

# PSATS NewsBulletin

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A MONTHLY  
NEWSLETTER  
CONTAINING THE  
LATEST  
INFORMATION  
ON LEGISLATION  
AND NEWS OF  
INTEREST TO  
TOWNSHIPS

## Legislature Adjourns for the Session

The state General Assembly adjourned on October 8 and is not expected to reconvene this year. On November 30, the legislative session ends, and any pending legislation dies and will have to be reintroduced in the next legislative session, which begins in January 2009.

Despite recent setbacks, it is expected that both the I-80 tolling plan and the proposal to lease the Pennsylvania Turnpike will be revived in 2009.

## State Transportation Funding in Long-Term Crisis FHWA Rejects Tolls on I-80; Bid on Leasing Turnpike Expires

Pennsylvania's efforts to seek alternative ways to pay for road improvements, bridge repairs, and mass-transit subsidies suffered a blow in September when two different approaches experienced setbacks. However, both proposals are likely to be reintroduced in 2009.

In the first failure, the Federal Highway Administration rejected Pennsylvania's application to toll Interstate 80. On September 11, the agency announced that the planned use of toll revenues does not meet federal requirements because the state has not proven that the proposed payments are legitimate operating costs. Despite the ruling, the state Turnpike Commission is expected to seek federal approval again next year to charge tolls on I-80.

In the second failure, the Pennsylvania Transportation Partners decided not to renew its offer to pay the state \$12.8 billion to lease the Pennsylvania Turnpike for 75 years. The Spanish-led partnership of Abertis Infraestructuras SA and Citigroup cited inaction by the state legislature as its reason for not renewing the offer once it expired on September 30. The group has indicated it could pursue a similar deal in the future, and Gov. Ed Rendell, who supported the turnpike leasing proposal as an alternative to tolling I-80, has said that he will try again to put the lease proposal out to bid.

Rendell believes that any leasing money the state receives would produce enough annual revenue, once invested, to pay for the state's highway, bridge, and mass-transit needs. The leasing proposal, however, did not include money for local roads and bridges.

Because both these decisions represent a major change in the state's transportation funding plan and the implementation of Act 44, last year's transportation financing statute, the General Assembly will have to address long-term funding for transportation again.

Recently, the House held hearings on two bills — SB 1158 and HB 555 — that would provide the necessary process and procedures to allow for public-private partnerships in Pennsylvania's transportation system and would set the stage for the leasing of the Pennsylvania Turnpike. Despite the hearings on this proposed legislation, however, the governor's proposal to lease the turnpike did not have sufficient support in the General Assembly. Reports in Harrisburg indicated that the governor wanted to see a vote on the turnpike issue before the General Assembly adjourned, but legislative leaders would not schedule a vote. (At a recent rally at the State Capitol, leaders of the Pennsylvania Conference of Teamsters presented lawmakers with



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A shortage of road salt and skyrocketing prices will make it more difficult for townships to keep pavement clear of snow and ice this winter without breaking their budgets.

petitions signed by more than 100,000 residents opposing a long-term lease of the turnpike.)

It should be noted that none of these measures contains provisions for sharing any of the potential revenues with local governments. Township officials are urged to contact their legislators about the critical need for local governments to receive a fair share of any transportation funding.

## **Salt Shortage and Higher Prices Add to Municipal Transportation Woes**

Rising oil prices have made it more expensive for townships to pave roads and operate their vehicles. Now, the soaring cost of the rock salt used to keep roads ice-free in winter may take another bite out of township budgets.

The United States used a near-record amount of road salt last year, largely because areas from the Northeast to the Midwest had heavier-than-average snowfall. Parts of Iowa and Wisconsin, for example, received four to six times their typical amounts, and Vermont, New Hampshire, and other areas set records.

Last year's harsh winter left salt storage barns around the country virtually empty. Municipalities that needed additional salt late in the season had trouble finding it because supplier stockpiles had also been depleted.

