LOCAL GOVERNMENT COMMISSION
Quarterly Legal Update
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Local Government Commission
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Legislative Updates:

Since the previous issue of the Quarterly Legal Update, there have been two additional bills sponsored by the Local Government Commission that have been signed into law:

SB 971 (Kearney) (**Act 24** of 2026) amended the Second Class Township Code to extend the date of completion, filing, and publication of the municipal Audit and Annual Financial Report.

SB 972 (Kearney) (**Act 25** of 2026) amended the Second Class Township Code to allow for memorials honoring 1st responders.

Additionally, **HB 2361** (Freeman), amending the Municipal Consolidation or Merger Act, has passed the House unanimously and is now in the Senate Local Government Committee.

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Election Law

Watson v. Republican National Committee, 2026 WL 1855462 (Jun. 29, 2026). Mississippi law permits absentee ballots to be counted if they are postmarked on or before Election Day and received within five business days after Election Day. The Republican National Committee, the Mississippi Republican Party, and others (collectively, RNC) challenged the constitutionality of a statute establishing these election procedures, arguing that three federal statutes establish a uniform federal "Election Day" and require the receipt of ballots to occur on or before Election Day. The United States District Court entered summary judgment in favor of the Mississippi Secretary of State. The United States Court of Appeals reversed in part, vacated in part and remanded, holding that federal law preempted Mississippi's receipt deadline. The RNC requested rehearing *en banc*, which the Court of Appeals denied. Mississippi Secretary of State sought review in the Supreme Court, and the Court granted Certiorari.

The Supreme Court reversed, holding that the federal election-day statutes establish the day by which voters must cast their ballots, but they do not require election officials to receive or count every ballot on that same day. The Court reasoned that the statutory term "the day for the election" refers to the deadline for voters to choose a candidate - not the deadline for election officials to complete ballot receipt and tabulation, and that although Congress has the power to do so, it has never expressly required all absentee ballots to be received by Election Day. If Congress wishes to require receipt by Election Day, it must say so expressly. The four-justice dissent, authored by Justice Alito, largely echoed the arguments of plaintiffs: the federal law, interpreted in light of legal context, statutory text, historical practice and precedent mandates that an 'election' occurs when the ballots are cast *and* received.

Government Accountability

Honey v. Lycoming County Offices of Voter Services, 355 A.3d 801 (Pa., April 28, 2026). Heather Honey (Requestor) filed a Right-to-Know Law (RTKL) request seeking the cast vote records (CVRs) from Lycoming County's 2020 General Election. Lycoming County denied the request, arguing that CVRs constituted the protected "contents of ballot boxes and voting machines" under Section 308 of the Pennsylvania Election Code. Requestor appealed. The Office of Open Records agreed with the County. On further appeal, the trial court reversed and ordered disclosure of the records. The Commonwealth Court reversed the trial court, holding that CVRs were the digital equivalent of ballots and therefore exempt from disclosure.

The Supreme Court of Pennsylvania ultimately reversed the Commonwealth Court's decision, holding that CVRs do not constitute the contents of ballot boxes or voting machines as defined by the Election Code. The Court found that CVRs consolidated reports of vote data drawn from each cast ballot, and not a representation of the physical ballots. Therefore, CVRs are subject to public disclosure as "reports and other documents and records" in the custody of the county office of voter services. The Court also determined that disclosing CVRs does not violate the "constitutional command for voter secrecy", because the CVRs do not reveal the contents of any single ballot.

Land Use

In re: Appeal of Charles Chrin Real Estate Trust from the Decision of the Palmer Twp. Bd. of Supervisors Appeal of: The Charles Chrin Real Estate Trust, 2026 WL 1784579 (Pa. Cmwlth., June 22, 2026).** Applicant filed a conditional use application to develop a large, multi-tenant manufacturing facility in the township's Planned Industrial / Commercial district, which would include loading docks and parking spaces for trailers and passenger vehicles. The application did not list any future tenant or tenants for the facility, indicating instead that the business, hours and days of operation, and number of employees were "To Be Determined."

