

CONFIDENTIAL/ATTORNEY CLIENT PRIVILEGE

Solicitor's Report

September 2022

Dated October 13, 2022

Legislative

HB 139 PN 104, formerly reported last session as HB 509, entitled the "Permit Administration Act", would require DEP to handle the administration of permits including renewals and modifications for applicants including a municipal authority in a more timely and transparent manner. The act would require a tracking system of applications. It would require notice of incomplete applications within 10 days of receipt and notice of technically deficient applications within 20 days of completeness. It would require notice to permit holders of changes to permit regulatory requirements, expiration and changes to fees. It would require third party reviewers to review applications that DEP cannot get to. The proposal passed the former House, and was pending before the Senate Intergovernmental Operations Committee when the last session closed. See SB 28

HB 457 PN 1016 would amend the Authorities Act and the Ethics Act to provide investigatory and enforcement under the Ethics Act of a violation of conflict of interest provisions relating to contracts in the Authorities Act. The most recent version includes a prohibition from using proceeds from a borrowing for a purpose other than the project for which the debt was incurred, or placed in an account used by the authority for an unrelated purpose.

HB 584 PN 554 would amend the Prevailing Wage Act to increase work covered by the Act from \$25,000 to \$150,000, and exempt local highway and bridge projects.

HB 587 PN 557 would amend the Prevailing Wage Act to increase work covered by the Act from \$25,000 to \$207,000, with annual adjustments based upon the CPI.

HB 590 PN 559 would increase the recycling fee for municipal waste landfills and incinerators from \$2 to \$5 per ton.

HB 710 PN 680 would amend the Separations Act to increase the work covered by the Act from \$4,000 to \$250,000, with annual adjustments based upon the CPI.

HB 1936 PN 2211 would amend the Public Utility Code to only allow the sale of municipal or authority owned water or wastewater systems to private companies using the fair market valuation procedures if the system is under financial and /or operational distress. The sponsors cite to testimony by the consumer advocate that sales always drive up rates for customers, and to protect ratepayers, those sales should be limited to systems truly in distress.

HB 2428 PN 3153 along with companion bill SB 1130 PN 1827 would amend the Sunshine Act to add provisions applicable to the conduct of public meetings that are broadcast via internet or any other electronic means including acceptance of remote public comment. Among other

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provisions, the bill would require that should the agency allow remote public comment, in the event remote public comment cannot be received due to internet service outage or other technological failure, official action must be postponed until the next advertised meeting. The bill would prohibit mandating the exclusive use of remote comment, unless the meeting is held under exigent circumstances such as a disaster emergency.

HB 2524 **PN 3499** would amend the Right to Know Law to require agencies to register open records officer contact information with the Office of Open Records, permit agencies to ask requesters whether records will be used for commercial purposes, permit agencies to assess fees for commercial requests and provide grounds to deny vexatious requests. While the bill would appear to address an ongoing concern regarding the administrative time spent to address commercial requests, PMAA has opposed the bill on the grounds that it contains gaps and exemptions that would greatly lessen its purpose, and would authorize the Office of Open Records to award attorney fees and costs to requesters as opposed to the current law which restricts the awarding of attorney fees and costs to a court of law. **This most recent printer's number makes some technical wording changes but no substantive revisions.**

SB 28 PN 10 would provide for the administration of permits by State agencies by providing for a permit tracking system. Final passage in Senate on May 26, 2021.

SB 276 PN 258 would allow a school or municipality to opt out of paying prevailing wages. As proposed, while the opt-out provision would apply to a borough it would not apply to a municipal authority.

SB 597 PN 1714 requires community water and wastewater systems of 501 or more connections to submit an asset management plan to DEP for review and approval. It also provides for critical valve inspections and repair, meter testing protocol, lead line replacement plan, development of a cybersecurity system, annual information to customers, regulations, contingency for public funding and enforcement. Essentially, this would establish a new, broad regulatory program to force regulatory oversight of system wide facility management programs, which asset management programs have to date been left to the sound discretion of the owners of the systems. The proposed legislation does not include any funding mechanism, so presumably customers would bear the additional costs for development and implementation of the asset management plans through increased rates. In addition, while the plans are to be submitted to DEP for review and approval, the proposed legislation does not address additional DEP funding to implement the new program. The bill passed the Senate on June 7, 2022, and is pending in the House before the Environmental Resources and Energy Committee, which held an informational meeting on the proposed bill on August 2, 2022. Marc Lucca, President of Aqua Pennsylvania testified in support of the bill arguing that such plans are now only required of public utilities, and extending them to municipalities and authorities would improve consumer confidence of those systems. Mike Doran, President of Pennsylvania American Water Company also testified in support of the bill. Various representatives of municipal systems and PMAA testified in opposition to the bill.