To avoid that problem this year, many states have requested bids early, according to the Salt Institute, an industry trade group. Five states have increased their orders by a total of 2 million tons over last year. Suppliers quickly realized that at this pace they would not have enough salt to bid on other contracts.

A representative from PennDOT recently told Lancaster-based TV station, WGAL, that the department is not expecting to experience a salt shortage this winter. However, townships and other municipalities are having a hard time receiving bids on salt, and if bids do come in, the price has more than doubled since last year.

## **DEP Grants Permits for Marcellus Shale Natural Gas Drilling**

The Department of Environmental Protection recently issued 73 permits to drill for natural gas in the Marcellus shale formation in 12 counties.

"We recognize that there are incredible opportunities for the commonwealth in the Marcellus shale, but realizing those gains cannot come at the expense of our natural resources," says Acting Secretary of Environmental Protection John Hanger. "The Marcellus formation could hold trillions of cubic feet of natural gas — enough to help reduce the price of natural gas, which is a cleaner-burning fuel, and to create thousands of new jobs, as well as new income for property owners and communities across Pennsylvania."

However, Hanger points out that DEP will only issue permits to operations that have met

As part of an effort to safeguard the state's water resources, DEP is requiring applicants for permits to drill for gas in Marcellus shale to provide information about the sources and locations of water to be used in the drilling procedure.

consistent statewide rules to effectively manage the magnitude of water withdrawals associated with this kind of drilling. Concerns about the effects of large water withdrawals on streams and aquifers have prompted the need to regulate such activities at drilling operations.

DEP worked with the Susquehanna and Delaware river basin commissions and the oil and gas industry to create an application process for Marcellus shale drilling permits that requires gas well operators across the state to better protect water resources.

As part of the permitting process, operators must provide information about the sources and locations of water to be used in the drilling procedure, the anticipated impact of drilling on water resources, and the locations of any facilities where drilling fluids would be taken for treatment and disposal.

This water can originate from various sources, including municipal suppliers or streams. Because much of the Marcellus shale lies outside of Pennsylvania's traditional oil and gas patch, residents in the area where these drilling activities are occurring are unfamiliar with mineral extraction.

The counties and the number of permits issued in this most recent round of awards follow: Armstrong – 1, Bradford – 8, Elk – 2, Fayette – 13, Greene – 10, Indiana – 2, Lycoming – 7, McKean – 2, Potter – 2, Susquehanna – 5, Washington – 16, and Westmoreland – 5.

To date, 257 permits have been approved for drilling in the Marcellus shale this year, and 518 permits have been approved for drilling since 2005. The department is reviewing another 24 permit applications awaiting comprehensive water management plans that will safeguard the state's water resources.

For more information about drilling in Marcellus shale, log onto [www.depweb.state.pa.us](http://www.depweb.state.pa.us), keyword: Oil and Gas, and then click "Marcellus Page."

## **State Supreme Court Hears Arguments in Local Government Oil and Gas Case**

The state Supreme Court convened in Pittsburgh on September 9 to hear arguments in a case involving two local governments that could determine how gas exploration is conducted throughout Pennsylvania.

Oakmont Borough in Allegheny County and Salem Township in Westmoreland County are battling gas exploration companies over where drilling can occur. The court's decision may ultimately determine whether municipalities have the right and authority to make zoning decisions about where drilling and exploration can take place within their borders.

Oakmont Borough Council denied a conditional use permit to Huntley & Huntley of Monroeville, which was seeking permission to drill a gas well in a single-family residential district. In Salem Township, the Independent Oil and Gas Association challenged the township's ordinance regulating access roads and other details about how a gas well would fit into the surrounding community.

DEP, which administers the state oil and gas laws, has filed briefs in the case arguing that although the state agency controls the technical aspects of oil and gas operations, local governments have zoning authority over those operations. PSATS has also filed a brief in support of

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the local government position.

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A similar case is playing out in Bucks County, where Nockamixon Township has been sued by Arbor Resources, a Michigan company that has accused the township supervisors of enacting unreasonable and unlawful restrictions on their gas exploration efforts.