The township's zoning ordinance requires a site plan with specific information, including the type of services or manufacturing, maximum hours of operation, and potential nuisances or hazards. Because the applicant did not identify future tenants but provided detailed information about the proposed use, the township zoning board denied the application, as it could not assess potential hazards or compliance with the ordinance. The trial court affirmed the board.

On further appeal, the Commonwealth Court held that the Board properly denied the application because the zoning ordinance required the applicant to prove that the proposed industrial use would not create significant health or safety hazards and without knowing what businesses would occupy the building or how they would operate, the Board could not evaluate whether the ordinance's standards were satisfied. Moreover, the court held that an applicant bears the burden of providing enough information to allow meaningful review, and that burden is not met by proposing only a shell building for unknown future users. Significantly, local governing bodies are not required to speculate about future tenants or future operations when applying ordinance standards.

> ***The Framers recognized the difficulty in crafting election laws 'applicable to every probable change in the situation of the country.'…So instead of constitutionalizing election law, they decided that 'a discretionary power over elections' need to be lodged 'somewhere.'…Suffice it to say, that power was not lodged in this Court. The election-day statutes say nothing about ballot receipt, and we cannot add to the words Congress chose.***
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> ***-Watson v. Republican National Committee***

Galownia v. Zoning Hearing Board of Cecil Township, 2026 WL 1784365 (Pa. Cmwlth., June 22, 2026).** Property owner (Owner) constructed a fence that exceeded the six-foot height limit of the zoning ordinance. Owner argued that the height restriction was unreasonable due to an elevation difference between his property and his neighbors' and claimed the fence was necessary for security reasons. The township issued a notice of violation because the fence exceeded the ordinance's height limit. The owner sought a dimensional variance, but the zoning hearing board (Board) denied the request, noting that the Owner provided no supporting evidence. The trial court affirmed the Board and Owner appealed to Commonwealth Court.

The Commonwealth Court upheld the Board's denial of the variance because Owner did not establish an unnecessary hardship unique to the property. The court held that concerns about privacy, security, and personal preference, standing alone, do not satisfy the legal standard for a dimensional variance. The court found that substantial evidence supported the board's finding that the property could reasonably be used in conformity with the ordinance by constructing a compliant six-foot fence. Before Commonwealth Court, Owner argued that the Board did not afford him an opportunity to cross examine witnesses, however the court determined that this claim was not properly preserved for appeal.

Keith Valley Associates, LLC v. Horsham Township, 2026 WL 1784771 (Pa. Cmwlth., June 22, 2026).** Keith Valley (Owner) owns a 100-acre property (Property) in the township. Owner sent a letter, notifying township of its "intention to commence forestry activities on the Property" but did not request a zoning determination. Nonetheless, the township's zoning officer issued an Order and Determination on December 11, 2024, indicating Owner would need to obtain a zoning permit before commencing forestry activities. Owner appealed to the zoning hearing board, which held a hearing.

Thereafter, Owner filed a complaint in Commonwealth Court's original jurisdiction, alleging that township violated the provisions commonly known as the Agriculture, Communities and Rural Environment Act (ACRE). The complaint included three counts: (1) alleging the township violated the Act by imposing unnecessary impediments on its forestry operations, (2) requesting the Order and Determination be declared null as contrary to law, and (3) seeking to enjoin the township from requiring a zoning permit for forestry activities. The township filed Preliminary Objections (POs) arguing insufficient specificity, failure to exercise or exhaust a statutory remedy, lack of subject matter jurisdiction, and legal insufficiency.

The court sustained the township's POs and dismissed Owner's complaint with prejudice, concluding that he did not allege the Township's ordinance was an "unauthorized local ordinance" under the ACRE Act. The court noted that Owner's issue was with the township's interpretation of the ordinance, not the ordinance itself. The court emphasized that the zoning hearing board had exclusive jurisdiction to hear appeals from the zoning officer's determinations, and Owner should have pursued this administrative remedy before seeking judicial intervention.

