively to Philadelphia.

General. For all units except Philadelphia, the Local Government Unit Debt Act sets forth a procedure for obtaining approval of the voters to issue or transfer local government debt.[1] Any debt approved by the voters is excluded for the computation of the jurisdiction's nonelectoral borrowing capacity. The debt approval question must specify the particular purpose or project for which the funds will be used.

The governing body must adopt a resolution signifying its intent to increase the debt.[2] It may also certify a copy of the resolution and the form of the question to the county board of elections at least 45 days before the election.[3] The question may be placed on the ballot at any municipal, general, primary or special election called for other purposes. If the next election will take place in more than ninety days, or less than thirty days, from the effective date of the resolution, the governing body may fix a date for a special election, in which case it must pay all election expenses.[4]

Notice of the referendum must be published in one or two newspapers of general circulation within the jurisdiction and the designated county legal journal, if any. In daily newspapers, notice must be published three times at intervals of not less than three days; in weekly newspapers and the legal journal, notice must be published once a week for two successive weeks. The first publication must be between fourteen and twenty-one days before the election, but after the resolution's effective date.[5]

The referendum question must be framed in a form substantially in compliance with the wording specified in the Local Government Unit Debt Act.[6] The conduct of the election is governed by the Pennsylvania Election Code.[7] If the question is defeated, no other election may be held for the same purpose until after 155 days have elapsed.[8]

On the tenth anniversary of the election approving the debt, the authority to issue bonds or notes terminates. The governing body may also rescind or cancel the debt authorization without obtaining the voters' approval.[9]

If debt has been incurred for a particular purpose and the governing body wishes to use the funds for a purpose other than that already approved by the voters, the governing body must pass a resolution calling for an election to approve the new purpose. The election is subject to the same procedures and conditions as an election to approve debt.[10]

Philadelphia. Subject to constitutional limitations, Philadelphia City Council may authorize new debt or a debt increase by enacting an ordinance with approval from two-thirds of its members.[11] The city council may submit the question for approval by the voters at a referendum. The ordinance must state the date of the referendum.[12]

Notice of the referendum must be given once a week for three weeks in each of three daily newspapers having a circulation of at least 30,000 in the city, as well as in the designated legal journal.[13] The referendum must be held at a municipal or general election, unless such election occurs more than ninety days after the date of the ordinance providing for the election. When a special election is called, the city must pay all costs of the election. The question must be printed on the ballot in brief form, followed by the words "yes" and "no" with appropriate voting squares. If a majority of voters approve the question, the ordinance becomes effective upon certification of the vote by the court. If not, the ordinance is ineffective.[14]

Debt that is approved by the voters is excluded from the computation of the amount of debt the city has incurred without approval of the voters. Debt previously incurred directly by the city council without approval of the voters may be transferred to electoral debt, assumed or refunded by a subsequent action to obtain the approval of the voters following the procedure above.[15]

When city council wishes to change the use of funds already borrowed with the approval of the voters, the proposal must be approved in a further referendum. The referendum must follow the procedures outlined above, including that the ordinance authorizing the change in purpose must be approved by two-thirds of the members of city council. Further, the notice of the election must contain a statement of the amount and purpose of the original authorization, the new purpose proposed, and the reason for the change.[16] The question must be substantially in the form specified in the law.[17]

References

1. 53 Pa.C.S.A. § 8041.
2. 53 Pa.C.S.A. § 8041(a).
3. 53 Pa.C.S.A. § 8043(a).
4. 53 Pa.C.S.A. §§ 8041(b) and (c).
5. 53 Pa.C.S.A. § 8042(a).
6. 53 Pa.C.S.A. § 8042(b).
7. 53 Pa.C.S.A. § 8043(b).
8. 53 Pa.C.S.A. § 8045.
9. 53 Pa.C.S.A. § 8047.
10. 53 Pa.C.S.A. § 8049.
11. 53 P.S. § 12581.
12. 53 P.S. § 12584.
13. 53 P.S. § 12585.
14. 53 P.S. § 12586.
15. 53 P.S. § 12583.
16. 53 P.S. § 15763.
17. 53 P.S. § 15765.

Fire Protection

Various laws authorize referenda relative to the provision of fire service. They include authorization for replacing paid fire companies with volunteer companies and vice versa, a special millage for fire protection purposes, a special tax used for construction of a fire house or municipal building, and a special tax for ambulance and rescue squads.

Replacing Paid Fire Companies with Volunteer Fire Companies. No county or municipality employing paid firefighters, including, but not limited to, fire drivers, may disband its entire paid fire force in favor of having the services performed by volunteers unless approved by the voters in a referendum.[1] This requirement does not apply where one station is closed and its paid firefighters are transferred to another station.[2]

The question may be initiated by an ordinance enacted by the governing body or a petition signed by at least twenty percent of the registered voters of the municipality. The referendum election must take place at the next general, municipal or primary election occurring not less than the 13th Tuesday after the ordinance or petition is filed with the board of elections. Petitions may be circulated no earlier than the twentieth Tuesday before the election, nor later than the thirteenth Tuesday prior to the election. Cities of the third class have the option of conducting the referendum under the provisions of the statute or Article X of the Third Class City Code.[3]

Special Fire Tax. In boroughs and townships, the governing body may levy a special real estate tax for fire protection purposes of up to three mills. If the municipalities wish to levy a tax of more than three mills, a question on levying the additional tax must be submitted to the voters in a referendum.[4] The question must be submitted to the voters in accordance with the election laws and framed by the county board of elections. The Borough and First Class Township Codes contain no deadline for the submission of the question to the board of elections, and the question may be placed on the ballot at any election. For townships of the second class, the question may only be placed on the ballot at the first municipal or general election occurring not less than sixty days after the question is submitted.[5]

