



# Legislative Locator

A Monthly Publication of The Pennsylvania Municipal League

July 2019

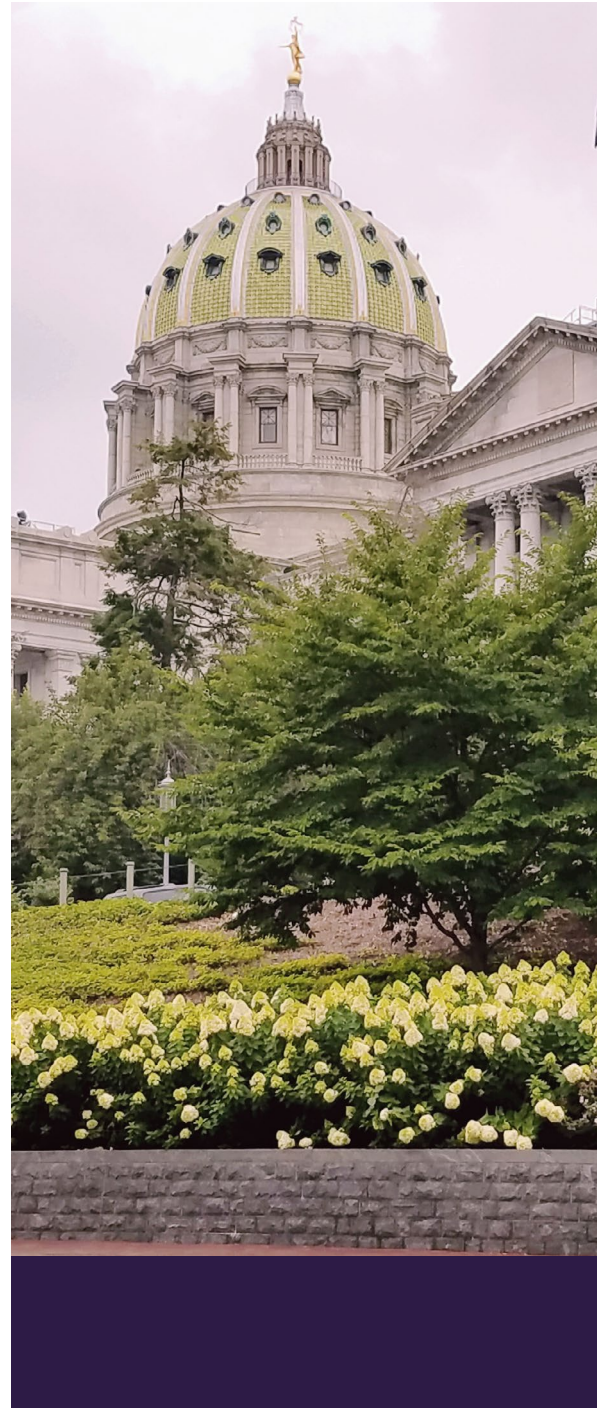
## TAKE ACTION!

### Local Use of Radar

#### Attention Local Officials:

Please reach out to your House members and members of the [House Transportation Committee](#) where [Senate Bill 607](#) and [House Bill 1686](#) await Committee consideration – and express your support! **Senate Bill 607 and House Bill 1686 are identical pieces of legislation – both bills authorize the use of radar and LIDAR for all municipal police. This proposal is supported by The League, PSATC and other local government groups, including the PA State Mayors' Association and the Radar Coalition.**

Please consider adopting a resolution supporting local use of radar in your municipality. We have provided a [sample resolution](#), on our website. If you have adopted a resolution in past sessions, it should be updated. In addition, there is a [sample press release](#) to use after adopting a resolution to let your residents know that municipal radar is a priority in your community and to encourage them to advocate for the passage of Senate Bill 607 and House Bill 1686, too.





## LEGISLATION ENACTED

### **Act 17 of 2019**

#### **Senate Bill 127 (PN 961)**

**Signed: June 28, 2019**

**Effective: Immediately**

Act 17 amends Title 35 (Health and Safety) reauthorizing the 911 Law (Act 12 of 2015) which was set to expire on June 30, 2019. The 911 Law places a monthly fee of \$1.65 on all phones and distributes the revenue to county 911 centers and PEMA. Act 17 extends the law until 2024. It also adds stakeholders to the 911 Advisory Board and permits PEMA to purchase a Smart 911 System to assist with the identification of people with disabilities when calls are made to 911.

