

Joint Public Hearing
“Positives Experienced for Local Government Entities During COVID-19 Pandemic”
Pennsylvania Senate and House of Representatives
Local Government Committees
September 13, 2021

Testimony

David A. Greene, Esq., Executive Director, Local Government Commission
Kristopher Gazsi, Esq., Assistant Director–Legal Counsel, Local Government Commission

Introduction

Good morning Chairs Dush, Kearney, Knowles and Freeman, and Members of the House and Senate Local Government Committees. My name is David Greene, Executive Director of the Local Government Commission. With me today is Kris Gazsi, Assistant Director-Legal Counsel, for the Commission. Thank you for inviting us to testify at today’s Joint Public Hearing on Positive Experiences for Local Government Entities during the COVID Pandemic. As most of you are aware, the Local Government Commission is a bipartisan, bicameral agency of the Pennsylvania General Assembly comprised of ten legislators—three from the majority party and two from the minority party in each chamber—collectively working for more effective and efficient local government in Pennsylvania. Our testimony today is intended to provide the Committees with an overview of the Commission’s activities and observations during the pandemic and some commentary on how the General Assembly may be able to leverage the experiences of the last 18 months to enhance local government in the Commonwealth for the benefit of both citizens and local officials and employees.

Given that our intent here today is to emphasize the positive, we should first acknowledge the efforts of those local government officials, employees and experts who are represented here today. They rose to the challenge of not only adapting to changed logistical, administrative and fiscal realities as a result of the pandemic, but also provided the Commission and the General Assembly at large critical, sometimes nearly real-time feedback through their associations and other outreach to guide the development of essential legislative measures. Although serious challenges persist, (and I am sure that you will hear this from others today) a central positive to the COVID-19 pandemic was that local government *worked*; our counties, boroughs, townships, town and cities maintained the provision of essential government services and went beyond; establishing portals, forums, alerts, cooperative ventures and additional services to their constituents in the interest of the public health, safety and welfare police power entrusted to them.

An opportunity to refocus on clarity and certainty

Past is prologue, and another positive of our experience with the pandemic thus far is that it has provided current local government stakeholders with a, hopefully, once-in-a-generation stress test on the structure and assumptions of local government law and functional paradigms. Furthermore, the emergency demonstrated the inextricable linkage between the well-being of a municipal government and that of the constituents that support it. These tandem interests cannot be separated and are always at the heart of any legislation your committees consider on any given day, but the depth of the pandemic's disruption to the lives of Pennsylvanians, and the consequences, both real and potential, on municipal functions that the General Assembly negotiated brought local government inefficiencies into stark relief, and the challenge to our assumptions about how local government "should" look was no longer theoretical.

Because the relationship between these two interests is rooted in reciprocal obligations, and government obligations are often linked to deadlines, one of the earliest COVID-related municipal enactments was contained within Act 10 of 2020, signed into law early in the pandemic on March 27, 2020, empowering the Department of Community and Economic Development (DCED) to extend the filing deadline for local earned income tax. This deferral, consistent with federal taxation changes, was essential to taxpayers but created a cash flow challenge for municipal entities. For some municipalities, reserves were sufficient to smooth the disruption and meet payroll and government service obligations, but for the most cash-strapped municipalities, including those in fiscal distress, the delay of tax receipts could prove challenging. Language patterned after Commission-sponsored legislation was placed in the Fiscal Code by Act 114 of 2020, authorizing municipalities to issue two-year tax anticipation notes to provide a tool for short-term, secured obligations during the emergency.

The positive lesson learned from Act 10 was not only one of a mutually beneficial solution to the financial trauma inflicted on constituents and, by extension, municipalities, but also a rekindling of our obligation to seek *clarity* in law, and provide deliberate, thoughtful remedies where ambiguity in statute is found. The genesis of the Act 10 provisions, in part, stemmed from a need for a uniform, unequivocal source of DCED's power to work with political subdivisions to extend deadlines where Act 511 prior to the amendment was not completely clear.

Uncertainty was also implicated in the necessity of Act 15 of 2020, the law providing temporary authority for municipalities to extend property tax deadlines, conduct virtual municipal meetings, and tolling deadlines for permits. Neither the provisions of Title 35 regarding emergency powers of municipalities, the various municipal codes, the Municipalities Planning Code, or other law expressly addressed these issues. Importantly, Act 15 provided clarity about how existing and emerging technologies could be integrated into municipal governance. Much like public access cable did in the past, Act 15 has, arguably, laid the foundation for a new paradigm in the information pipeline between municipal government and the citizens of the Commonwealth. Bringing municipal and school board meetings to Zoom, Facebook and YouTube have facilitated public participation in local government in ways our communities are likely to want continued.

An opportunity to refocus on modernization of procedure

My discussion of Acts 10 and 15 has thus far involved two features of municipal governance: finance and administration. The pandemic has provided us an opportunity to examine another facet of local government law: *procedure*.

