

## Government Affairs Successes

Here are examples of what PBA Government Affairs has been able to do for the industry:

### 2020

#### **SB 1030 – now Act 34 of 2020:**

- Act 26 amended the PA Sewage Facilities Act (Act 537 of 1965) to provide for the use of alternate on-lot septic systems for site development plans.

Act 26 also required DEP to develop scientific, technical, and field-testing standards, in consultation with the Sewage Advisory Committee, to evaluate on-lot sewage systems that have been classified as alternate systems.

DEP has refused to interpret Act 26 to follow both the letter of and the intent of the General Assembly with respect to use of on-lot alternate sewage technologies. In fact, the most recent draft Technical Verification Protocol imposes a disincentive to the adoption of alternate technologies which DEP has itself listed as effective. Sen. Yaw (Chair of Senate Environmental Resources and Energy Committee) introduced a bill, Senate Bill 1030, that will re-implement the original intent of Act 26.

PBA, along with multiple coalition partners participated in a call-to-action asking for swift passage of SB 1030 during June. The vote in the Senate was unanimous and the vote in the House was 136-66. The Governor signed the bill on June 5, 2020.

### 2019

- Pennsylvania Governor Tom Wolf signed House Bill 751 (Act 53 of 2019) reforming the way private water and sewer utilities' income tax liability is calculated. The tax change specifically relates to a federal tax provision affecting private water and sewer utilities when they extend service to a new area. With more than 3,800 member companies, Pennsylvania Builders Association Members annually invest millions of dollars in water and wastewater infrastructure that is donated to private water/sewer companies after development is complete. Act 53 becomes effective August 31, 2019.

Investor-owned water companies previously enjoyed a federal tax exemption for such infrastructure known as contributions in aid of construction (CIAC), but a little-advertised change in the Federal Tax Cut and Jobs Act (TCJA) eliminated this exemption in 2018. Prior to the passage of Act 53 this tax impacted developers, increasing the cost of every new home by thousands of dollars.

The “no gross up” method (also called the “utility finance” or “socialization” method) adopted in Act 53 requires the utility to pay the tax and then adds that amount to the utility's rate base for all customers. Essentially, the utility finances the payment of the tax expense and the utility gets reimbursed from rates over the life of the depreciating CIAC asset. ***Eliminating the requirement that developers fund the utilities tax obligation up front.***

Act 53 of 2019 provides significant savings for developers, homebuilders, and homebuyers.

Pennsylvania Home Builders and Developers are the only advocates that consumers can trust to safeguard the integrity of affordable housing.

## 2018

- **Act 84 of 2018: HB 1499: Elimination of Signature Requirement for Closure of NPDES Permits.** Act 84 amends the statutes governing common interest ownership communities (CIOCs) in. These amendments are all intended to clarify existing provisions of these consumer protection statutes and enhance the overall administration and governance of Pennsylvania's community associations.

Section 3205(13.1) of the Uniform Condominium Act, Section 5205 (16.1) of the Uniform Planned Community Act and Section 4205(A)(15) of the Real Estate Cooperative Act codify the current instructions promulgated by the Department of Environmental Protection in connection with the termination of the NPDES permit and provide for the transfer of responsibility for post-construction stormwater management from the declarant to the association, if the declaration provides notice of those responsibilities.

- **Act 111 of 2018: Workers' Compensation Fix.** Act 111 re-establishes a provision in the Pennsylvania Workers' Compensation Act authorizing Impairment Rating Evaluations (IREs) for claimants and makes additional changes to address the 2017 state Supreme Court's ruling in *Protz v. WCAB* with a reduction (to 35 percent) of the impairment threshold; and increases the burial benefit in the act from \$3,000 to \$7,000.

## 2017

- **Commonwealth Court dismisses Clean Air Council Lawsuit:** On January 5, 2017, the Commonwealth Court of Pennsylvania dismissed the Clean Air Council (CAC) lawsuit that threatened to mandate accelerated adopting of all model building codes, including the mandate for fire sprinklers in all homes. PBA's arguments were instrumental in defeating the onerous lawsuit.

