

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 765 Session of
2023

INTRODUCED BY COMMITTEE, HUTCHINSON, DUSH, BROWN AND KEARNEY,
JUNE 13, 2023

REFERRED TO LOCAL GOVERNMENT, JUNE 13, 2023

AN ACT

1 Amending Title 8 (Boroughs and Incorporated Towns) of the
2 Pennsylvania Consolidated Statutes, in powers and duties of
3 elected officials, further providing for surcharge by
4 auditors; in powers, duties and rights of appointed officers
5 and employees, further providing for borough manager created
6 by ordinance and election, for powers and duties, for other
7 offices not incompatible and for organization of commission;
8 and, in taxation and finance, further providing for
9 preparation of budget.

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

12 Section 1. Sections 1059.3(a)(2), 1141, 1142, 1143, 1174(a)
13 and 1307 of Title 8 of the Pennsylvania Consolidated Statutes
14 are amended to read:

15 § 1059.3. Surcharge by auditors.

16 (a) Surcharges.--

17 * * *

18 (2) The following shall apply:

19 (i) No elected or appointed official of a borough
20 may be surcharged for any act, error or omission in
21 excess of the actual financial loss sustained by the

borough.

(ii) A surcharge shall take into consideration as its basis the results of the act, error or omission and the results had the procedure been strictly in accordance with law.

(iii) Subparagraph (i) shall not apply to cases involving fraud or collusion on the part of officers nor to any penalty enuring to the benefit of or payable to the Commonwealth. Notwithstanding this section, the procedures in the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, shall apply to balances and shortages in the tax accounts of the tax collector.

(iv) No elected or appointed official of a borough may be surcharged if the official acted in good faith reliance on a written, nonconfidential opinion of the solicitor of the borough or on an opinion of the borough solicitor publicly stated at an open meeting of the borough and recorded in the official minutes of the meeting. This subparagraph shall not apply if a solicitor's opinion has been rendered under duress or if the parties seeking and rendering the solicitor's opinion have colluded to purposefully commit a violation of law. As used in this subparagraph, the term "solicitor" shall include a special counsel appointed by the borough for a specific matter.

* * *

§ 1141. Borough manager created by ordinance and election.

(a) General rule.--The council of a borough may, at its discretion at any time, create by ordinance the office of

1 borough manager and may, in like manner, abolish the office.
2 While the office exists, the council shall, from time to time,
3 and if there is a vacancy, elect, by a vote of a majority of all
4 the members, one [person to fill the office.] individual,
5 partnership, limited partnership, association or professional
6 corporation as the borough manager.

7 (b) Subject to [employment] agreement.--The borough manager
8 shall serve at the pleasure of council, subject to contractual
9 rights that may arise under an employment agreement or
10 professional services agreement that may be entered in
11 accordance with section 1142 (relating to powers and duties).
12 § 1142. Powers and duties.

13 (a) General rule.--The powers and duties of the borough
14 manager shall be regulated by ordinance.

15 (b) Employment or professional services agreement.--

16 (1) Council may enter into an employment or professional
17 services agreement with the borough manager that specifies
18 the terms and conditions of employment.

19 (2) The employment or professional services agreement
20 may remain in effect for a specified period terminating no
21 later than two years after the effective date of the
22 agreement or the date of the organizational meeting of
23 council following the next municipal election, whichever
24 occurs first.

25 (3) An employment or professional services agreement
26 entered into under this section may specify conditions under
27 which a borough manager who is an individual will be entitled
28 to severance compensation[, but in no] or, in the case of a
29 partnership, a limited partnership, an association or a
30 professional corporation, payments for the termination of

1 appointment. In no event may the employment or professional
2 services agreement guarantee retention or employment through
3 the term of the agreement or confer upon the borough manager
4 any legal remedy based on specific performance.

5 (4) An employment or professional services agreement
6 with a borough manager executed on or after a municipal
7 election but before the first meeting in January the year
8 after the municipal election shall be void.

9 (5) The council may delegate to the borough manager, by
10 ordinance and subject to recall, any of the nonlegislative
11 and nonjudicial powers and duties of the council, the
12 planning commission and the shade tree commission. With
13 approval of council, the mayor may delegate to the borough
14 manager any of the mayor's nonlegislative and nonjudicial
15 powers and duties.

16 (c) Status as public official.--The borough manager, if an
17 individual, and, for a partnership, limited partnership,
18 association or professional corporation appointed as the borough
19 manager, each officer and employee directly providing services
20 as required or authorized by the agreement shall be considered a
21 public official for purposes of the provisions of 65 Pa.C.S. §
22 1103 (relating to restricted activities).

23 § 1143. Other offices not incompatible.

24 (a) General rule.--The offices of borough manager, street
25 commissioner, secretary, treasurer and chief of police shall not
26 be incompatible, and any two or more or all of the offices may
27 be held by one person. Neither the mayor nor any member of the
28 council shall be eligible to hold the office of borough manager.

29 (b) Applicability.--In the case of a partnership, limited
30 partnership, association or professional corporation appointed

1 as the borough manager, the restriction under subsection (a)
2 shall apply to each officer and employee who directly provides
3 services as required or authorized by the agreement.

4 § 1174. Organization of commission.

5 (a) General rule.--The commission first appointed shall
6 organize within ten days of its appointment and shall elect one
7 of its members as the chair and one as the secretary. [The]
8 Thereafter, the commission shall meet and organize [on] within
9 30 days of the first Monday of each even-numbered year. Each
10 commissioner shall be notified in writing of each and every
11 meeting.

12 * * *

13 § 1307. Preparation of budget.

14 [Beginning at least 30 days prior] Prior to the adoption of
15 the budget, a proposed budget or annual estimate of revenues and
16 expenditures for the ensuing year shall be prepared in a manner
17 designated by the council. The proposed budget shall be kept on
18 file with the borough secretary and be made available for public
19 inspection by the borough secretary for a period of ten days.

20 Section 2. This act shall take effect in 60 days.