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# Legislative Locator

The Legislative Locator is a Monthly Publication of The Pennsylvania Municipal League



June 2021

## Small Wireless Facilities Deployment Act A Win for Local Government

Legislation providing for the deployment of small cell wireless facilities has passed both the House and Senate and awaits the Governor's signature. House Bill 1621, considered the gold standard as the most municipal friendly small cell legislation in the country, is a win for local governments in the Commonwealth.

In previous sessions, The League opposed small cell infrastructure bills because provisions were more restrictive than the 2018 FCC Order and local zoning authority was preempted. As the new 2021/2022 legislative session began, The League and AT&T negotiated a compromise that upheld local authority while also easing small cell infrastructure deployment. We then went to our respective colleagues to gain their approval of the compromise.

As a united front, the wireless industry and local government presented the compromise to the General Assembly this spring asking for the language to remain as negotiated. The introduced legislation remained largely unchanged, except for a few provisions negotiated between the wireless industry and the unions that represent the workers installing small cell facilities.

The League is proud of the end result. Our years of opposition and consternation from prime sponsors has paid off and the result is a much better piece of legislation for local government. Please [click here](#) to view a comparison of the final bill with previous versions.

We would like to thank the Cohen Law Group for their legal and technical advice throughout this process. Their assistance was invaluable to our efforts.

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## General Assembly Sends 2021/2022 Budget to the Governor's Desk

Before their summer recess and five days ahead of its due date, the General Assembly passed a \$40.8 billion budget for the 2021/2022 fiscal year, including \$39.78 billion from the General Fund and \$1.04 billion from federal relief through the American Rescue Plan Act (ARPA). The Governor signed the budget on June 30.

The budget does not include any tax increases and preserves most of the \$7 billion the Commonwealth received from the federal government through ARPA, saving \$5 billion of ARPA funds for future budgets.

Public K-12 education saw a significant increase in funding with a total \$13.55 billion investment. An additional one-time allotment of \$350 million in ARPA funds was budgeted to address learning loss during the pandemic, and of that, \$100 million is targeted to historically disadvantaged school districts. The Pennsylvania State System of Higher Education received an additional \$50 million to support its integration and consolidation efforts.

The Department of Health and Human Services budget increased by \$1.8 billion to cover Medicaid costs, but also included \$282 in ARPA funding to help nursing homes and long-term care homes cover COVID-related costs.

Critical transportation infrastructure projects received \$279 million in federal funds and a provision of the budget will permit municipalities to use ARPA funds to fulfill their match requirements under the Public Transportation Trust Fund.

To help get people back to work, the budget invests \$728 million in ARPA funds to stabilize the child care industry and provides \$44 million to technical and career schools

to boost job growth. The budget increases funding for programs to help Pennsylvanians struggling to recover from the pandemic, providing \$450 million for rental assistance, \$350 million for homeowner mortgage assistance and \$36 million to help pay water bills. Affordable housing received a boost in the full funding of the PA Housing Tax Credit which was enacted last year, but not funded. Full funding amounts to \$10 million annually.

The budget also prioritizes public safety by investing \$30 million for violence intervention and prevention, as well as providing funds to train an additional 180 State Police Troopers.

Lastly, the budget places \$2.5 billion in the rainy day fund and sets aside \$372 million for future pandemic needs.

## Cosponsor Memos

### Post-traumatic Stress Injury

Representative Frank Ryan has announced intention to introduce legislation providing emergency service and public safety officials benefits under workers' compensation for a PTSD, regardless of whether or not the injury is accompanied by a physical injury.

### Municipal Authorities Selling Surplus Energy

Representative Keith Gillespie has announced intention to introduce a bill amending Title 53 (Municipalities Generally) allowing municipal authorities to sell, at retail, the surplus energy produced at their facilities.