SB 632 PN 758 would amend the Crimes Code to require persons entering a municipal building to check their firearms if the governing body of the municipality had adopted an ordinance. A municipal building is defined as the meeting place of the governing body.

SB 1125 PN 1476 would implement a new Legionnaires' Disease risk management program for public water systems through the adoption and implementation of mandatory water management plans including routine sampling and testing and necessary mitigation measures including disinfectant, flushing or other requirements established by DEP. The details of the program are to be established through new DEP regulations. The bill would establish a Legionnaires' Disease Drinking Water Restricted Account in the amount of \$30,000,000 from ARP, clean water and drinking water funds for grants to be administered by DEP. The bill would also implement mandatory water management programs for certain covered buildings to be administered by the Department of Health.

SB 1130 PN 1827 (See HB 2428 PN 3153)

Courts – **Nothing to report.**

Financial

Credit Enhancement Agreement - **Commenced discussions with Authority staff on a renewed Credit Enhancement Agreement between the Borough and the Authority providing for a commitment by the Borough to continue to guarantee water obligations under the Management Agreement between the Borough and the Authority for calendar year 2023 for a fee to be discussed.**

PENNVEST funding offer for the 2021 Lead Service Replacement Project – **At its September 26, 2022 Special Meeting, the Board accepted the PENNVEST offer for reduced funding. PENNVEST has scheduled a conference call for October 27, 2022 to discuss a timeline for the project and establishing a new settlement date.**

Lower, Upper and West Pottsgrove Townships – Nothing to report.

Sewer Treatment Plant – Nothing to report.

Sewer Collection System - Nothing to report.

Water Treatment Plant – Reviewed DEP letter of August 24, 2021 granting credit for LT2 Rule compliance under SDWA regulations, in view of pending Consent Order and Agreement. Reviewed draft Amendment to the Consent Order and Agreement to extend the compliance date to December 7, 2022. Consent Order and Agreement Amendment finalized on March 23, 2022. DEP delivered the fully executed Amendment on March 29, 2022. **Nothing to report.**

Water Distribution System

Aqua Bulk Water Agreement - Reviewed draft permanent Bulk Water Purchase Agreement presented by counsel for Aqua and participated in internal review and discussions and discussions

with Aqua counsel. Bulk Water Purchase Agreement conditionally approved at March meeting. Aqua delivered its signed Agreement and attachments including a letter agreement signed by the Chairman on June 22, 2022 on behalf of the Authority with Aqua wherein Aqua agreed to a 180 day time schedule for completion of equipment modifications at the pump station, the preparation of as-built plans, the delivery of manuals and an amendment to the Agreement to incorporate the approved as-built plans. **Worked with Aqua counsel to circulate a fully-executed version of the Agreement.**

PAWC Shut-off Agreement - Reviewed Water Shut-off Agreement proposed by PAWC to authorize shut-off of Authority water service within the PAWC Upper Pottsgrove wastewater service area for delinquent wastewater users. **A few issues continue to remain, particularly the timing of staff to restore service after shut-off.**

Developments

Pottsgrove Hunt (formerly Kummerer) – Nothing to report.

Lankford Acquisition Company, LP renewable fuel plant – Nothing further to report.

Lower Pottsgrove Township Municipal Complex – Nothing to report.

Stormwater Fees – Cross motions for summary judgment were filed before Commonwealth Court in the West Chester Borough stormwater fee litigation, and the parties are awaiting a decision from Commonwealth Court. Argument on the cross motions was scheduled before the Court *en banc* for December 15, 2021, but the argument was continued to be relisted before the Court on the next available argument list. Argument on the cross motions before Commonwealth Court was held on September 14, 2022. The Judges expressed the following concerns: (1) the fact that West Chester University had its own MS4 permit; (2) the fact that the Borough could not assess fees against upstream municipalities; (3) whether the University saw any specific stormwater benefits related to the fee, as opposed to benefits seen by all property owners; (4) the use of the collected fees by the Borough; and (5) whether the Borough would seek fees against PennDOT for roads should it be successful. **Nothing further to report.**