## **Local Government Groups Urge Grassroots Action on Assessing Oil and Gas Companies**

Townships are being asked to contact their House and Senate members in support of a proposal to reverse a 2002 Pennsylvania Supreme Court decision and allow oil and gas companies to be assessed and taxed as real property. PSATS has joined with the County Commissioners Association of Pennsylvania in arguing for a change in existing law to allow oil and gas interests to be assessed to improve tax equity and reduce property taxes for other taxpayers.

In its 2002 ruling in *Independent Oil and Gas et al v. Fayette County Board of Assessment Appeals*, the state Supreme Court found that oil and gas companies could be assessable for tax purposes only if they were specifically enumerated in law. This ruling flies in the face of language in the General County Assessment Law, which states that all property is taxable unless specifically exempted by the General Assembly.

Legislators have indicated that they need to hear more from their local officials to understand why this issue is significant to their district.

Correcting the Supreme Court decision would improve tax equity by allowing counties to assess property taxes against oil and gas companies leasing the mineral rights based on the value of the lease. Coal, limestone, and other minerals are currently assessable. Without this remedy, PSATS and CCAP believe that the remaining property taxpayers would be disproportionately forced to fund the operations of schools, counties, and municipalities.

### **Open Records Web Site Up and Running**

The Web site of the state's new Office of Open Records is now online and available to township officials. According to Terry Mutchler, the new executive director of the Open Records office, who spoke at the Cumberland County convention this month, the site contains sample requests and other forms and will also include a Guide for Local Officials. In the coming weeks, new interim guidelines for appeals and mediation and copy fees will be posted.

To view the new Web site, log onto <http://openrecords.state.pa.us>.

PSATS testified against a bill requiring townships with a population greater than 10,000 to pay \$100 per resident if they use state police rather than local departments. Passage of this measure would set a dangerous precedent since smaller townships could be targeted in the future.

## **PSATS Testifies Against Bill to Require Townships to Pay for State Police Coverage**

The State Association testified before the House Judiciary Committee in September against a bill to require townships with a population of more than 10,000 to pay \$100 per resident if they use state police rather than local or regional police. Similar legislation has been pending for the last 10 years.

Statewide, most of the roughly 1,700 municipalities that use state police services have less than 10,000 residents, but 21 townships have more. **House Bill 2563**, if enacted into law, would bring additional mandated costs and no increase of police services. PSATS has testified that the state police, for example, will not enforce any local ordinances.

Another PSATS concern is that passage of this bill would set a dangerous precedent. This year, the legislation is targeting townships with more than 10,000 residents. Next year, or sometime in the future, it could target smaller townships. (In past years, the legislation had included townships with populations over 5,000.)

The legislative session ended without further action on the bill, but PSATS will remain vigilant in making sure a similar provision does not pass in the new session.

## **Testimony Offered on Road Bonding and Intrastate Intergovernmental Meetings**

PSATS recently testified in support of a bill to increase permissible levels of road bonding and against a bill to mandate regular intermunicipal meetings. The legislative session ended without further action on either bill.

**House Bill 2133 (PN 3037)** would amend the Vehicle Code to require PennDOT to publish a revised schedule of bonding amounts based on increased or decreased maintenance costs by January 1, 2009, and at least every three years thereafter. Currently, under Title 67 of the Pennsylvania Code, Chapter 189, PennDOT is only obligated to publish a revised schedule "from time to time" based on increased or decreased maintenance costs. This standard provides little guidance and no impetus for the department to revise its bonding amounts so that they are in line with the costs associated with repairing damage to local roads. The current bonding amounts — \$6,000 per mile for dirt and gravel roads and \$12,500 per mile for paved or oil and chip roads — have not changed since 1978.

**House Bill 1753 (PN 2335)** would require that the governing body of a municipality participate in a joint meeting at least once every three months with the governing body of at least one other contiguous municipality. The intergovernmental meeting would be held to discuss areas of common interest and similar goals, and each year, the municipality would submit to the state a one-page report summarizing the meetings. PSATS wrote in its testimony that townships already meet on a regular basis among themselves and already cooperate on projects of similar interest. The passage of such a measure would represent another unwarranted administrative burden and unfunded mandate for townships.