> ***'Reasonable detail' is not defined in the Third Class City Code and the courts have yet to elucidate its definition through case law. However, we have done so for a similar requirement imposed via…the Pennsylvania Municipalities Planning Code… In that context, we concluded that a published notice contains 'reasonable detail' when it "disclos[es] enough information to make the public aware of the ordinance proposal and where to obtain an attested copy of the full text of the ordinance***
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> ***-Vonnieda-Lagrassa v. Lancaster City Council***

Municipal Governance

Vonnieda-Lagrassa v. Lancaster City Council, 2026 WL 1001425 (Pa. Cmwlth., April 14, 2026).** Lancaster residents (Residents) challenged the enactment of a City Council of the City of Lancaster's (City Council) amendment to the City's shade tree ordinance. Hearings were held on the amendment and Residents participated in the hearings. Ultimately City Council voted in favor of the Ordinance In their *pro se* Notice of Appeal from the Decisions of the City Council of the City of Lancaster, Residents argued that City Council enacted the Ordinance in a manner that failed to comply with the procedural requirements imposed by the Pennsylvania Sunshine Act (Act), by discussing and deciding on the Ordinance outside of public meetings and the Third Class City Code. Residents filed a motion for injunction, requesting that the trial court declare the Ordinance *void ab initio* due to council's purported violation of the Act; both parties requested attorney's fees.

In its order and opinion, the trial court held that the hearing notice published by City Council did not describe the Ordinance in reasonable detail, in violation of the Third Class City Code and thus did not provide city residents with sufficient information regarding the changes the Ordinance would make to the existing shade tree ordinance. The trial court also determined that the Act had not been violated in this instance, because the record did not establish that nonpublic deliberations had taken place regarding the Ordinance. The trial court declared the Ordinance *void ab initio* under the Third Class City Code but denied the parties' respective requests for attorney's fees under the Sunshine Act. City Council appealed.

Commonwealth Court affirmed the decision of the trial court, concluding that the record did not establish a Sunshine Act violation and the ordinance advertisement was insufficiently detailed. However, the court found that the trial court failed to address City Council's request for attorney's fees under the Sunshine Act. It therefore remanded the case for the limited purpose of determining whether the Sunshine Act claims were frivolous or substantially unjustified, which could support an award of attorney's fees to City Council.

Public Employment

Hempfield Township v. Teamsters Local 30, 357 A.3d 605 (Pa. Cmwlth., April 15, 2026). Hempfield Township (Township) and Teamsters Local 30 (Union) were parties to a collective bargaining agreement (CBA) covering township employees. The Township discontinued a Medicare supplemental insurance plan that had been provided to retirees. The Union filed a grievance, asserting that the Township's action violated the CBA. An arbitrator ruled in the Union's favor and ordered the Township to reinstate the benefit. Township filed with the trial court who affirmed the arbitrator's award and denied the Township's petition to vacate the award. On appeal to Commonwealth Court, the Township argued that the arbitrator lacked jurisdiction because the grievance was not arbitrable; and the award violated public policy by requiring the Township to give up its managerial prerogative to choose between retirement healthcare providers.

Commonwealth Court affirmed the trial court concluding that the grievance fell within the scope of the arbitrator's jurisdiction, and that a grievance raised on behalf of "all affected" employees adequately identified the grievants under the CBA's terms; and that the award did not violate Pennsylvania public policy under the deferential standard applicable to labor arbitration awards issued under Section 702 of the Public Employe Relations Act, stating that public employers are not obligated to negotiate matters of inherent managerial policy. Specifically, the Court did not find that the arbitrator's remedy – requiring the Township to reinstate coverage for the same Medicare supplemental insurance policy that was bargained for – was contrary to a well-defined, dominant public policy, even if the cost was higher than the Township's sought alternative policy.

The Township's attempt to distract from the fact that a change in bargained-for insurance coverage is not an inherently managerial decision by focusing on the budget implications of the bargain does not somehow transform its decision into a managerial one.

-Hempfield Township v. Teamsters Local 30

PSP NE, LLC v. Pennsylvania Prevailing Wage Appeals Board, 356 A.3d 774 (Pa., May 19, 2026). The Pennsylvania State Police (PSP) sought a new headquarters, barracks, and training facility and issued detailed specifications for the project. Rather than contracting directly for construction, it entered a 20-year build-to-suit lease with PSP NE, LLC (Developer). The Developer financed construction with private loans, but the lease payments were structured to repay the Developer's construction debt, taxes, insurance, and other project costs.