### **Acts 50 and 51 of 2019**

#### **House Bills 547 (PN 887) and 548 (PN 538)**

**Signed: July 2, 2019**

**Effective: 60 days**

Acts 50 and 51 amend the First Class Township Code, the Borough Code and Third Class City Code to allow for the levy of Real Property Taxes by a resolution if the tax rate is levied at the same rate or at a lower rate than the previous year. An ordinance is required if there is a rate increase. Resolutions providing for a tax levy must be recorded in the municipality's ordinance book in the same manner as a tax ordinance.

### **Act 58 of 2019**

#### **House Bill 1614 (PN 2214)**

**Signed: July 2, 2019**

**Effective: Immediately**

Act 58 amends the Municipal Police Jurisdiction Law which provides exceptions to primary police jurisdiction. This legislation addresses a recent PA Supreme Court decision that called into question police action outside their primary jurisdiction. The bill extends jurisdiction to situations where a police officer or agent of the PA Attorney General's Office: has been requested to aid federal, state or local law enforcement; has probable cause to believe federal, state or local law enforcement needs assistance; or is participating, with permission, on a local, state or federal task force. The legislation is retroactive to June 15, 1982, the date the Municipal Police Jurisdiction Law was enacted. Additionally, the legislation eliminates the need for an Intergovernmental Cooperation Agreement for any of the exceptions to primary jurisdiction.



## COSPONSOR MEMOS TO WATCH

### Volunteer Fire Fighter Service Tax Credit

Senator Michele Brooks introduced [SCO414](#) as intent to introduce legislation that will create a state tax credit for active volunteer fire fighters. A volunteer who has been active for two years shall qualify for a \$500 tax credit for taxes due to the state, and a volunteer who has been active for six or more years shall qualify for a \$1,000 tax credit. The legislation is a response to the Senate Resolution 6 report released last session.

### LBFC Study on Tax-Exempt Nonprofits

Representative Christopher Rabb issued [HCO2216](#) to garner support for legislation that will direct the Legislative Budget and Finance Committee (LBFC) to examine institutions which have a nonprofit status in this Commonwealth, and to report the findings to the General Assembly.

### Inactive Status for Certified Code Officials

Representative Thomas Murt issued [HCO2247](#) as intent to introduce legislation that will amend the Uniform Construction Code (UCC) to allow the Department of Labor and Industry to create an inactive status for code officials who are taking time away from the profession and have existing International Code Council (ICC) certifications. The ICC certifications can last for up to three years.

### Public Official Drug Screening

Representative Jake Wheatley, Jr. issued [HCO2266](#) to garner support for legislation that will require all candidates for public office, including local governments, to submit a drug screening certificate of compliance when submitting a nominating petition – to be deemed eligible for the ballot.

## FY 2019-20 State Budget

This year's \$34 billion budget passed the House and Senate and went onto receive Governor Wolf's signature on June 28. The spending plan is higher than last year's by \$1.3 billion. A \$900 million surplus in unexpected revenues helped to keep budget negotiations moving forward and supported a deposit of approximately \$300 million in the state's Rainy Day Fund.

Aside from the "budget" bill, there are many other pieces of legislation that make up the budget package including the tax code, fiscal code, public school code and administrative code bills. Below are some of the highlights.

Education saw funding increases in several areas including basic education, special education, Pre-K, higher education and grant funds for school security measures. Libraries also received increased funding by \$5 million.

A temporary moratorium was placed on municipalities wishing to ban plastic bags and/or single-use plastic containers until the Legislative Budget and Finance Committee and the Independent Fiscal Office study the economic and environmental impact of this type of local legislation. The agencies have until July of 2020 to report their findings to the General Assembly.

Fund transfers were significant in this budget. In addition to a blanket authorization for the Budget Secretary to take up to \$45 million from any fund under the Governor's control for the administration of DEP and/or DCNR, there is now a permanent authorization to take money from the Environmental Stewardship Fund and the Recycling Fund. This year, the transfers are \$16 million and \$10 million, respectively.

