

TO: Lester K. Fryer, Chairman, Local Government Committee

FROM: John H. Broujos, Counsel

SUBJECT: SB 751, PN 808 - Optional Plans for Local Government Act

REF: 53 PS _____

MUNICIPALITIES AFFECTED: Counties, cities, boroughs, towns and townships.

BACKGROUND:

Article IX, Section 3 provides that municipalities shall have the right and power to adopt optional forms of government as provided by law. An optional form of government shall be presented to the electors by initiative, by the governing body of the municipality, or by the General Assembly.

This is a review of the major provisions and is not a section by section analysis.

PROVISIONS:

Section 201. A municipality which does not adopt an optional plan of government shall retain its existing form of government. If a municipality has already adopted a charter under the Optional Third Class City Law, then it will continue to be governed by said charter and said law.

Section 301. Adoption plans - referendum on the question and election of study commission. Adoption of optional plans follows the two step procedure, rather than the three step procedure. The two steps are first at one time combining the decision on whether a study commissioner should be elected and the election of the study commission itself and, second a referendum on adoption of the proposed optional plan. The three steps following the analogy to the adoption of a home rule charter, would provide for three distinct, separate elections/referendums on (1) the question of whether a study commissioner should be elected; (2) election of a study commission; and (3) consideration of adoption of the optional plan.

(Amend page 3, line 5 by striking out "an election" and inserting "a referendum")

Article III provides for election of the study commission by nomination, election and certification and provides for organization of the study commission, performance of duties, compensation and reports.

Section 312. This section provides for recommendations by the study commission as follows:

1. That a referendum be held on the question of adopting one optional form of government as specified by the commission; or
2. The form of government of the municipality shall remain unchanged; or
3. Such other action as deemed consistent with its function as a study commission.

COMMENT:

In the event the study commission recommends that adoption of an optional form of government be submitted to the voters, the question is then placed on the ballot at the next primary or general election. Implementing this, Section 313 discusses the procedure for placing the question of

adoption or rejection of a recommended form of optional government on the ballot. However, there is no treatment of the question of what will be done with a recommendation that the form of government remain unchanged. By the terms of Section 313, read together with Section 312, nothing further would be done in the event that the study commission recommends that the government remain unchanged. The question then arises as to whether the question of adoption of some optional form of government can be submitted to the electors again. Section 505 provides that a referendum on the question of adoption or repeal shall not be submitted to the electors more often than once in five years. Does this mean that once a question of adoption or repeal by approval of the concept and appointment of a study commission is rejected, that then there can be no further submission to the electors? Section 314 covers this by providing that no ordinance or petition may be filed for a study commission within five years after an election has been held on the question. Therefore, Section 505 means that a referendum of adoption or repeal of the proposed optional form of government shall not be submitted more often than once in five years. That is, the result of the study commission will be voted on. But the result of the study commission can only be voted on if it is a recommendation of a specific form of optional government. Consequently, the Act does not provide for what action is to be taken when a study commission says the government should remain unchanged. By the terms of Section 314 another study commission could not be elected until five years later.

COMMENT:

The Committee may consider whether the study commission should in fact have the opportunity to conclude that an optional form should not be adopted. By recommending that the form of government remain unchanged, the commission is in fact recommending only and not making a decision. There is no way for this recommendation to be put to a vote. Consequently, the Committee may consider whether it might be better to require an optional form to be placed on the ballot for the people to reject. It may be argued that if the commission feels that the municipality should have no other form of government, it would be dishonest or "make work" to require it to come up with some recommended form of optional government. However, again, the people can decide by voting on perhaps the best alternate form of optional government the commission has to recommend.

Section 507 (c) provides that on the effective date of an optional plan adoption, all elected and appointed officials in the municipality shall be abolished and the terms of all elected and appointed officials shall immediately cease and determine.

(Amend page 14, line 6 to insert after "this act", the words "the offices of".)

Section 507 (c) further provides, after the above sentence, that nothing shall be construed to abolish the office or terminate the term of office of any justice or of any official or employee now protected by any tenure of office or civil service law. A question arises as to the meaning of "any tenure of office law". Existing statutes for municipalities refer to offices as being for a term of x years. If it were contended that a law providing for a term of so many years constitutes a tenure law, there would be litigation by incumbent office holders to protect their offices. This section should be clarified.

Section 507 (c). The section referred to above goes on to provide that nothing in the section shall be construed to abolish (any policeman or fireman) or (the office or terminate the office of any official or employee or of any policeman or fireman). If the intent here is to provide a transition from one form of government to another for performance of the vital functions of police protection and fire protection, then this section carries that out. However, there may be other means to accomplish this

such as assuming that the optional form of government study commission will provide in its recommendation some procedure for transition. If it is argued that the optional forms of government are rigid and the forms set forth in State law are final and binding on the municipality and no such transition is provided, then a more serious question arises. That is, what of the health officials, housing inspectors, refuse collectors, sewage treatment plant and water system operators, and other functions of government which are vital though not as spectacular as riots and fires? This section should be clarified to determine to what extent the protection of these positions are to provide a transition and to what extent they can in fact create a problem of vested interests in positions.

This memo embraces articles I through VI only.