As implied by Act 15, municipal law contains provisions that require or imply face-to-face interaction or the utilization of outdated technology for conducting municipal business. COVID, by rendering some of these procedures impractical or dangerous during the pandemic, has provided us an opportunity to re-examine their utility and discuss possible solutions to modernize municipal government outside of any extraordinary procedures that could be implemented in an emergency. Statutory guidance to municipalities promotes the function of local government, but procedural strictures can stifle innovation. Although defects in procedure can have costly consequences for municipalities, the good news is that common-sense modernization or clarification of municipal procedure can be relatively uncontroversial. The distinction between existing telephonic quote provisions and the possibility of reusable email lists for small-dollar contracting, although unrelated to the COVID emergency, is an example of a quaint procedural requirement easily modernized with the change of a few words in the municipal codes.

Other examples of this include two current Local Government Commission proposals: SB 807 and its companion piece HB 1770 would authorize the sharing of notary public commission and signature information between the recorder of deeds and the prothonotary electronically. Senate Bill 755 and its companion piece in

the House, HB 1592, would amend the Municipalities Planning Code to authorize the electronic submission of planning documents for review by governmental agencies. No doubt, other opportunities to fine-tune the procedural or transactional formalities of local government await us.

An opportunity to refocus on municipal, interagency, and intergovernmental delegation of power

Finally, the *structure and delegation* of local government emergency power is worthy of our continued examination. I realize that there is an extraordinary amount of debate and legislative action on this issue occurring right now, so I will be brief. As previously mentioned, Act 15 appeared to address some ambiguities existing in the Emergency Management Services Code, Part V of Title 35 of the Pennsylvania Consolidated Statutes. The scope of power delegated to state-level officials and certain county and municipal health agencies under the Disease Prevention and Control Law, the possibility of clarified or greater intergovernmental cooperation provisions related to emergency services generally or disease prevention specifically, and whether these matters are consistent with existing municipal code provisions or Title 53 of the Pennsylvania Consolidated Statutes, are issues that are better discussed now. For example, very early in the pandemic Commission staff examined the provisions of Title 53 at Chapter 11 subchapters B and C, which authorize municipalities to conduct business as a body outside of the municipality and provide for the emergency succession of public officers, but these provisions appear to apply only in the context of enemy attacks on the United States. The pandemic has reminded us that there are potential emergencies that we find difficult to see on the horizon, and current statutory restrictions with regard to continuity of municipal operations could be expanded, e.g., permitting municipal meetings in a local high school if a flood destroys the municipal building.

Conclusion: discretion and preparation

I will close with one final virtue on display over these last few years: *discretion*. Many of the people in this room work in the shadow of unintended consequences. Even with the enactment of Act 15 and excellent guidance from the Office of Open Records, technological challenges resulted in a trial court finding a September 14, 2020, meeting of school directors void for violating both Act 15 and the Sunshine Act.

During the Summer of 2020 and into the Fall, Commission staff solicited feedback from local government professionals and considered many alternative measures on issues such as additional municipal lending authority, alternative procedures for municipal financial recovery, provisions to temporarily change

assessment appeal procedures, and broadening the authority of municipalities to use restricted accounts for current expenses. The Commission, in its tradition of always acting by consensus, deferred action on these matters in no small part due to the possibility of an unforeseen downside to municipalities and their constituents, the uncertainty of the economic outlook and possible federal action. True to form, an incremental approach was favored by the Commission. Similarly, much of the COVID related municipal legislation was enacted with sunset provisions and even under the high-pressure circumstances of providing relief to municipalities and constituents in mid-2020, legislators, in their wisdom, were constantly considering the implications of even temporary changes, and restricted measures deemed necessary.

Even now, and as a result the dialogue here today, the General Assembly must not only quantify the good that resulted from the pandemic but must consider whether that good should be codified only for emergency situations, permanent changes to municipal law, or abandoned in favor of even better approaches. Furthermore, as awful as it may be to contemplate, we must recognize not only our good acts, but our good fortune. We cannot fail to improve the resiliency of local government due to a lack of imagination about what could have happened. Rest assured, the Commission is engaged in examining these questions: On October 21, 2021, in Room 515 of the Irvis Office Building, the Local Government Commission will be hosting a Symposium on Improving the Efficiency and Effectiveness of Local Government Post COVID featuring presentations from practitioners and academics and discussions with Commission Members and the local government associations. We hope the papers submitted and the discussions that occur can enhance the work of your committees. Additionally, the staff of the Commission remains at your service upon request.

This concludes our testimony. Kris and I will do our best to answer any questions that you may have.

Respectfully submitted,

David A. Greene, Esq,
Executive Director

Kristopher J. Gazsi, Esq.
Assistant Director-Legal Counsel