### Act 133 of 2017 and the City Rent Withholding Act

Representatives Jim Rigby and Louis Schmitt have announced intention to introduce a bill package amending Act 133 of 2017 regarding access permits for a property at sale when the property has code violations, clarifying how the Act works in case of tenant occupied property and opening the City Rent Withholding Act to all municipalities.

## Adopted Resolutions

### House Resolution 106

**Signed in the House: June 10, 2021**

**Signed in the Senate: June 10, 2021**

[House Resolution 106](#) immediately terminates the March 6, 2020 proclamation of disaster emergency, as amended, renewed and issued under the hand and seal of Governor Tom Wolf. As a concurrent resolution, it does not need the signature of the Governor.

## Enacted Legislation

### Act 21 of 2021

#### House Bill 854

**Signed: June 11, 2020**

**Effective: Immediately**

[Act 21](#) amends the Administrative Code requiring executive agencies to preserve all records relating to the orders of a disaster emergency declaration issued by the Governor relating to COVID-19. The preservation of records under this Act shall conform with an executive agency's existing record retention policy.

Additionally, the Act provides for a 90-day extension to the suspension of a regulatory statute, order, rule or regulation that was previously suspended under the COVID-19 emergency declaration. The suspension of these regulatory statutes, orders, rules or regulations will be in effect until September 30, 2021, unless sooner terminated by the authority which initially authorized the suspension.

## On the Governor's Desk

### Small Wireless Facilities Deployment Act

[House Bill 1621](#) (PN 1797) and [Senate Bill 769](#) (PN 898), introduced by Representative Jim Marshall and Senator Patrick Browne respectively, would create the Small Wireless Facilities

Deployment Act establishing standards for deploying small cell infrastructure while preserving local authority over rights-of-way. House Bill 1621 is currently on the Governor's desk, and Senate Bill 769 passed the Senate but did not move any further.

Under the legislation, small cell wireless facilities would be a permitted use in all areas except underground districts and would be reviewed by municipal staff in accordance with applicable codes. The definition of applicable codes in the legislation would include local zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances. Wireless providers and contractors would have the right to either collocate small cell facilities on existing poles; replace an existing utility pole with added small cell infrastructure; or install a new utility pole with added small cell infrastructure.

In accordance with the FCC's 2018 Small Cell Order, municipalities would have the right to charge an annual right-of-way management fee not to exceed \$270 per small wireless facility. Municipalities would have the ability to make their case for higher fees. This would be accomplished by demonstrating that the higher fee is a reasonable approximation of costs to manage the right-of-way and that the fee is reasonable and non-discriminatory.

Municipalities may also charge application fees, including \$500 for an application seeking approval of up to five collocated small cell facilities and \$100 per each additional collocated facility thereafter, and \$1000 for a new or replacement pole. Municipalities would have 60 days to approve an application to collocate facilities and 90 days to approve an application to replace or install a new utility pole. A municipality may deny an application based on several reasons listed in the bill, including interference with the safe operation of traffic control and failure to comply with the applicable codes. Applicants would be afforded the opportunity to correct an application deficiency.

The dimensions of the small cell facilities match those in the FCC Order. The size of the antenna would be limited to 3 cubic feet in volume, accessory equipment may only be 28 cubic feet in volume and the maximum utility pole height would be 50 feet. Height waivers would be subject to applicable codes. Municipalities may also develop objective guidelines for small wireless facilities regarding the minimization of aesthetic impact, as long as the guidelines are technically feasible and nondiscriminatory.

All structures and facilities would be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way or obstruct the legal use of the right-of-way by the municipality and utilities. Wireless providers would be responsible for repairing any damage to the right-of-way and must return it to at least the condition that existed prior to any work being done. If the wireless provider fails to complete the repairs within a 30-day written notice from the municipality, the municipality may complete the repairs and charge the wireless provider reasonable fees for the repairs, as well as a \$500 penalty.

If the FCC adjusts its fee levels for small wireless facilities, a municipality may adjust any impacted rate or fee on a pro rata basis consistent with the FCC order. If the FCC's 2018 Small Cell Order is reversed or repealed by the U.S. Supreme Court, then the application and ROW use fees may increase by three percent annually.

