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### Pennsylvania Local Government: A Peculiar System and Its Implications

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Directed Research

# Pennsylvania Local Government

A Peculiar System and Its Implications

Robert Clark  
5-3-2017

## I. Introduction

This article discusses the peculiar system of local government established in Pennsylvania, including the implications of that system of local government. This article begins by providing an overview of the historical development of Pennsylvania's local government system, beginning with its legal sources in the United States and Pennsylvania constitutions and the unique history and geography of the colony and commonwealth of Pennsylvania.<sup>1</sup> This historical development includes Pennsylvania's geographic position among the original colonies and Pennsylvania's internal geography that caused an internal fragmentation between urban and rural communities and the urban East and frontier West, leading to desires for local control among Pennsylvania residents.<sup>2</sup>

This article describes the general system of local government in Pennsylvania, which creates multiple layers of municipalities, including cities, townships, or boroughs, counties, school districts, and municipal authorities. This system results in extreme governmental fragmentation, with Pennsylvania ranking as one of the states with the greatest number of local governments.<sup>3</sup> This article then compares the system of local government in Pennsylvania to local government systems in Virginia and New York, which have systems focused on counties or towns, respectively.<sup>4</sup> This article then provides a more in-depth discussion and explanation of each type of municipality in Pennsylvania, including counties, cities, boroughs, townships, school districts, and municipal authorities, and the powers exercised by each municipality.<sup>5</sup> This article also discusses the primary laws that empower Pennsylvania's local governments to

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<sup>1</sup> See *infra* Parts II.A, II.B.

<sup>2</sup> See *infra* Part II.C.

<sup>3</sup> See *infra* Part III.A.

<sup>4</sup> See *infra* Part III.B.

<sup>5</sup> See *infra* Parts IV.A-D.

exercise government power and provide government functions to their residents, including planning and zoning, taxation, and municipal authorities.<sup>6</sup>

Finally, this article discusses the implications and problems that arise from Pennsylvania's system of local government. These issues include zoning, particularly regarding oil and gas development, the several layers of taxation imposed on Pennsylvanians, and problems facing school districts.<sup>7</sup> Additionally, the shrinking population of Pennsylvania has resulted in many small, local municipalities with few residents, which then struggle to provide services to their residents. Pennsylvania's laws complicate the process of merging or consolidating these small municipalities, which prevents many municipalities from combining to try to resolve their fiscal problems and aid the provision of government services.<sup>8</sup> This article concludes by providing possible solutions to the problems created by Pennsylvania's local government system, while also reviewing the system and the benefits that it does provide.<sup>9</sup>

## **II. The Historical Development of Pennsylvania's Local Government**

### **A. The United States Constitution on Local Government**

The historical context for the development of Pennsylvania's local government system is necessary for understanding how and why Pennsylvania's system developed and the resulting problems that have arisen. In the Tenth Amendment, the United States Constitution implicitly allowed the individual states to determine and setup their own local government systems.<sup>10</sup> Because the United States Constitution does not explicitly mention local governments, each state

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<sup>6</sup> See *infra* Part IV.E.

<sup>7</sup> See *infra* Parts V.A-F.

<sup>8</sup> See *infra* Part V.E.

<sup>9</sup> See *infra*, Part VI.

<sup>10</sup> Irina Zhorov, *Why does Pa. have so many local governments?*, KEYSTONE CROSSROADS (Sept. 16, 2014), <http://crossroads.newsworks.org/index.php/local/keystone-crossroads/72804-why-does-pa-have-so-many-local-governments>. See U.S. CONST. AMEND. X (1776). "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Id.*

reserves the right to form and organize local governments within the state.<sup>11</sup> The fact that each state reserves this power, without limitation by the United States Constitution, has resulted in the states exhibiting great variety in the organization and form of their local governments.<sup>12</sup>

The Tenth Amendment not only reserves the power to form local governments to the states, but it also notes that powers are reserved to the people.<sup>13</sup> The local governments have historically “represented an important locus of popular sovereignty.”<sup>14</sup> The United States Constitution presupposed the existence of some structure for local governments, to carry out the will of the people.<sup>15</sup> However, the local governments generally must be granted their powers by the states,<sup>16</sup> under the Dillon Rule that recognizes state governments’ power to control the structure and functions available to local governments, which applies in Pennsylvania.<sup>17</sup> The local governments play a crucial role by representing the will of the people to the state and federal governments, particularly in light of the participatory focus of local governments, on which Pennsylvania especially focused in the development of its local government system.<sup>18</sup>

## **B. Pennsylvania’s Historical Background and Circumstances**

### **a. Pennsylvania’s Unique History and Geography**

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<sup>11</sup> Zhorov, *supra* note 10. See U.S. CONST. AMEND. X.

<sup>12</sup> See THE WHITE HOUSE, *State & Local Government*, <https://www.whitehouse.gov/1600/state-and-local-government> (last accessed Feb. 8, 2017); Zhorov, *supra* note 10.

<sup>13</sup> House Resolution and Articles of Amendment (Aug. 24, 1789), reprinted in CREATING THE BILL OF RIGHTS: THE DOCUMENTARY RECORD FROM THE FIRST FEDERAL CONGRESS 37, 41 n. 23 (Helen E. Veit et al. eds., 1991) (showing that the Senate explicitly voted to add the words “or to the people” to the Tenth Amendment); Jake Sullivan, *The Tenth Amendment and Local Government*, 112 YALE L.J. 1935, 1937-38 (2003).

<sup>14</sup> Sullivan, *supra* note 13, at 1939-40.

<sup>15</sup> *Id.* at 1941-42.

<sup>16</sup> THE WHITE HOUSE, *supra* note 12.

<sup>17</sup> National League of Cities, *Local Government Authority*, <http://www.nlc.org/local-government-authority> (last accessed Feb. 8, 2017) (describing the development of the Dillon Rule, which recognizes that local governments only hold the powers delegated to them by their state).

<sup>18</sup> Sullivan, *supra* note 13, at 1942. See Susan Revermann, *Government Structure in Colonial Pennsylvania*, SEATTLE PI, <http://education.seattlepi.com/government-structure-colonial-pennsylvania-6953.html> (last accessed Feb. 8, 2017) (noting the focus of Pennsylvania’s founders on participatory government).

With its focus on participatory government and localism,<sup>19</sup> Pennsylvania's early history shows the development of local government units that gave citizens greater local control.<sup>20</sup> The original charter of the province of Pennsylvania, in 1682, by King Charles II to William Penn, included a power to divide Pennsylvania into towns, boroughs, cities, and counties.<sup>21</sup> Pennsylvania's first state constitution, adopted in 1776, also provided for the creation of towns, boroughs, cities, and counties.<sup>22</sup>

The reason for Pennsylvania's particular focus on localized government and control likely related to its geography, both internally and relative to the other colonies.<sup>23</sup> The fact that Pennsylvania was a middle colony, between the distinct regions of the South and New England, caused it to develop a unique system of local government that took elements from the systems of both regions.<sup>24</sup> Pennsylvania's system sought a partition of powers, which merged the local town control of New England, manifested in the township and borough, together with the regional county government of the South, manifested in the separately-controlled county.<sup>25</sup> Pennsylvania's many rivers and mountains, including the Appalachian range, provided further reason to have many local governments.<sup>26</sup> In fact, a topographic map of Pennsylvania clearly

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<sup>19</sup> See Revermann, *supra* note 18; Zhorov, *supra* note 10.

<sup>20</sup> See PA. CONST. of 1776 Ch. II § 9 (1776); Pennsylvania Legislative Reference Bureau, THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1700 309 (2001) (providing the Charter of the Province of Pennsylvania in which King Charles II gave William Penn the power to divide Pennsylvania into "townes hundreds and counties" [sic] and "to erect and incorporate Townes into Borroughs and Borroughs into Citties" [sic]).

<sup>21</sup> Pennsylvania Legislative Reference Bureau, *supra* note 20, at 309.

<sup>22</sup> PA. CONST. of 1776 Ch. II § 9 (1776).

<sup>23</sup> See E.R.L. Gould, *Local Self-Government in Pennsylvania*, JOHN HOPKINS UNIV. 156, 168 (1886) (explaining Pennsylvania's unique local government system that adheres to neither New England's focus on the town nor the South's focus on the county); Zhorov, *supra* note 10 (explaining how Pennsylvania's many rivers and mountains caused settlements that were nearby each other could still be nearly inaccessible, requiring separate governments).

<sup>24</sup> Gould, *supra* note 23, at 168-69.

<sup>25</sup> *Id.*

<sup>26</sup> Zhorov, *supra* note 10. See Henry Gannett and United States Census Office, *Population of the United States: 1790 to 1820*, U.S. Census Office (1898), <http://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~31948~1151329:3--Population-1790-1820> (showing the population density divide between Pennsylvania's two urban centers and its less-populated rural areas, as caused by the Appalachian Mountains); World Atlas, *Pennsylvania*,

shows that the counties, particularly in central Pennsylvania, formed around the Appalachian Mountains.<sup>27</sup> Because of these geographic features, Pennsylvania citizens who lived close to each other physically had little access to each other in reality, meaning that separate local governments were necessary.<sup>28</sup>

Pennsylvania had another unique situation that led to a push for local control – it was comprised of different groups of citizens who were highly divided by geography, beliefs, and interests.<sup>29</sup> The urban elites of eastern Pennsylvania and independent frontiersmen of western Pennsylvania were divided, not only by a mountain range, but by different beliefs and needs.<sup>30</sup> The distant frontiersmen demanded greater localism for themselves and Philadelphia continued its history of supporting localism and democracy, resulting in further local government fragmentation.<sup>31</sup> Ultimately, Pennsylvania’s unique position fragmented it geographically, legally, and politically between the different regions of the South and New England and the urban East and frontier West, which played a role in the development of its unusual local government.<sup>32</sup>

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<http://www.worldatlas.com/webimage/countrys/namerica/usstates/paland.htm> (last accessed Feb. 9, 2017) (describing the valleys, mountains, hills, ridges, forests, and rivers that crisscross all of Pennsylvania).

<sup>27</sup> See Geology.com, *Pennsylvania Map Collection*, <http://geology.com/state-map/pennsylvania.shtml> (last accessed Feb. 9, 2017) (providing elevation and physical maps of Pennsylvania showing the county lines following the patterns of Pennsylvania’s geography).

<sup>28</sup> Zhorov, *supra* note 10.

<sup>29</sup> Thomas P. Slaughter, *THE WHISKEY REBELLION: FRONTIER EPILOGUE TO THE AMERICAN REVOLUTION* 72 (1986) (describing the vast differences between Philadelphians and western Pennsylvania frontiersmen, who had a particular desire for localism and local control against the interests of distant elites). See generally Daniel P. Barr, *A COLONY SPRUNG FROM HELL: PITTSBURGH AND THE STRUGGLE FOR AUTHORITY ON THE WESTERN PENNSYLVANIA FRONTIER, 1744-1794* (2014); Slaughter, *supra*.

<sup>30</sup> See Slaughter, *supra* note 29, at 72-73 (describing the desire of western Pennsylvanians to have greater local control and not be totally subject to the interests of a Philadelphia government that was distant to them, which was manifested in the Whiskey Rebellion against the federal government)

<sup>31</sup> See, e.g., Slaughter, *supra* note 29, at 72-73, 104 (describing the desires for localism in western Pennsylvania and opposition even to state-level actions); Marshall Smelser, *The Federalist Period as an Age of Passion*, 10 *JOHNS HOPKINS UNIV. PRESS* 391, 394 (1958), available at <https://www.jstor.org/stable/pdf/2710583.pdf> (explaining Philadelphia’s history as a seat of freedom and democracy and westerners’ desires to be free from distant control).

<sup>32</sup> See, e.g., Gould, *supra* note 23, at 168-69; Slaughter, *supra* note 29, at 72-73, 104-05; Smelser, *supra* note 31, at 394.

## b. Pennsylvania's Constitution

The historical emphasis on local municipalities governing throughout Pennsylvania has carried forward to the most recent state constitution in 1968.<sup>33</sup> The Constitution of 1968 gives the legislature the “power to classify counties, cities, boroughs, school districts, and townships according to population.”<sup>34</sup> The classification of municipalities is important, because the legislature may only pass general laws affecting local governments, not local or special laws.<sup>35</sup> However, a law affecting local governments that relates to a class of municipalities is considered a general law.<sup>36</sup> Therefore, the General Assembly may only pass laws affecting local governments when applied to an entire class of municipality.<sup>37</sup> In particular, the Pennsylvania Constitution prohibits the state legislature from passing local or special laws that can be provided for by general law, including regulating the affairs of municipalities or creating or changing the lines of municipalities.<sup>38</sup> This limitation is relevant with regard to small municipalities that cannot be forced to merge or consolidate with each other.<sup>39</sup>

The Pennsylvania Constitution of 1968 requires the General Assembly to provide by general law for local government,<sup>40</sup> called municipalities, defined as “a county, city, borough, incorporated town, township or any similar general purpose unit of government.”<sup>41</sup> While the General Assembly may provide for certain forms of local government, the Constitution also

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<sup>33</sup> See PA. CONST. of 1968 (1968).