After the Lease was executed, Developer sought a determination from the Bureau of Labor Law Compliance (Bureau) within the Department of Labor and Industry, that, despite contrary language in the lease, the project was not subject to the Pennsylvania Prevailing Wage Act (PWA). The Bureau determined that the project was subject to the PWA because public funds ultimately financed the construction. The Prevailing Wage Appeals Board (Board) agreed, but

Commonwealth Court reversed, concluding the agreement was a bona fide lease rather than a construction contract.

The Pennsylvania Supreme Court reversed Commonwealth Court and held that the project was public work subject to the PWA. The Court emphasized that whether construction is "paid for in whole or in part out of the funds of a public body" requires examining the totality of the circumstances, not simply whether the developer initially obtained private financing or whether the agreement is labeled a lease. The Court identified several factors demonstrating that public funds effectively paid for the construction. The PSP dictated the building's design and specifications and was constructed exclusively for governmental use. The lease payments were structured to retire the developer's construction financing and the Commonwealth assumed significant financial obligations, including responsibility for unamortized construction costs if the lease terminated early.

The Court found that the lease payments financed construction rather than merely compensating the developer for occupancy. Consequently, the Pennsylvania Supreme Court rejected the Commonwealth Court's heavy reliance on which party bore construction risk, explaining that risk allocation is only one relevant consideration, not the controlling test. Instead, courts must evaluate the overall economic substance of the transaction.

Where a municipality is duty bound to provide a service for the public benefit and in the absence of a voluntary, contractual relationship between itself and those receiving the service, the associated charge is a tax.

-Borough of West Chester v. Pennsylvania State System of Higher Education

Taxation and Finance

Borough of West Chester v. Pennsylvania State System of Higher Education, 355 A.3d 886 (Pa., April 30, 2026). The Borough of West Chester (Borough) adopted a stormwater management ordinance imposing a stormwater charge on developed properties based on the amount of impervious surface area (e.g., roofs, parking lots). Revenue from the charge funded the Borough's stormwater management program, including compliance with state and federal environmental mandates and operation of the municipal storm sewer system. The Pennsylvania State System of Higher Education (PASSHE) and West Chester University (collectively, Properties) refused to pay, arguing the charge was a tax, from which Commonwealth agencies are immune. The Borough contended the assessment was a fee for services, not a tax because it was imposed only on developed properties, and the revenue was used specifically for stormwater management.

Commonwealth Court concluded that the charge was a tax because it provided general benefits to the public rather than specific benefits to the property owners. The court found no evidence of a voluntary, contractual relationship between the Borough and the Properties, the charge was deemed a tax because it was imposed for the public benefit and not based on a contractual relationship.

On appeal to the Pennsylvania Supreme Court, the closely divided Supreme Court concluded that the assessment was a tax rather than a fee because stormwater management is a governmental function that municipalities are required to perform for the benefit of the public and the Properties did not voluntarily choose to receive stormwater management services or enter into a contractual relationship with the Borough. Moreover, the Supreme Court found that the charge funds a broad public program rather than compensating the Borough for a discrete service requested by or provided to an individual property owner. The fact that the amount of the charge is calculated using impervious surface area does not transform it into a fee. Rather, only those charges for services which are quasiprivate in nature and funded by a charge reasonably proportional to the extent of use or value of service rendered can be construed as a fee for service. As such, the Court held that because the Properties are Commonwealth instrumentalities that enjoy immunity from local taxation, the Borough could not collect the charge from these Properties.

Dissenting justices would have upheld the charge as a fee paid for the service of collecting and removing excess stormwater akin to other forms of waste or wastewater collection and removal. Additionally, one concurring justice noted that her finding that the charge was a tax was limited to the charge imposed in this circumstance, and would consider charges in future cases that:

(1) Where proceeds are directed solely to stormwater remediation; or
(2) Where the amount of the charge is calculated according to the benefit accruing to each property based on the amount of runoff from nearby properties.