Borough Fire Building Tax. The Borough Code permits a special real estate tax of up to two mills, the proceeds of which may be used to construct a fire house, fire training center, or municipal building.[6]

Ambulance and Rescue Squads Tax. In boroughs and townships, the governing body may levy a special tax of up to one-half mill to support ambulance, rescue, and other emergency service squads.[7] Boroughs and townships of the first class may increase this tax to two or three mills, respectively, if the additional millage above one-half mill is approved by the voters at a referendum.[8] For townships of the second class, there is no limit to the additional millage that may be approved by the voters, but the increases must be approved by the voters.[9]

For boroughs and townships of the first class, there is no deadline to submit the question to the board of elections and it may be placed on the ballot at any election. For townships of the second class, the question may only be placed on the ballot at the first municipal or general election occurring not less than sixty days after the question was submitted.[10]

References
1. 35 Pa.C.S.A. § 7708(a).
2. *Maher v. County of Allegheny,* 675 A.2d 378 (Pa.Cmwlth. 1996), *appeal denied,* 687 A.2d 380, 546 Pa. 697 (1996).
3. 35 Pa.C.S.A. § 7708(b).
4. 8 Pa.C.S.A. § 1302(a)(6); 53 P.S. § 56709; 53 P.S. § 68205(a)(4).
5. 53 P.S. § 68206.
6. 8 Pa.C.S.A. § 1302(a)(7).
7. 8 Pa.C.S.A. § 1302(a)(9) and (e); 53 P.S. § 56709(a); 53 P.S. § 68205(a)(8).
8. 8 Pa.C.S.A. § 1302(e); 53 P.S. § 56709(c).
9. 53 P.S. § 68205(a)(8).
10. 53 P.S. § 68206.

Forest Lands
Several laws authorize local referenda relating to forest lands. They cover reallocation of federal forest land payments and the purchase or sale of municipally-owned land.

National Forest Reserve Payments. Money appropriated by the federal government from national forest land reserves is generally divided so that 75% benefits public schools and 25% benefits public roads in the township where the forest land is located.[1] However, at least twenty percent of the registered voters of the township may present a petition to the governing body to have that allocation split evenly. If the governing body receives such a petition, it must adopt a resolution petitioning the county board of elections to place the question on the ballot. The county board of elections must cause the question to be placed on the ballot at the first primary or general election occurring at least sixty days thereafter. The same question cannot be presented to the voters for at least five years.[2]

Selling Municipal Forest Lands. Any sale or lease of municipal forest land in a city or township must be authorized by an ordinance of the governing body, but it does not become effective unless approved by the voters in a referendum held at the next primary, municipal or general election.[3] In townships of the second class, the question may only appear on the ballot during a municipal or general election.[4]

References
1. 72 P.S. § 3542.
2. 72 P.S. § 3543.
3. 53 P.S. § 3356; 53 P.S. § 58047; 53 P.S. § 67207(f).
4. 53 P.S. § 67207(f).

Health Departments

State law authorizes referenda on the creation of county health departments (except in counties of the first class) or joint-county health departments.

All petitions must be in the form required for nomination petitions in the Election Code, except they cannot be circulated more than six months before the filing deadline, which is ninety days before the next general or municipal election. The validity of the petition and any challenges to it are governed by the Election Code.

Where the question calls for creation of a joint-county health department, voters in each county affected must file a separate petition and each county must conduct a separate referendum. Petitions to create health departments must be signed by registered voters totaling at least one percent of the highest total vote cast for any county office at the last municipal election.[1]

Single-county departments of health may be dissolved by referendum and members of multi-county departments may withdraw after a referendum on the issue. Petitions for dissolution of a county health department or withdrawal from a joint-county health department may be circulated no earlier than five years after the date the department was established nor five years following the date of another referendum on the same question. Petitions for dissolution or withdrawal must be signed by registered voters equal to at least ten percent of the highest total vote cast for any county office at the last municipal election. The questions must be presented at the next election occurring at least 30 days after the validity of the petitions has been determined.[2]

References

1. 16 P.S. § 12005.
2. 16 P.S. § 12005.1.

Home Rule Charters and Optional Plans

Adoption, amendment, and repeal of alternate forms of government, such as home rule charters and optional plans, must be accomplished by referendum. Several laws establish the applicable procedures.

General Law. The Home Rule Law applies to all municipalities and counties except Philadelphia and Allegheny County and establishes the procedure for adoption of home rule charters or optional plans of government. Each change requires approval by the voters in a referendum. All elections under the Home Rule Law must be conducted in accordance with the Pennsylvania Election Code.[1] Any election under the Home Rule Law must be advertised by the municipal secretary or clerk in a newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of thirty days prior to the election.[2] Notice requirements are mandatory; lack of notice can lead to invalidation of the election.[3]

The process of adopting a home rule charter or optional plan begins with a referendum on whether to form a government study commission. The question may be placed on the ballot by an ordinance of the governing body or petition of the voters. The petition must be signed by voters totaling at least five percent of the number of votes cast for the office of Governor at the last gubernatorial general election within the municipality. No petition can be circulated or signed prior to the twentieth Tuesday before the election, nor later than the thirteenth Tuesday. The ordinance or petition must be filed with the county board of elections at least thirteen weeks before the election. The question may be placed on the ballot at any primary, general or municipal election.[4] The members of the government study commission are elected at the same election that the question is submitted to the voters.[5]

If the government study commission recommends a new form of government for the municipality, that recommendation must be presented to the voters within nine months, subject to extensions permitted by law.[6] The report of the commission is filed with the municipal secretary, who must certify a copy of the report to the county board of elections within five days. The question must be placed on the ballot at the primary, municipal or general election specified by the commission, which must occur at least sixty days following the filing of the report with the board of elections. The question must be framed by the commission in the form provided in the law. The law permits the commission to frame an interpretative statement to accompany the question on the ballot.[7]