<sup>34</sup> PA. CONST. of 1968 Art. III § 20 (“Classification of Municipalities”).

<sup>35</sup> See PA. CONST. of 1968 Art. III § 32, Art. IX § 1 (“Certain Local and Special Laws” and “Local Government”).

<sup>36</sup> See PA. CONST. of 1968 Art. IX § 1 (recognizing that a general law is uniform as to a class of local governments).

<sup>37</sup> See PA. CONST. of 1968 Art. III. §§ 20, 32, Art. IX § 1.

<sup>38</sup> PA. CONST. of 1968 Art. III § 32, Cl. 1, 3-4.

<sup>39</sup> See PA. CONST. of 1968 Art. III § 32 Cl. 3-4; Kate Lao Shaffner, *Municipal mergers and consolidations: solution for distressed municipalities?*, KEYSTONE CROSSROADS (Sept. 5, 2014), [http://crossroads.newsworks.org/index.php/keystone-crossroads/latest/item/72320-mergers-and-consolidations-how-municipalities-change-boundaries?linktype=featured\\_articlepage](http://crossroads.newsworks.org/index.php/keystone-crossroads/latest/item/72320-mergers-and-consolidations-how-municipalities-change-boundaries?linktype=featured_articlepage). However, the Constitution of 1968 requires the General Assembly to provide for a process for multiple municipalities to establish, dissolve, consolidate, or merge municipalities. PA. CONST. of 1968 Art. IX §§ 6, 8.

<sup>40</sup> PA. CONST. of 1968 Art. IX § 1.

<sup>41</sup> PA. CONST. of 1968 Art. IX § 14.



requires that the General Assembly provide municipalities with the power to adopt home rule charters.<sup>42</sup> Under a home rule charter, a municipality may adopt a different form of government than that normally provided for its class and undertake any functions not prohibited by the Constitution, legislature, or its own charter.<sup>43</sup> The General Assembly must also provide for other optional forms of municipal government, besides the standard form given to each municipality and home rule charters, which a municipality may vote to adopt.<sup>44</sup> The Constitution expressly provides for the organization of counties, listing certain required public officers and providing for their election, though counties may also adopt a home rule charter or optional form.<sup>45</sup> In another significant constitutional provision, the General Assembly must set a debt limit on municipalities,<sup>46</sup> which has been relevant to the development of municipal authorities.<sup>47</sup> The Constitution provides the general framework for the multiple layers of local government in Pennsylvania, which have developed for multiple reasons.

### **C. Reasons for the Development of This System of Government**

#### **a. Pennsylvania's Position Among the Colonies**

As discussed above, the particular history and circumstances of Pennsylvania led to the development of its local government system, as Pennsylvania has been fragmented between north and south, coastal and frontier, and urban and rural.<sup>48</sup> Beginning in 1664, Pennsylvania's land was held by the Duke of York, who established a local government focused around towns, based on the English system of local government.<sup>49</sup> However, once William Penn received the

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<sup>42</sup> PA. CONST. of 1968 Art. IX § 2.

<sup>43</sup> *See id.*

<sup>44</sup> PA. CONST. of 1968 Art. IX § 3.

<sup>45</sup> PA. CONST. of 1968 Art. IX § 4.

<sup>46</sup> PA. CONST. of 1968 Art. IX § 10.

<sup>47</sup> *See infra* Part IV.D.

<sup>48</sup> *See* Gannett and United States Census Office, *supra* note 26; Gould, *supra* note 23, at 168-69; Slaughter, *supra* note 29, at 72-73, 104-05.

<sup>49</sup> Gould, *supra* note 23, at 156-57, 160, 163.

charter to Pennsylvania in 1682, the county became the focal point of local government, though the town still played a role and townships later grew in significance.<sup>50</sup> The American Revolution did not alter this system of local government, whereby towns and townships split local control with the more powerful county.<sup>51</sup> Being split between the influence and history of New England and the South, Pennsylvania local government borrows from both, using the town and township focus of New England and the county focus of the South.<sup>52</sup> Pennsylvania's particular position in the middle of the colonies played a role in the modern system of local government, with its significant county governments and its lower level, but unrelated, township and borough governments.<sup>53</sup>

### **b. Pennsylvania's Urban/Rural Divide**

Pennsylvania's unusual combination of county or town/township government derives not only from its location fixed between North and South, but also because of its mix of rural and urban areas.<sup>54</sup> In dispersed, plantation-style states, like those of the South, the county

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<sup>50</sup> *Id.* at 163.

<sup>51</sup> *Id.* at 164.

<sup>52</sup> *Id.* at 168.

<sup>53</sup> *See id.* at 168-69.

<sup>54</sup> Historically, Pennsylvania has been split between its rural and urban communities. *See* The Center for Rural Pennsylvania, *Urban/Rural PA*, [http://www.rural.palegislature.us/rural\\_urban.html](http://www.rural.palegislature.us/rural_urban.html) (last accessed Feb. 10, 2017) (describing the urban and rural counties of Pennsylvania and noting that 27% of Pennsylvania's residents live in its 48 rural counties). In fact, the nationwide population trends over the past century have particularly affected Pennsylvania, with the urbanization of the first half of the twentieth century as industries grew and then the subsequent suburbanization, both of which drained population from rural areas. Looking at the population density changes of Pennsylvania's counties clearly indicates these shifts. *See* Richard L. Forstall, *Pennsylvania: Population of Counties by Decennial Census: 1900 to 1990*, U.S. BUREAU OF THE CENSUS (Mar. 27, 1995), <http://www.census.gov/population/cencounts/pa190090.txt>. *Compare* Wayne County Department of Planning, *Population Density Change in Pennsylvania Counties 1920-1930* (Feb. 2012), [http://planning.co.wayne.pa.us/wp-content/uploads/2011/05/1920-1930-Census-Counts\\_1.pdf](http://planning.co.wayne.pa.us/wp-content/uploads/2011/05/1920-1930-Census-Counts_1.pdf) (showing higher population density increases in the urban counties of Allegheny and Philadelphia and decreases in rural counties), *and* Wayne County Department of Planning, *Population Density Change in Pennsylvania Counties 1940-1950* (Feb. 2012), [http://planning.co.wayne.pa.us/wp-content/uploads/2011/05/1940-1950-Census-Counts\\_1.pdf](http://planning.co.wayne.pa.us/wp-content/uploads/2011/05/1940-1950-Census-Counts_1.pdf) (showing higher population density increases in the urban counties of Allegheny and Philadelphia and decreases in rural counties), *with* Wayne County Department of Planning, *Population Density Change in Pennsylvania Counties 1960-1970* (Feb. 2012), [http://planning.co.wayne.pa.us/wp-content/uploads/2011/05/1960-1970-Census-Counts\\_1.pdf](http://planning.co.wayne.pa.us/wp-content/uploads/2011/05/1960-1970-Census-Counts_1.pdf) (showing the continuing decrease of population density in rural counties, but also a decrease in urban counties, with an increase in counties surrounding urban counties), *and* Wayne County Department of Planning, *Population Density Change in Pennsylvania Counties 1980-1990* (Feb. 2012), <http://planning.co.wayne.pa.us/wp->

governments have dominated, because the few centralized communities require the local governments to cover more territory.<sup>55</sup> In the urban, compact, and densely populated states of New England, the town or township governments have dominated, because many small local governments could develop around each urban center.<sup>56</sup> Pennsylvania has large areas made up of both of these types of communities. Small frontier towns, farming communities, and industrial communities led to the creation of many local municipalities.<sup>57</sup> Around Pittsburgh, for example, dozens of compact communities exist, based around separate industrial complexes that served the city's many industries.<sup>58</sup> However, central Pennsylvania also has vast low-population areas, such as Cameron County, which has no cities, a population around 5,000,<sup>59</sup> and fewer than thirteen people per square mile.<sup>60</sup> The residents of both the urban and rural areas of Pennsylvania possess strong ties of tradition and community to these local municipalities though, which often drives them to oppose changes to the municipality, including mergers or consolidations.<sup>61</sup>

### **c. Pennsylvanians' Demands for Localism**

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content/uploads/2011/05/1980-1990-Census-Counts\_1.pdf (showing the great decrease in population density in urban and rural counties, with a smaller increase in suburban counties, following the collapse of several manufacturing industries throughout the state). The many population trends throughout Pennsylvania have played crucial roles in the changes in and implications of the local government system, with the recent population decrease in most of the state leaving small populations in many of the formerly thriving communities run by local governments. *See generally* Michelle Wilde Anderson, *Who Needs Local Government Anyway? Dissolution in Pennsylvania's Distressed Cities*, 24 WIDENER L.J. 149 (2015).

<sup>55</sup> Michigan Townships Association, *Origins of Township Government*, MTA <https://www.michigantownships.org/origin.asp> (last accessed Feb. 9, 2017).

<sup>56</sup> *Id.*

<sup>57</sup> Anderson, *supra* note 54, at 150-51 (describing the many small and local divisions of government).

<sup>58</sup> *Id.* at 150.

<sup>59</sup> Pennsylvania Department of General Services, *The Pennsylvania Manual Vol. 122*, at 6-6 - 6-10, 6-18 (2016), <http://www.dgs.pa.gov/State%20Government/Print,%20Design%20and%20Mail%20Services/Documents/Volume%20122%20Entire%20Manual.pdf>.

<sup>60</sup> Cameron County Pennsylvania, *About Us*, <http://www.cameroncountypa.com/> (last accessed Feb. 9, 2017).

<sup>61</sup> *See, e.g.*, Anderson, *supra* note 54, at 152-53, 156-57; IssuesPA, *Taking a Closer Look at Government: The State's Role in Local Government*, ISSUESPA (May 1, 2006), <http://issuespa.org/content/taking-closer-look-government-states-role-local-government>.

Historically, the citizens of Pennsylvania have possessed a relatively great desire for localism and local control.<sup>62</sup> The highly-localized government in Pennsylvania provides the historical benefit of giving residents the power to have an effect on the services available to them.<sup>63</sup> Because of the many local governments and many public officers running those governments,<sup>64</sup> Pennsylvania's citizens may relatively easily access their local public officials to effect change and influence their local community.<sup>65</sup> Pennsylvania's early charters and constitutions specifically provided for a close and accessible local government to develop for this very purpose.<sup>66</sup>

### **III. Pennsylvania's Extreme Governmental Fragmentation**

#### **A. Pennsylvania's System of Local Government**

Because of Pennsylvania's combination of multiple layers of local government with counties and cities, boroughs, or townships and the desire for localism and separate control of urban and rural communities, Pennsylvania experiences extreme governmental fragmentation.<sup>67</sup> The historical development of Pennsylvania's local government system resulted in 67 counties containing a total of 2,561 cities, boroughs, and townships, placing Pennsylvania as the state with the third-most general purpose governments.<sup>68</sup> Pennsylvania also places third in having the

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<sup>62</sup> See generally Barr, *supra* note 29; Slaughter, *supra* note 29; Smelser, *supra* note 31.

<sup>63</sup> Pennsylvania Municipal League, *Civics and You: Your Key to Pennsylvania Local Government*, at ch. 8 (2014), <http://www.civicsandyoupa.com/index.php/english/>.

<sup>64</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-13 - 6-132 (providing contact information for the thousands of municipalities in Pennsylvania, as well as local officials for each municipality).

<sup>65</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 8.

<sup>66</sup> See *id.*; Revermann, *supra* note 18; Zhorov, *supra* note 10.

<sup>67</sup> David Rusk, "Little Boxes" – *Limited Horizons: A Study of Fragmented Local Governance in Pennsylvania: Its Scope, Consequences, and Reforms*, BROOKINGS INST., 2-5 (2003), <https://www.brookings.edu/wp-content/uploads/2016/07/Rusk.pdf>.

<sup>68</sup> United States Census Bureau, *General-Purpose Local Governments by State: Census Years 1942 to 2012 - United States – States: 2012 Census of Governments* (Sept. 26, 2013), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>; Pennsylvania Department of General Services, *supra* note 59, at 6-3.

fewest residents per local government unit.<sup>69</sup> By one measure, the delivery of services by local governments, Pennsylvania has the most fragmented local government system of any state in the country.<sup>70</sup>

The fact that the legislature cannot force Pennsylvania's local governments to merge or consolidate worsens the fragmentation.<sup>71</sup> Of the states that prohibit forced mergers, Pennsylvania contains the greatest number of local governments.<sup>72</sup> For several reasons, all of which further contribute to governmental fragmentation and derive from Pennsylvania's history, mergers and consolidations have been extremely rare.<sup>73</sup> In fact, in one early annexation that occurred when Pittsburgh annexed the nearby city of Allegheny City, the residents of Allegheny City strongly opposed the action,<sup>74</sup> which led to a United States Supreme Court case.<sup>75</sup> Therefore, despite the many local governments governing small and shrinking communities throughout Pennsylvania, the voluntary consolidation or merger of municipalities is unlikely.<sup>76</sup>

To further add to the plethora of local government entities, Pennsylvania contains independent school districts that act as special-purpose governments separate from local municipalities.<sup>77</sup> Five hundred public school districts spread across Pennsylvania, with the

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<sup>69</sup> Rusk, *supra* note 67, at 3.

