

IN-PERSON AND LIVESTREAM BUSINESS MEETING OF THE LOCAL GOVERNMENT COMMISSION

Wednesday, January 19, 2022

The meeting of the Local Government Commission (Commission) was called to order by Senator Scott E. Hutchinson at 9:05 a.m. with the following Commission Members, staff and guests participating in-person and remotely:

MEMBERS

Senator Scott E. Hutchinson, Chair
Senator Judy Ward
Senator Cris Dush
Senator Judith L. Schwank
Senator Timothy P. Kearney
Representative R. Lee James
Representative Dan Moul
Representative Robert Freeman
Representative Christina D. Sappey

STAFF

David A. Greene, Executive Director
Kristopher J. Gazsi, Assistant Director
Martin A. Toth, Associate Legal Counsel
Danette H. Magee, Senior Research Analyst
Julia Frey, Research Analyst
Karen S. Bear, Executive Assistant

GUESTS

Matthew Deegan, Senator Hutchinson's Office
Nathan Akers, Senator Judy Ward's Office
Aaron Weltner, Senator Judy Ward's Office
Sam Arnold, Senator Kearney's Office
Bre Medevich, Representative Freeman's Office
Tyler Arkatin, Representative Sappey's Office
Mary Yoder, Senate Local Government Committee (R)
Rob Gaertner, House Local Government Committee (R)
Kyle Schaeffer, House Local Government Committee (R)
Jon Castelli, House Local Government Committee (D)
Tim Scott, House Urban Affairs Committee (D)
Ashley White, County Commissioners Association of Pennsylvania
Brianna Petitti, County Commissioners Association of Pennsylvania
Amy Sturges, Pennsylvania Municipal League
Kaitlin Errickson, Pennsylvania Municipal League
Ed Troxell, Pennsylvania State Association of Boroughs
Ron Grutza, Pennsylvania State Association of Boroughs
Tammy Shearer, Pennsylvania State Association of Elected County Officials
Eric Feder, Pennsylvania State Association of Elected County Officials

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Joe Gerdes, Pennsylvania State Association of Township Supervisors
Joe Regan, Pennsylvania Fraternal Order of Police
Clint Cullison, Greenlee Partners
Ted Mowatt, Wanner Associates
Roseanne Milazzo, West Norriton Township
George Cronin

The in-person and virtual meeting was recorded and conducted with both Member and Commission staff participation. On Thursday, January 13, 2022, notice of the meeting was posted on the committee meeting pages of the Senate of Pennsylvania and the House of Representatives through the Legislative Data Processing Center. The meeting agenda was posted on the Commission’s website, www.lgc.state.pa.us, on Friday, January 14, 2022, and outside of the Commission’s office located at 506 Irvis Office Building. Any questions on agenda items for consideration by the Commission were addressed during the meeting. After adjournment, the recording of the meeting will be posted on the Commission’s website at www.lgc.state.pa.us.

As the first order of business, the Members reviewed an Intergovernmental Cooperation Agreement (Agreement) that was received, via e-mail, by the Commission on December 28, 2021, concerning the relationship between the State Tax Equalization Board (STEB) within the Department of Community and Economic Development (DCED) and 66 of the 67 counties in the Commonwealth of Pennsylvania. By entering into the Agreement, the participating counties will assist STEB financially in the creation and implementation of a new “centralized and standardized Statewide database for counties to utilize and report to STEB all property values and data.” The Agreement is intended to benefit both STEB in the furtherance and efficient performance of its duties, as well as the participating counties, which will receive access to enhanced report and study features within the new database. The Agreement, in essence, would provide the following:

1. For a period not to exceed ten years, participating counties would waive receipt of a recurring payment established by statute and ordinarily paid by the Commonwealth to each in the amount of \$.20 for each documentation of a transfer or conveyance of real estate “prepared, certified and delivered” to STEB.
2. DCED agrees to dedicate the withheld funds to the development and implementation of a new statewide property database to meet its existing statutory duties and offer the participating counties enhanced access to that database and its tools. A county other than a participating county will have access to the new database, but only to allow it to report and review its own data; without access to advanced report and study features.

In accordance with Title 53 of the Pennsylvania Consolidated Statutes (Pa.C.S.), Section 2314, many agreements between a Pennsylvania municipality and the federal government, the Commonwealth, any other state or a government unit of another state must be submitted to the Commission for review and recommendation as a precondition to execution. Pursuant to statute, the Commission is required to provide an advisory written response to a proposed intergovernmental agreement within 90 days of the agreement’s submission. Notwithstanding this

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mandate, a failure of the Commission to provide a written response has no effect of the legal efficacy of the agreement so long as it has been submitted to the Commission prior to execution. The Commission does not regard the role of the Commission in reviewing agreements between Pennsylvania municipalities and the Commonwealth as involving a power to veto or enjoin; but, in accordance with the requirements of 53 Pa.C.S. § 2314, the Commission is charged with undertaking a “review” of the agreement and providing “an advisory written response of its review of, and any recommended changes to, the agreement with regard to form and compatibility with the laws of this Commonwealth.”

Executive Director David Greene summarized the proposed Agreement and responded to the Members’ questions and concerns. Mr. Greene stated that upon review by the Commission’s Assistant Director Kris Gazsi and Associate Legal Counsel Marty Toth, five recommendations to the Agreement are advised. The recommendations are as follows:

Recommendation 1. The parties should consider a revision to the Agreement to address the possibility that one or more Participating Counties choose to leave the Agreement before the end of the term, and what effect the county’s exit will have on access to any enhanced database tools.

