

LEGISLATIVE LOCATOR

Your source for legislative reporting and advocacy

A Monthly Publication of the Pennsylvania Municipal League

September 2018

Take Action!

Attention Local Officials! Contact your [Senator](#) and ask for **House Bills 913, 914, 915 and 916** to be called up for a vote. **This bill package authorizes storm water fees as an alternative option to help pay for storm water mandates.** *Ask your Senator for **PASSAGE WITHOUT AMENDMENT**, before this session ends and we have to begin this process again.*

House Bills 913, 914, 915 and 916 amend the Town Code, Borough Code, First Class Township Code and Third Class City Code, respectively. These bills authorize the enactment and enforcement of ordinances to govern and regulate the planning, management, implementation, construction and maintenance of storm water facilities. Second class townships and municipal authorities were afforded similar authority in prior sessions.

In addition, the legislation provides for the optional levy by ordinance of reasonable and uniform fees to cover the costs of storm water management. Fees can be assessed in one of the following ways: on all properties; on all properties benefited by a specific storm water project; or via a storm water management district assessing fees on all property owners. Fees may be annual or more frequent and exemptions and credits must be provided for properties meeting best management practices.



414 North Second Street, Harrisburg, PA 17101 • Phone: 717-236-9469 • Fax: 717-236-6716

Email: rschuetler@pml.org — asturges@pml.org • Website: www.pml.org

LEGISLATIVE LOCATOR

Legislation of Interest

Optional County Demolition and Rehabilitation Fund

Senate Bill 735 (PN 1909), introduced by Senator James Brewster, amends the Real Estate Tax Sale Law (RETSL), authorizing counties to establish demolition and rehabilitation funds for blighted property.

Following the adoption of an ordinance to establish a demolition and rehabilitation fund, a county may impose a fee of up to 10% of the purchase price of a property sold for delinquent taxes. The fee is to be collected at the point of sale and deposited into the fund. Public notice is required and must state that there is a fee and provide the percentage rate. Fund moneys shall only be used by the county or by an entity under contract with the county for the demolition and rehabilitation of blighted property located in the county. The fee does not apply to purchases of tax delinquent property sold to a nonprofit, land bank or government entity.

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

Location: *Passed Senate; House Urban Affairs Committee, June 25, 2018*

Boroughs – Decrease in Number of Council

Senate Bill 1168 (PN 1748), introduced by Senator Eichelberger, amends Title 8 (Boroughs), allowing residents to seek to reduce the size of their borough council through referendum.

Senate Bill 1168 applies to small boroughs with populations of less than 3,000 residents where at least 5% of the registered electors petitioned the court for a decrease in the size of the borough council. After the petition is certified, the Court of Common Pleas shall certify the question to be presented to the residents at the next general election. This question may not be considered more than once in five years.

If enacted, this legislation will take effect immediately.

Location: *Senate Appropriations Committee, June 18, 2018*

Home Rule Law Ballot Questions

Senate Bill 1176 (PN 1756), introduced by Senator Gene Yaw, amends the Home Rule Law by limiting home rule ballot questions to general and municipal elections only (no primaries). Further, the legislation prohibits an ordinance or petition from being filed for the election of a government study commission when *any* of three ballot questions regarding election of a government study commission have been defeated in the last four years. Current law allows for a different question to be placed on the ballot the following year, after a question has been defeated.

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

Location: *Reported out of Senate Appropriations Committee; On Third Consideration, September 25, 2018*

Voluntary Municipal Dissolution in Counties of the Second Class

House Bill 2122 (PN 3101) and **Senate Bill 1069 (PN 1537)** amend the Second Class County Code to provide for the voluntary dissolution of cities, boroughs and townships with a population of 10,000 or less within Allegheny County. The newly dissolved district would be designated as an unincorporated form of government and administered by the County.

The bills require the local governing body to initiate the dissolution and to develop an essential services transition plan with the County as part of an intergovernmental cooperation agreement. Following public advertisement and public meetings, a referendum will be held. If passed,

LEGISLATIVE LOCATOR

the unincorporated district will be absorbed by the County and the essential services transition plan will become the new local ordinance and the process will begin to allow the County to administer the district. Timeframes and specific details relating to debt and taxes are outlined in the legislation.

The bills also provide for the merger and consolidation of an unincorporated district with a neighboring municipality.

The House Urban Affairs Committee held a hearing on HB 2122 on May 22, 2018.