<sup>70</sup> *Id.* at 3-5.

<sup>71</sup> *Id.* at 3. See PA. CONST. of 1968 Art. III § 32 Cl. 3-4.

<sup>72</sup> Rusk, *supra* note 67, at 3.

<sup>73</sup> See, e.g., *id.* at 18 (noting the role of racial and economic differences in preventing mergers and consolidations of the many local governments); Shaffner, *supra* note 39 (listing the successful and attempted mergers and consolidations and describing the factors that prevent them, including the complexity of the process, the inability of local politicians to agree or cooperate with each other, and the desire of residents to preserve their local identity and autonomy).

<sup>74</sup> Diana Nelson Jones, *The day the City of Allegheny disappeared*, PITTSBURGH POST-GAZETTE, Dec. 9, 2007, <http://www.post-gazette.com/local/city/2007/12/09/The-day-the-City-of-Allegheny-disappeared/stories/200712090229>.

<sup>75</sup> See *Hunter v. Pittsburgh*, 207 U.S. 161, 170, 174 (1907) (holding that the Pennsylvania act allowing the annexation of Allegheny City by Pittsburgh was constitutional under the current Constitution).

<sup>76</sup> See Shaffner, *supra* note 39.

<sup>77</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-3; Pennsylvania Municipal League, *supra* note 63, at ch. 9.

power to tax residents within the school district.<sup>78</sup> An early law establishing the public school system required that every school district could only cover one local municipality, meaning that each local municipality with a public school contained a separate special-purpose school district government.<sup>79</sup> In the 1960s, the school districts underwent a major consolidation, eventually resulting in the current 500 school districts.<sup>80</sup> The school districts are governed by school boards elected by local residents, which then tax those residents to fund the school.<sup>81</sup> Today, the school districts present another layer of local government separate from the county and city, borough, or township, sometimes spanning over the territory of multiple counties and lower-level municipalities.<sup>82</sup>

Finally, adding yet another separate layer of special-purpose local government, Pennsylvania contains municipal authorities, which provide common government services to residents of a defined municipality or group of municipalities.<sup>83</sup> As of 2012, 1,756 municipal authorities existed in Pennsylvania.<sup>84</sup> In 1935 and 1945, the Pennsylvania General Assembly passed two Municipal Authorities Acts, which created the ability for municipalities to form municipal authorities.<sup>85</sup> The municipal authorities were originally created to avoid debt limits on municipalities, in order to finance major projects, but have also aided municipalities in joining together to fund government projects.<sup>86</sup> The municipal authorities also have the power to

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<sup>78</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>79</sup> See James Pyle Wickersham, A HISTORY OF EDUCATION IN PENNSYLVANIA 313 (1886).

<sup>80</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-6; Pennsylvania Municipal League, *supra* note 63, at ch. 11.

<sup>84</sup> United States Census Bureau, *Special District Governments by Function and State: 2012 - United States – States: 2012 Census of Governments*, (Sept. 26, 2013), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>85</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 11.

<sup>86</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6. See PA. CONST. of 1968 Art. IX § 10 (empowering the General Assembly to prescribe debt limits on local governments).

purchase and control property, borrow money, and issue bonds.<sup>87</sup> Municipal authority projects include many different services often provided by government, including sewage, water, transportation, and economic development.<sup>88</sup>

When taking into account these many general and special purpose local governments, Pennsylvania has the third-most local governments of any state, after Illinois and Texas.<sup>89</sup> Every Pennsylvanian lives under the control of: 1) a county; 2) a city, borough, or township; and 3) a school district.<sup>90</sup> Furthermore, many Pennsylvanians live under the control of several different municipal authorities, particularly within cities.<sup>91</sup>

## **B. Comparing and Contrasting Pennsylvania to Other States' Local Governments**

### **a. Virginia's System of Local Government**

The system of local government in Pennsylvania is extraordinarily confusing, with Pennsylvania residents living under the control of multiple layers of overlapping local governments; in contrast, many states have much simpler local government systems. Compared to Pennsylvania's 4,897 local governments, Virginia contains merely 324 municipalities.<sup>92</sup> The county provides the primary local government entity in Virginia,<sup>93</sup> as expected for a southern state.<sup>94</sup> The city governments serve 38 urban areas throughout Virginia, but they are also entirely separate and independent from Virginia's counties.<sup>95</sup> Therefore, the city and county are

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<sup>87</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6.

<sup>88</sup> See Governor's Center for Local Government Services, *Municipal Authorities in Pennsylvania*, 40-43 (Aug. 2002), available at <http://www.penntain.net/pdf/munauthority.pdf>; Pennsylvania Department of General Services, *supra* note 59, at 6-6; Pennsylvania Municipal League, *supra* note 63, at ch. 11.

<sup>89</sup> United States Census Bureau, *Government Units by State: Census Years 1942 to 2012 - United States - States: 2012 Census of Governments*, (Sept. 26, 2013), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>90</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-3 - 6-6.

<sup>91</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-6.

<sup>92</sup> Commonwealth of Virginia, *Virginia Government in Brief*, at 54 (2014), <http://hodcap.state.va.us/publications/VGIB.pdf>.

<sup>93</sup> *Id.*

<sup>94</sup> Gould, *supra* note 23, at 173.

<sup>95</sup> Commonwealth of Virginia, *supra* note 92, at 67.

two different types of local government that are on the same level,<sup>96</sup> unlike Pennsylvania where each city is within a county. Virginia also has small entities called towns that provide limited services to urban areas within counties, but they are governmentally part of the county government.<sup>97</sup> Unlike Pennsylvania's school system, Virginia's school divisions almost entirely align with the boundaries of cities or counties.<sup>98</sup> Furthermore, the schools are much fewer in number (136) and almost all are directly under the control of either a county or city.<sup>99</sup> Virginia also allows the creation of authorities to undertake special projects, but the authorities are created by and under the supervision of the state government.<sup>100</sup> Compared to Pennsylvania, Virginia presents a much simpler organization of local governments.<sup>101</sup>

#### **b. New York's System of Local Government**

Compared to Pennsylvania's 4,897 local governments, New York's local government system presents a relatively simpler and less fragmented style, with 3,453 local governments.<sup>102</sup> New York's local government system includes 57 county governments at the larger level of government.<sup>103</sup> The county governments cover every portion of New York's territory, but the county governments are relatively weak and provide few services.<sup>104</sup> New York also contains 62

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 62.

<sup>99</sup> United States Census Bureau, *Public School Systems by Type of Organization and State: 2012 - United States - States: 2012 Census of Governments*, (Sept. 26, 2013),

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>100</sup> Commonwealth of Virginia, *supra* note 92, at 73. Furthermore, Virginia only has 193 special purpose local governments, in other words municipal authorities, compared to Pennsylvania's 1,756. United States Census Bureau, *Special District Governments by Function and State: 2012 - United States - States: 2012 Census of Governments*, (Sept. 26, 2013),

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>101</sup> See Mike Maciag, *Which States Have Most Fragmented Local Governments?*, GOVERNING (Aug. 30, 2012), <http://www.governing.com/blogs/by-the-numbers/local-government-consolidation-fragmentation.html>.

<sup>102</sup> United States Census Bureau, *Local Governments by Type and State: 2012 - United States - States: 2012 Census of Governments*, (Sept. 26, 2013), <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>.

<sup>103</sup> *Id.*

<sup>104</sup> Department of State, Division of Local Government Services, *What do Local Governments do?*, <https://www.dos.ny.gov/lg/localgovs.html> (last accessed Feb. 13, 2017).



cities, which are all located within the jurisdiction of a county.<sup>105</sup> The cities provide many different local government services to their residents.<sup>106</sup> New York also contains 932 towns, which are separate from cities but also within the jurisdiction of a county.<sup>107</sup> The towns also provide many local government services.<sup>108</sup> Some towns also contain a further layer of local government, called a village.<sup>109</sup> Every village is located within a town, which is within a county, making three layers of local government.<sup>110</sup> In New York, the school districts are also separate and independent local government entities, with the power to tax and incur debt.<sup>111</sup> New York contains public authorities to undertake major projects, but they are formed by the state rather than local governments.<sup>112</sup> Compared simply, Virginia's government centers around its counties and New York's focuses on its smaller cities and towns, while Pennsylvania is split between significant county governments and independent cities, boroughs, and townships.<sup>113</sup>

#### **IV. An Explanation of Pennsylvania's Local Government System**

##### **A. County Governments**

While the Pennsylvania Constitution provides the proper form of county government,<sup>114</sup> the primary law governing county governments exists in the Pennsylvania County Code [County Code].<sup>115</sup> The County Code classifies all Pennsylvania counties into nine classifications, based

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* There are 551 villages in New York. *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> New York State Department of State, Division of Local Government Services, *Local Government Handbook*, at 75 (2011), [https://www.dos.ny.gov/lg/publications/Local\\_Government\\_Handbook.pdf](https://www.dos.ny.gov/lg/publications/Local_Government_Handbook.pdf). New York contains 679 independent school districts, compared to Pennsylvania's 514. United States Census Bureau, *supra* note 102.

<sup>112</sup> New York State Department of State, Division of Local Government Services, *supra* note 111, at 159. New York contains 1,174 public authorities, compared to Pennsylvania's 1,756. United States Census Bureau, *supra* note 100.

<sup>113</sup> Gould, *supra* note 23, at 168-69, 173.

<sup>114</sup> See PA. CONST. of 1968 Art. IX § 4.

<sup>115</sup> See 16 P.S. §§ 101-13204 (2017).

on the population of the county.<sup>116</sup> The size of Pennsylvania's 67 counties vary widely in population from Philadelphia County's 1.5 million residents to Cameron County's approximately 5,000 residents, making county classifications particularly important.<sup>117</sup> The County Code also further delineates the public officials named in the Pennsylvania Constitution, including the three county commissioners that make up the board that governs the county under the normal county form.<sup>118</sup> The county consists of several other officials who carry out the county's powers independent from the county commissioners, including a sheriff, treasurer, district attorney, clerk of courts, recorder of deeds, register of wills, and prothonotary.<sup>119</sup> The County Code lays out the powers of the many county officials.<sup>120</sup> The county officials' roles generally revolve around the county courthouse, which is one of the primary roles of the county government.<sup>121</sup> Seven Pennsylvania counties have adopted home rule charters, as provided for in the Pennsylvania Constitution, by which they may adopt a different form of county government.<sup>122</sup> Therefore, rather than having a three commissioner board, these counties may choose from having either an elected county executive or elected county council made up of several members.<sup>123</sup>

The county commissioners, or council or executive in home rule counties, oversee the general operations of the county and ensure that it performs its powers and functions

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<sup>116</sup> 16 P.S. § 210.

<sup>117</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *County Information*, CCAP (2016), <http://www.pacounties.org/PAsCounties/Pages/County-Information.aspx>. Philadelphia has consolidated its city and county into one government. Pennsylvania Department of General Services, *supra* note 59, at 6-4.

<sup>118</sup> 16 P.S. § 410(a). *See* PA. CONST. of 1968 Art. IX § 4; Pennsylvania Department of General Services, *supra* note 59, at 6-4.

<sup>119</sup> 16 P.S. § 410(a). *See* PA. CONST. of 1968 Art. IX § 4; Pennsylvania Department of General Services, *supra* note 59, at 6-4.

<sup>120</sup> *See* 16 P.S. §§ 401-1505.

<sup>121</sup> *See* Pennsylvania Department of General Services, *supra* note 59, at 6-4.

<sup>122</sup> *See* PA. CONST. of 1968 Art. IX §§ 2, 4; Pennsylvania Department of General Services, *supra* note 59, at 6-4.