Amendments to home rule charters or optional plans of government may be initiated by voter petition or by ordinance of the governing body. Proposals for amendment of optional plans are limited to those options identified in Section 2924 of the Home Rule Law.[8] The voters may not vote on the question of whether to change the form of government until a home rule charter or optional plan has been in effect for five years.[9]

Petitions proposing amendments must be signed by registered voters totaling at least ten percent of the total number of votes cast for the office of Governor in the last gubernatorial general election. No petitions may be circulated prior to the twentieth Tuesday before the election, nor later than the thirteenth Tuesday. The ordinance or petition must be filed by the thirteenth Tuesday before the election. Amendments may be placed on the ballot at any primary, municipal or general election.[10]

Home rule charters and optional plans of government may be repealed only through the election of a government study commission by the procedure described above. If the government study commission recommends repeal, it must provide in its report for a new form of government to be established to replace the home rule charter or optional plan.[11]

Philadelphia Home Rule. Philadelphia's home rule process is similar. If an ordinance is adopted after a vote of two-thirds of the members of city council or a petition is signed by 20,000 voters, then city council must create a commission to frame a new home rule charter.[12] The proposal of the charter commission is filed with city council.

Amendments to Philadelphia's existing home rule charter may be proposed by a two-thirds vote of city council or by a petition presented to city council signed by at least 20,000 registered voters. When amendments are presented by petition, city council has the power to determine whether or not they will be submitted to the voters.[13]

New charters or amendments must be submitted to the voters at a primary, municipal or general election occurring at least 45 days after final action by city council.[14] A new charter may be submitted as a whole or in sections; alternate provisions may be presented to the voters, but any change in the method of electing city officers must be submitted as a separate question. All amendments must be submitted as separate questions.

Proposed charters or amendments must be printed in pamphlet form for general distribution to the public at least 28 days before the election.[15] Notice of the election must be published once a week for three consecutive weeks in three newspapers of general circulation within the city during the thirty days immediately prior to the election.[16] Notice of the election is also to be made by proclamation of the mayor posted at each polling place and published in at least two newspapers of general circulation in the city once a week for three consecutive weeks during the thirty days prior to the election.[17]

Optional Charter Plans for Cities of the Third Class. Any city of the third class operating under an optional plan may revert to operating under the Third Class City Code. A referendum on reversion may be initiated by a petition signed by at least fifteen percent of the registered voters of the city. The question must be placed on the ballot at the next general election occurring at least sixty days after the petition is filed with the county board of elections.[18] Thirty days' notice of the election must be given by proclamation of the mayor. A copy of the proclamation must be posted in each polling place and published in at least two newspapers of general circulation in the city once a week for three consecutive weeks during the period of thirty days before the election.[19]

References

1. 53 Pa.C.S.A. § 2951.
2. 53 Pa.C.S.A. § 2952.
3. *Mt. Lebanon v. County Bd. of Elections of Allegheny County,* 368 A.2d 648, 470 Pa. 317 (1977); *Reese v. County Bd. of Elections of Lancaster County,* 308 A.2d 154, 10 Pa.Cmwlth. 448 (1973).
4. 53 Pa.C.S.A. § 2911.
5. 53 Pa.C.S.A. § 2912(a).
6. 53 Pa.C.S.A. § 2921(a).
7. 53 Pa.C.S.A. §§ 2925 and 2926.
8. 53 Pa.C.S.A. § 2942.
9. 53 Pa.C.S.A. §§ 2943 and 2944.

10. 53 Pa.C.S.A. § 2929; *Borough of Warren v. County Bd. of Elections of Warren County,* 425 A.2d 1113, 59 Pa.Cmwlth. 137 (1981); *McCaskey v. Allegheny County Dept. of Elections,* 590 A.2d 77, 139 Pa.Cmwlth. 229 (1991); *Wolfgang v. Allegheny County Dept. of Elections,* 629 A.2d 316 (Pa.Cmwlth. 1993).
11. 53 Pa.C.S.A. §§ 2967 and 3171.
12. 53 P.S. § 13102.
13. 53 P.S. § 13106.
14. 53 P.S. § 13110.
15. 53 P.S. § 13109.
16. 53 P.S. § 13114.
17. 53 P.S. § 13109.
18. 53 P.S. § 41231.
19. 53 P.S. § 41242.

Horse Racing

Voters may prohibit horse racing in townships of the second class located within 50 air miles of an existing race track. The issue may be placed on the ballot by a resolution of the board of supervisors and must be placed on the ballot upon the petition of registered voters totaling at least 25 percent of the highest number of votes cast for a public office in the township at the last municipal election. The board of elections places the question on the ballot at a primary or general election.[1]

Reference
1. 53 P.S. § 66549.

Hospitals

When petitioned by at least 100 voters, the county commissioners of counties of the second class and second class A must place the question of whether to construct a tuberculosis hospital on the ballot. The question must be submitted at the next general or municipal election.[1] In counties of the third through eighth class, the petition must be signed by citizens equal to the number of votes cast at the last municipal election. The question must be submitted at the next municipal election and the referendum must be conducted under the provisions of the Election Code.[2]

References
1. 16 P.S. § 5315.
2. 16 P.S. § 2381.