To comply with Pennsylvania's smoking ban, townships should have removed all ashtrays and similar receptacles and prominently posted "no smoking" signs.

## **PA's Smoking Ban Took Effect September 11**

Townships should have gone smoke-free as of **September 11, 2008**, to comply with Pennsylvania's statewide smoking ban.

To comply with the ban, the state Department of Health recommends that all ashtrays and other receptacles used to extinguish cigarettes or other smoking items be removed from the premises. In addition, "no smoking" signs or the international "no smoking" symbol (*a pictorial representation of a burning cigarette in a circle with a bar across it*) must be prominently posted and properly maintained where smoking is not permitted.

"No smoking" signs designed uniquely for Pennsylvania are available as part of the Clean Indoor Air Compliance Toolkit, which has been developed by the Pennsylvania Alliance to Control Tobacco and includes additional guidance for establishing a smoke-free workplace. Signage for entrances and areas where smoking is not permitted is available through the Department of Health. To download these signs and the Clean Indoor Air Compliance Toolkit, log onto [www.health.state.pa.us](http://www.health.state.pa.us).

## **Local Government Legislation Moves Forward**

Before adjourning for the year, the General Assembly passed a number of pieces of legislation of interest to townships.

**Sunshine Act** — **Senate Bill 467 (PN 2352)** amends the Sunshine Law to increase the penalty from \$100 to \$1,000 for the first offense, and \$2,000 for any subsequent offense, for any member of any agency who participates in a meeting that violates the act. The bill also adds that an agency may not make a payment on behalf of or reimburse a member of an agency for a fine or cost resulting from the member's violation of this section. This bill was passed by the Senate.

**Amateur radio** — **Senate Bill 884 (PN 2242)** requires that any municipality that wants to regulate the screening or height of an amateur radio antenna must reasonably accommodate amateur radio service communications and represent the minimum practicable regulation. The proposal was adopted by both the Senate and the House.

**Intrastate mutual aid system** — **Senate Bill 1225 (PN 1876)** creates a statewide mutual aid system to foster mutual assistance among municipalities in the prevention of, response to, and recovery from threats to public health and safety that are beyond the capability of an affected municipality to respond to on its own. All local governments within the commonwealth would be part of the system unless a local government elects not to participate by resolution. Both the Senate and House approved this bill.

**Scrap metal theft prevention** — **House Bill 1742 (PN 4350)** requires scrap metal processors and recycling facility operators to collect and record certain personal information from a seller if the purchase of scrap metal exceeds \$100. This legislation was approved by both chambers and is on its way to the governor for his signature.

Townships  
must meet for  
their annual  
reorganizational  
meeting on  
Monday,  
January 5, 2009.

### **'Fibermat A' Approved for Use on Municipal Roads**

Fibermat A, a bituminous fiber reinforced seal coat, was recently approved for use by municipalities after testing at the Pennsylvania Transportation Institute at Penn State University.

Effective immediately, Fibermat A is approved for purchase with Bureau of Municipal Services' Liquid Fuels Funds expenditures. According to PennDOT, municipalities will find Fibermat A to be a useful tool for pavement preservation, which helps lengthen a pavement's life cycle. The expanded life cycle will decrease costs for municipalities in the long term.

Fibermat A was tested against conventional chip seal treatments at various field sites across the state, at controlled test sections at the Pennsylvania Transportation Institute's test track, and in other laboratory tests. The sealant has also been reviewed and evaluated by various PennDOT bureaus and districts, municipal organizations, and asphalt paving organizations.

For more information, call Rich Stirling at (717) 783-3721.

### **Date Set for Annual Reorganizational Meeting**

Townships must meet for their annual reorganizational meeting on **Monday, January 5, 2009**. Section 602 of the Second Class Township Code requires this annual meeting to be held on the first Monday in January, and the auditors' annual reorganizational meeting must be held the next day, Tuesday, January 6, 2009.