<sup>123</sup> County Commissioners Association of Pennsylvania, *supra* note 117. *See* Pennsylvania Department of General Services, *supra* note 59, at 6-4.

appropriately.<sup>124</sup> Because of the greater land area of counties compared to other municipalities, counties often undertake community and economic development and planning and transportation services.<sup>125</sup> The counties also regulate the conduct of elections, with the county commissioners generally governing the county board of elections.<sup>126</sup> The counties are often the local government that facilitates and implements human services, including public welfare, child protective services, and services and programs regarding the elderly, mental health, and drug and alcohol abuse, which may all be partially funded by the state or federal government.<sup>127</sup> Because of the widely varied populations of Pennsylvania's counties, the actual degree of services provided by a given county varies from county to county.<sup>128</sup>

One of the primary services the county provides is the judicial system, including the courts of common pleas, magisterial district courts, county jail, juvenile detention centers, and probation and investigative services.<sup>129</sup> The county also provides vast record-keeping services at the county courthouse in relation to several county officials' roles, such as the recorder of deeds and register of wills.<sup>130</sup> The county keeps records of assessed property values as well, which are

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<sup>124</sup> County Commissioners Association of Pennsylvania, *supra* note 117.

<sup>125</sup> *See id.*

<sup>126</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *supra* note 117.

<sup>127</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *supra* note 117. *See, e.g.*, 16 P.S. § 1999b (providing for agreements between counties and the federal government to provide health and welfare programs); 16 P.S. § 2163 (giving counties the power and duty to care for dependents and children).

<sup>128</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 7. Other services provided by counties may include housing and redevelopment authorities, hospitals and elderly care homes, community colleges, libraries, parks, waste disposal, and environmental programs. Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *supra* note 117; Pennsylvania Municipal League, *supra* note 63, at ch. 7. *See, e.g.*, 16 P.S. §§ 2110-2111 (providing for the creation and governance of county hospitals); 16 P.S. § 2502 (providing for the creation of recreation places and boards to govern them, including parks and fairs).

<sup>129</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *supra* note 117.

<sup>130</sup> *See* Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *supra* note 117. *See, e.g.*, 16 P.S. § 9701 (providing for the Recorder of Deeds to keep records of every deed and conveyance).

used in relation to taxation.<sup>131</sup> The county uses its power to tax its residents through property taxes based on assessed property values to fund the county's services and functions.<sup>132</sup> The county may also collect per capita and occupation taxes to fund its services.<sup>133</sup> The 67 counties of Pennsylvania provide one layer of services, taxes, and bureaucracy, under which are laid another layer of smaller municipalities.<sup>134</sup>

## **B. Lower-Level Municipal Governments**

### **a. Classifications of Local Municipalities**

The Pennsylvania local government system consists of one layer of counties with another layer of local municipalities under it, consisting of cities, boroughs, and townships.<sup>135</sup> The Pennsylvania Constitution provides that the General Assembly has the power to classify cities, boroughs, and townships based on population.<sup>136</sup> The classification of municipalities allows the General Assembly to pass bills that affect only a limited number of municipality classes, while still being general legislation allowed by the Pennsylvania Constitution.<sup>137</sup>

### **b. The Powers and Functions of Local Municipalities**

The different types of local municipalities generally all hold the same powers, though cities often exercise more of those powers than boroughs and boroughs more than townships.<sup>138</sup> Therefore, the powers and available functions of local municipalities are generally the same,

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<sup>131</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4; County Commissioners Association of Pennsylvania, *supra* note 117; Pennsylvania Municipal League, *supra* note 63, at ch. 7. See 16 P.S. § 1770 (providing for taxation based on assessed property values).

<sup>132</sup> County Commissioners Association of Pennsylvania, *supra* note 117. See 16 P.S. § 1770 (describing the potential county taxes).

<sup>133</sup> Pennsylvania Governor's Center for Local Government Services, *Tax Collector's Manual*, at 1 (2007), <http://dced.pa.gov/download/tax-collectors-manual/?wpdmdl=56412>; see 16 P.S. § 1770 (describing the potential county taxes).

<sup>134</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-3 - 6-6.

<sup>135</sup> *Id.* at 6-4 - 6-6.

<sup>136</sup> PA. CONST. of 1968 Art. III § 20.

<sup>137</sup> See PA. CONST. of 1968 Art. III §§ 20, 32.

<sup>138</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4.

despite the different types and forms of local municipalities.<sup>139</sup> In other words, the municipality's classification, based on its size, affects its form and the functions likely undertaken, but has little effect on the powers it could exercise.<sup>140</sup> The local municipalities can "make policy decisions, levy taxes, borrow money, authorize expenditures, and direct administration of their governments."<sup>141</sup> Using these powers, the local municipalities may undertake several different functions, including police and fire stations, maintenance of local roads, water, sewage, and garbage services, local planning and zoning, business licensure, parks, and health services.<sup>142</sup> However, the functions actually undertaken vary between municipalities. Historically, municipalities carried out police and fire services, zoning, and road maintenance.<sup>143</sup> Some local governments also provide sewer, water, and trash services, but Authorities or the private sector provide these services in some municipalities.<sup>144</sup> The advantage, and the confusing result, of having highly-varied local governments means that each local government may choose separately to undertake certain functions and not undertake others, using local ordinances.<sup>145</sup>

### **c. Pennsylvania's Cities**

The city is generally the largest local municipality, based on population, which Pennsylvania divides into four different classes.<sup>146</sup> Pennsylvania's 56 cities vary widely in population as well, from First Class Philadelphia's 1.5 million to Third Class Parker City's

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<sup>139</sup> See *id.*; Pennsylvania Municipal League, *supra* note 63, at ch. 8.

<sup>140</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4; Pennsylvania Municipal League, *supra* note 63, at ch. 8.

<sup>141</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-4.

<sup>142</sup> *Id.* at 6-5.

<sup>143</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 8.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Act of Jun. 25, 1895, No. 188, 1895 P.L. 275; Pennsylvania Department of General Services, *supra* note 59, at 6-5; Pennsylvania Municipal League, *supra* note 63, at ch. 8.

840.<sup>147</sup> The concentration of Pennsylvania's residents with highly rural areas and a couple of large cities, as described earlier, results in an interesting division of Pennsylvania's city classifications.<sup>148</sup> Philadelphia is the sole First Class city; Pittsburgh is the sole Second Class City; Scranton is the sole Second Class A City.<sup>149</sup> Pennsylvania's remaining 53 cities are all Third Class Cities.<sup>150</sup>

As the only First Class City, Philadelphia adopted a home rule charter to determine its own form of government, which consists of a strong mayor and a 17-member council.<sup>151</sup> Because of the strong mayor home rule charter, the mayor has the power to control the administration of the city government, with aid from a managing director and other officials.<sup>152</sup> Pittsburgh and Scranton also adopted home rule charters, giving them a city council and a strong mayor who has powers of appointment and removal, determines the annual budget, recommends legislation to the council, and holds a veto against council legislation.<sup>153</sup>

The Third Class Cities are governed by the Third Class City Code.<sup>154</sup> The Third Class City Code establishes a city commission consisting of a mayor and 4 other members, with the mayor serving as president of the commission.<sup>155</sup> Eighteen of the 53 Third Class Cities use this form of government.<sup>156</sup> However, the remaining Third Class Cities adopted either home rule charters or optional plan charters, as provided for in the Pennsylvania Constitution.<sup>157</sup> The

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<sup>147</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5, 6-46.

<sup>148</sup> *See id.* at 6-46.

<sup>149</sup> *Id.*; Irina Zhorov, *Explainer: Cities, boroughs, and townships, oh my! Pa. municipalities clarified*, KEYSTONE CROSSROADS (Apr. 4, 2016), <http://crossroads.newsworks.org/index.php/local/keystone-crossroads/92324-explainer-cities-boroughs-and-townships-oh-my-pa-municipalities-clarified>.

<sup>150</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-46; Zhorov, *supra* note 149.

<sup>151</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *See* 11 Pa.C.S. §§ 10101-14702.

<sup>155</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5. *See* 11 Pa.C.S. §§ 10701, 11003.

<sup>156</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5.

<sup>157</sup> *Id.* *See* PA. CONST. of 1968 Art. IX §§ 2-3.

optional plan charters allow for either a mayor-council form with a strong mayor or a council-manager form with a council-appointed city manager.<sup>158</sup> The majority of Pennsylvania's cities began as smaller boroughs that incorporated as cities once they surpassed the population requirement, which currently sits at 10,000 residents.<sup>159</sup>

#### **d. Pennsylvania's Boroughs**

Pennsylvania's boroughs are another type of local municipality, which tend to be smaller forms of cities.<sup>160</sup> Pennsylvania contains 957 boroughs, which are governed by the Borough Code (also known as the Boroughs and Incorporated Towns Code).<sup>161</sup> Due to the general size and density of boroughs, which are like smaller cities, the boroughs are generally governed by a weak mayor and a council that holds most of the power, as well as several independent officials.<sup>162</sup> The council's powers are broad, enabling it to carry out the functions of local municipalities, including government administration, police and public safety, finance, public works, and code enforcement, such as zoning.<sup>163</sup> The mayor's only special power relates to the administration of the police force.<sup>164</sup> The council may also appoint a borough manager to carry out its ordinances.<sup>165</sup> A borough may adopt either a home rule charter or optional plan to determine its own form of government.<sup>166</sup>

#### **e. Pennsylvania's Townships**

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<sup>158</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5. *See* 53 Pa.C.S. §§ 3001-3064.

<sup>159</sup> Zhorov, *supra* note 149.

<sup>160</sup> *Id.*

<sup>161</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-3, 6-5. *See* 8 Pa.C.S. §§ 101-3501.

<sup>162</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5; Zhorov, *supra* note 149. *See* 8 Pa.C.S. § 806.

<sup>163</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5; Pennsylvania Municipal League, *supra* note 63, at ch. 8. *See* 8 Pa.C.S. § 1005.

<sup>164</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 8; Zhorov, *supra* note 149.

<sup>165</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-5; Pennsylvania Municipal League, *supra* note 63, at ch. 8; Zhorov, *supra* note 149. *See* 8 Pa.C.S. §§ 1141-1142.

<sup>166</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6.

The final main local municipality type is the township, of which Pennsylvania contains 1,547.<sup>167</sup> Pennsylvania allows two classes of townships, with most First Class Townships (93) in urban areas surrounding cities and most Second Class Townships (1,454) in rural areas.<sup>168</sup> Pennsylvania's townships also vary widely in population, from Upper Darby Township's 82,795 residents outside of Philadelphia to East Keating Township's 11 residents in central Pennsylvania.<sup>169</sup> The townships are subject to the First Class Township Code and Second Class Township Code.<sup>170</sup> First Class Townships are governed by elected commissioners, numbering either 5, if elected at-large, or up to 15, if elected by wards.<sup>171</sup> Second Class Townships are governed by three supervisors.<sup>172</sup> The townships may elect or appoint several other officials, which generally vary based on the size of the township.<sup>173</sup> Townships are classified as second class by default, but a township may decide by referendum to become first class if the township has a population density greater than 300 residents per square mile.<sup>174</sup> Once again, a township may also decide to enact a home rule charter or optional plan to determine its own form of government.<sup>175</sup>

#### **f. Pennsylvania's One Town**

Finally, Pennsylvania also contains one town, Bloomsburg, which exists by a special act of the General Assembly passed in 1870.<sup>176</sup> The Town of Bloomsburg's government consists of

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*; Pennsylvania Municipal League, *supra* note 63, at ch. 8; Zhorov, *supra* note 149.

<sup>169</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-7, 6-124.

<sup>170</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 8. *See* 53 P.S. §§ 55101-59156 (First Class Township Code); 53 P.S. §§ 65101-70105 (Second Class Township Code).

<sup>171</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*; Zhorov, *supra* note 149.

<sup>175</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6.

<sup>176</sup> *Id.* at 6-5; Jill Whalen, *History abounds in only town in Pa.*, STANDARD SPEAKER (Sept. 19, 2013), <http://standardspeaker.com/news/history-abounds-in-only-town-in-pa-1.1554752>; Zhorov, *supra* note 149. *See* Act of Mar. 4, 1870, No. 335, 1870 P.L. 343.



a 6-member council with a mayor, who has the power to vote with the council.<sup>177</sup> Otherwise, Bloomsburg is generally treated as a borough, but provides another interesting wrinkle in Pennsylvania's local government system.<sup>178</sup>

#### **g. Home Rule Charters and Optional Plans**

The formation of Pennsylvania's local government is further complicated by the fact that the Pennsylvania Constitution requires the General Assembly to provide home rule charters and optional plans for all municipalities to have the opportunity to choose their own form of government.<sup>179</sup> Eighty municipalities have chosen to adopt home rule charters, while ten have adopted optional plans.<sup>180</sup> Both the home rule charter and optional plans allow municipalities to determine the structure of their local governments.<sup>181</sup> When a municipality adopts a home rule charter, that charter not only alters its structural form, but frees it from the General Assembly's limits on the powers and functions of a municipality of its class.<sup>182</sup> Therefore, the municipality with a home rule charter may use any power or undertake any function not prohibited by the Pennsylvania Constitution, General Assembly legislation, or its own home rule charter.<sup>183</sup> On the other hand, optional plans allow a municipality to change its local government structure, but it is still subject to the municipality code and legislation affecting its municipality class.<sup>184</sup> These alternative options, again, further complicate Pennsylvania's local governments.

