



Save the Date!

PMEA 2022 Annual Conference – September 7 – 9, 2022 @ Penn Stater, State College

American Rescue Plan Act Funding

By: *GMS Funding Solutions*

THE BASICS OF ARPA

The American Rescue Plan Act (ARPA) of 2021 established the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF), which delivers \$350 billion in COVID-19 relief to state, local, territorial, and Tribal governments. These funds are intended to provide government entities with substantial flexibility to meet local needs—including support for households, small businesses, impacted industries, essential workers, and communities hardest hit by the COVID-19 pandemic. These funds can also be used to advance critical water, sewer, and broadband infrastructure projects.



ELIGIBILITY TEST

The US Department of Treasury published the Coronavirus State and Local Fiscal Recovery Fund Interim Final Rule (IFR) on May 10, 2021, which has been updated several times since then with the public comment and question period ending July 16, 2021. Treasury has stated that until a Final Rule is adopted and becomes effective, the IFR is, and will remain, binding and effective. This means that if recipients use CSLFRF in a manner consistent with the IFR, while the IFR is effective, they will not be subject to recoupment. The IFR provides guidance on eligible uses of the funds, and outlines a general two-part eligibility test:

1. A recipient must first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency.
2. In addition, the eligible use must “respond to” the identified negative economic impact in a reasonable and proportionate manner.

ELIGIBLE USES

ARPA funding is specifically designed to:

1. **Respond to Public Health Emergency/Negative Economic Impacts** – provides funding for COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff, in addition to addressing negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.
2. **Provide Premium Pay** – provides assistance for economic harm to the public sector and essential workers - healthcare, education and childcare, transportation, sanitation, grocery and food production, public health and safety by providing premium pay.
3. **Alleviate Revenue Loss** – allows recipients to allocate funds for the provision of government services (a broad category of eligible expenditures) to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency.
4. **Construct Water/Sewer/Broadband Infrastructure** - provides recipients with the ability to make necessary investments in water, sewer, or broadband infrastructure.

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Annual Business Meeting Board Election

PMEA elected three members to the PMEA board at the annual conference this year. As per the association’s 2019 revised by-laws, the three seats are ending their initial two-year terms. All future terms will be for four-years. Elected to serve beginning in January 2022 are: the boroughs of **Ephrata**, **Hatfield**, and **Zelienople**. Borough councils will select their representatives to serve.

American Rescue Plan Act Funding (continued)

In an effort to promote a longstanding impact with multiplier effects for the economy, recipients may assign a portion of their ARPA CSLFRF funds to an appropriate sub-recipient, such as a municipal authority, an industrial development authority, or a non-profit organization. Investments in local community initiatives and economic recovery projects that fall within the eligible expenditure categories and meet the two-part eligibility test can result in long-lasting, positive, and recurring impacts in communities throughout Pennsylvania.

DISCLAIMER

The information provided in this article is for general informational purposes only. The eligible uses of ARPA Funds described are provided as examples of opportunities and uses that may be approved as allowable expenditures of ARPA Funds and are not intended to be nor should be interpreted as approval or guaranty of eligibility. Each investment opportunity and request for ARPA funding should be reviewed by independent counsel for compliance with the U.S. Department of the Treasury's guidelines regarding the use of ARPA Funds.

GMS Funding Solutions is a project management team working alongside our public and private sector clients to secure funding and financing for the advancement of transformative community and economic development projects across Pennsylvania. Visit us at: www.gmsfundingsolutions.com.

Municipal Electrics and the Municipal Claims and Tax Liens Act

By: Isaac P. Wakefield, Esq., and Samuel E. Wiser, Jr., Esq., Salzmann Hughes

Avoiding accruing utility delinquencies is crucial for municipalities. Mounting arrearages present budgetary issues for municipalities and often lead to inequitable results where ratepayers who diligently pay their bills are forced to subsidize those who do not. The advent of COVID-19 and the accompanying mandatory or voluntary limitations on municipal collection efforts have left some municipalities with work to do to bring accounts current. Utility service termination resulting in the displacement of people or businesses can be politically challenging. Municipal electric utilities that adopt and implement proper delinquency policies and uniform collection processes have always been and will continue to be in the best position to protect against carrying forward sizeable accounts receivable balances and associated pitfalls.