Legislation passed that authorizes Pennsylvania to establish and administer a PA Health Insurance Exchange Fund, rather than PA residents using the federal exchange to purchase insurance. This move is expected to reduce administrative and premium costs.

The cap on the Historic Preservation Tax Credit increased from \$3 to \$5 million. The cap on PA Housing Affordability and Rehabilitation Enhancement Fund (PHARE) increased from \$25 million to \$40 million. And, Internet retailers in Pennsylvania are now required to collect sales tax when their sales exceed \$100,000.

Two items that produced heated debates on the floor of both the House and Senate were the lack of an increase in the minimum wage and the elimination of cash assistance, a safety net for disabled and impoverished Pennsylvanians.

## LEGISLATION OF INTEREST

### Right to Know Law – Commercial Requests

**House Bill 283 (PN 1736)**, introduced by Representative Justin Simmons, amends the Right-to-Know Law concerning records requested for a commercial purpose. Commercial purpose is defined as the use of a record for the purpose of: selling or reselling any portion; obtaining names and addresses for the purpose of commercial solicitation; or for any other purpose which the requester can reasonably expect to generate revenue. The bill provides that use of a record by a nonprofit educational or scientific institution for research or use of a record by the news media, a journalist or author, do not constitute a commercial purpose.



## LEGISLATION OF INTEREST

In terms of written requests, an agency may require the requester to certify in writing whether the request is for a commercial purpose. Certification will be proscribed by the Office of Open Records. A false certification is subject to penalty.

The legislation authorizes an agency to charge additional fees for responding to a commercial request. Fees must be reasonable, approved by the Office of Open Records and not established with the motive of making a profit. The bill also clarifies that with any fees an agency and requester may enter into a contract that provides for an alternative fee arrangement. And, finally, fees charged may be appealed to the Office of Open Records.

If enacted, this legislation will take effect in 60 days.

**Location:** *Received First Consideration before the House, May 6, 2019*

### Right-to-Know Law – Personal Financial Information

**House Bill 860 (PN 1127)**, introduced by Representative Brett Miller, amends the Right-to-Know Law expanding the definition of personal financial information which is considered exempt from the law. The expanded definition includes account passwords, W-2s, benefit elections, retirement fund contributions, healthcare contributions and names and ages of dependents.

If enacted, this legislation will take effect in 60 days.

**Location:** *Passed House; Senate State Government Committee, May 17, 2019*

### Public Contract Bid Non Receipt Act

**House Bill 1035 (PN 1207)** and **Senate Bill 494 (PN 528)**, introduced by Representative Christina Sappey and Senator Scott Martin, respectively, amend Act 78 of 1979 (the law relating to purchases without bids) authorizing political subdivisions, municipal authorities and transportation authorities to enter into contracts for services after two consecutive advertisements have failed to induce bids. Prior to enacting the contract, a governing body must identify at a public meeting, the entity that it intends to contract with, the contract price and a summary of the contractual terms and conditions.

Misuse of or an attempt to evade advertising requirements under current law will subject the governing body to penalties.

If enacted, this legislation will take effect in 60 days.

**Location:** *House Bill 1035: Passed House; Senate Local Government Committee, June 20, 2019*

*Senate Bill 494: Received First Consideration before the Senate, June 18, 2019*

### Public Meeting Agendas

**House Bill 1069 (PN 2209)**, introduced by Representative Aaron Bernstine, amends Title 65 (Public Officers) regarding public meeting agendas. The bill requires agencies, including local governments, to post their meeting agenda 24 hours in advance online, if they have a publicly accessible website. An agenda must include each matter of business that will or may



## LEGISLATION OF INTEREST

be a subject of deliberation or official action at a meeting, as well as the meeting location. Copies of the agenda must also be available and posted at the meeting location.

The bill limits deviation from a posted agenda to:

- emergency business relating to a clear and present danger to life or property;
- matters arising within the 24-hour period that are *de minimis* in nature and not involving the expenditure of funds or entering into a contract; or
- changes to the agenda by majority vote with the reason being announced before the vote to change the agenda is taken.