#### **h. Federally-Recognized Communities**

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<sup>177</sup> Whalen, *supra* note 176; Zhorov, *supra* note 149.

<sup>178</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-10.

<sup>179</sup> PA. CONST. of 1968 Art. IX §§ 2-3.

<sup>180</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-7.

<sup>181</sup> *Id.* at 6-3.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 6-4.

The existence of unincorporated communities in Pennsylvania provides another interesting element to note, even though they are not municipalities and have no local government.<sup>185</sup> The unincorporated communities are also called census-designated places, because the United States Census Bureau recognizes the existence of the community, despite the lack of a local government.<sup>186</sup> These entities often make the system more confusing, particularly considering that, in some instances, Pennsylvania residents associate with or recognize the unincorporated communities more than the actual municipality in which these entities exist.<sup>187</sup>

Another set of non-governmental communities that further complicates Pennsylvania's system relates to the United States postal code, which gives communities a zip code and location name for the purpose of mail delivery.<sup>188</sup> However, the zip codes are not aligned with municipality lines, nor are the associated location names necessarily related to the municipalities within that zip code.<sup>189</sup> The zip codes cross county lines and a location within one city may list an entirely different city as its postal address.<sup>190</sup> Due to this lack of alignment between local municipalities and the listed location on the address, the postal codes and related addresses provide another layer of confusion.<sup>191</sup>

### **C. School Districts**

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<sup>185</sup> See, e.g., United States Census Bureau, *School District Reference Map (2010 Census): Lawrence County, PA*, (Jan. 1, 2010), [http://www2.census.gov/geo/maps/dc10map/sch\\_dist/st42\\_pa/c42073\\_lawrence/DC10SD\\_C42073\\_001.pdf](http://www2.census.gov/geo/maps/dc10map/sch_dist/st42_pa/c42073_lawrence/DC10SD_C42073_001.pdf) (providing a map of Lawrence County, which lists the municipalities as well as several census-designated places that are not incorporated as a municipality).

<sup>186</sup> See, e.g., *id.*

<sup>187</sup> See, e.g., *id.*

<sup>188</sup> See United States Postal Service, *Look Up a Zip Code*, USPS.COM (2017), <https://tools.usps.com/go/ZipLookupAction!input.action> (providing a service to lookup a zip code by address or find all the zip codes associated with a particular city).

<sup>189</sup> See UnitedStatesZipCodes.org, *Zip Codes in Pennsylvania*, <http://www.unitedstateszipcodes.org/pa/> (last accessed Feb. 21, 2017) (providing a map of Pennsylvania showing the zip code areas throughout the state, which fail to align with Pennsylvania's local governments).

<sup>190</sup> See *id.*

<sup>191</sup> See *id.*

The Pennsylvania Constitution requires that the General Assembly must provide for the formation and funding of a public education system,<sup>192</sup> which was originally stated as a goal even in the Constitution of 1790.<sup>193</sup> This early commitment to free public education led the General Assembly to first carry out this duty state-wide in 1834, with the passage of the first public school law, which has developed into the modern system.<sup>194</sup> The laws governing the public school system are consolidated into the School Code, which was originally passed as the Pennsylvania Public School Code of 1949 [School Code].<sup>195</sup>

The school districts originally formed based on the counties of Pennsylvania, but eventually a school district formed for every township or borough.<sup>196</sup> While Pennsylvania had around 2,500 school districts after the passage of the School Code,<sup>197</sup> Pennsylvania underwent a massive reorganization of the school system in the mid-twentieth century.<sup>198</sup> The reorganization brought about a shift from highly localized, one-room schoolhouses to consolidated school districts.<sup>199</sup> Three legislative acts passed during the 1960s brought about the reorganization.<sup>200</sup> The reorganization resulted in a reduction in the number of school districts from 2,277 to 669 in ten years.<sup>201</sup> The Pennsylvania public school system now consists of 500 school districts.<sup>202</sup>

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<sup>192</sup> PA. CONST. of 1968 Art. III § 14 (1968).

<sup>193</sup> PA. CONST. of 1790 Art. VII § 1 (1790).

<sup>194</sup> Harold F. Alderfer, A CITIZEN'S GUIDE TO PENNSYLVANIA LOCAL GOVERNMENT 63 (1966).

<sup>195</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9. See 24 P.S. §§ 1-101 - 27-2702.

<sup>196</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>197</sup> Pennsylvania School Boards Association [PSBA], *Merger/Consolidation of School Districts: Does it save money and improve student achievement?*, EDUC. RES. & POL'Y CENTER, at 9 (Apr. 2009), <http://mrea-mt.org/wp-content/uploads/2016/04/PA-psba-merger-consolidation.pdf>.

<sup>198</sup> Alderfer, *supra* note 194, at 63; PSBA, *supra* note 197, at 6.

<sup>199</sup> PSBA, *supra* note 197, at 6.

<sup>200</sup> PSBA, *supra* note 197, at 6. See Act of Jul. 8, 1968, No. 150, 1968 P.L. 299 ("Providing for Administrative Units Comprised of School Districts"); Act of Aug. 8, 1963, No. 299, 1963 P.L. 564 (amending the original school district reorganization plan to add flexibility to the plan); Act of Sept. 12, 1961, No. 561, 1961 P.L. 1283 (providing for the first major consolidation and reduction of school districts).

<sup>201</sup> PSBA, *supra* note 197, at 6.

<sup>202</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9.

While federal and state funds help to finance the public schools, Pennsylvania law empowers school districts to directly levy taxes against residents of the school district in order to pay for the public school system.<sup>203</sup> Pennsylvania school districts collect their tax-funded money through three different taxes - earned income tax,<sup>204</sup> services tax,<sup>205</sup> and property tax.<sup>206</sup> Pennsylvania school districts have the power to collect taxes based on real property,<sup>207</sup> which provides the majority of the school districts' local tax-funded money.<sup>208</sup>

The Pennsylvania public schools are each controlled by locally-elected school boards.<sup>209</sup> The school boards hold the power to make school employment decisions, purchase school supplies, make school construction plans, levy school taxes, and issue bonds in relation to the school.<sup>210</sup>

Pennsylvania's history of the early development of free public education resulted in the creation of its unusual system, with many localized and fragmented school districts funded by local taxes.<sup>211</sup> Due to strong opposition to publicly-funded education, the Free Schools Act of 1834 divided the state into many local school districts, allowing each locality to decide whether to opt into the program.<sup>212</sup> The law required a separate school district for every township or borough, which contributed to the highly fragmented school district system.<sup>213</sup> This requirement apparently led to further fragmentation of local governments, as a municipality would split into

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<sup>203</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9. *See* 24 P.S. § 5-507.

<sup>204</sup> Act of Jul. 2, 2008, No. 32, 2008 P.L. 197.

<sup>205</sup> Act of Jun. 21, 2007, No. 7, 2007 P.L. 13.

<sup>206</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>207</sup> *See* 53 Pa.C.S. § 8811.

<sup>208</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>209</sup> Alderfer, *supra* note 194, at 64.

<sup>210</sup> *Id.* at 64. *See generally* 24 P.S. §§ 5-501 – 5-527.

<sup>211</sup> *See* Pennsylvania Department of General Services, *supra* note 59, at 1-20; Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>212</sup> Pennsylvania Department of General Services, *supra* note 59, at 1-20.

<sup>213</sup> *See* James Pyle Wickersham, A HISTORY OF EDUCATION IN PENNSYLVANIA 313 (1886).

separate townships or boroughs when it found itself split over the issue of public schools.<sup>214</sup> By 1849, the state government passed a law requiring all localities to adopt public schools.<sup>215</sup> In 1854, the Pennsylvania General Assembly passed the Common School Law, which gave great powers to a school board in each school district, separate from the local municipality.<sup>216</sup> These powers ranged from the power to purchase real property to determining the school curricula, as well as the power to levy taxes to fund the school.<sup>217</sup>

These early laws provided the general framework for the education and school district system that still exists in Pennsylvania.<sup>218</sup> However, one change that has further complicated the local government system relates to the fact that school districts no longer align to individual municipality lines.<sup>219</sup> Instead, in Pennsylvania, a rural school district may contain several townships and city school districts may jut into surrounding townships, ignoring township lines; even county lines are irrelevant in some cases.<sup>220</sup> This fact further complicates local government, as one school district may cover several townships and boroughs and multiple

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<sup>214</sup> William A. Fischel, *The Congruence of American School Districts with Other Local Government Boundaries: A Google-Earth Exploration*, DARTMOUTH C. ECON. DEP'T WORKING PAPER 1, 22 (Mar. 1, 2007), available at [https://www.dartmouth.edu/~wfischel/Papers/Fischel\\_Congruence\\_1mar07.pdf](https://www.dartmouth.edu/~wfischel/Papers/Fischel_Congruence_1mar07.pdf).

<sup>215</sup> Pennsylvania Department of General Services, *supra* note 59, at 1-20.

<sup>216</sup> Chester C. Bashore, PENNSYLVANIA COMMON SCHOOL LAW 1-2 (1906), available at <https://play.google.com/books/reader?id=MqRDAAAIAAJ>; Pennsylvania Department of General Services, *supra* note 59, at 1-20. See Common School Act of May 8, 1854, P.L. 617.

<sup>217</sup> See Bashore, *supra* note 216, at 22, 108, 168; Pennsylvania Department of General Services, *supra* note 59, at 1-20.

<sup>218</sup> See Pennsylvania Department of General Services, *supra* note 59, at 1-20; Pennsylvania Municipal League, *supra* note 63, at ch. 9.

<sup>219</sup> See Fischel, *supra* note 214, at 21; Pennsylvania Department of Community and Economic Development, *Find Municipality by Address*, <https://munstats.pa.gov/Public/FindMunicipality.aspx> (last accessed Feb. 7, 2017) (providing aid for residents to determine their school district, because such a determination is not always obvious based on the municipality of residence).

<sup>220</sup> Fischel, *supra* note 214, at 21; Pennsylvania Department of Transportation, *Pennsylvania's School Districts and Intermediate Units*, [http://www.dot7.state.pa.us/BPR\\_PDF\\_FILES/MAPS/Education/Statewide\\_IU\\_and\\_Districts\\_web\\_map.pdf](http://www.dot7.state.pa.us/BPR_PDF_FILES/MAPS/Education/Statewide_IU_and_Districts_web_map.pdf) (last accessed Feb. 2, 2017) (providing a map of school district lines, including, for example, Purchase Line School District in Intermediate Unit 28, which contains territory in two counties and is non-contiguous).

counties, while taxing residents of those locations and being subject to the municipalities' rules.<sup>221</sup> Thus, the school districts add yet another layer of confusing local government.<sup>222</sup>

#### **D. Municipal Authorities**

Special local governments entities, called municipal authorities, began to develop in the 1930s, after the Great Depression struck.<sup>223</sup> Municipal authorities exist to perform a specific service, rather than providing general governmental services.<sup>224</sup> The municipal authority may engage in many different commercial and revenue-producing projects, which the authority finances through bonds or other forms of borrowing money.<sup>225</sup> These projects generally include public structures or facilities, such as schools, highways, water and sewage works, hospitals, and industrial development parks.<sup>226</sup> Any local government entity may form a municipal authority, either individually or together with another local government.<sup>227</sup> The municipal authorities originally developed due to limits on municipal debt, in order to aid municipalities in funding major public projects.<sup>228</sup> The municipal authorities have remained popular for the purpose of facilitating multiple municipality joint projects.<sup>229</sup> Interestingly, Pennsylvania has been one of the states to most extensively use municipal authorities.<sup>230</sup>

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<sup>221</sup> See, e.g., Pennsylvania Department of Transportation, *supra* note 220; United States Census Bureau, *School District Reference Map (2010 Census): Lawrence County, PA*, (Jan. 1, 2010), [http://www2.census.gov/geo/maps/dc10map/sch\\_dist/st42\\_pa/c42073\\_lawrence/DC10SD\\_C42073\\_001.pdf](http://www2.census.gov/geo/maps/dc10map/sch_dist/st42_pa/c42073_lawrence/DC10SD_C42073_001.pdf) (depicting, for example, Wilmington Area School District, which consists of Pulaski Township, Wilmington Township, Washington Township, Plain Grove Township, New Wilmington Borough, and Volant Borough in Lawrence County and Wilmington Township in Mercer County).

<sup>222</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-3.

<sup>223</sup> *Id.* at 6-3.

<sup>224</sup> *Id.* at 6-6.

<sup>225</sup> John C. Bollens, *SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES* 240 (University of California Press 1957).

<sup>226</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-3. See 53 Pa.C.S. § 5607(a).

<sup>227</sup> Bollens, *supra* note 225, at 240.

<sup>228</sup> *Id.* See PA. CONST. of 1968 Art. IX § 10 (1968) (mandating debt limits on municipalities).