Wireless providers would be required to fully indemnify municipalities for any harm caused while installing, repairing or maintaining small wireless facilities or utility poles within the right-of-way.

Lastly, a municipality would be required to adopt new or amend existing ordinances to comply with this bill.

### Extension for Unemployment Compensation Appeals

[House Bill 178 \(PN 1370\)](#), introduced by Representative Lee James, would amend the Unemployment Compensation Law extending the number of days for a claimant, last employer or base-year employer to file an appeal of a determination from 15 days to 21 days. This legislation would extend appeals of a referee's decisions. It would apply prospectively to determinations and decisions made after notice has been published in the PA Bulletin as specified in the bill. It would also allow for the electronic transmission of determinations.

### Pre-registration of Tax Sale Bidders

[House Bill 264 \(PN 1003\)](#), introduced by Representative Doyle Heffley, would amend the Real Estate Tax Sale Law requiring potential bidders at tax sales to appear and register 10 days prior to each tax sale in which they wish to bid.

Registration would require providing contact information and an affidavit stating the applicant: has no delinquent real estate taxes in the Commonwealth; has no municipal utility bills that are over one year outstanding in the Commonwealth; is not acting for a person barred from participating in the sale; and has not failed to correct housing code violations or maintain property in a safe, legal and sanitary manner for three years preceding the application to bid.

Tax claim bureaus may establish registration fees and must provide the list of potential bidders to all municipalities within a county at least seven days prior to the scheduled sale. The bill would bar repurchase by the property owner or immediate family members. It also expands the time

frame a municipality can petition the Court of Common Pleas to prohibit the transfer of any deed for any property to 15 days before or after any sale.

Lastly, the bill would authorize a tax claim bureau, with the consent of all taxing districts where the property is located, to establish a minimum purchase price for sales of property in repository.

### Licensing of Minor Owned Businesses

[House Bill 664 \(PN 1047\)](#), introduced by Representative Johnathan Hershey, would amend Title 53 (Municipalities Generally) and Title 68 (Real and Personal Property) preempting both municipalities and homeowner's associations from requiring licenses from businesses operated by minors on an occasional basis. A municipality would be restricted from requiring a business license from such a business in a residential zoned or unzoned area by a minor and that is a sufficient distance away as to not become a direct competitor with other licensed businesses.

Under this bill, a business would be defined as an enterprise exclusively owned by one or more minors that receives no more than \$5,000 in proceeds a year, though an exception is provided if the enterprise is for a charitable purpose. Occasional basis would be defined as business that operates no more than 84 days a year.

### PennDOT Special Events Permits

[House Bill 765 \(PN 1420\)](#), introduced by Representative Brett Miller, amends Title 75, Section 6109 prohibiting PennDOT from requiring a municipality to fully indemnify and hold the Commonwealth harmless as a condition of approval of a permit for a procession, special activity or assemblage on a state-designated highway, if all of the following are met:

- the sponsor of the activity is not the municipality;
- the sponsor will fully indemnify the Commonwealth;
- the sponsor names PennDOT as an additional insured on it insurance;
- the sponsor agrees to reimburse the Commonwealth for traffic control costs;
- the municipality approves of the special event; and
- the municipality agrees to provide detour signage or police controls if requested by PennDOT.

The bill would also add new language to the section providing the Commonwealth with sovereign immunity from suit by participants for personal injury or property damage arising from a special event. The definition of participants includes spectators, sponsors, municipal officials, police, fire police, media and others present at an event.

### Workers' Compensation Safety Committees

[Senate Bill 147 \(PN 685\)](#), introduced by Senator Wayne Langerholc, would amend the Workers' Compensation Act requiring established safety committees to provide workers information regarding risks associated with opioid use. It would also require the Department of Labor and Industry to develop and make resources available within 21 days for employers to comply with the bill.