From the beginning, PBA engaged in a furious litigation and fundraising effort to defeat the suit. First, PBA had to gain specific approval from the Court in order to intervene in the lawsuit. PBA was not a party to the original claim. We genuinely feared that the state agencies might settle the case in a manner that hopelessly disadvantaged residential construction.

Without PBA's effort to intervene, the Court would never have heard the position of PBA's members. Second, led by PBA's governmental affairs leadership, PBA build a war chest to fight this battle on behalf of the membership. The generous donations of PBA members and industry friends made this win possible.

A big "Thank You" to all those who contributed across the state. Without your leadership and financial support, the outcome of this decision could have been very different.

- **Act 26 of 2017: Alternate On-Lot Septic Systems for Site Development Plans.**

Act 26 amends the PA Sewage Facilities Act to provide for the use of alternate on-lot septic systems for site development plans. Applicants may now use both conventional and alternate on-lot septic systems to satisfy site suitability requirements when proposing a plan supplement or plan revision for a new land development.

- **Act 35 of 2017: UCC Exemptions.**

Act 35 amends the PA Uniform Construction Code Act to exempt structures commonly referred to as “roadside farm stands”, “maple sugar houses” and “loading/unloading structures at livestock auction houses” from the PA UCC. Permits and inspections will no longer be required and municipal amendments are not allowed.

- **Act 36 of 2017: RAC Fix.**

Act 36 amends the PA Uniform Construction Code Act to make comprehensive changes to the process used by the Uniform Construction Code Review and Advisory Council (RAC) to evaluate and adopt building code updates.

Act 36 requires the RAC to immediately begin a re-review of the 2012 and 2015 ICC Model Code revisions. October 1, 2018 would be the effective date of regulations implementing the results of the RAC 2015 Code Review. Act 36 has stopped the RAC review of the 2018 ICC Model Codes commenced on September 27, 2017. The 2018 ICC Model Code will not be available for adoption in PA until March of 2022.

## **2016**

- **Act 133 of 2016:**

Act 133 creates “temporary access” certificates that will allow a sale of property to move forward, but require that substantial code violations be corrected prior to the new owner inhabiting the property. It will also require that all other code violations be corrected within a certain time frame, with financial and other penalties left in place for failure to comply.

- **Act 162 of 2016:**

Act 162 clarifies the manner in which a county Recorder of Deeds Office may charge fees for the recording of amendments to declarations of condominiums, cooperatives, and planned communities. Counties throughout the state have been charging separate indexing fees for each lot when amendments to a community association governing documents are recorded. Many of our builders see fees totaling thousands of dollars of additional costs. This makes the passage of simple, but necessary, changes to governing documents cost-prohibitive for many planned communities. This legislation will prohibit per lot indexing fees, bringing fees to a reasonable and affordable level.

## **2015**

- **Act 31 of 2015:**

House Bill 1071 amends the Development Permit Extension Act to clarify outstanding issues regarding the extension of certain building and construction permits. Specifically, House Bill

1071 states that all permits granted between December 31, 2008 and July 2, 2013 are “tolled” until July 2, 2016. Further, House Bill 1071 spells out the original intent of the Act to include the right to convert or withdraw real estate in the approvals that are suspended by the Act.

As a result of the economic downturn in recent years, builders and contractors may have been unable to secure funding for permitted jobs prior to the expiration of their permits. This legislation prevents members of our industry from having to go through the needless and unnecessary step of applying for and awaiting new permits for projects that have previously been permitted.

- **Act 59 of 2015:**

House Bill 874 amends the Crimes and Offenses Code to eliminate legal loopholes which provided exceptions to the crimes of harassment, stalking, and threatening to use a weapon of mass destruction if the perpetrator is involved in a labor dispute.