<sup>229</sup> Bollens, *supra* note 225, at 240.

<sup>230</sup> *Id.*

The state legislature created the municipal authority in the 1930s, during the Great Depression, to facilitate municipalities in partially funding federal programs to aid the municipalities.<sup>231</sup> The Municipal Authorities Act now governs the powers, form, and limitations on municipal authorities.<sup>232</sup> The municipal authorities provide an important function, due to the unusual form of Pennsylvania local government.<sup>233</sup> Because of Pennsylvania's highly fragmented, localized, and small local governments, the municipal authorities are helpful in joining together local governments for intergovernmental cooperation, in order to accomplish expensive projects that would otherwise be impossible for a single municipality.<sup>234</sup> For example, small townships may combine their efforts in a joint municipal authority to provide sewage or other services for their residents or to finance major projects in cities or counties, such as airport, parking, and transit authorities.<sup>235</sup> However, the municipal authorities also add to the problem of governmental fragmentation and waste, as they add yet another government entity that requires further coordination and complication for local governments and citizens.<sup>236</sup> Furthermore, the municipal authorities enjoy a less-direct check on their activities and leadership, which worsens political patronage problems.<sup>237</sup>

## **E. Powers Given to the Municipal Governments**

### **a. Municipalities Planning Code**

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<sup>231</sup> *Id.* at 241.

<sup>232</sup> *See* 53 Pa.C.S. §§ 5601-5623.

<sup>233</sup> *See* Bollens, *supra* note 225, at 245.

<sup>234</sup> *See id.*

<sup>235</sup> Governor's Center for Local Government Services, *supra* note 88, at 40-41. *See, e.g.*, Greta Mittereder, *\$10 million sewer project starts up in Mercer County*, WKBN 27: FIRST NEWS (July 22, 2015), available at <http://wkbn.com/2015/07/22/sewer-project-starts-up-in-mercero-co/> (describing the Neshannock Creek Watershed Joint Municipal Authority providing sewage services to multiple townships); Port Authority of Allegheny County, *Port Authority*, (Feb. 8, 2017), <http://www.portauthority.org/paac/default.aspx> (providing multiple transportation services throughout Allegheny County).

<sup>236</sup> *See* Bollens, *supra* note 225, at 245-46.

<sup>237</sup> *See id.* at 246.

Pennsylvania's municipalities have significant powers, which have certain complicating implications when combined with the fact that Pennsylvania has so many different layers of small and local municipalities. One of the primary powers given to municipalities by the Pennsylvania General Assembly involves zoning and planning.<sup>238</sup> The legislature has given municipalities the power to conduct planning and adopt zoning ordinances, under the Municipalities Planning Code [Planning Code].<sup>239</sup> The power of municipalities to plan is one of the key functions that local governments undertake, including annual budgets, housing development, road construction, and hiring employees.<sup>240</sup> The Planning Code also enables municipalities to work together to undertake planning and development using intergovernmental cooperative planning and implementation agreements, which are crucial given the small size and population of many Pennsylvania municipalities.<sup>241</sup> The Planning Code gives municipalities the power to create planning commissions, which then undertake the community planning functions for the municipality.<sup>242</sup> Under the Planning Code, municipalities have the power to make comprehensive plans, regarding future development, land use, housing, transportation, utilities, and other functions.<sup>243</sup>

Related to general municipal planning, the Planning Code also gives municipalities the power to pass zoning ordinances, in order to effectuate their plans.<sup>244</sup> Pennsylvania's zoning laws particularly empower the smaller local governments, as the counties' zoning powers only

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<sup>238</sup> See Pennsylvania Department of General Services, *supra* note 59, at 6-3; Governor's Center for Local Government Services, *Citizen's Guide to Pennsylvania Local Government*, at 37-38 (2003), <http://dced.pa.gov/download/citizens-guide-to-pennsylvania-local-government-pdf/?wpdmdl=57750>; Pennsylvania Municipal League, *supra* note 63, at ch. 8.

<sup>239</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-3. See 53 P.S. §§ 10101-11202.

<sup>240</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 8.

<sup>241</sup> See 53 P.S. §§ 11101-11107. Interestingly, the stated purpose of these intergovernmental agreements is the protection of the separate identities of Pennsylvania's individual municipalities, particularly regarding rural farming. *See id.* at § 11101.

<sup>242</sup> *See id.* at §§ 10201, 10209.1.

<sup>243</sup> *See id.* at § 10301.

<sup>244</sup> *See id.* at §§ 10601-10619.2.



apply to its local municipalities that have no zoning ordinances themselves.<sup>245</sup> Municipalities' zoning ordinances may regulate the use of land and water, building of structures, areas to be occupied or unoccupied by structures, population density, and preservation of historic and agricultural areas.<sup>246</sup> Using zoning ordinances, municipalities have the power to control community growth and development for housing and business, prevent overcrowding, and regulate the types of buildings and businesses that may occupy a community.<sup>247</sup>

### **b. Local Tax Enabling Act**

Pennsylvania municipalities also possess the power to tax their residents, including their property, under the Local Tax Enabling Act.<sup>248</sup> The Local Tax Enabling Act provides for many different types of taxation for municipalities.<sup>249</sup> The two primary taxes by which local municipalities collect sufficient funds to carry out their functions are the real estate tax and earned income tax.<sup>250</sup> The Local Tax Enabling Act gives every local government the power to levy taxes, as well as school districts,<sup>251</sup> while counties also hold a taxation power.<sup>252</sup> Therefore, the granting of the taxation power to Pennsylvania's many layers of local government results in multiple layers of taxation for Pennsylvania residents.<sup>253</sup>

### **c. Municipal Authorities Act**

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<sup>245</sup> *See id.* at § 10602.

<sup>246</sup> *See id.* at § 10603.

<sup>247</sup> Governor's Center for Local Government Services, *supra* note 238, at 38.

<sup>248</sup> 53 P.S. §§ 6924.301-6924.901.

<sup>249</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-3. *See* 53 P.S. § 69204.301.1.

<sup>250</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-3.

<sup>251</sup> *See* 53 P.S. § 6924.301.1.

<sup>252</sup> *See* 16 P.S. § 1770.

<sup>253</sup> Governor's Center for Local Government Services, *supra* note 238, at 29. *See* Pennsylvania Department of Community and Economic Development, *County Tax Information*, PA DCED (2017), [http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=CountyTaxSummary\\_Dyn\\_Excel](http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=CountyTaxSummary_Dyn_Excel) (providing a breakdown of county tax rates); Pennsylvania Department of Community and Economic Development, *Find Your Withholding Rates by Address*, PA DCED (2017), <http://munstats.pa.gov/Public/FindLocalTax.aspx> (providing a calculator for determining local tax rates for local governments and school districts).

Though they do not have the power to tax, Pennsylvania created municipal authorities with the Municipal Authorities Act, empowering them to undertake major financing of government projects.<sup>254</sup> The Municipal Authorities Act gives great power to local municipalities, as they may undertake massive government projects to serve their communities.<sup>255</sup> The municipal authorities allow for local control over construction of government buildings, transportation, sewage and water, recreation projects, hospitals, and industrial and commercial development.<sup>256</sup> Municipal authorities also give local municipalities the ability to more easily join together and work cooperatively to provide government services to their residents, without requiring the state government to act.<sup>257</sup> The municipal authorities have great financing powers and provide essential services on which residents depend, resulting in yet another layer of local government.<sup>258</sup>

## **V. The Implications and Problems of Pennsylvania's Local Government System**

### **A. Zoning**

The implications of Pennsylvania's many layers of local government include many complicated situations, including highly varied zoning ordinances from one municipality to another. Each small municipality can zone its territory in the way it sees fit, which causes problems for businesses and developers who must carefully plan based on each municipality's zoning rules.<sup>259</sup> While municipalities may grant variances to zoning ordinances,<sup>260</sup> the person or

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<sup>254</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6; Governor's Center for Local Government Services, *supra* note 238, at 29. See 53 Pa.C.S. § 5601-5623.

<sup>255</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6; Governor's Center for Local Government Services, *supra* note 238, at 29.

<sup>256</sup> Pennsylvania Department of General Services, *supra* note 59, at 6-6; Governor's Center for Local Government Services, *supra* note 238, at 29.

<sup>257</sup> See 53 Pa.C.S. § 5604 (providing for local municipalities to withdraw from and join in municipal authorities).

<sup>258</sup> See 53 Pa.C.S. § 5607 (describing the many purposes and powers of municipal authorities).

<sup>259</sup> See 53 P.S. § 10601; Governor's Center for Local Government Services, *supra* note 238, at 38.

<sup>260</sup> See 53 P.S. § 10910.2 (allowing for variances to zoning ordinances as approved by the zoning hearing board).

business seeking a variance to the ordinance must go through a lengthy process before the municipality's zoning hearing board in public meetings.<sup>261</sup> Furthermore, even an existing land use may require variances in order to expand, meaning that development could be stunted or at least slowed by the zoning requirements and difficulty of obtaining a variance.<sup>262</sup>

## **B. Oil and Gas Development**

A major zoning issue specific to Pennsylvania involves the expansion of the oil and gas industry, particularly regarding municipalities' zoning affecting hydraulic fracturing.<sup>263</sup> In 2012, the Pennsylvania General Assembly passed Act 13, which attempted to supersede all local municipal ordinances regarding oil and gas drilling.<sup>264</sup> The removal of the oil and gas zoning power from local municipalities resulted in a Pennsylvania Supreme Court case between local governments and environmental groups against the state government.<sup>265</sup> The Pennsylvania Supreme Court ruled that the Act 13 provisions that made state law preempt local zoning laws with respect to oil and gas development were unconstitutional based on the Pennsylvania Constitution's Environmental Rights Amendment.<sup>266</sup> While municipalities cannot outright ban

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<sup>261</sup> *Id.*; Pennsylvania Governor's Center for Local Government Services, *Township Supervisors Handbook*, at 19 (2015), <http://dced.pa.gov/download/Township%20Supervisors%20Handbook/?wpdmdl=59476>; Governor's Center for Local Government Services, *supra* note 238, at 38. *See, e.g.*, Gideon Bradshaw, *Mt. Pleasant zoning board wraps up hearings on ordinance challenge*, OBSERVER-REPORTER (Jan. 30, 2017), [http://www.observer-reporter.com/20170130/mt\\_pleasant\\_zoning\\_board\\_wraps\\_up\\_hearings\\_on\\_ordinance\\_challenge](http://www.observer-reporter.com/20170130/mt_pleasant_zoning_board_wraps_up_hearings_on_ordinance_challenge) (describing a months-long challenge to a zoning ordinance regarding oil and gas drilling).

<sup>262</sup> *See, e.g.*, *Overstreet v. Zoning Hearing Bd.*, 412 A.2d 169, 172 (Pa. Commw. Ct. 1980) (affirming the zoning hearing board's denial of a variance for the landowners to expand their pre-existing mobile home park).

<sup>263</sup> Hydraulic fracturing is a relatively new process of drilling for natural gas by which fluids are pumped into a gas well at a high pressure in order to fracture rock formations to increase the flow of natural gas, resulting in an increased quantity of recovered natural gas from that well. The injected fluid includes water, sand or some other proppant, and chemicals. United States Environmental Protection Agency, *The Process of Hydraulic Fracturing*, EPA (Jan. 9, 2017), <https://www.epa.gov/hydraulicfracturing/process-hydraulic-fracturing>.

<sup>264</sup> Act of Feb. 14, 2014, No. 13, 2012 P.L. 87.

<sup>265</sup> *See Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (holding that Act 13's preemption of local oil and gas zoning ordinances was unconstitutional); Marie Cusick, *Pennsylvania Supreme Court strikes down controversial portions of Act 13*, STATEIMPACT (Dec. 19, 2013), <https://stateimpact.npr.org/pennsylvania/2013/12/19/state-supreme-court-strikes-down-act-13-local-zoning-restrictions/>.

<sup>266</sup> *Robinson Twp.*, 83 A.3d at 1000. *See* PA. CONST. of 1968 Art. I § 27 (declaring that "the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment"); Cusick, *supra* note 265.

oil and gas drilling,<sup>267</sup> each municipality may enact its own zoning regulations regarding oil and gas drilling, which has led to uncertainty for both oil and gas companies and local residents.<sup>268</sup> While many municipalities still have no ordinance regulating oil and gas development, the municipalities now have the power to control the industry's development within their jurisdictions.<sup>269</sup>

### C. Taxation

Pennsylvania's municipal governments also possess the power to tax their residents, which results in multiple layers of taxation to the state, county, local municipality, and school district.<sup>270</sup> While the duty of tax collection is normally centralized in one tax collector, Pennsylvania residents must still pay separate school, county, and local municipality taxes.<sup>271</sup> Local municipalities receive most of their funding from local taxes, particularly the earned income and real estate tax.<sup>272</sup> The Local Tax Enabling Act makes several other types of taxes available to local municipalities, including per capita, amusement, and local services taxes.<sup>273</sup> Counties also possess the power to separately tax residents, with the real property tax providing

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<sup>267</sup> *Pennsylvania General Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 709, 721-22 (W.D. Pa. 2015) (holding that state law preempts a municipality's zoning ordinance that prohibits oil and gas drilling).