Downingtown Area School District v. Chester County Board of Assessment Appeals Tax Parcel No.: 33-5-43.3, 356 A.3d 802 (Pa., May 19, 2026). The Downingtown Area School District (School District) adopted a written policy under which it would appeal any property assessment expected to generate at least $10,000 in *additional* annual tax revenue. The policy expressly stated that appeals would be made without regard to property type or use. In 2019, the District appealed the assessments of 16 underassessed properties of the 100 that met the threshold, including the Marchwood Apartments complex (Marchwood). Marchwood argued that, although facially neutral, the policy was implemented in a way that disproportionately targeted commercial properties and therefore violated the Pennsylvania Constitution's Uniformity Clause.

The board of assessment appeals (Board) denied the District's appeal. The trial court reversed, siding with the District, finding the District's policy neutral and not discriminatory. Commonwealth Court reversed, holding that the District arbitrarily applied its policy by not appealing *all* properties meeting the threshold, failing to justify certain choices, and by not appealing some properties for reasons unrelated to value.

The Pennsylvania Supreme Court, in a 4-3 decision, reversed Commonwealth Court and held that a facially neutral "tax liability deficit threshold" is a constitutional criterion for selecting assessment appeals; and that the Uniformity Clause does not require a taxing district to appeal every underassessed property or conduct countywide reassessments before filing appeals. The fact that higher-value commercial properties are more likely to satisfy the monetary threshold does not make the policy unconstitutional.

Moreover, the Supreme Court held that there was insufficient evidence that the District intentionally discriminated against any class of property or systematically singled out commercial properties for different treatment. The Court emphasized that taxing districts possess statutory discretion under the Consolidated County Assessment Law to decide which assessments to challenge and that a school district is

Taxing districts stand on the solidest ground when their neutral methodologies [for assessment appeals] are spelled out in detail and carefully followed, either directly or through an agent…This applies to a district's method for generating an initial list of properties meeting the designated threshold, as well as how the district narrows that list down to just the properties it plans to appeal. Careful documentation of both the methodology and its application makes it that much easier for a reviewing court to verify that no prohibited selection criteria were used and no discrimination is at play. It also tends to streamline or disincentivize litigation because there is less ambiguity about the underlying facts.

-Downingtown Area School District v. Chester County Board of Assessment Appeals

not required to expend public resources pursuing appeals that are unlikely to produce sufficient tax revenue to justify litigation costs.

The dissents, one authored by Justice Dougherty and one by Justice Donohue, essentially held that the application of the tax liability deficit threshold resulted inevitably in more commercial properties being appealed, and that the metric of potential revenue enhancement made the threshold irrelevant. The dissents noted that no residential properties were targeted for appeal. Justice Donohue, in emphasizing that tax burden equalization is the animating force of the Uniformity Clause, observed "the Majority's position [is] that the maximization of revenue is an acceptable selection criterion without regard to the constitutional mandate to prioritize equalization of tax burdens among all classes of real property."

Overbrook Golf Club v. Radnor Township, 2026 WL 1674400 (Pa. Cmwlth., June 1, 2026). Overbrook Golf Club and Radnor Valley Golf Club (Clubs) are private, nonprofit recreational clubs organized under Pennsylvania law and exempt from federal income taxes. They are owned by their members and have various levels of membership with different dues and fees. The dues and fees are used for club operations and capital improvements, not for services rendered.

Radnor Township (Township) audited the Clubs and concluded that they had improperly excluded membership dues, fees, and assessments from the business privilege tax (BPT) base. The Township issued assessments for delinquent taxes. The trial court invalidated the assessments and directed the refund of the assessments paid under protest.

The Environmental Rights Amendment requires 'public natural resources' to be conserved and maintained. There is no public policy that favors a limit on such undertakings.

