Legislative Update

Small Wireless Facilities Deployment Act
Sets Standards for 5G


Due to the strong opposition of borough officials, the PA State Association of Boroughs (PSAB) opposed prior bills due to provisions that would have preempted local authority. However, PSAB and other local government associations were able to negotiate a plan that is much closer to the Federal Communications Commission (FCC) Order with more protections for municipalities.

In accordance with the FCC’s 2018 Small Cell Order, municipalities would have the right to charge an annual fee 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.

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 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.

Municipalities will have the option to deny a permit if it creates a hazard for motorists or pedestrians, or it violates provisions within the Americans with Disabilities Act. Local governments can also create guidelines for the small wireless facilities if it does not prohibit installation.

The law is effective Aug. 30, 2021, and municipalities have until Oct. 29, to enact or amend their ordinances to comply with Act 50. If municipalities do not amend or enact a new ordinance, wireless providers can use the provisions in Act 50.

Wireless providers are 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.
Senate Passes Bill to Allow Local Police to Use Radar

Senate Bill 419, authored by Sen. Mario Scavello (R-Monroe/Northampton) that would allow municipal police across the state to use radar guns for speed enforcement, passed the Senate by a 49-1 vote in June.

The bill would require any municipality that wants to use radar to first adopt an ordinance authorizing its use in that community, and get officers certified in use of the equipment.

Police departments would also have to post warning signs on any “main arteries” entering into its jurisdiction that radar enforcement is used there, and for the first 90 days only warnings could be issued.

The devices could not be used within 500 feet of any sign that denotes a reduction in a speed limit.

Pennsylvania is the only state in the nation that limits the use of radar exclusively to its state police. The PA State Association of Boroughs has advocated for passage of municipal radar for more than two decades.

Earlier this year, however, the Pennsylvania State Troopers Association, the union representing members of the PA State Police and typically a strong voice on public safety issues, lent its support to a similar bill sponsored by Rep. Greg Rothman (R-Cumberland). Rothman’s bill passed the House Transportation Committee this spring but has not moved any further.

Senate Bill 419 is before the House Transportation Committee for consideration.

Bill Introduced to Help Communities With High Percentage of Tax-Exempt Properties

House Bill 1702, authored by Rep. Robert Freeman (R-Northampton), would establish the Tax-Exempt Property Municipal Assistance Fund to help municipalities with 15% or more of their total assessed property value as tax-exempt within their borders. It would be funded by the state’s existing 18% Liquor Tax, known as the Johnstown Flood Tax.

“Municipalities with high levels of tax-exempt properties are facing difficult fiscal decisions,” Freeman said. “A shrinking tax base makes it difficult for some to provide the basic services expected from local government. By providing annual funding to these municipalities, we can stabilize their fiscal situation and enable them to maintain essential basic services to ensure the health and safety of their citizens.”

This program would be particularly beneficial to Act 47 communities, county seats, cities, and any community with a major institution of higher learning, a large non-profit health care facility, or considerable state forest or game land.

The legislation would require each county to annually provide the state with information regarding the assessed value of tax-exempt properties within each municipality of the county. The funding formula would be based on the assessed value of those properties as if they were taxable. No municipality would receive more than 10% of the total revenue in the fund, and property owned by the municipality itself would not be eligible for compensation.

The bill is before the House Local Government Committee.
State Budget Includes No New Tax Increases for 2021-22

The $40.8 billion state budget passed for the 2021-22 fiscal year in June called for no increase in individual or business taxes. The budget increases spending by $1 billion, or 2.5%, over current approved spending.

The new fiscal year began July 1.

COVID-19 Relief

A total of $282 million in federal money was directed to supporting Pennsylvania’s nursing homes ($247 million) and assisted care facilities and personal care homes ($30 million), many of which were severely impacted by the COVID-19 pandemic. In addition, $5 million will provide for ventilation improvements.