Intergovernmental Cooperation

The voters of any municipality, except Philadelphia, may use the referendum process to mandate that the governing body adopt an ordinance to enter into an intergovernmental cooperation agreement, or to delegate any function, power or responsibility to another governmental unit.[1]

The petition must be signed by registered voters totaling at least five percent of the number of votes cast for the office of Governor in the last gubernatorial general election within the jurisdiction. The petition must be filed with the county board of elections at least ninety days before the next primary or general election. A similar question cannot be submitted more than once in five years.[2]

References
1. 53 Pa.C.S.A. § 2304.
2. 53 Pa.C.S.A. § 2306.

Libraries

The Library Code authorizes referenda in a number of areas relating to library service, including the establishment of a local library tax, participation in the county library system, participation in a district library cooperative program and bond issues.

Library Tax. Voters may decide whether to establish a special annual library tax on all taxable property for the purpose of establishing, maintaining and adding a local library. Elected officials, who may submit the question to the voters at any time, must also do so if petitioned by voters totaling at least three percent of the number of persons voting at the

last preceding general or municipal election. The question must be submitted at least sixty days before the next primary, municipal or general election. Once approved, governing bodies may increase the tax rate without submitting the question to the voters.[1]

Where questions are submitted to the voters of an entire county, municipalities that already maintain local libraries that are not part of the county library district are not included in the voting process unless their governing bodies signify their intent by ordinance or resolution to join the county library district.[2]

Withdrawing from County Library District. If a municipality maintains a separate library and a county library is also in existence, a referendum must be held at a special election on whether the municipality shall cease to be part of the county library district and no longer subject to paying county library taxes. The question must be initiated by a petition signed by at least three percent of the number of persons voting in the last general or municipal election. The petition must be filed with the county board of elections at least sixty days prior to the next general or municipal election. The same question shall not be submitted to the voters more than once in five years.[3]

Purchasing Land and Erecting Library Buildings. At least five percent of the registered voters of a municipality may petition the municipality to place on the ballot the question of whether to borrow funds to purchase land or build a library building. If petitioned, the governing body must place the question on the ballot at the next election.[4]

References
1. 24 Pa.C.S.A. § 9315.
2. 24 Pa.C.S.A. § 9317(a).
3. 24 Pa.C.S.A. § 9317(e).
4. 24 Pa.C.S.A. § 9316.

Liquor Licenses

The Liquor Code grants each municipality the option to hold referenda on numerous liquor-related questions, including whether to grant liquor licenses, retail beer licenses, licenses for beer distributors, licenses for privately-owned golf courses, licenses for veterans' clubs, special occasion permits, or permit the operation of state liquor stores. These questions may only appear on the ballot at the primary election before a municipal election, but no more often than once in four years, except that referenda for wholesale and import distributor licenses, veterans' club licenses, and special occasion permits, which may take place every two years.

Petitions must be signed by registered voters totaling at least 25 percent of the highest vote cast for any office in the municipality at the last general election. Separate petitions must be filed with the county board of elections for each question to be voted on by the voters. Petitions may be circulated and signed only between the tenth and thirteenth Tuesdays before the primary. All petitions must be filed by the tenth Tuesday before the primary.[1]

Bottle Clubs. The Crimes Code authorizes a local option referendum regarding whether to prohibit bottle clubs from operating in a municipality. The issue may be placed on the ballot only during a primary election and may not appear more often than once every four years. The question may be initiated by resolution of the governing body or by registered voters totaling at least 25 percent of the highest vote cast for any office in the municipality at the preceding general election.[2]

References
1. 47 P.S. § 4-472.
2. 18 Pa.C.S.A. § 7328(b).

Local Offices

Several laws authorize referenda on matters related to local office. These include expanding or reducing boards of township supervisors, creating the office of controller in certain counties, eliminating jury commissioners, and reorganizing former county offices in Philadelphia.

Township Supervisors. Townships of the second class generally have three-members boards of supervisors, but those boards may be expanded to five members after a referendum. The same procedure is followed to reduce the size of a board from five to three members. The question may be initiated by resolution of the board of supervisors or by a petition signed by at least five percent of the registered voters of the township. The petition or resolution must be filed with the county board of elections by the thirteenth Tuesday before the next municipal or general election. The question may be placed on the ballot only during a November election. The question of whether to expand the board cannot be presented to the voters more than once in any three-year period, while the question of whether to reduce the board may not be presented to the voters more than once in any five-year period.[1]

County Controller. Counties of the sixth, seventh and eighth class may establish the office of controller through a referendum. The question may be initiated by a petition signed by at least five percent of the highest number of votes cast for any office in the county at the last general election. The petition must be filed with the county commissioners at least sixty days before the date of the election. The question may go on the ballot at any primary, municipal or general election. If approved, the controller replaces the county auditors.[2]

Jury Commissioners. The office of jury commissioner may be abolished through a referendum in counties of the third class with a population between 237,000 and 240,000 or between 337,000 and 341,000 at the 1990 census. The question may be placed on the ballot by resolution of the governing body or petition of registered voters totaling at least 5% of the highest vote cast in the last general election. The question can appear at any election except in the year the office of jury commissioner is on the ballot.[3]

In addition, the office may be abolished in any county having a population of not less than 371,000 and more than 380,000 at the 2000 census by resolution of the governing body.[4] Counties of the second class A or third through eighth class may do so as well.[5]

Philadelphia Offices. The Philadelphia City Council has the authority to legislate with respect to the election and appointment of positions that are typically county offices.[6]

References

1. 53 P.S. § 65402.
2. 16 P.S. § 605.
3. 16 P.S. § 401(d) and (e); *Pennsylvania State Ass'n of Jury Com'rs v. Commonwealth,* 74 A.3d 333 (Pa.Cmwlth. 2013), *affirmed,* 75 A.3d 483 (2013).
4. 16 P.S. § 401(e).
5. 53 P.S. § 13132(c); *Sweeney v. Tate,* 216 A.2d 77, 420 Pa. 45 (1966).
6. PA. CONST., Art. 9, § 13.