<sup>268</sup> Bradshaw, *supra* note 261 (discussing the debate that many municipalities must undertake in deciding how to zone oil and gas drilling and whether to adopt new ordinances); Jamison Cocklin, *Aftermath of PA Act 13 Ruling: Widespread Uncertainty*, NATURAL GAS INTEL (Dec. 27, 2013), <http://www.naturalgasintel.com/articles/96880-aftermath-of-pa-act-13-ruling-widespread-uncertainty> (discussing the uncertainty surrounding the development of oil and gas drilling and whether certain municipalities will enact zoning ordinances); David Conti, *Many Pa. municipalities hesitant to regulate drilling through zoning*, TRIB LIVE (Mar. 21, 2015), <http://triblive.com/business/headlines/7984102-74/zoning-drilling-gas> (discussing the fact that few municipalities have yet adopted oil and gas zoning ordinances due to the expense of doing so and the intense disputes surrounding the topic).

<sup>269</sup> Bradshaw, *supra* note 261; Cocklin, *supra* note 268; Conti, *supra* note 268.

<sup>270</sup> See Pennsylvania Department of Community and Economic Development, *supra* note 253 (providing a breakdown of county tax rates); Pennsylvania Department of Community and Economic Development, *supra* note 253 (providing a calculator for determining local tax rates for local governments and school districts).

<sup>271</sup> Governor's Center for Local Government Services, *supra* note 238, at 33.

<sup>272</sup> Pennsylvania Governor's Center for Local Government Services, *supra* note 261, at 20. See, e.g., 53 P.S. § 68205 (providing for township and special tax levies for townships).

<sup>273</sup> Pennsylvania Governor's Center for Local Government Services, *supra* note 261, at 20. See, e.g., 53 P.S. § 6924.301.1 (providing for the taxing powers of local municipalities).

the bulk of the counties' tax revenue.<sup>274</sup> The counties may levy hotel, personal property, and nuisance taxes as well.<sup>275</sup> Finally, the school districts also collect real property, earned income, and local services taxes to fund public education in that school district.<sup>276</sup> The many layers of Pennsylvania municipal taxation complicate Pennsylvania's local government system and result in many different effective tax rates for Pennsylvania residents, depending upon where they reside and work.<sup>277</sup>

#### **D. School Districts**

Pennsylvania's many independent school districts results in further problems in Pennsylvania's education system, with the taxing power causing uneven school funding and the independence of the school boards often preventing mergers or consolidation.<sup>278</sup> Due to Pennsylvania's system of funding schools primarily through local taxes, the Pennsylvania school system suffers extreme variability in the amount of funds available from one school district to another.<sup>279</sup> In school districts with wealthier residents, the school districts are able to collect greater tax revenue due to the higher property values and earned income; while school districts with poorer residents are not able to collect as much tax revenue to fund the schools.<sup>280</sup> Because

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<sup>274</sup> Pennsylvania Governor's Center for Local Government Services, *Manual for County Commissioners*, at 55 (2015), <http://dced.pa.gov/download/manual-for-county-commissioners/?wpdmdl=56406>. See 16 P.S. § 1770.

<sup>275</sup> Pennsylvania Governor's Center for Local Government Services, *supra* note 274, at 59. See 16 P.S. § 1770 (providing for personal property and per capita taxes); *id.* at § 1770.4 (providing the authorization for a hotel tax).

<sup>276</sup> Pennsylvania Municipal League, *supra* note 63, at ch. 9. See 24 P.S. § 5-507.

<sup>277</sup> See Pennsylvania Department of Community and Economic Development, *supra* note 253 (providing a breakdown of county tax rates); Pennsylvania Department of Community and Economic Development, *supra* note 253 (providing a calculator for determining local tax rates for local governments and school districts).

<sup>278</sup> See, e.g., Emma Brown, *In 23 states, richer school districts get more local funding than poorer districts*, WASHINGTON POST (Mar. 12, 2015), [https://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/?utm\\_term=.6d97c2befed9](https://www.washingtonpost.com/news/local/wp/2015/03/12/in-23-states-richer-school-districts-get-more-local-funding-than-poorer-districts/?utm_term=.6d97c2befed9) (discussing the lack of funding equity for Pennsylvania's school districts, due to the dependence on local tax funding); Debbie Wachter Morris, *Back to School, Part 4: Local districts probe consolidation*, NEW CASTLE NEWS (Sept. 2, 2010), [http://www.ncnewsonline.com/news/back-to-school-part-local-districts-probe-consolidation/article\\_83621597-1a13-5e2f-bc01-7203524b1a26.html](http://www.ncnewsonline.com/news/back-to-school-part-local-districts-probe-consolidation/article_83621597-1a13-5e2f-bc01-7203524b1a26.html) (discussing the difficulty of consolidating the independent school districts).

<sup>279</sup> Brown, *supra* note 278.

<sup>280</sup> *Id.*

of this system, school district spending in poorer districts is 33% lower per-pupil than in wealthier districts, which is the widest discrepancy of any state.<sup>281</sup> While school districts have great power by being able to tax their residents, the fact that Pennsylvania school districts largely rely on local taxes, especially property taxes, results in pronounced inequality among school districts.<sup>282</sup>

The independence of the school districts, with their own school boards, causes problems regarding the merger or consolidation of school districts, which could be beneficial to the schools given the declining enrollment in most of the state due to shrinking populations.<sup>283</sup>

Pennsylvania state government focused on this issue recently, with Governor Rendell's 2009 proposal to reduce the school districts to 100 in number, but no legislative action has occurred.<sup>284</sup>

In addition to the practical difficulty of planning a massive school consolidation, two other issues stand in the way of change: 1) the established school boards and administrators, and 2) residents' traditions and ties to local schools.<sup>285</sup> Pennsylvania conducted studies that show that significant cost reductions are possible if school districts merge, but few mergers have occurred.<sup>286</sup> Instead, each school district has a separate school board and many administrators, despite the fact that 79

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<sup>281</sup> *Id.* Vermont is the state with the second-worst discrepancy, but even it only has an 18% differential. *Id.*

<sup>282</sup> Brown, *supra* note 278; Eleanor Chute, *Pennsylvania schools lead in unequal funding, data show*, PITTSBURGH POST-GAZETTE (Mar. 14, 2015), <http://www.post-gazette.com/local/2015/03/14/Pennsylvania-schools-lead-in-unequal-funding-data-show/stories/201503140060>.

<sup>283</sup> See Colt Shaw, *School district merger study in the works*, THE MORNING CALL (June 6, 2016), <http://www.mcall.com/news/nationworld/pennsylvania/mc-pa-school-district-mergers-20160606-story.html>. See generally J. Wesley Leckrone, *The Politics of Educational Change: What Can We Learn from the School Consolidation Acts of 1961 and 1963?*, TEMPLE U. (2015), <http://williampennfoundation.org/sites/default/files/reports/School%20Consolidation.pdf> (discussing the need for and history of school consolidation in Pennsylvania).

<sup>284</sup> Leckrone, *supra* note 283, at 6.

<sup>285</sup> David Mekeel, *Would school district consolidation work today?*, READING EAGLE (July 31, 2016), <http://www.readingeagle.com/news/article/merger-principle> (discussing the historical opposition to school district mergers by school boards and local residents).

<sup>286</sup> See John Finnerty, *Lawmakers want a new look at school merger*, MEADVILLE TRIBUNE (July 23, 2016), [http://www.meadvilletribune.com/news/local\\_news/lawmakers-want-a-new-look-at-school-mergers/article\\_9a38a294-5077-11e6-b340-83bb6de3ea8a.html](http://www.meadvilletribune.com/news/local_news/lawmakers-want-a-new-look-at-school-mergers/article_9a38a294-5077-11e6-b340-83bb6de3ea8a.html) (describing one study that showed 88 Pennsylvania school districts that could merge and reduce costs, none of which have merged in the ten years since the study).

school districts have fewer than 1,000 students,<sup>287</sup> while many experts suggest 4,000 students is optimal.<sup>288</sup> While the current system is highly inefficient and wasteful, with many separate boards and administrators running the many small schools, the opposition of those boards and administrators and the residents' desire for local control and preservation of their traditional schools stand in the way of change.<sup>289</sup>

### **E. Mergers and Consolidations of Small Municipalities**

Similar to the issues involving school consolidations, Pennsylvania's local municipalities could benefit from mergers and consolidations, but the local government officials and residents often oppose these changes.<sup>290</sup> Just as school districts have experienced reductions in students, many local municipalities are experiencing population declines, with 817 local municipalities containing fewer than 5,000 residents.<sup>291</sup> Despite the many underpopulated municipalities in Pennsylvania, since 1975, local residents have approved only 11 of 16 merger proposals and 3 of 21 consolidation proposals.<sup>292</sup> While Pennsylvania's state government may desire a consolidation of the many municipalities, the state government has no power over the municipalities in this area, as consolidations and mergers may only occur by local referendum or initiative.<sup>293</sup> In fact, the controversial merger of Allegheny City into Pittsburgh is partially

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<sup>287</sup> *Id.*

<sup>288</sup> Leckrone, *supra* note 283, at 3-5; Mekeel, *supra* note 285.

<sup>289</sup> Leckrone, *supra* note 283, at 4 (discussing the benefits of school consolidation, but also the difficulty of accomplishing consolidations due to the opposition of local residents and other problems mentioned by school board members and administrators).

<sup>290</sup> Shaffner, *supra* note 39.

<sup>291</sup> United States Census Bureau, *Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States - States: 2012 Census of Governments*, (Sept. 26, 2013), <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>.

<sup>292</sup> Shaffner, *supra* note 39. A merger occurs when one municipality takes over the control of another municipality or municipalities, with only one municipality surviving and the others being eliminated. *Id.* A consolidation occurs when two or more municipalities combine together to form a new municipality. *Id.* No merger or consolidation since 1975 has consisted of more than two municipalities. *Id.*

<sup>293</sup> Rusk, *supra* note 67, at 17. *See* PA. CONST. of 1968 Art. IX § 8 (providing for consolidation, merger, or boundary change of municipalities by initiative or referendum); 53 Pa.C.S. § 733 (providing for consolidation or

responsible for this constitutional provision.<sup>294</sup> Because of the initiative or referendum requirement, even when municipalities want to consolidate or merge, the required process often complicates and lengthens the completion of a merger or consolidation.<sup>295</sup>

Because local residents and politicians have total control over whether mergers or consolidations occur, the influence of local politicians and desires of local residents often prevent a merger or consolidation from occurring.<sup>296</sup> The few mergers that have successfully occurred have been in rural, small municipalities that are racially and economically homogenous, indicating the importance of the residents' ability to easily identify with each other.<sup>297</sup> Furthermore, if local politicians oppose the merger or consolidation, then the process has little chance of moving forward, considering the local governments put together the joint agreement for voter approval in the first place.<sup>298</sup>

While there are benefits to having local autonomy and preserving traditional municipalities, with the changing population of Pennsylvania, many municipalities are now too

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merger by joint agreement approved by the electorate, initiative, or joint agreement approved by the electorate and initiative of the electors).

<sup>294</sup> Christopher Briem, *Century-old dispute has delayed city's expansion efforts*, PITTSBURGH BUS. TIMES (Apr. 19, 2004), <http://www.bizjournals.com/pittsburgh/stories/2004/04/19/editorial1.html>.

<sup>295</sup> See Rusk, *supra* note 67, at 17-18 (discussing the lack of guidance and methods for municipal mergers and consolidations).

<sup>296</sup> See Shaffner, *supra* note 39 (discussing the fact that, for a merger or consolidation to occur, the local governments must be able to come to an agreement and residents must overcome their desires for local control, autonomy, and tradition); J.D. Prose, *Fallston voters reject merger with Patterson Twp.*, BEAVER COUNTY TIMES (May 24, 2013), [http://www.timesonline.com/fallston-voters-reject-merger-with-patterson-twp/article\\_808516f7-4111-5844-8005-1f82aaa08735.html](http://www.timesonline.com/fallston-voters-reject-merger-with-patterson-twp/article_808516f7-4111-5844-8005-1f82aaa08735.html) (discussing the vote of 101 borough residents that resulted in a rejection of a merger with a neighboring township, despite the major fiscal waste of separate municipal governments and the approval of the neighboring township's residents); Angie Schmitt, *The City That Wasn't: Shenango Valley and the Failure of Consolidation*, RUSTWIRE (July 20, 2013, 10:39 AM), <https://rustwire.com/2013/07/10/the-city-that-wasnt-shenango-valley-and-the-failure-of-consolidation/> (discussing the failed attempt to consolidate three cities and two boroughs that suffered population decline and fiscal waste into one larger city, which was opposed by local residents based on socio-economic differences and a desire to maintain local traditions and autonomy).