Finally, business arising during the course of a meeting by a taxpayer or resident may be referred to agency staff. Or, if *de minimis* in nature, the governing body may take official action.

If enacted, this legislation will take effect in 60 days.

**Location:** *Received First Consideration before the House; House Rules Committee, June 19, 2019*

### Removal of Local Elected Officials for Not Attending Meetings

**House Bill 1444 (PN 2259)**, introduced by Representative Justin Walsh, amends Article IX, Local Government, of the PA Constitution to allow for the General Assembly to provide for, by law, the removal of a local elected official for cause, which includes absenteeism from meetings and dereliction of duty. An amendment to the Constitution requires passage in two consecutive sessions before going to the voters in the form of a ballot referendum.

**Location:** *Passed House; Referred to Senate Local Government Committee, July 8, 2019*

### Fireworks Law

**House Bill 1687 (PN 2287)**, introduced by Representative Frank Farry, amends the Fireworks Law (Act 43 of 2017) and places the legislation under Title 3 (Agriculture).

House Bill 1687 maintains many of the same provisions as Act 43 relating to the sale and use of consumer fireworks. There are no changes to permanent consumer firework retail sales regarding licensing, location and safety regulations, except for the notice requirement mentioned below. A person must still be 18 years of age or older to purchase or use consumer fireworks; consumer fireworks may not be used within 150 feet of a vehicle or a building; and no person may use consumer fireworks while intoxicated.

House Bill 1687's new provisions pertaining to the use of consumer fireworks are as follows:

- Consumer fireworks are limited to use between the hours of 10:00 a.m. and 10:00 p.m., except for specific days whereupon use is authorized until 1:00 a.m. Those days are:
  - July 2, 3 and 4 and December 31 of each year. When July 4 falls on a Tuesday, Wednesday or Thursday, consumer fireworks are authorized for use until 1:00 a.m. and on the immediately preceding and following Fridays and Saturdays;

## LEGISLATION OF INTEREST

- a list of holidays and weekends are expressly excluded from local regulation including the dates listed above, as well as Memorial Day and Labor Day and their respective preceding and following Saturdays and Sundays.
- A municipality is authorized to enact rules and regulations concerning the sale and use of consumer fireworks that are not in conflict with the provisions outlined in the bill.
- All consumer fireworks sales facilities must display a posted notice that states, “additional conditions, prohibitions and limitations on the use of fireworks may be implemented by a municipality.”
- Penalties are added for a conviction of a second offense within one year of conviction of a first offense. Second offense penalties include a higher fine and a misdemeanor of the third degree.
- Language is added to clarify that the 12% tax imposed on the sale of consumer fireworks is only on the purchase price of each item sold, not Sales Tax;

Other provisions that are changed by House Bill 1687 include:

- all of the language relating to temporary retail structures is removed, see Senate Bill 696 below; and
- municipal bond limits for display fireworks are lowered to not less than \$1,000 from not less than \$50,000.

Senate Bill 696 has been introduced to address temporary retail structures. The legislation tasks the Department of Agriculture with rule-making authority for firework safety standards after a recent court decision determined that the General Assembly did not have the authority to delegate that responsibility to the National Fire Protection Association, striking down the portion of Act 43 dealing with temporary retail structures.

If enacted, House Bill 1687 will take effect in 60 days.

**Location:** *House Agriculture and Rural Affairs Committee, July 8, 2019*



**120<sup>TH</sup> ANNUAL  
LEAGUE SUMMIT**  
**OCTOBER 3-6**  
**Gettysburg Borough**  
Gettysburg Hotel & Majestic Theater  
Registration and accommodation information now available at:  
[PML.org/league-summit/2019-league-summit](http://PML.org/league-summit/2019-league-summit)



## The Pennsylvania Supreme Court Weighs in on Home Rule

By Gretchen K. Love, Attorney at Law, Campbell Durrant Beatty Palombo & Miller, P.C.