Municipal Classification Change

The municipal codes permit certain types of municipalities to move from one classification to another.

Borough Incorporation. A new borough may be incorporated from any contiguous area within one or more townships with a population of at least 500.[1] The courts have ruled that incorporation of a borough from part of a township is not a boundary change within the meaning of the Pennsylvania Constitution and the incorporation provisions do not conflict with the constitutional mandate for a uniform boundary change procedure.[2]

A petition seeking incorporation of a borough must be signed by a majority of the 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.[3] The court of common pleas must then appoint a borough advisory committee to study the proposed incorporation. The

committee must consist of two residents of the proposed borough, two residents of each existing township who do not reside in the proposed borough, and one resident of the county, who shall be the chairman.[4] Within sixty days, the committee must study the proposal and return its recommendations to the court. After receiving the findings-of-fact and the advice of the committee, the court must hold a hearing on the proposed incorporation. If the court finds that the desirability of the proposed incorporation is supported by a preponderance of evidence, it certifies the question of incorporation to the county board of elections for a referendum vote of the residents of the area proposed for incorporation. After receipt of the certified election results, the court must enter a final decree incorporating the borough or denying the petition.[5]

Creation of a Borough from a City of the Third Class. An election may be held to change a city of the third class to a borough. The change may be initiated by a petition signed by at least ten percent of the registered voters of the city. The petition must be filed with the court of common pleas at least ninety days prior to the next general, municipal or primary election.[6] Notice of the election must be given in at least one newspaper of general circulation within the county once a week for four consecutive weeks.[7] If the majority of those voting were against the change from a city to a borough, the same question cannot be resubmitted for a period of five years.[8]

Creation of a Township of the First Class from a Township of the Second Class. A township of the first class may be created from a township of the second class that has a population density of at least three hundred persons per square mile. The question of whether the township should become a township of the first class must be initiated by a petition signed by at least five percent of the registered voters of the township.[9] The question is placed on the ballot by the county board of elections at the first general or municipal election occurring at least ninety days after the certification of population. The purpose of the time limitation is to ensure that the population density remains accurate when the matter is put before the voters.[10] If the vote is favorable, the township becomes a township of the first class on the first Monday of January of the year following the election. If the majority of voters reject, the question cannot be submitted for two years. After that time the question can be resubmitted by the governing body by unanimous action, and must be resubmitted if petitioned by ten percent of the registered voters of the township.[11]

Creation of a Township of the Second Class from a Township of the First Class. The question of reestablishing a township of the second class must be presented to the voters of any township of the first class after certification that it no longer has a population density of at least 300 persons per square mile. That must be presented at the first general or municipal election held at least ninety days after the certification. If the majority of voters are in favor of remaining a township of the first class, no further proceedings may commence for a period for four years. After that time the board of commissioners may resubmit the question by unanimous action, or shall submit the question upon petition of ten percent of the registered voters of the township.[12]

In addition, regardless of the population requirement, the board of commissioners of a township of the first class may on its own initiative, or within fifteen days after receipt of a petition signed by at least five percent of the registered voters of the township, pass a resolution submitting the question of reestablishing itself as a township of the second class to the voters. The question is then submitted to the voters at the next primary, municipal or general election occurring at least ninety days after the passage of the resolution. If the vote is negative, no further proceedings may be commenced for a period of two years.[13]

References

1. 8 Pa.C.S.A. § 201.
2. *Bear Creek Tp. v. Borough of Penn Lake Park,* 340 A.2d 642, 20 Pa.Cmwlth. 77 (1975); *In re Incorporation of Borough of New Morgan,* 562 A.2d 402, 127 Pa.Cmwlth. 519 (1989), *affirmed,* 590 A.2d 274, 527 Pa. 226 (1991).
3. 8 Pa.C.S.A. § 202(a); *In re Incorporation of Borough of Treasure Lake,* 999 A.2d 644 (Pa.Cmwlth. 2010), *appeal denied,* 13 A.3d 481, 608 Pa. 481 (2010).
4. 8 Pa.C.S.A. § 202.1.
5. 8 Pa.C.S.A. § 202.2(b).
6. 8 Pa.C.S.A. § 201.
7. 8 Pa.C.S.A. § 232(b).
8. 8 Pa.C.S.A. § 232(c).

9. 53 P.S. § 55207.
10. *In re Petition to Submit Ballot Question to Concord Tp. Voters,* 100 A.3d 765 (Pa.Cmwlth 2014).
11. 53 P.S. § 55208.
12. 53 P.S. § 55209a.
13. 53 P.S. § 65202.

Municipal Name Change

The name of boroughs and townships may be changed through a referendum. In boroughs, a petition may be presented by council after it adopts a resolution or by at least five percent of the registered voters. The court of common pleas then conducts a hearing, at which time residents may object to the proposed name change.[1] In townships of the first class, the question may be initiated by petition of at least ten percent of registered voters.[2] The court then orders an election to be held at the next primary, municipal or general election occurring at least ninety days after the filing of the petition. For townships of the second class, the court orders an election at the next general or municipal election occurring at least sixty days after the court's order.[3] In townships of the first class, notice must be given in at least one newspaper of general circulation once a week for four consecutive weeks.[4]

References
1. 8 Pa.C.S.A. § 242.
2. 53 P.S. § 55251; 53 P.S. § 65207.
3. 53 P.S. § 65207.
4. 53 P.S. § 55252.