Recommendation 2. The parties should consider clarifying how a failure to perform will be addressed under the Agreement, including:

- Is the Delivery Date a “time of the essence” provision?
- Are the Participating Counties anticipated to be third-party beneficiaries with standing in a contractual dispute with the vendor?
- If DCED completes the database after returning the waived funds, will the Participating Counties have access to the enhanced features of the database?

Recommendation 3. We recommend that the parties consider clarifying how DCED should use unused funds waived from the Participating Counties, if the Agreement’s revenue mechanism generates more than \$750,000 during the term.

Recommendation 4. We recommend that the Agreement clarify whether Participating Counties’ access to the enhanced tools is intended to continue in perpetuity after the end of the Agreement’s term, or whether the parties anticipate a future Agreement to provide for continued access.

Recommendation 5. We recommend that DCED clarify the acceptable terms of use of the database beyond the description in the Background portion of the Agreement that describes the anticipated functions available to Participating Counties “for their own use.”

The Commission’s review of the Agreement reveals no legal authority compelling it to conclude that the Agreement is not in compliance with Pennsylvania law, and it appears the Agreement is in proper form and compatible with the laws of this Commonwealth. After a lengthy discussion, the Members unanimously agreed on a motion by Senator Dush and a second by Senator Kearney to

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authorize Commission staff to send correspondence detailing the Commission's comments to all involved entities.

The Members reviewed the minutes of the December 16, 2021, business meeting, which were unanimously approved on a motion by Senator Schwank and a second by Representative Freeman.

The Director informed the Members that the Commission's current online legal research contract with Westlaw expires January 31, 2022. A copy of the renewal contract was given to the Members for their perusal. The contract includes a 5.4 percent increase for the first year and a 3 percent term increase for the second year of the two-year contract. After some discussion, the Members agreed unanimously on a motion by Representative James and a second by Senator Dush to accept Thomson Reuters' 24 monthly payment plan contract for the Westlaw program.

The financial reports for the month of December 2021 were presented, and an explanation was given by the Executive Director. The financial reports were unanimously approved on a motion by Representative Moul and a second by Senator Schwank.

Research Associate Julia Frey presented to the Members results from the 2021 joint survey of Pennsylvania's 12,809 elected municipal officials, which was piloted by Ms. Frey and Center for Rural Pennsylvania (CRP) Senior Policy Analyst Jonathan Johnson. The survey, which was conducted with the assistance of the Pennsylvania Municipal League, the Pennsylvania State Association of Boroughs, and the Pennsylvania State Association of Township Supervisors, garnered a 7 percent response rate with an estimated margin of error slightly above 3 percent. The responses revealed that the average age of a municipal elected official to be about 61 years of age. The majority were white (93 percent) and male (56 percent). Most officials (74 percent) had attended training courses with the past two years and 46 percent of the municipal officials had a bachelor's degree or higher. Many officials (98 percent) said they could access the Internet from their home. However, 20 percent indicated that they could not attend virtual meetings without interruptions or freezing. Other survey questions posed to the municipal elected officials involved the use of American Rescue Plan funds, important issues facing their municipality and the biggest challenges confronting their community, as well as other demographic information. A final report detailing the survey results will be made available in a few weeks and will be electronically distributed to the Members of the General Assembly, the participating municipal associations, and posted on the websites of the Commission and the CRP.

Due to time constraints, the revised language to the Sunshine Act amendment, as suggested by the Members at the December 16, 2021, business meeting, will be reviewed at the February 9, 2022, business meeting. At the last meeting, the Members unanimously decided to further define the categories of allowed public speakers and expand language providing for methods of public comment in the event of technical issues with remote streaming.

The Executive Director reported that at the request of Tyler Arkatin, Chief of Staff for Representative Sappey, Senior Research Analyst Danette Magee assembled a one-page directory of links to resources and contacts that would be useful to newly elected local government officials. The publication was also distributed to all Members of the General Assembly to aid their newly elected municipal officials.

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It was also announced by the Executive Director that Ms. Magee was recently awarded the Michael M. Chuddy Award for Best Article in the Assessors Association of Pennsylvania (AAP) Journal on Assessment Administration. Throughout her tenure with the Commission, Ms. Magee has worked with the AAP. The Assessors' Association of Pennsylvania was founded in 1948 by a group of county assessors with the intent of promoting more education and professionalism. Today, the AAP has grown to become a leading association offering a wide variety of services for county assessors.

Since the December business meeting, three pieces of legislation sponsored by the Commission have been introduced. Mr. Greene reported that Senate Bill 991, Printer's Number 1301, and House Bill 2254, Printer's Number 2610, would amend Title 11 (Cities) of the Pa.C.S. by replacing and repealing the City Classification Law of 1895 to update and simplify the city classification process and permit Second Class A and Third Class cities to remain in their current classification in most cases regardless of population changes unless they qualify for, and actively choose, a change of class. House Bill 2253, Printer's Number 2609, would revise the emergency powers provisions of Title 53 (Municipalities Generally) of the Pa.C.S. to further authorize the designation of a temporary seat of government, provide for emergency succession of officers during an emergency, and expressly authorize remote public meetings for specified municipalities during emergencies. Both House Bills were referred to the House Local Government Committee and the Senate Bill is in the Senate Local Government Committee.

As the last order of business, the Executive Director announced that at the February 9, 2022, business meeting the Members will be discussing the Sunshine Act amendments and possibly reviewing another legislative piece. Chairman Hutchinson congratulated Ms. Magee on her award and thanked Representative Sappey and Mr. Arkatin for suggesting the formation of a newly elected officials' resource guide and acknowledged Mr. Gazsi and Mr. Toth for their quick, thorough review of the intergovernmental cooperation agreement.

The meeting adjourned at 9:50 a.m.

**ATTESTED: _____
January 31, 2022**