The bill provides an overdue and necessary fix to the Crimes and Offenses Code, and helps ensure equal protection for all parties involved in labor disputes.

- **Acts 37 and 38 of 2015:**

Senate Bills 687 and 688 clarify oversights made by the judiciary with respect to the Uniform Planned Community Act and Uniform Condominium Act. Specifically, Senate Bills 687 and 688 state that the creation of planned communities and condominium associations out of existing land or facilities would not require municipal approval unless and until the planned community or condominium association constructed new structures or buildings.

- **Act 58 of 2015:**

House Bill 792 provides funding for the Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund (PHARE). PHARE will receive 40% of the difference between revenue projections from the Realty Transfer Tax (RTT) and actual funds collected from the RTT. The amount that can be allocated to PHARE is capped at \$25 million, and the RTT rate will not increase as a result. Funds from PHARE will be used to remediate blighted and abandoned properties.

## 2014

- **Act 162 of 2014:**

One of the biggest legislative wins for PBA and its local associations, House bill 1565 will no longer deny landowners and homeowners the right to use their land to its fullest potential, while still affording the same level of protection for water resources that currently exist in the regulatory process. House bill 1565 states that earth disturbance activities that require an NPDES permit for stormwater discharges may use or install: a riparian buffer, a riparian forested buffer, OR other options listed in the Department of Environmental Protection’s Best Management Practices Manual.

- **Act 160 of 2014**

House bill 1543 (Act 160 of 2014) allows for time and material contracts; it would require a contractor who has made a change that would affect their active registration to update their registration (change in insurance, etc.) within 30 days of the change. This bill comes after long negotiations over several years with the Attorney General’s office.

## 2013

- **Permit Extensions:**

As part of the 2012 Fiscal Code, PBA secured a further extension to the 2010 Permit Extension language, carrying permit approvals forward from 2009 to July 2, 2016. The language extends previously approved state and local permits for building projects.

- **Act 37 of 2013:**

PBA also worked with PSATS and the Community Associations Institute (CAI) to pass Act 37 of 2013 (formerly House Bill 1122), which modifies the Uniform Planned Communities Act (UPCA). Act 37 extends the 7-window to convert or withdrawal real estate in planned communities or condominiums to either 10 years (for projects without an approved phasing plan) or the duration of an approved phasing plan.

- **Act 41 of 2013**

Draft On-Lot Septic Guidance for Exceptional Value and High Quality Watersheds: PBA and its local associations in the Northeast Region worked to respond to DEP draft on-lot septic guidance for high quality (HQ) and exceptional value (EV) watersheds, which was published in the March 2 Pennsylvania Bulletin for a 60-day public comment period. PBA and its local associations, spearheaded by the Wayne County Builders Association, mounted a sustained lobbying and public education campaign that has been largely responsible for two major developments. First, in conjunction with the Office of the Governor and the legislature, PBA helped to ensure the passage of Act 41 of 2013 (formerly House Bill 1325), which allowed for the usage of on-lot septic systems as long as those systems complied with Clean Streams Law regulations. Second, DEP has indicated that, with the passage of Act 41, there is no longer a need for the proposed guidance document advertised in the PA Bulletin and as such, efforts to implement the document will be discontinued.

## 2012

- **HB 1718 and HB 1719**

Amending the Municipalities Planning Code – these bills will improve the municipal process in three ways: 1) clarifying the amount of retainage a municipality can withhold for public improvements to no more than 10%, 2) extending the amount of time builders have to dispute municipal invoices from 30 days to 100 days, and 3) assessing a 4% penalty on municipal engineers that are found to overbill through the arbitration process.

- **HB 2530 – amending the UCC**

House Bill 2530 allows for municipal joint boards of appeal. Previous to its passage, case law narrowly interpreted the appeals process to require that whatever entity administers and enforces building codes must also provide for an appeal opportunity (many municipalities were enforcing codes but deferring appeals to a regional or county appeal board, which case law deemed a violation of statute).