The budget includes $50 million to the Pennsylvania Housing Finance Agency for construction cost relief, to help builders of low-income housing cope with the increased costs of materials caused by the pandemic, and $5 million to the Emergency Medical Services Operating Fund to offset revenue losses caused by the pandemic.

Education

The spending plan called for a record $13.55 billion investment in pre-kindergarten through 12th grade. The budget includes a $300 million increase in basic education, with $100 million of that going to the 100 neediest school districts in the state to help them pay for their operations.

Some $50 million in federal funds is slated for the Pennsylvania State System of Higher Education for its planned redesign, which calls for the consolidation of six schools.

Community colleges received a $5 million increase in funding.

Rainy Day Funds

Another $2.52 billion will be deposited into the state’s Rainy Day Fund, bringing the balance to a historic $2.76 billion. The record-high boost to that fund was made possible because of surplus revenue plus the $7.3 billion in federal COVID-19 relief dollars the state received.

On top of the rainy day fund deposit, the budget plan called for the state to hold on to $5 billion in unspent American Rescue Plan funding for future budgets. Those dollars must be spent by Dec. 31, 2024, and can be used for nearly anything, minus funding a tax cut or pension plan.

Economic and Community Development

The budget maintains level funding for the Center for Local Government Services at $4.2 million. In addition, the Municipal Assistance Program, which funds shared services, community planning, and flood plain management activities for local governments, was level funded at $546,000.

The Keystone Communities program, designed to encourage the creation of partnerships between the public and private sectors in communities, received an increase in funding to $29.7 million, up 22.6%.

Office of Open Records

The PA Office of Open Records remained funded at a level of $3.3 million.

Libraries

The public library improvement subsidy remained level funded at $59.5 million.

Roads and Infrastructure

To support critical road and bridge projects, and to make up for pandemic-related losses in
revenue in the Motor License Fund, this budget allocated $279 million in federal relief funds for transportation infrastructure.

**Public Safety**

This budget allows the Pennsylvania State Police to train two new cadet classes, which will add up to an additional 180 troopers to protect communities throughout the state. Additionally, $30 million was allocated for violence intervention and prevention.

Another $5 million in federal funds was allocated to the Emergency Medical Services Operating Fund to support first responders.

**Conservation Districts**

Conservation districts received level funding, maintaining $3.375 million in General Fund dollars from the departments of Agriculture and Environmental Protection (DEP), transferring the DEP portion of the funding back from the Environmental Stewardship Fund. Conservation districts were also set to receive nearly $8.2 million distributed under Act 13 of 2012.

**Marketing and Training**

The Pennsylvania First program, originally focused on investment and job creation in the state, maintained level funding at $20 million.

Funding for marketing to attract tourism was increased by 69% to $30.1 million, with a majority of the money aimed at arts and cultural activities that generate statewide and regional economic impacts.

Marketing to attract businesses remained flat funded at $2 million.

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**House Approves Measure to Block State, Local Governments, Schools, and Colleges From Requiring Proof of COVID-19 Vaccine**

The PA House has approved legislation authored by Sens. Kristin Phillips-Hill (R-York) and Judy Ward (R-Blair/Cumberland) that would ban the state, counties, municipalities, school districts, colleges, and universities from requiring proof of vaccination.

Senate Bill 618 was amended in the House to prohibit colleges and universities that receive subsidies from the Pennsylvania Higher Education Assistance Agency from requiring students to show proof of receiving the COVID-19 vaccine. The bill also prohibits the state or any local government from using taxpayer funds from developing a COVID-19 vaccine passport app.

Phillips-Hill said, “a government-issued vaccine passport is a bridge too far, especially in light of how the state’s contact tracing program failed more than 72,000 Pennsylvanians and their very personal health care data.”

“Whether mandating a vaccine, masking, social isolation, or business closures, the General Assembly said no more to the government overreach and unprecedented intrusion on behalf of the people we represent,” Ward said.

The legislation heads back to the Senate for concurrence on the amendments inserted by the House.