Location: *House Bill 2122 – House Urban Affairs Committee, March 9, 2018*

Senate Bill 1069 – First Consideration before the Senate, September 26, 2016

PA Construction Code Amendments

House Bill 2622 (PN 3961), introduced by Representative Clint Owlett, amends the PA Construction Code Act to require that decisions rendered by a local uniform construction code board of appeals shall be honored by the subsequent code administrator that takes jurisdiction over an existing project. This legislation was introduced last session and passed the House.

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

Location: *House Labor and Industry Committee, September 10, 2018*

Cosponsor Memos to Watch

Firearms at Public Meetings

Representative Carolyn Comitta issued [HCO3626](#) as intent to introduce legislation that would offer an option for a municipality to prohibit firearms at public meetings. Posted notice of the prohibition would be required at every public entrance to the meeting.

Fireworks Law Amendments

Representative Frank Farry issued [HCO3679](#) to garner support for new legislation that would amend the Fireworks Law to allow local governments to implement reasonable controls for the sale and use of consumer fireworks within their borders. Further, the legislation would limit the timeframes in which fireworks can be discharged and increase criminal penalties for violations of the sale and use.

House and Senate Session Days:

Senate: October: 1, 2, 3, 15, 16, 17
November: 14

House: October: 1 (NV), 2 (NV), 9, 10, 15, 16, 17
November: 13

Session dates are subject to change.

Approximately twice a month, the [National League of Cities](#) issues a Federal Advocacy Update to let you know what is happening at the national level. You can catch these updates on our website [here](#).

Five Takeaways for Cities from the FCC's Small Cell Preemption Order

By [Angelina Panettieri](#)

On Wednesday, September 26, the Federal Communications Commission (FCC) [voted to approve a declaratory ruling and report and order](#) that would enact harsh new preemptions of local authority over small cell wireless facility deployment and management of local rights-of-way.

The order is expected to go into effect 30 days after publication of the final version in the Federal Register. As [previously reported on Cities Speak](#), the order will:

- shorten the time cities have to process applications for small cells to either 60 or 90 days, depending on whether they are being mounted on an existing or new structure;
- limit application fees for small cells to \$100 per site, and recurring fees to \$270 per site, per year, for small cells in the rights-of-way;
- prohibit cities from assessing fees that include anything other than a “reasonable approximation” of “reasonable costs” directly related to maintaining the rights-of-way and the small cell facility; and
- limit aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are reasonable, comparable to requirements for other rights-of-way users and published in advance.

NLC, along with its local government partners, has fought this preemption order through [comments to the FCC](#) and advocacy on Capitol Hill; and, we will continue the fight in all three branches of the federal government. The final text of the order has not yet been released, but is expected to be substantially similar to [the draft](#), with one change: if cities notify wireless providers that applications are incomplete, they will be able to restart, rather than toll, the shot clock for that specific application.

Here are five key takeaways for cities from the FCC's vote:

1. Cities Have an Image Problem

Cities have faced an upswing in preemption from state and federal governments, particularly on telecommunications issues. This latest preemption is just further evidence of an ongoing image problem for cities – namely that they are obstructions to business and to winning the “race to 5G,” rather than innovators and builders of strong communities. Commissioner Mike O’Rielly described local governance as consisting of “ridiculous fees and prolonged delays,” and, Commissioner Brendan Carr, in his pre-vote statement, inaccurately depicted 5G deployment as a zero-sum battle between urban and rural areas, in which only preemption can save rural communities from the ambitions of large cities.

Despite the leadership of cities like San Jose, California and Lincoln, Nebraska in deploying small cell wireless facilities, wireless advocates have convinced many policymakers that city leaders are not the best people to make decisions about their own communities and streets. A [Wall Street Journal editorial](#) published the morning of the FCC meeting claimed that “U.S. cities are throttling deployment with extortionist fees...[and] self-serving behavior from local politicians.” The FCC's vote, the [many state bills](#) preempting local authority passed in the last several years, and the introduction of the [STREAMLINE Small Cell Deployment Act](#) in the Senate demonstrate that cities need to overcome this bias against local leadership.