## 2011

- **Act 1 of 2011**

Act 1 of 2011 removed the sprinkler mandate for newly-built, single family homes from Pennsylvania's building code. This costly mandate took choice out of the hands of consumers

and had the potential to seriously stunt contractor's businesses. The new law states that builders must offer customers information on sprinklers, but leaves the choice up to them.

- **HB1336 Home Improvement Contractor Fix-It**

This Home Improvement Contractor Fix-It Legislation improved the Home Improvement Contractor Act for retailers, contractors and consumers by making three major changes. First, it required that the fees collected by the Attorney General for registration be placed into a dedicated fund to administer and enforce the act. It also increased the amount that a home improvement contract must reach before requiring that only a one-third deposit could be accepted by a contractor. Finally, the legislation defined "home improvement retailer" in order to allow retail installers of all sizes the option to opt out of the 1/3 partial pay, allowing them to collect 100 percent of the cost if they post a letter of credit in the amount of \$100,000 per store location.

- **SB263 Data Quality**

The Data Quality Act amended the Regulatory Review Act to ensure that state agencies describe the data a new regulation is based on, explain how the data was obtained and show why the data is acceptable. Enacting the Data Quality Act helped improve Pennsylvania's business climate, created jobs and stimulated long-term economic growth by reducing the cost of regulatory compliance for businesses and individuals.

## **Historical Government Affairs Successes, 1998-2010**

### **PBA Offensive Successes**

- **Architects' Licensure Law Reform (Act 31 of 1998)**

Home builders and remodelers are now able to advertise design services. Such advertisement was previously prohibited. Numerous home builders and remodelers were cited and fined by the Architects' Licensure Board. Unless specifically required by a municipal ordinance, home builders do not need an architect's seal on their building plans. Home builders and remodelers, as well as home centers and kitchen and bath design centers, who choose not to involve an architect in the construction of a new home or an addition or major renovation can avoid the costs of architects' fees.

- **Uniform Planned Communities Act Reform (Act 37 of 1998)**

Amends Act 180 of 1996, the Uniform Planned Communities Act, by reducing the paperwork burden on residential developers whose homeowners associations are formed for limited purposes. Examples of limited purposes include storm water management, signage and open space maintenance. It also requires associations with bylaws that were in effect before the passage of Act 180 to comply with the act. Developers must continue to disclose the financial responsibility of homeowners' costs, association fees and dues to prospective homebuyers.

- **Uniform Planned Communities Act (Act 189 of 2004)**

The act amends the Uniform Planned Communities Act and is an extensive cleanup of the original legislation. The PBA successfully amended this legislation to extend the retroactivity effect of homebuilder protections in planned communities.

- **Statewide Building Code (Act 45 of 1999)**

For areas of Pennsylvania where there was no building code, this new law leveled the playing field for builders across the state. All builders must build to the same standard. For areas where local codes exceeded the BOCA code, the new law prevented excessive codes from getting any worse.

- **Water and Sewer Tap-in Fees (Act 112 of 2000)**

This act requires all authorities to use the tap in fee formula that is prescribed in the Act regardless of the number of taps requested. Also, the legislation limits tap in fee charges by one municipal authority to another municipal authority to the rate charged within the selling authority's own service area.

- **Growth Control (Act 67 and Act 68 of 2000)**

Together these Acts represent the first comprehensive set of amendments to the Municipalities Planning Code since 1990, when the Transportation Capital Improvement Act, now Article V-A, provided for the imposition of transportation impact fees. Act 67, focuses on multi municipal planning. Act 68, provides a variety of changes to the Municipalities Planning Code including changes to comprehensive plans, subdivision and land development, impact fees and zoning, among others. Most importantly numerous anti-growth proposals such as urban growth boundaries and developer requirements for providing for infrastructure were defeated.

