



# PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION

1000 North Front Street, Suite 401 Wormleysburg, PA 17043  
717-737-7655 • 717-737-8431(Fax)  
www.municipalauthorities.org • info@municipalauthorities.org

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## SENATE LOCAL GOVERNMENT COMMITTEE NOVEMBER 10, 2008

### TESTIMONY

#### PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION JOHN W. BROSIOUS, DEPUTY DIRECTOR

The Pennsylvania Municipal Authorities Association (PMAA) represents 700 authorities across Pennsylvania. Over six million citizens are served by our members providing public water, sewer service, waste management, recycling and recreational facilities.

In Pennsylvania, authorities traditionally provide water and sewer service, act as financing arms of municipal or county government, and provide county solid waste management. Municipal authorities also run regional airports, recreation areas, and can be involved in industrial development projects.

### STRUCTURE OF MUNICIPAL AUTHORITIES

#### CREATION

Authorities are traditionally created to finance and/or operate public projects and facilities. These projects typically deal with singular services that are complex in nature and often require significant debt. Examples are construction and management of a sewage treatment plant and system, water filtration plant and system, landfill or airport. Finances and funding are based on rates for services, thus relieving the local municipality of tax-based or fee-based responsibilities in these areas, which keeps municipal debt levels lower and allows them to focus on other services.

An authority can be created by a single municipality, several municipalities, a county or several counties. A service area is delineated at the time of creation. This can be a portion, or all, of a municipality or county, or can extend into several municipalities or counties. Service areas can also be adjusted at later dates or expanded by contractual or service agreements.

#### POWERS

The Municipality Authorities Act provides a variety of powers to authorities (Title 53, Section 5607(d)). Thirty two specific areas are delineated in the Act, some of which are: acquisition of property, financing of projects, setting and collecting rates for services, borrowing money, exercising eminent domain, entering contracts, setting and collecting tapping fees for new development.

## **PROJECTS**

The Act also outlines seventeen types of projects that authorities may engage in (Section 5607(a)), including: water systems, sewer systems, building and owning public facilities, transportation projects including parking, recreation and park facilities, incinerator plants, waste disposal, hospitals, public busing, swimming pools and lakes, and industrial development. Some of these projects are delineated very specifically, and others are broader in scope.

## **LIMITATIONS**

The Act also identifies some limitations on actions of authorities. Foremost among these is the so-called “non-compete” clause in Section 5607(b)(2). The key phrase in this section is: “...*and not to unnecessarily burden or interfere with existing businesses by the establishment of competitive enterprises,...*” Over the years, this section has been used to challenge activities of authorities that local or regional businesses feel unfairly compete with their services.

Another limitation on authorities, Section 5607(b)(3), restricts authorities from engaging in “solely revenue producing purposes” outside of their boundaries unless: 1) the governing body where the project is to be located officially gives its approval, or 2) if no approval was received, the authority will make payments in lieu of real estate taxes or to pay the taxes which would normally be assessed on the property. This section was added several years ago to address activities by a handful of authorities that were acquiring properties in other municipalities or counties outside of their authority service areas. This took these local properties off the tax roles since they were now owned by a public entity.

## **APPOINTMENTS**

A key component of authorities is that they are created by municipalities or counties and the board members of the authorities are similarly appointed by the creating municipality or county. Appointments are made on a staggered basis, usually one or two per year, serving five-year terms. Board members must be either a taxpayer, citizen or business owner in the municipality that created the authority or of the service area of the authority. A majority of the board members must be citizens residing in the incorporating municipality(ies). Board members cannot be removed by their appointing municipality, except in cases where they have missed (unexcused) three consecutive authority board meetings. Otherwise, a board member can only be removed by a court for cause shown.

## **SENATE BILL 1507**

Some specific comments to the role of authorities as electricity suppliers as proposed in Senate Bill 1507.

1. Non-compete Clause. As previously mentioned, an authority would have to be cognizant of other electricity providers in their area and insure their entry into aggregating and selling electricity would not interfere or unfairly compete with these other providers. A provision could be added to the bill to waive the non-compete clause for public purchase and sale of electricity.
2. PUC Jurisdiction. Currently, PUC does not exercise jurisdiction over authorities providing any of their delineated services, including electricity. Carefully worded language would be necessary in order to exempt authorities from PUC jurisdiction.

3. Voluntary/Optional Purchase by Residents. This provision may create some finance and logistical issues. Typically, an authority provides service (water, sewer, solid waste) to all residents in the area. The service is not offered on an optional or voluntary basis, as this would impact the recovery of costs for the infrastructure that is necessary to provide the service. Perhaps it might work differently with re-sale of electricity, but this should be further discussed. Logistically, the billing, record keeping, etc. would need to be constructed in a manner that incorporates customers of existing providers. An additional concern is the ability of the authority to pay costs to the provider of the electric with a potentially limited customer base.
4. Section 5607(a)(12). This section of the Municipality Authorities Act already deals with electricity in certain circumstances. They include the generation of surplus electric power from authority-owned incinerators, dams, etc. and the resale of this electricity to entities authorized to sell electric to the public. Certain federal and state laws are referenced in this section and these laws should be reviewed for potential application to the new power being granted to authorities.
5. Municipal Approval/Authority Creation. A municipality or municipalities will have to approve the creation of an authority to provide this function. Legal considerations at that time should address the provision of service by the authority, including service area, customer base (optional provision?), and ability to make project financially viable.

PMAA welcomes the opportunity to work with the Senate Local Government Committee and individual senators to create a program which can incorporate the intent of Senate Bill 1507. Thank you for the invitation to address you today.