The degree of power for home rule municipalities to regulate business has been given a fraction of clarity by the Pennsylvania Supreme Court. In *Pennsylvania & Lodging Ass'n et al. v. City of Pittsburgh*, 175 A.3d 219 (Pa. 2019), the plaintiffs challenged the City of Pittsburgh's authority to enact ordinances which on their face appear to regulate business. Specifically, the Paid Sick Days Act ("PSDA"), which requires businesses operating in the City to provide paid sick leave to their employees and the Safe and Secure Buildings Act ("SSBA"), which places education and training requirements (related to security) upon building owners and their employees.

Any municipality which adopts a home rule charter "may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time." PA. CONST. art. IX, § 2; Home Rule Charter and Optional Plans Law ("HRC"). Despite this broad grant of power, Section 2962(f) of the HRC carves out home rule communities from determining "duties, responsibilities or requirements placed upon businesses, occupations and employers... except as *expressly* provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities." This is commonly known as the "Business Exclusion."

In reaching its determination, the Court scrutinized the state statutes relied on by the City. With respect to the PSDA, the City pointed to the Disease Prevention and Control Act ("DPCL") of 1955 as providing its express authority. DPCL provides "municipalities which have boards or departments of health or county departments of health [with the ability to] enact ordinances or issue rules and regulations relating to disease prevention and control, which are not less strict than the provisions of th[e] act or the rules and regulations issued thereunder by any board." 35 P.S. § 521.16 (c).

The Court found that the DPCL provided enough express authorization for the City to enact the paid sick leave law because the ordinance was mostly a health related measure which would aid in disease prevention and control by incentivizing sick employees to stay home. The Court noted that the finding of an "express" authorization should be construed in favor of the municipality.

With respect to the SSBA, the Court concluded the opposite – the statute relied upon by the City did not provide express authorization for the ordinance. Specifically, the City relied on various statutes, including the Emergency Code, 35 Pa. C.C. §§7501-7931. In reaching its determination, the Court explained, "nothing about this statutory language suggests that it can support imposing broad obligations upon virtually all private building staff, from security to custodial... We find nothing in the Emergency Code to sustain the SSBA."

Given the lack of unanimity in the Court's opinion, it is clear that the Court was divided on the appropriate method to evaluate the scope of home rule. The Majority Opinion states that it sought to find a "middle-ground" in construing "expressly." It also concedes that "even if this case does not pronounce the ever-elusive bright-line rule, it enables us to bracket the gray area between what is and is not allowed by the limitations upon business regulation imposed by the Business Exclusion." The dissenting Justices note the elasticity and uncertainty in the overall outcome of the analysis.





Despite this lack of clarity, it seems the majority of the Court subscribes to a more tethered and plain language reading of “expressly” in construing what kinds of ordinances are permissible. Only through *careful* deliberation and advisement will a home rule legislative body be able to accurately determine if a state statute provides the requisite express authorization to enact an ordinance which impacts business.

*The Pennsylvania Municipal League participated in an amicus brief in support of the City.*



## UPDATE

### Local Government Lawsuit Against FCC Small Cell Order Moves Forward

Recently, a coalition of local governments and municipal organizations, along with other parties, filed initial briefs in a suit to overturn the Federal Communications Commission’s (FCC) 2018 order preempting local authority over small cell infrastructure on public rights-of-way. NLC participated as a member of the [local government coalition](#), which argued that the FCC misinterpreted the Communications Act in its justification of its preemption authority in the small cell order. The coalition brief also argues that the limits on fees, moratoria and shot clocks in the order are arbitrary and capricious under the law and should be overturned.

Several other private and public-sector entities also filed in the initial round of briefs. The [American Public Power Association](#), which represents public utilities, made arguments similar to local governments about the lack of statutory standing for the FCC’s order. [Montgomery County, Maryland](#), filed a separate brief from other local governments, raising concerns about the FCC’s failure to confirm that the current radiofrequency emissions standards, which date to 1996, are still valid in the case of small cell deployments. Many municipal governments, municipal associations and utility associations filed amicus briefs in support of local governments, as did a coalition of the [Communications Workers of America](#), the [National Digital Inclusion Alliance](#), and [Public Knowledge](#).

The federal government must file its brief in the case in August, and all parties will have an opportunity to respond in September.