<sup>297</sup> Rusk, *supra* note 67, at 18 (discussing the homogeneity of the mergers and consolidations that have occurred); Shaffner, *supra* note 39 (noting that "how well the respective populations identify with one another" is an important factor in whether a merger or consolidation will occur).

<sup>298</sup> Shaffner, *supra* note 39 (describing the process of merger or consolidation and noting that local governments can effectively stop the process at any point).



small in population to provide services to their residents.<sup>299</sup> Pennsylvania provides no mechanism of dissolution for shrinking municipalities and, even if they want to merge or consolidate with another municipality, the other municipality may oppose joining together and taking on a poorer or otherwise undesirable municipality.<sup>300</sup> Therefore, Pennsylvania's small municipalities often have no option but to continue with their current operations despite small and declining populations.<sup>301</sup> For example, one Pennsylvania municipality still maintaining a city charter is Parker, which now holds only 756 residents and the title of the "Smallest City in the U.S.A."<sup>302</sup> Likewise, Centralia, Pennsylvania, remains an independent borough, despite having fewer than 5 residents.<sup>303</sup>

Due to the problem of shrinking municipality populations throughout much of Pennsylvania, some experts believe that Pennsylvania should change its state law to allow for forced mergers of municipalities.<sup>304</sup> However, just as early Pennsylvanians desired local control, many Pennsylvanians still insist on maintaining their small and independent municipalities.<sup>305</sup> In

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<sup>299</sup> Shaffner, *supra* note 39.

<sup>300</sup> Shaffner, *supra* note 39 (discussing the lack of a dissolution option and the fact "that stronger municipalities have little incentive to merge with weaker municipalities," due to their differences in tax rates, tax bases, and stability in general).

<sup>301</sup> See Jeremy G. Burton, *In tiny Jeddo, 'small' a matter of perspective*, STANDARD SPEAKER (May 30, 2011), <http://standardspeaker.com/news/in-tiny-jeddo-small-a-matter-of-perspective-1.1154513> (discussing the disconnect between Pennsylvanians' desires for local control in their shrinking municipalities and for provision of local government services); Rusk, *supra* note 67, at 22 (discussing the lack of mandatory or optional dissolution in Pennsylvania, despite a lack of ability to provide services, compared to other states that force municipalities to dissolve if they fail to provide services to their residents).

<sup>302</sup> City of Parker, *Our History*, <http://www.visitparker.us/history.html> (explaining the rise and fall of Parker's population along with the oil industry in the city).

<sup>303</sup> See Centralia PA, *Centralia Loses Another Resident, Home Abandoned*, CENTRALIA (Jan. 2, 2017), <http://www.centraliapa.org/centralia-loses-another-resident-home-abandoned/> (noting that another resident left the borough, reducing the population below five, as the coal mine fire continues to burn under the largely abandoned borough); see also Pennsylvania Department of General Services, *supra* note 59, at 6-115 (noting Centralia's population of ten at that time and the current mayor).

<sup>304</sup> See, e.g., Rusk, *supra* note 67, at 22 (arguing that Pennsylvania could benefit from adopting forced mergers, as other states with many municipalities have done).

<sup>305</sup> See, e.g., David M. Sanko, *Forced-Merger Bills Are a Slap in the Face to Our Founding Fathers*, PENNSYLVANIA STATE ASSOC. OF TOWNSHIP SUPERVISORS (Sep. 9, 2010), <http://www.psats.org/subpage.php?pageid=OpEdForcedMergersSept2010> (arguing that forced mergers would inappropriately harm Pennsylvanians' "fundamental right to govern themselves locally").

fact, despite recognizing the problems of insufficient funding and inefficient duplication of services, both a Republican county commissioner and Democratic city councilmember interviewed for this article opposed forced mergers and touted the importance of local control.<sup>306</sup> The Democratic city councilmember stated that it is best to just “let the municipalities decide.”<sup>307</sup> The Republican county commissioner noted that, while our system “results in duplication of services and parochialism,” many Pennsylvanians believe it is best to “do as much as you can at the level closest to the resident.”<sup>308</sup> The desire for local control, even in tiny municipalities, comes into conflict with the desire of many Pennsylvanians for greater governmental efficiency and provision of services, but local control has trumped efficiency and provision of services for most Pennsylvanians.<sup>309</sup>

#### **F. Regional Planning**

Finally, the many small municipalities of Pennsylvania lack the ability to undertake major planning on their own and their differing interests and separate governments also make larger regional planning difficult.<sup>310</sup> As discussed earlier, municipal authorities aid this process as far as providing a vehicle for cooperation,<sup>311</sup> but the authorities cannot give the separate governments common interests.<sup>312</sup> Of course, even when municipalities do cooperate through municipal authorities, these entities add yet another layer to Pennsylvania’s municipal government system.<sup>313</sup> Ultimately, many of the same reasons that prevent mergers and

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<sup>306</sup> Interview with City Councilmember, City of Pittsburgh, in Pittsburgh, Pa. (Apr. 4, 2017); Interview with County Commissioner, in New Castle, Pa. (Mar. 30, 2017).

<sup>307</sup> City Councilmember, *supra* note 306.

<sup>308</sup> County Commissioner, *supra* note 306.

<sup>309</sup> City Councilmember, *supra* note 306; County Commissioner, *supra* note 306; Shaffner, *supra* note 39.

<sup>310</sup> *See, e.g.*, Rusk, *supra* note 67, at 12-14 (discussing the difficulty the many municipalities have in undertaking regional planning and the detrimental effect on economic growth).

<sup>311</sup> *See* 53 Pa.C.S. § 5604 (providing for local municipalities to withdraw from and join in municipal authorities).

<sup>312</sup> *See* Rusk, *supra* note 67, at 32-34 (discussing the difficulty of regional planning with the many small municipalities who struggle to provide services and the ineffectiveness of the Intergovernmental Cooperation Act).

<sup>313</sup> *See* United States Census Bureau, *supra* note 84 (noting the 1,756 municipal authorities that are special purpose government entities in Pennsylvania).

consolidations also deter cooperation in regional planning, with joint planning largely occurring among municipalities of a similar economic, racial, and geographic makeup.<sup>314</sup> Pennsylvania's relatively high number of small municipalities complicates many aspects of local government, as well as creating a confusing system for Pennsylvania's residents.

## **VI. Conclusion**

The Pennsylvania local government system not only confuses many residents, but it also creates problems for local municipalities in providing desired services to local residents, particularly with shrinking populations and decreasing tax bases.<sup>315</sup> The opposition of many Pennsylvanians to forced mergers to attempt to resolve this problem means that an alternative method must be found.<sup>316</sup> The use of voluntary cooperative organizations and joint agreements may provide that alternative method.<sup>317</sup> Local governments engage in these activities already; for example, joint police forces and economic development corporations are some ways that municipalities can voluntarily resolve these problems.<sup>318</sup> The expanded use of cooperative agreements and organizations may provide the solution to the problems created by Pennsylvania's layers of small municipalities without violating Pennsylvanians' demands for

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<sup>314</sup> Rusk, *supra* note 67, at 37.

<sup>315</sup> *See supra* Part V.

<sup>316</sup> *See supra* Part V.E.

<sup>317</sup> *See, e.g.*, 53 Pa.C.S. § 2203 (authorizing the use of joint agreements and intergovernmental cooperation); Pennsylvania Association of Councils of Governments, *Mission*, PACOG (2017), <http://pacog.com/mission/> (providing a voluntary organization by which local governments may cooperate).

<sup>318</sup> *See, e.g.*, Patrick Buchnowski, *Somerset County towns consider joint police force*, TRIBUNE-DEMOCRAT, (Apr. 18, 2006), [http://www.tribdem.com/news/local\\_news/somerset-county-towns-consider-joint-police-force/article\\_03f300d3-f980-560f-b057-6fa18bf0b61b.html](http://www.tribdem.com/news/local_news/somerset-county-towns-consider-joint-police-force/article_03f300d3-f980-560f-b057-6fa18bf0b61b.html) (noting the growing popularity of joint police forces and the benefit of cost-sharing to aid small municipalities); John Finnerty, *Costs of state police patrols create tension in Pennsylvania*, COMMUNITY NEWSPAPER HOLDINGS INC., (May 13, 2016), [http://www.cnhi.com/featured\\_stories/costs-of-state-police-patrols-create-tension-in-pennsylvania/article\\_5063a348-1b8f-11e6-8796-1b31b48adf8b.html](http://www.cnhi.com/featured_stories/costs-of-state-police-patrols-create-tension-in-pennsylvania/article_5063a348-1b8f-11e6-8796-1b31b48adf8b.html) (noting the controversy over the provision of state police and the possibility of joint police forces resolving the problem of police provision in rural communities); Regional Industrial Development Corporation, *Partners*, RIDC (2017), <http://ridc.org/partners/> (noting the many state and local government officials who partner with the corporation to cooperatively bring about economic development throughout the region).

local control and preservation of local municipalities.<sup>319</sup> Both the county commissioner and city councilmember interviewed for this article noted the role that Councils of Governments (COGs) may play in resolving the problems in Pennsylvania.<sup>320</sup>

The question remains as to whether and how municipalities will begin to cooperate with each other more fully, considering the limited extent to which they now cooperate. The state government may play a role by incentivizing municipalities to engage in cooperative agreements and organizations to cost-share and limit the inefficient duplication of services, by partially funding the cooperatives, for example.<sup>321</sup> However, if no changes are made by the state to incentivize cooperation or by the municipalities to save themselves, the continuing economic and fiscal problems may effectively force mergers or cooperation, regardless of what residents and local officials may desire.<sup>322</sup> The county commissioner specifically noted the role of “the economy as driver of forcing mergers” of municipalities, in spite of the fact that Pennsylvanians have “a lot of community pride.”<sup>323</sup>

Many Pennsylvanians, both historically and even currently, insist on local control and the preservation of traditional communities, despite the problems inherent in this system.<sup>324</sup> The system gives local residents a greater voice in their local government, as opposed to a more centralized state, even if it makes local government confusing or less efficient.<sup>325</sup> Voluntary cooperation between municipalities provides the best possible solution to the problems of shrinking populations, confusing overlapping of local governments, and inefficient duplication of

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<sup>319</sup> See, e.g., Pennsylvania Association of Councils of Governments, *supra* note 317 (facilitating general cooperation between local governments); Regional Industrial Development Corporation, *supra* note 318 (providing for cooperation between local governments in economic development).

<sup>320</sup> City Councilmember, *supra* note 306; County Commissioner, *supra* note 306.

<sup>321</sup> County Commissioner, *supra* note 306.

<sup>322</sup> City Councilmember, *supra* note 306; County Commissioner, *supra* note 306.

<sup>323</sup> County Commissioner, *supra* note 306.

<sup>324</sup> See *supra* Parts II.B, II.C.c, V.E.

<sup>325</sup> See City Councilmember, *supra* note 306; County Commissioner, *supra* note 306; *supra* Part II.B.

services that also preserves the desire for local control and governments.<sup>326</sup> While the state may attempt to incentivize this cooperation through financing, Pennsylvania's local governments and residents may oppose any change until the economic and government fiscal situation makes cooperation absolutely necessary.<sup>327</sup> Ultimately, the peculiar system of local government in Pennsylvania results from the particular historical circumstances of the state and continues because many Pennsylvanians still consider the values that formed Pennsylvania's system to be important, despite the problems that arise from it.<sup>328</sup>

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<sup>326</sup> See, e.g., Bill Schlachter, et al., *Key Challenges and Strategies for Local Government*, U. PITT. INST. POL., at 6-19 (2011), <http://www.iop.pitt.edu/documents/Key%20Challenges%20and%20Strategies%20for%20Local%20Governments.pdf> (describing several strategies to solve the provision of services and fiscal problems in municipalities, including the use of cooperative agreements and voluntary organizations, such as COGs); National Association of Regional Councils, *Cooperative Purchasing and Shared Service Programs: Information to Guide Local & Regional Interest & Implementation*, NARC, (Oct. 2012), [http://narc.org/wp-content/uploads/NARC-Shared-Services-Presentation\\_updated-September-2012.pdf](http://narc.org/wp-content/uploads/NARC-Shared-Services-Presentation_updated-September-2012.pdf) (noting the significant role that COGs and other cooperative agreements can play in aiding municipalities and reducing costs, referencing a COG in western Pennsylvania).

<sup>327</sup> See City Councilmember, *supra* note 306; County Commissioner, *supra* note 306.

<sup>328</sup> *Supra* Parts II.B, V.