-Misingwa Land Trust v. Board of Commissioners of County of Beaver

The Commonwealth Court affirmed the trial court's decision vacating the tax assessments. The court concluded that the clubs were not engaged in 'business" within the meaning of the township's BPT ordinance because they are nonprofit, member-owned organizations, not commercial enterprises operated for profit. Thus, members are owners, not customers purchasing services. Membership dues and assessments are contributions to operate and maintain the members' own club, rather than payments for commercial services. By contrast, the clubs remained subject to BPT on their commercial revenue (pro shop sales, caddie fees, locker rentals, carts, and non-member activities), but not on membership dues, fees, or assessments.

Misingwa Land Trust v. Board of Commissioners of County of Beaver, 2026 WL 1740622 (Pa. Cmwlth., June 17, 2026). Misingwa Land Trust (Trust) is a nonprofit, IRS-recognized Sec. 501(c)(3) organization, whose mission is to preserve historically significant lands, conserve natural open space, remediate environmentally impaired property, and provide public access to preserved lands. The Trust acquired seven parcels of largely undeveloped woodland in Beaver County, including property containing a former industrial brick plant requiring environmental remediation. It applied for a real estate tax exemption as a purely public charity under Article VIII, Section 2(a)(v) of the Pennsylvania Constitution. The Beaver County Board of Assessment Revision denied the exemption. On appeal, the trial court affirmed, concluding that the Trust failed to satisfy several elements of the five-part test established in *Hospital Utilization Project (HUP) v. Commonwealth* (citation omitted). Specifically, the trial court held that the Trust failed to prove it advanced a charitable purpose, benefited a substantial and indefinite class of persons, and relieved the government of some of its burden. The trial court justified these findings by concluding that the properties were not advertised to, or appreciably used by, the public. Furthermore, the court observed that there was substantial open space already provided by the government in the county and that the government has a competing burden of promoting economic development that is stifled by the preservation of the property. These facts weighed, in the court's opinion, against finding that the Trust relieved the government of a portion of its burden.

On appeal, Commonwealth Court found that the trial court erred in its application of the HUP test. The court concluded that the trial court improperly merged two separate HUP factors: 1. whether the organization advances a charitable purpose and 2. whether it benefits a substantial and indefinite class of persons. Commonwealth Court also concluded that the trial court did not consider the public policy embodied in Pennsylvania's Environmental Rights Amendment, the History Code, and the Institutions of Purely Public Charity Act, all of which recognize land conservation and historic preservation as charitable objectives. Moreover, the Court found that the trial court focused too narrowly on the current level of public use of the property rather than the fact that the property was not restricted to use by a select group and did not prohibit public access. The court vacated the trial court's orders and remanded for a new analysis under the proper constitutional framework, as well as whether the exemption was authorized under the Institutions of Purely Public Charity Act.

** Indicates that this case is UNREPORTED. *See* 210 Pa. Code § 69.414

Legislative Updates: *(Continued from page 1)*

HB 2437 (Davidson) amends Title 58 (Oil and Gas) of the PA Consolidated Statutes to expand the use of funds in the Highway Bridge Improvement Account to include the improvement or repair of any county or municipal bridge, not just at-risk deteriorated bridges. This bill passed the House unanimously on June 24, 2026, and was referred to the Senate Transportation Committee.

HB 2146 (Freeman) amends the Sunshine Act to allow for official action only on specified minor administrative approvals not listed on a meeting agenda, so long as it would cause a hardship if the action were delayed. The bill passed the House 193-9 on July 1, 2026, and was referred to the Senate State Government Committee.

HB 2496 (Friel) amends the Pennsylvania Municipalities Planning Code to allow municipalities to adopt a resolution to impose a pause of up to 180 days on accepting new land development applications for data center developments, during which time municipalities may adopt, amend or repeal provisions of a land use ordinance relating to data center developments. The bill passed the House 201-1 on June 24, 2026, and was re-referred to the Senate Rules and Executive Nominations Committee after first consideration.

This newsletter has been produced by the staff of the Pennsylvania Local Government Commission, a bicameral, bipartisan agency of the Pennsylvania General Assembly. The information presented herein should be construed as an effort to provide a neutral summary of current legal issues facing municipal governments in the Commonwealth of Pennsylvania, and not as a substitute for any form of legal advice.