Pennsylvania's Municipal Claim and Tax Lien Law or "MCTLL" governs municipalities' collection of unpaid service or user charges, including for electric service, against real estate. MCTLL contains robust substantive and procedural requirements that guide a municipality's effort to collect such charges by, for example, filing municipal liens and executing on those liens through the writ of *scire facias* process. The trouble, however, is that MCTLL has not been substantially revisited by the Pennsylvania General Assembly since its enactment in 1923. Accordingly, the law presently contains archaic language and complex processes that often confound local governments that seek to implement its terms. And recent judicial applications of the MCTLL have left some municipalities questioning their powers under MCTLL and yearning for a clarifying legislative effort to modernize the law.



No doubt borough electric utilities are not strangers to the Commonwealth Court's 2017 decision in *Ellwood City v. Heraeus Electro-Nite Co., LLC*, 167 A.3d 273 (Pa. Cmwlth. 2017). *Ellwood City* involved a borough's efforts to recover approximately \$1.3 million from an industrial customer for past electric service not previously billed due to a billing error. Of particular concern was the Commonwealth Court's reasoning, which was arguably unnecessary to its decision in the case, that the nature and content of the particular ordinance at issue precluded the imposition of a municipal lien. The ordinance characterized the electric service as contractual or voluntary, rather than as a unilateral governmental action. And, in

turn, a contractual dispute cannot serve as the basis for a lien against real estate by operation of law. The Commonwealth Court's decision, though limited to the ordinance at issue in *Ellwood City*, resulted in much hand-wringing due to concern that, read broadly, the court's decision could prevent boroughs and other municipalities from filing municipal liens for the collection of utility service charges. Thus far, we have not seen challenges to utility collections along these lines. But the hope is that Pennsylvania's General Assembly will amend MCTLL to clarify that the conclusions of *Ellwood City* were erroneous and to confirm what has always been true, that municipalities may use municipal claims and liens to recover unpaid utility rates for utility services provided including electric service.

The fall-out from *Ellwood City* is only one among a number of complaints regarding the current language of the MCTLL. Other often invoked concerns surround permissible interest rates and penalties to be passed both before and after a lien is filed, the extent to which liens exist and are recoverable for delinquencies that have not been perfected through the formal filing of a lien, and questions regarding the priority of a municipal claim or municipal lien over other encumbrances. And, for their part, municipal solicitors must sometimes wrestle with implementing antiquated procedural requirements from the MCTLL in the modern court system.

Unfortunately, while there is an expectation that the legislature is making strides toward and will ultimately amend MCTLL in the near term to account for some of these grievances, there are no bills

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Municipal Electrics and the Municipal Claims (continued)

pending yet in the General Assembly. We are compelled to withhold speculation on what the entire scope of those changes may be or when they may occur. We only hope that some of the common questions about MCTLL are addressed.

Anticipation over a modernized and clarified MCTLL should not stall a borough's collection efforts. It is advisable for boroughs to review their existing collections policies and consult with their solicitors regarding their efficacy under MCTLL's existing structure and pursuant to any other applicable laws including the Utility Service Tenants Rights Act and the Fair Debt Collection Practices Act. The attorneys at Salzman Hughes, P.C. routinely advise clients on the intricacies of their collection efforts and would be glad to provide an independent review of any collections policies. And, of course, we will continue to monitor and contribute to any legislative efforts to modernize MCTLL to the extent we are granted the opportunity.

Salzman Hughes, P.C. is Solicitor of PMEPA. The attorneys at Salzman Hughes, P.C. can assist with any questions related to the new legislative measures explained in this article.



Redistricting – A Once in a Decade Job

By: Joe Uliana, Managing Principal, J.M. Uliana & Associates

At beginning of each decade, states are required to redraw the boundaries of state legislative and Congressional districts. The process of legislative reapportionment is a constitutional mandate, made necessary to ensure that districts are the same size and that new district boundaries reflect the shifts in population that have occurred over the previous ten years.

Redrawing of state legislative and congressional boundaries may seem like a technical, inside baseball issue, but the results have a real-world impact. These new district lines will help to determine your state Representative, Senator or Congressperson.

Final decisions on these changes are likely to be made in the next two months, so it is a good time to look at the process and what might happen.

The 2020 Census found that Pennsylvania's population, while growing by 2.1%, was slower than the growth in the country as a whole, as a result Pennsylvania will lose one Congressional seat, dropping from 18 seats to 17.