- **Excessive Engineering fees (Act 206 Of 2004)**

This act amends the Municipalities Planning Code by improving the arbitration process for disputing excessive municipal design review and inspection fees. Builders now will be able to arbitrate disputed fees at the conclusion of subdivision review and the completion of improvements instead of the current requirement to arbitrate each monthly bill. This hard fought PBA priority gives the members more leverage with municipal engineering firms.

- **Changes to the Unfair Trade Practices and Consumer Protection Law (Act 196 of 2004)**

This Act allows the rescission of rights to be waived through the execution of an Emergency Work Authorization Form. By completing a form, contained in the Act, the homeowner is able to obtain the work of a contractor immediately in the event of an emergency. This is of particular value to PBA's remodelers and HVAC contractors who previously had to get the consumer to write their own waiver, or risk violating the law. A number of PBA members had been cited by prosecutors for failure to comply with the three-day right of rescission.

- **Water Supply and Wastewater Infrastructure Capitalization Program (Act 218 of 2004)**

This creates the program within the Department of Community and Economic Development (DCED) and under the Commonwealth Financing Authority to allocate \$250 million for water/sewer infrastructure. Many anti-growth legislators attempted to kill the bill, which they claimed promoted sprawl.

- **Uniform Construction Code (Act 157 of 2006)**

This Act was successful in securing an additional two dollars per permit to go toward building code training. It also will require municipalities to submit a notice to challenge an ordinance ten days prior to the Department of Labor and Industry hearing.

- **Visitability (Act 132 of 2006)**

This Act allows municipalities to provide tax credits for the construction of home in which people with physical challenges can more easily live or visit.

- **Mechanics' Lien Law (Act 52 of 2006)**

This bill amended the Mechanics' Lien law by eliminating the stipulation of liens for commercial contracts. At PBA's insistence, stipulations remained for all residential construction and development loans of \$1 million or less.

- **Mechanics' Lien Law (Act 34 of 2009)**

This Act further amends the Mechanics' Lien Law with changes to the residential construction exclusion regarding waiver of liens by repealing the one million dollar maximum residential construction contract exclusion and replacing it with a exclusion of residences three stories in height, or less, not including basements. This has become an issue for some home builders who are financing a number of homes at the same time. It does not alter the original concept of the exclusion to keep it limited to low-rise residential. Large multi-story apartments and condominiums are considered commercial construction and are not included in this exclusion. More importantly, it has become a critical issue for new homebuyers whose homes have been liened due to disputes between developers, builders, sub-contractors and suppliers.

- **Bonding Issue (Act 3 of 2006)**

This Act amends Title 68 allowing an individual to obtain a corporate surety bond or a letter of credit in lieu of escrowing deposits. This would reduce the significant administrative costs and burdens of large home building companies associated with maintaining escrow accounts for each contract purchaser's deposit in planned communities. Under Pennsylvania law, builders are not generally required to escrow customer deposits in non-planned communities and are able to use those funds in connection with homebuilding. This legislation strikes a balance between addressing large builders' business concerns as well as the consumer protection aspect of the current UPCA by requiring a \$1 million bond or letter of credit to be posted to secure the return of any customer deposit that is not returned by a builder to a customer when required by the terms of the underlying purchase agreement.

- **Eminent Domain (Act 52 of 2006)**

This act makes changes to the eminent domain code, which will favor private property rights.

- **H2O PA Act (Act 63 of 2008)**

This bill authorizes the Commonwealth Financing Authority bond \$800 million for water or sewer, storm water, flood protection and dam safety projects.

- **Home Improvement Consumer Protection Act (Act 132 of 2008)**

For over 14 years PBA successfully blocked legislation which would require statewide registration of home improvement contractors. Finally in 2008 PBA was able to successfully negotiate a registration law that does not overly burden legitimate contractors and yet gives the Attorney General the ability to route out unfair competitors. A critically important component was the elimination of almost all municipal contractor licensing ordinances.

- **Anchor Bolt legislation (Act 9 of 2007)**

This bill amended the PA Construction Code Act to use the 2003 IRC foundation standards instead of recently created 2006 IRC standards which would mandate anchor bolts that did not need to be used in Pennsylvania and would be an added costs to members.

