

THE PENNSYLVANIA STATE ASSOCIATION OF BOROUGHES

Senate Bill 275

Energy Preemption



Senate Local Government & Environmental Resources & Energy Committees

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Good morning Chairman Dush, Chairman Yaw, Chairman Kearney, Chair Comitta, and members of the Senate Local Government & Environmental Resources & Energy Committees. My name is Ron Grutza and I serve as the Senior Director of Regulatory Affairs at the Pennsylvania State Association of Boroughs (PSAB). Thank you for the invitation to testify today before the two committees on Senator Yaw's Energy Choice legislation.

PSAB is a statewide, non-partisan, non-profit organization dedicated to serving 956 borough governments and thousands of elected and appointed borough officials in Pennsylvania. Since 1911, PSAB has represented the interests of boroughs and helped to shape the laws that laid their foundation. With more than 2.6 million Pennsylvanians residing in borough communities, our members strive to deliver quality leadership and service to citizens across the Commonwealth.

Over the past few years, the Pennsylvania General Assembly has become accustomed to enacting more and more preemption bills. Preemption of local government is a serious action by the General Assembly when a subject field is of statewide concern. Some of these subjects include liquor, banking, and firearms. PSAB's guiding principle has always been to allow our members the most flexibility to decide what works best for their own borough communities. Of course, that means leaving important decisions at the local level and less mandating from Harrisburg.

Senate Bill 275 would preempt all actions of a local government that restrict or prohibit the connection to utilities based on the source of energy delivered. Additionally, the bill would prohibit a local government from discriminating against a utility service provider based on the source of energy delivered.

The sweeping nature of the preemption language in Senate Bill 275 could be problematic. We believe that enacting the legislation in the present form could create unintended consequences. For instance, would utility street opening ordinances be considered having the effect of prohibiting natural gas service? Certainly, these ordinances do not prohibit the connection to utility services. However, with a broadly written preemption in this legislation these ordinances may be seen as a regulatory barrier to utility services.

Under Section 12 of the Air Pollution Control Act (APCA) (Act of Jan. 8, (1960) 1959, P.L. 2119, No. 787), local governments may enact ordinances that regulate, among other things, the selection, operation and location of outdoor wood-fired boilers (OWB). OWBs heat homes and buildings, produce domestic hot water, heat swimming pools or hot tubs, and provide heat to agricultural operations such as greenhouses and dairies.¹ However, OWBs also pollute the environment and can cause a nuisance for residents with lung problems. Therefore, many local governments in Pennsylvania have ordinances regulating or banning the use of OWBs. Will Senate Bill 275 preempt these ordinances designed to protect the health, safety, and welfare of our residents?

The Pennsylvania Construction Code Act (PCCA) provides the only mechanism for adopting building codes by local governments. Under the PCCA, if a local government wanted to adopt a stricter building code provision, for example prohibiting a type of energy, it would need to petition the Secretary of Labor & Industry and meet a host of statutory requirements (Section 503 of PCCA). If the Secretary of Labor & Industry were to approve the stricter change to a local building code, an aggrieved party has the right

¹ *Pennsylvania Department of Environmental Protection, MODEL ORDINANCE FOR OUTDOOR WOOD-FIRED BOILERS*

to appeal that decision. The PCCA requires the Secretary to review the proposed ordinance on the following criteria:

(i) that certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception;

(ii) the exception shall be adequate for the purpose intended and shall meet a standard of performance equal to or greater than that prescribed by the Uniform Construction Code;

(iii) the exception would not diminish or threaten the health, safety and welfare of the public; and

(iv) the exception would not be inconsistent with the legislative findings and purpose described in section 102.

As you can see, the PCCA already provides a difficult process, with sufficient due process, to adopt local building codes which are stricter than the state standard in the Uniform Construction Code.

PSAB is not aware of any municipality in Pennsylvania that has enacted or is considering enacting an ordinance which prohibits the use of certain types of energy sources. We are aware of municipalities that have adopted Local Climate Action Plans through DEP's Local Climate Action Program. These local programs are designed to reduce the amount of greenhouse gas emissions in their community. Many facets of these plans require the municipality to make changes to their own systems, however, they encourage and incentivize commercial and residential properties to implement changes.

Another tool which municipalities have been using to incentive clean energy choices is the Commercial Property Assessed Clean Energy Program, or C-PACE (Act 30 of 2018). Enacted in 2018, C-PACE allows business property owners access to low-interest, long-term loans for clean energy and clean water projects that are repaid as property taxes to benefit the community. Eligible energy efficient projects include whole-building insulation, geothermal heating and cooling, combined heat and power, smart building systems, state-of-the-art chillers, boilers, or furnaces, and heat recovery systems. The C-PACE program represents the type of innovate tools counties and municipalities are using today to encourage, not mandate, energy efficient commercial buildings.

In closing, PSAB would like to thank the committees for the opportunity to present our concerns about Senate Bill 275 today. Again, we know of no municipality in Pennsylvania looking to prohibit energy choices for their constituents. As the legislative process moves forward, we would ask you to consider narrowing the scope of the bill to minimize any potential unintended consequences. I will be happy to answer any questions the members may have.