Ordinances in Cities of the Third Class

Voters in cities of the third class have limited power to propose ordinances to city council by petition. The petition must be signed by least 100 qualified voters and must be accompanied by a copy of the proposed ordinance.[1] The petition is then made available to the public and must be signed by voters totaling at least twenty percent of all votes cast for the office of mayor at the last mayoral election. If the petition has enough signatures, city council may either pass the proposed ordinance or submit it to the electorate at the next primary, municipal or general election occurring at least ninety days later.[2] The question must state the nature of the proposed ordinance followed by the words "yes" and "no."[3] If a majority of voters approve, the ordinance becomes effective.[4] The ordinance cannot be amended or repealed for two years after its effective date except by public vote.[5] If defeated, the same subject matter cannot be voted on again for three years.[6]

City council can submit a question for repeal or amendment of any ordinance at any succeeding municipal, primary or general election taking place at least ninety days after it is submitted by city council.[7]

Ordinances passed by city council can also be protested by the voters. A petition to protest the ordinance must be signed within ten days of final passage by registered voters totaling at least twenty percent of those voting for mayor at the preceding mayoral municipal election. If sufficient signatures are obtained, the ordinance is suspended from going into effect and city council must reconsider the ordinance.[8] If the ordinance is not repealed, city council must place the question before the voters at the next primary, municipal or general election occurring at least sixty days later.[9] The question must state the nature of the referred ordinance followed by the words "yes" and "no."[10] If a majority approve, the ordinance becomes effective from the date the results are certified. If defeated, the ordinance has no effect.[11]

The Third Class City Code lists six subject areas excluded from the referendum powers of the voters. They are the following types of ordinances: (1) required by state law or courts; (2) tax levies, appropriations, and the exercise of eminent domain; (3) exercise of the police powers; (4) incurring debt; (5) constructing and maintaining streets; and (6) constructing sewers and keeping streets and sidewalks in good condition.[12]

References
1. 53 P.S. § 36031.
2. 53 P.S. § 36035.
3. 53 P.S. § 36036.
4. 53 P.S. § 36037.

5.   53 P.S. § 36038.
6.   53 P.S. § 36039.
7.   53 P.S. § 36040.
8.   53 P.S. § 36051.
9.   53 P.S. § 36059.
10. 53 P.S. § 36061.
11. 53 P.S. § 36063.
12. 53 P.S. § 36050(b).

Retirement System

Any municipality or municipal authority may voluntarily join the Pennsylvania Municipal Retirement System. The governing body may elect to join by adopting an ordinance or resolution and then submitting the issue to the voters for their approval. In addition, if petitioned by at least five percent of the registered voters in the jurisdiction, the governing body must submit the question to the voters. The question may be placed on the ballot at any general or municipal election. If the voters approve, the governing body must adopt an ordinance or resolution to join the Pennsylvania Municipal Retirement System. If they disapprove, no further action can be taken for two years.[1]

Reference
1.   53 P.S. § 881.107.

Schools

Referenda relating to schools are authorized for the approval of school building costs above the standard and establishing home rule for Philadelphia schools. For referenda on school taxes see the section on Taxes. Other general laws relating to school district referenda address electoral approval of debt and intergovernmental cooperation.

School Construction. Except where otherwise approved by the voters, school districts of the second, third and fourth class may not construct a new school building or a substantial addition to an existing building without the consent of the voters through a referendum.[1] Public hearings and referenda under this section are the exclusive procedure for gaining public input on school building construction. Advisory questions on school building construction are unlawful.[2]

Home Rule School District. Philadelphia is authorized to adopt and amend provisions governing the administration of a separate and independent home rule school district.[3] A charter commission may be appointed by a two-thirds vote of city council or by a petition signed by at least 20,000 registered voters.[4] The charter proposals or amendments must be submitted to the voters at an election occurring at least 45 days after filing of the proposed provisions with city council. The election may be held at any primary, general or municipal election.

The proposal must be printed in a pamphlet ready for public distribution at least 28 days before the election. At least thirty days' notice of the election must be given through a proclamation issued by the mayor. Notice must be published in at least two newspapers of general circulation once a week for three consecutive weeks during the thirty-day period before the election.[5]

References
1.   24 P.S. § 7-701.1.
2.   *Hempfield School Dist. v. Election Bd. of Lancaster County,* 574 A.2d 1190, 133 Pa.Cmwlth. 95 (1990), *appeal denied,* 581 A.2d 574, 525 Pa. 650 (1990).
3.   53 P.S. § 13202.
4.   53 P.S. § 13203.
5.   53 P.S. § 13210.

Small Games of Chance

The Local Option Small Games of Chance Act authorizes the licensing of various clubs, nonprofit and charitable organizations to conduct small games of chance. Licenses can be issued only for municipalities which have approved their issuance in a referendum. The question may only be placed on the ballot at the primary preceding a municipal election.[1] When an election has been held, a second election cannot be held until the fourth year thereafter.

The question can be placed on the ballot in two ways. It can be initiated by a resolution of the municipal governing body. Or, it can be initiated by a petition signed by registered voters equal to at least 25 percent of the highest total vote cast for any office within the municipality at the preceding general election. The Act does not contain explicit circulating and filing dates. It does state that proceedings are to be in accordance with the provisions of the Pennsylvania Election Code. Provisions of the Election Code governing candidate petitions restrict circulation to between the thirteenth and tenth Tuesdays before the election and require filing of petitions by the tenth Tuesday before the election. The resolution or petition must be filed with the county election board. The Act contains the wording of the question.

Withdrawal of approval for issuing small games of chance licenses may be accomplished through the same referendum. In a municipality where a prior referendum approved issuance, a second question could be placed on the ballot after the four-year waiting period to effect withdrawal of the approval.