How states draw their Congressional districts is unique to each state. In Pennsylvania, the new Congressional map is a law, approved like any other law. A Bill is passed through both the House and Senate and is signed by the Governor. This may seem straight forward and simple, but politics is always in play. Also, Governor Wolf is a Democrat, and the House and Senate are controlled by Republicans, so this makes agreeing on a final map more difficult. Compromises will be needed.

An agreement might be a little easier to achieve, given the announcements that two Members of the Pennsylvania Congressional delegation, Rep. Connor Lamb (D-Allegheny) and Rep. Michael Doyle (D-Allegheny), are not seeking re-election. It seems logical that their seats may be consolidated in order to get to 17 seats, but sometimes the simple answer doesn't always work out.

While the Congressional reapportionment depends on national population shifts, state redistricting is only about the changes in the Commonwealth.

The 2020 census provides interesting insights into a long-term, Pennsylvania trend. Pennsylvania's population continues to grow south and east. The dividing line between population growth and loss in Pennsylvania is the area bounded by I-80 to I-81 and south to the Maryland border. The only county outside of this area that grew in the last ten years is Allegheny County. The area to the north and west I-80 to I-81 has lost population.

It looks like the City of Philadelphia has grown enough to add one House seat. The Philadelphia suburbs as well as York, Cumberland, and Lancaster Counties have all grown. Those areas could possibly gain state House seats, as well.

Counties that will possibly lose seats come from the areas that border the states of Ohio, New York, and West Virginia, where counties have lost population over the last ten years.

While it is clear that some seats will be moved from west to east, everything else is yet to be determined. The state House and Senate redistricting process is much different from Congressional reapportionment. The Pennsylvania Constitution provides that General Assembly seats are redrawn by a five-member Legislative Reapportionment Commission, consisting of the four caucus Floor Leaders and a fifth Member, the Commission Chair, who is usually appointed by the Supreme Court. This year the Supreme Court chose the highly respected former Chancellor of the University of Pittsburgh, Mark Nordenberg to be the Commission Chair.

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Redistricting (continued)

Former Chancellor Nordenberg has promised an open and transparent process. To date, the Commission he chairs has held fourteen public meetings and accepted hundreds of formal, public comments. When the Commission publishes their draft maps, there will be additional public hearings before a final map is approved.

There is much work to do before the end of the year. The process of drawing new districts has been hampered by the COVID-19 pandemic, which has caused the Department of Commerce to delay the transfer of critical census data to the states. The lateness in receiving local population information is forcing the map drawing process to shorten significantly.

Key decisions that will affect the people of Pennsylvania for ten years will now be made soon. In between football games, Thanksgiving, deer hunting and preparations for Christmas make sure to pay attention to what is happening in Harrisburg on Congressional and Legislative reapportionment. Who knows, your community may have a new state Representative, state Senator or Member of Congress next year.

Ephrata Hosts AMP Board

The American Municipal Power (AMP) board held its regular monthly meeting in Ephrata. Bob Thompson, manager and AMP Board member, stated that “the Borough of Ephrata was honored to host the October meeting of the AMP Board of Trustees on Wednesday October 20, 2021.”

Thompson added, “in addition to the board meeting members of the board as well as several of AMP staff visited Ephrata’s Pennsylvania RICE (reciprocating internal

combustion engine) Peaking installation. This consisted of 5.4 mw of peak shaving diesel generators. The project is expected to be commissioned COD (commercial operation date) on November 1, 2021. Ephrata is the first of nine Rice Peaking projects to come online in partnership with AMP. The other Pennsylvania participants include Perkasio, Hatfield, Schuylkill Haven, Mifflinburg, Quakertown Blakely, Weatherly and Girard.”



Associate Member Spotlight



An **AEP** Company

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There are a variety of ways you can approach your municipal energy strategy. Partnering with an energy supplier you trust is step one. Backed by our parent company, American Electric Power (AEP), with more than 100 years of energy experience, AEP Energy offers stability in service and price to deliver the right solution for your municipality. Visit us at <https://www.aepenergy.com/>.

We Want to Hear From You

Please share with us your exciting projects and photos for future newsletters. Your submissions should be sent to bosak@papublicpower.org at any time and we will use them in upcoming editions.

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