- **PA Construction Code Act (Act 106 of 2008)**

This bill amended the PA Construction Code Act by creating the Uniform Construction Code Review and Advisory Council with the intention that the body of experts would review changes to the code and decide which were appropriate for Pennsylvania.

- **Scrap Material Theft Prevention Act (Act 113 of 2008)**

This Act requires scrap processors and recycling facility operators to collect information relating to the purchase and sale of scrap material. Increases in scrap metal prices were encouraging thieves to strip new homes under construction of their metal.

- **Permit Extension Act (Act 46 of 2010)**

This Act allows builders and developers who have received approval, agreement, or a permit (including a building permit or construction permit), and if that permit expires or expired sometime after December 31, 2008, to extend the permits automatically until July 2, 2013.

### **PBA Defensive Successes**

- Urban Growth Boundaries - Continue to successfully block growth control legislation that would, if passed, change the Municipalities Planning Code (MPC) to limit where the citizens of Pennsylvania could live. Concurrently, requires developers to pay for and install 100% of all infrastructure before sub-division approval – on-site and off-site.

- Continue to block legislation creating education impact fees – these bills have been re-introduced each session since 2000. The legislation would amend the MPC and would require subdivision and land development applicants to file an economic impact statement with school districts within the area of their proposed subdivisions or land development. Also continue to stop legislation that would require builders to notify school districts of sub-division applications.

- Continue to prevent passage of legislation increasing the Realty Transfer Tax

- Continue to stop legislation creating state water well drilling requirements.

- Blocked Painting Licensure Legislation – this would have created licensing for commercial painters. While the bill exempted residential painters, some of our members do commercial painting. PBA asked the legislature to vote no on the legislation because it did not advance the safety or education of the painting industry. It only increased a company's already heavy bureaucratic burden and would have mandated training and enforcement that is already being performed by OSHA and other government agencies.

- Also prevented similar licensing for plumbers, electricians and interior designers.

- We were able to stop legislation amending the MPC regarding municipal comprehensive plans and their consistency with municipal ordinances and county comprehensive plans. We opposed this legislation because it weakens the existing language in Section 303(c) and removes the protection from the challenge. This presents both landowners and local governments with the new grounds for uncertainty as to the validity of land use ordinances.

- Also on the MPC front, we were able to block legislation regarding curative amendments. The PA Constitution gives landowners, absent proper zoning, the ability to use their land as they see fit as long as the use is not a nuisance to neighbors. This legislation dramatically affects property rights by removing a property owner's ability to use his land as a result of a determination by the court that the zoning ordinance is illegal. This type of legislation will encourage municipalities to be aggressive in restricting private property rights by writing defective zoning ordinances knowing they will have the ability to fix them with no penalty if they are challenged in court.
- We were able to prevent the passage of legislation regarding Construction Industry Employment Verification Act which would force builders to bear increased burdens for hiring illegal immigrants.
- Blocked expansion of municipal recreation fees.
- Thwarted DEP efforts to use a LEED-only standard for the \$25 million "high-performance buildings" grant program created under the Alternative Energy Investment Act of 2008 and successfully included the ANSI National Green Building Standard as qualifying under the program.
- Stopped efforts by DEP and environmental activist groups to include a requirement for mandatory 100-foot riparian forested buffers on all Pennsylvania streams in the new Chapter 102 regulations.
- Continue to block DEP-supported legislation creating stormwater management authorities.
- As part of ongoing efforts to defend against adverse implementation of the Chesapeake Bay TMDL, successfully advocated for and participated in the creation of a "nutrient credit trading exchange" designed to provide additional certainty and stability to the nutrient credit trading market.
- As part of ongoing efforts to defend against adverse implementation of the Chesapeake Bay TMDL, convinced DEP to begin developing an offsetting program for stormwater discharges associated with new construction and existing developed areas.