Reference

1. 10 P.S. 328.101 *et seq.*

Taxes

Open Space Tax. Municipalities, except counties, may impose an open space tax on real property or earned income of residents that does not exceed the millage authorized by voters at a referendum. The revenues must be used to pay debt and transactional fees incurred for purchasing open space, prepare land use and recreation plans, or develop property for use as open space. The referendum may be initiated by an ordinance of the governing body. The board of elections must ensure that the question is presented at the next primary, general or municipal election occurring not less than the thirteenth Tuesday following the filing of the ordinance. The additional tax may not be repealed any sooner than five years after the tax is imposed or when the indebtedness has been repaid, whichever is later. The provisions for repealing the tax are substantially identical.[1]

School Earned Income Tax/Net Profits Tax Increase. Each school district may levy an earned income and net profits tax if approved by the voters at a referendum at the municipal election preceding the fiscal year when the tax will be imposed. The referendum question must state the initial tax rates, the reasons for the tax, and the amount of the proposed budgeted revenue growth. Governing bodies may also end these taxes through a referendum. Elimination of the authorization for the increased earned income tax may be placed on the ballot by the school board after at least three full fiscal years of use.[2]

Voters may also initiate the appointment of a local tax study commission by a petition signed by registered voters totaling at least 2% of the total vote for Governor at the last gubernatorial election. If the school district fails to place the commission's recommendation on the ballot, voters may have the recommendation placed on the ballot by filing a petition signed by registered voters composing at least 5% of the total vote for Governor at the last gubernatorial election at least 90 days prior to the next municipal election.[3]

In school districts where an earned income or net profits tax is already in effect, any increase in school real estate taxes must be approved by the voters in a referendum at the primary election preceding the fiscal year when the proposed increase will tax effect.[4]

References

1. 32 P.S. § 5007.1.
2. 53 Pa.C.S.A. § 8703.
3. 53 Pa.C.S.A. § 8703(d)(1).
4. 53 Pa.C.S.A. § 8704.

Voting Systems

The Election Code authorizes referenda on the use of voting machines or electronic voting systems by counties and municipalities. Separate authorizations exist for use of voting machines,[1] discontinuing use of voting machines,[2] use of electronic voting systems,[3] and discontinuing use of electronic voting systems.[4]

Questions may be initiated by the county board of elections on its own motion, by resolution of the municipal governing body, or by a petition signed by registered voters comprising at least ten percent of the total number of voters voting at the preceding general or municipal election. The petition or resolution must be filed at least sixty days prior to the election.[5]

Questions relating to voting machines may be placed on the ballot only at municipal or general elections.[6] Questions relating to electronic voting may be placed on the ballot at any primary, municipal or general election.

If a question on using voting machines or an electronic voting system is defeated, the same question may be submitted again to the voters.[7] Questions on discontinuing voting machines or electronic voting systems may not be presented to the voters earlier than 103 weeks after their use was initially approved. The outcome of any referendum on voting machines or electronic voting is determined by a majority of those voting on the question.[8]

References
1. 25 P.S. § 3002.
2. 25 P.S. § 3004(g).
3. 25 P.S. § 3031.2.
4. 25 P.S. § 3031.4(e).
5. 25 P.S. §§ 3003 and 3031.3.
6. 25 P.S. § 3003.
7. 25 P.S. § 3031.3.
8. 25 P.S. § 3003(f).

Ward Realignment

Changing ward boundaries in cities of the first and third class requires approval by the voters of the affected wards. Philadelphia wards may be created, divided, realigned or consolidated by the court of common pleas upon petition of at least one hundred registered voters of the ward or wards affected, or of the city council. The court then appoints a five-person commission to prepare a realignment plan; four of the five commissioners must agree upon the plan. A question calling for approval of the realignment plan is placed before the voters at the next primary election. If the plan affects less than half of the wards, it is put on the ballot only in those wards; if it affects more than half, it is submitted to the voters of the entire city. Any plan must be approved by the voters before it takes effect.[1]

Wards in cities of the third class may be created, divided or detached by petition of at least one hundred registered voters (for creation or division of a ward) or 25 registered voters (for detachment).[2] The city council then appoints a commission of five voters to make a report and recommendation concerning the necessity, desirability, and feasibility of proposed wards.[3] After the commission reports, city council must decide whether to submit the question to the voters.[4] Then, if it decides to do so, it certifies the question to the county board of elections. The court places the question on the ballot at the next general or municipal election occurring not less than ninety days thereafter.[5] The question appears on the ballot only in the wards affected. The city must provide fifteen days' notice of the election by advertising in one or more newspapers of general circulation. If a majority votes in favor, the court realigns the wards by decree. If defeated, the question cannot be raised again for two years.[6]

References
1. 25 P.S. § 2742.
2. 53 P.S. § 35401.1.
3. 53 P.S. §§ 35403 and 35403.2.
4. 53 P.S. § 35402.2.
5. 53 P.S. § 35404.
6. 53 P.S. § 35407(c).

Water Systems

A borough may sell all or part of its water system after enacting an ordinance, which does not take effect for ten days. During that period, a protest signed by ten percent of the registered voters of the borough may be filed. That protest stays the sale and forces a referendum on the issue.

After the protest is filed with the borough council, the borough secretary has five days to certify the ordinance and the existence of the protest to the county board of elections. The board of elections must place the question on the ballot at the next primary, general or municipal election occurring at least sixty days from the date of the secretary's certification. The referendum must state the nature of the ordinance and provide that a yes vote sustains the ordinance and a no vote rejects it. If approved, the ordinance takes effect immediately; if defeated, it has no effect.[1]

Reference

1. 8 Pa.C.S.A. § 2409; *In re Petition of Werner,* 662 A.2d 35 (Pa.Cmwlth. 1995).