### Sunshine Act: Posting of Meeting Agendas

[Senate Bill 554 \(PN 875\)](#), introduced by Senator Patrick Stefano, would amend the Sunshine Act requiring the posting of agendas by agencies prior to public meetings wherein official business is conducted.

An agency, if it has a public website, would be required to post a meeting agenda, including items that may or may not be the subject of deliberation or action, at least 24 hours prior to the meeting. An agency would also be required to post the agenda at the meeting location, at its principal office and provide agenda handouts to meeting attendees. This requirement does not extend to agendas for conferences or working sessions, or for executive sessions.

An agency would not be permitted to take action on an item that was not included in the posted agenda except under these circumstances: emergency business relating to a real or potential emergency involving a clear and present danger to life or property regardless of whether public notice was provided; business arising within 24 hours of the meeting that a resident or taxpayer brings to an agency's attention; business arising within 24 hours of the meeting that is *de minimus* and does not involve expenditure of funds or entering into a contract; and business arising during a meeting from a resident or taxpayer that is not on the agenda.

An agency would be allowed to add an item to the agenda by a majority vote of the individuals present and voting, and may subsequently take action on the newly added agenda item. An agency would be required to post the new agenda on its website and at its principal location no later than one business day following the meeting at which the agenda was changed.

## Prohibition of COVID Vaccine Passports

**Senate Bill 618 (PN 945)**, introduced by Senator Kristin Phillips-Hill, would add two new chapters to Title 35 (Health and Safety) regarding the COVID vaccine and limiting the authority of the Pennsylvania Secretary of Health.

This bill would prohibit a government entity, including political subdivisions, and institutions of higher learning from requiring proof of COVID vaccination to use a service, to enter a building or to take part in an activity within the jurisdiction of the government entity or school. Additionally, a government entity would be further prohibited from including information on an ID card or electronic tracking system regarding an individual's COVID vaccination status. A government entity would also be prohibited from expending funds to develop an electronic tracking system for individuals who are not vaccinated.

Lastly, the bill would prohibit the Secretary of Health from ordering a closure or requiring an individual who was not exposed or potentially exposed to a contagious disease to do any of the following: physically distance from other individuals; wear a universal face covering; conduct a specific hygiene practice; shelter in place, quarantine or isolate from other individuals; and restrict travel.

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## Don't Delay - Apply for American Rescue Plan Funds Now

The League and PSATC encourage our members to apply for your municipality's American Rescue Plan Funds as soon as possible.

**Non-entitlement communities**, please visit the [Pennsylvania Department of Community and Economic Development's \(DCED\) website](#) to apply for funds through the Commonwealth. Allocation amounts for each non-entitlement community can be found [here](#). You can also view [Treasury's FAQs for non-entitlement communities](#) and [visit this Treasury webpage](#) to review further guidance for obtaining funding.

Please also view DCED's [webinar](#) detailing how to fill out each document to help your municipality fill out the application to receive your funds. Additionally, the U.S. Department of Treasury has released the [Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities](#), including best practices and principles for reporting.

For more information, please visit our [Advocacy Success: American Rescue Plan](#) webpage.



## NATIONAL LEAGUE OF CITIES UPDATE

### Treasury Expands Broadband Eligibility for ARPA in a Win for Cities

On Thursday, June 17, the U.S. Department of Treasury released updated [FAQ resources](#) on the broadband eligible use category for American Rescue Plan's [Local Fiscal Recovery Fund](#). NLC and other local government advocates raised concerns upon the release of Treasury's [Interim Final Rule](#) for the fund that the structure of the [broadband eligible use category](#) was too restrictive and would result in many communities in need of broadband infrastructure electing not to use ARPA funds for that purpose.

[Read More](#)

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## HOUSE AND SENATE SESSION DAYS 2021

### House:

September 27-29

### Senate:

September 20-22, 27-29

*\*reminder - session dates are subject to change*