2. Cities Need to Educate their Legislators

Federal policymakers can change their minds when they hear from their local leaders. FCC Commissioner Jessica Rosenworcel, who both affirmed and dissented in part on the preemption order, told her fellow commissioners that “If we want to speed the way for 5G service, we need to work with cities and states across the country because they are our partners.” [Nine members of the House Energy and Commerce Committee](#), as well as senators from [New York](#) and [Nevada](#) sent letters to the FCC prior to its vote, urging the Commission not to hold the vote on this item, as it did not sufficiently incorporate the many objections raised by local governments. Commissioner Rosenworcel and the Senators and Representatives who objected to the preemption did so in no small part because of the hundreds of city officials who called and sent letters to Congress and the FCC describing how the order would harm their communities.

Very few members of Congress or their staff have personal experience with city administration, and even fewer have personal experience with managing telecommunications equipment in cities. Without helpful stories, data and examples from local officials, these legislators have no evidence to counter the lobbying by wireless companies that claims cities need to be preempted to successfully deploy new technologies. While the FCC’s action may reduce some of the urgency felt by members of Congress to legislate on small cell deployment, it’s imperative for cities to keep educating Congress on how preemption widens, rather than narrows, the digital divide.

3. Cities Should Strengthen their Own Policies and Procedures

While NLC, its local association partners and local governments around the country will fight the implementation of the order, cities should take a close look at their own policies and procedures around small cell deployment. Regardless of whether the order is implemented or not, small cell technology is here to stay and cities need to prepare themselves to protect residents and streetscapes while pushing for the best deployment they can get for their communities.

In our recently-published [Municipal Action Guide on Small Cell Wireless Technology in Cities](#), NLC identified some important best practices for cities to follow as they plan small cell deployment. In the face of new requirements for shorter shot clocks and stricter tests on aesthetic requirements, it is more important than ever for cities to work with community groups to determine and publish the specific requirements for successful deployment. These may include more detailed, neighborhood-by-neighborhood requirements regarding issues such as infrastructure density, color or decorative pole requirements to ensure that sensitive areas of the city are sufficiently protected in advance. Any requirements imposed on providers must be available publicly before applications are submitted, so finalizing these requirements should be a first step for most communities.

Cities should be cautious when working with providers on these proactive steps – while it is important to incorporate technical needs into design decisions, any pre-application consultation that could be considered mandatory will start the new, shorter shot clock timeline for application reviews. Cities should also consider updating requirements for other occupants of the rights-of-way to harmonize them with requirements for small wireless facilities, to ensure that no rights-of-way user can claim requirements are not neutrally applied.

4. Cities Should Expect a Bumpy Road for Implementation

As many communities noted in their comments to the FCC opposing this decision, the new order is likely to increase, rather than decrease, litigation over wireless deployment. This is because the order contains little guidance and few definitions and offers a great deal of leeway to future judges in cases between local governments and wireless providers over interpreting the reasonableness of local fees and aesthetic requirements.

While this may have been intended to provide local governments with some degree of flexibility, this means that cities have little way to know what a “reasonable” consultant expense is if they do not have internal staff to manage small cell deployment, or what are “reasonable” aesthetic requirements, particularly as they relate to undergrounding requirements. Providers are likely to challenge local governments on these two points, particularly when a city sets rates at above the FCC-determined “safe harbor” rate of \$270 per small cell, per year, or if meeting aesthetic requirements will increase the cost of a particular deployment.

Cities may also see an increase in proactive outreach by wireless providers or tower companies informing them of what those companies see as the cities’ obligations under the new order. However, local governments should take care to consult with their municipal attorneys, state municipal leagues and possibly state utility commissions to verify these claims before taking any new actions.

5. Cities Can Fight Back

While the FCC’s vote represents **another preemption blow for local governments**, cities can fight back against this measure and others like it. NLC and our partners are pursuing administrative, legal and legislative steps to stop the FCC’s overreach.

A city, or cities, will likely appeal the FCC’s order in a circuit court. Depending on that court’s decision, or if there are cases in multiple circuits with differing outcomes, the issue could move as high as the Supreme Court, as in the case of *City of Arlington v. FCC*. Finally, under the terms of the Congressional Review Act, Congress may choose to overrule the order within 60 legislative (e.g., when Congress is in session) days of the rule’s publication in the Federal Register. Use of the Congressional Review Act has grown in popularity in recent years but would still necessitate the building of substantial support on Capitol Hill by cities and their leaders.

For more information on small cell technology and how your city can prepare, view [NLC’s municipal action guide](#) and tips from [Next Century Cities](#).