IV. Electoral Procedures Authorized in Home Rule Charters

Initiative and Referendum

The vast majority of Pennsylvania's home rule charters authorize direct legislative action by the voters through provisions for initiative and referenda. Generally, the voters may propose ordinances or require reconsideration of ordinances adopted by a governing body through a petition process. Should the governing body fail to enact a proposed ordinance or repeal a protested adopted ordinance, the issue is then framed and presented to the voters at a referendum.

Requirements for the number of signatures and filing dates vary from charter to charter, as do time limits for action by the governing body after presentation of the petition. Often there are limitations on the initiative and referendum powers. Areas commonly excluded include budget matters, capital programs, emergency ordinances, ordinances levying a special assessment, appropriations, salaries of officers and employees, borrowing and zoning. The number and extent of exclusions varies from charter to charter.

The courts have determined that planning and zoning activities must also be excluded from the referendum process in home rule jurisdictions because the Home Rule Law subjects home rule municipalities to the Pennsylvania Municipalities Planning Code.[1] For example, the Commonwealth Court invalidated an attempt to use the referendum provisions of Horsham Township's home rule charter to repeal an amendment to the township zoning ordinance. The court held that the Municipalities Planning Code requires ordinances to be adopted by the municipal governing body and makes no provision for review of a zoning ordinance referendum.[2] In a similar case, the Commonwealth Court ruled that the initiative provision of Ferguson Township's home rule charter could not be used to amend the township zoning ordinance since the Municipalities Planning Code vests the power to enact, amend and repeal zoning ordinances in the municipal governing body, not the voters.[3]

References
1. 53 Pa.C.S.A. § 2962(a)(10).
2. *Horsham Tp. Council v Mintz,* 395 A.2d 677, 39 Pa.Cmwlth 408 (1978).
3. *Minshall v. Board of Sup'rs of Ferguson Tp., Centre County,* 413 A.2d 1165, 50 Pa.Cmwlth. 541 (1980).

Recall

Recall is a method of removing an elected official from office through the electoral process. The process involves citizen petitions that initiate the recall question, which is then placed on the ballot. Recall is usually prohibited during certain portions of an official's terms, usually at the beginning and end of the term. Home rule charters in many Pennsylvania jurisdictions have provisions for the recall of elected officials.

In one of the most publicized and controversial cases of its time, the Pennsylvania Supreme Court voided the recall provisions of Philadelphia's home rule charter during a heated campaign to recall Mayor Frank L. Rizzo in 1976. The Supreme Court held that the recall provisions were unconstitutional because they violated Article VI, Section 7 of the Pennsylvania Constitution.[1] Because the Pennsylvania Constitution states that elected officials shall hold office on good behavior, they may only be removed for cause after having been found to be in violation of some law or other rule.

A second recall case reached the Pennsylvania Supreme Court in 1995. A group of citizens in the Municipality of Kingston, using provisions in the home rule charter, attempted to recall the mayor. There, the Supreme Court declared the recall provisions in Kingston's home rule charter to be unconstitutional. The Supreme Court determined that the recall provisions conflicted with the Pennsylvania Constitution's provision for removal of civil officers and exceeded the powers conferred by the Home Rule Law.[2]

References
1. *Citizens Committee to Recall Rizzo v. Board of Elections of City and County of Philadelphia,* 367 A.2d 232, 470 Pa. 1 (1976); Jefferson B. Fordham, "Judicial Nullification of a Democratic Political Process – The Rizzo Recall Case," *University of Pennsylvania Law Review,* Vol. 126, 1977, p.1.
2. *In re Petition to Recall Reese,* 665 A.2d 1162, 542 Pa. 114 (1995).

Number of Home Rule Counties and Municipalities

As of October 15, 2013, there were seven home rule counties in Pennsylvania. There were also 93 home rule municipalities, which is up from approximately 70 municipalities in the late 1990s.

For more information regarding home rule municipalities, see the Department of Community and Economic Development's *"Home Rule in Pennsylvania"* handbook, which can be found at www.newPA.com.

V. Advisory Questions

Highly publicized referenda in other states previously led to demands that certain locally controversial measures be determined by the voters. Those demands, in turn, led to the practice of placing advisory questions on the ballot to determine popular sentiment on particular local matters. Despite the fact that no law authorized the use of advisory opinions, this practice went relatively unchallenged for many years. However, in 1990, the Commonwealth Court made clear that nonbinding advisory questions are not permissible in Pennsylvania.

In that case, the Lancaster County Board of Elections permitted an advisory question about whether to build a new high school in the Hempfield School District. The court of common pleas rejected the school district's request for an injunction to preclude the question from being placed on the ballot and the school district appealed. The Commonwealth Court reversed and granted the injunction, ruling that the Election Code does not give county boards of elections the discretion to place nonbinding referenda questions on the ballot. The court found that the Public School Code determines how the school board must obtain public review of issues involving school construction and that the board of elections had no legal authority to place the nonbinding question on the ballot.[1]

The issue of advisory questions came up again before the Commonwealth Court in 1991. In that case, the Schuylkill County Board of Elections placed an advisory question on the ballot concerning a plan to build a soil remediation facility in Blythe Township. The township and the operator of the proposed facility asked the court of common pleas to remove the question from the ballot. The court followed the precedent established in Hempfield School Dist. and ordered that the issue be removed from the ballot. Schuylkill County appealed to the Commonwealth Court, which affirmed the decision of the court of common pleas. The court clearly stated that the county lacked authority to place a nonbinding referendum on the ballot absent specific statutory authority.[2]

References
1. *Hempfield School Dist. v. Election Bd. of Lancaster County,* 574 A.2d 1190, 133 Pa.Cmwlth. 85 (1990).
2. *Board of Elections of Schuylkill County v. Blythe Tp.,* 600 A.2d 231, 143 Pa.Cmwlth. 341 (1991).

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