TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS

BEFORE THE
SENATE ENVIRONMENTAL RESOURCES AND LOCAL GOVERNMENT COMMITTEES

ON

SENATE BILL 275

PRESENTED BY

JOE GERDES
DIRECTOR OF GOVERNMENT RELATIONS

MAY 11, 2021
HARRISBURG, PA

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Chairman Yaw, Chairman Dush and members of the Senate Environmental Resources and Energy and Local Government Committees:

My name is Joe Gerdes and I am the director of government relations for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to provide comments on behalf of our member townships.

The Association represents Pennsylvania's 1,454 townships of the second class and is committed to preserving and strengthening township government and securing greater visibility and involvement for townships in the state and federal political arenas. Townships of the second class cover 95% of Pennsylvania's land mass and represent more residents — 5.5 million Pennsylvanians — than any other type of political subdivision in the commonwealth.

Senate Bill 275 preempts municipalities from adopting any policy that would restrict utility connections or services in Pennsylvania based upon the source of energy. However, in Pennsylvania, municipalities do not have the current authority to restrict a type of utility connection or energy source because the Public Utility Commission has oversight and regulatory authority for utility connections and as such, municipal authority has been preempted.

The courts have made it very clear that if a provider of utility service, which includes energy, electric, and natural gas, is regulated by the PUC, that a municipality cannot regulate these services beyond limited management of their right-of-way. Management of the right-of-way includes requiring permits and fees for access to the right-of-way and ensuring that any damage is repaired, but Pennsylvania law is clear that utilities have the right to access and place their facilities within local rights-of-way.

If this bill is referring to intrastate or interstate pipelines, municipalities do not have the ability to regulate these facilities due to preemption in state and federal law. While our members do participate in the public comment processes in these laws and would like to have a greater voice in the siting process, they cannot regulate and certainly cannot stop these facilities, even if faced with sufficient opposition by their residents.

In the bill, the term "policy" is used on page two, but the term is defined using terms that are regulations, not policy. This includes land use and building code regulations. These terms are generic and making it appear that this language was not crafted specifically for Pennsylvania. As such, we are concerned that these terms could be broadly interpreted and could be seen as preempting local land use controls, which we would oppose.

One of the terms used in the definition of "policy" is building code. We understand that the legislation may exist due to the actions of local governments in other states to limit the provision of natural gas through building code or zoning amendments. We do not believe that municipalities in Pennsylvania currently have this ability.

In Pennsylvania, the General Assembly adopted a Uniform Construction Code in 1999. As such, the Department of Labor and Industry through the UCC Review and Advisory Council have the authority to adopt updated portions of codes from the International Code Council,

which become law for the entire state. The RAC process was put in place by the General Assembly after earlier updates to these codes contained provisions that were determined to be overly stringent, including residential sprinklers. As such, this process was enacted to review each new provision and determine if it is appropriate or not for Pennsylvania's statewide UCC.

Municipalities choose to "opt-in" or "opt-out" for the administration and enforcement of the UCC. The vast majority have opted in. In either case, the UCC is the law of the land in Pennsylvania and the Department certifies and oversees all UCC code officials. Municipalities that had ordinances in place in 1999 with provisions that exceeded the UCC were able to retain these provisions.

There is a process for municipalities to propose a local amendment that is more stringent than the UCC, however it is a challenging process subject to public review and approval by the Secretary of Labor and Industry. One change that is allowed per the UCC, but must comply with the review and approval process, is to require miscellaneous and accessory structures of less than 1,000 square feet to comply with the UCC. The Department maintains a list of all proposed changes, the process, and final determination.

As the purpose of this legislation is to clarify that more stringent local building code provisions that would restrict energy sources and certain utility connections are not permissible, it may be more effective to amend the UCC directly and include this clarifying language in the UCC local amendment process.

While we agree that municipalities do not have the current ability to regulate utility connections, we have concerns that the broad language in SB 275 could be open to interpretation and limit the ability of municipalities to regulate in the siting of power generation facilities, including commercial solar facilities. Currently, municipalities may site these facilities through zoning and regulate development plans through subdivision and land development ordinances and cannot keep out any allowable use. We oppose any change to this authority and ask that the legislation, if determined necessary, be clarified to clearly preserve existing local land use authority.

All municipal land use regulations must comply with the strict rules of the Municipalities Planning Code, including public review of new or amended ordinances, time limits on plan review, a strict appeal process, and the requirement to plan for every allowable use. Municipalities use land use to limit conflicts between uses, preserve property values, and ensure that impacts of new development are addressed. For example, with commercial solar facilities, municipalities are working to appropriately cite these facilities and limit impacts, such as requirements for stormwater management based on the amount of ground disturbed, as well as ensuring that the facility will be decommissioned at the end of its useful life.

We do not believe that municipalities have the existing authority to keep out or restrict a utility service or connection type through zoning. In fact, our members have complained when water and sewer lines are extended into an area of the township that is not planned for development and may be zoned as agriculture or open space. The extension of these utility lines

creates pressure to change the zoning for that district, circumventing the intention of the community to leave that zoning district with limited development.

In closing, we do not believe that municipalities have the authority to restrict utility service within their communities and do not oppose a clarification of this existing preemption. However, we ask that the current legislation be clarified so it is not open to interpretation and oppose any restriction or limitation to existing land use authority through the Municipalities Planning Code.

Thank you for the opportunity to comment today. I will now attempt to answer any questions that you may have.