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# WUC

Water Utility Council of the  
PA-Section, American Water  
Works Association (PA-AWWA)



## GOVERNMENT RELATIONS UPDATE

From Milliron & Goodman Government Relations, LLC.

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### Stephens Water Remediation Bill Passes House with Overwhelming Bipartisan Support

On September 25, 2019, the House passed legislation by Rep. Todd Stephens (R-Montgomery) to help address ongoing public water and environmental remediation costs and to foster and promote redevelopment of the former Willow Grove Naval Air Station.

"Despite the fact the federal government is responsible for the contamination, local ratepayers and taxpayers have been bearing the costs to remove these harmful contaminants from our public drinking water," Stephens said. "My legislation creates a way to fund the cleaning of our water while finding a productive use for the former air station property."

"Rep. Stephens worked tirelessly on behalf of the residents of his district in addressing this growing concern," House Majority Leader Bryan Cutler (R-Lancaster) said. "It's an important step in addressing the issue, and if similar situations occur in other communities across the Commonwealth, residents will be able to follow the successful blueprint developed by Rep. Stephens and other members in finding a potential solution."

**House Bill 1410**

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo>

[.cfm?sYear=2019&sInd=0&body=H&type=B&bn=1410](#), which passed with large bipartisan support (144-54), would redirect a portion of state tax revenue generated from the reuse of the former Willow Grove Naval Air Station and some land surrounding it to a newly created municipal authority, which would use the funds to eliminate the local surcharges ratepayers have been paying for clean water; to remediate water contamination caused by the military installation; and for infrastructure to encourage redevelopment of the closed military installation.

For decades, the former Willow Grove Naval Air Station conducted military training exercises using aqueous film-forming foam in firefighter training activities. This foam contained PFAS and contaminated the drinking water supplies in the area. The cost of removing the contaminants has been passed on to ratepayers.

"I believe this is the best way to eliminate the current surcharges to ratepayers and encourage the redevelopment of the Willow Grove Naval Air Station to the benefit of our community and the Commonwealth," Stephens said.

**Source:** Rep. Todd Stephens Press Release, 9/25/2019

### Leading Environmental Groups Back Stephens's Bill

# Addressing PFAS in Drinking Water

Leading environmental groups joined Gov. Tom Wolf in supporting Rep. Todd Stephens's (R-Montgomery) **House Bill 1410**

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=1410>, to fund infrastructure changes needed to remove polyfluoroalkyl substances (PFAS) from drinking water.

"I'm proud to have the support of Clean Water Action, Penn Environment and PennFuture for House Bill 1410, which would not only help all the residents impacted by the military base but help communities with similar problems across the Commonwealth," said Stephens.

"House Bill 1410 is part of the answer to the big outstanding question of who will pay for cleanups and the effects the chemicals have had on Pennsylvanians," Clean Water Action wrote in a letter to legislators. "It is also a part of a solution that will help ensure residents once again have access to their constitutional right to pure water."

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"It's wrong for local ratepayers to pay for a problem caused by the federal government," Stephens said. "House Bill 1410 will ensure payment for those costs and the cleanup efforts in other communities."

In addition, the legislation would direct PENNVEST to develop a program to address PFAS water contamination in communities across the Commonwealth. PENNVEST funds sewer, storm

water and drinking water projects across Pennsylvania.

**Source:** Rep. Stephens Press Release, 9/23/2019

## Nominations Sought for Damage Prevention Committee; PUC Reminds Stakeholders about October 25 Deadline

On September 23, 2019, the Pennsylvania Public Utility Commission (PUC) reminded stakeholders and concerned citizens across the state about the search for individuals to serve on the **PUC's Damage Prevention Committee (DPC)** [http://www.puc.pa.gov/transport/gassafe/docs/PAOnCall/Damage\\_Prevention\\_Committee-Nom\\_Form.docx](http://www.puc.pa.gov/transport/gassafe/docs/PAOnCall/Damage_Prevention_Committee-Nom_Form.docx), which is a key element of enhanced efforts to safeguard underground utilities.

The DPC is seeking candidates for three industry categories:

- Non-municipally owned or affiliated facility owner industries - including water and wastewater - nominated by facility owners or affiliated organizations (one position),
- Excavators - nominated by excavators or affiliated organizations (one position); and
- Municipal government - nominated by municipal governments or affiliated organizations (one position).

Nominations will be accepted until Oct. 25, 2019 and new DPC appointees will begin their three-year terms in 2020. **Nomination forms** [http://www.puc.pagov/transport/gassafe/docs/PAOnCall/Damage\\_Prevention\\_Committee-Nom\\_Form.docx](http://www.puc.pagov/transport/gassafe/docs/PAOnCall/Damage_Prevention_Committee-Nom_Form.docx) and **instructions** [http://www.puc.pa.gov/transport/gassafe/docs/PAOnCall/Damage\\_Prevention\\_Committee\\_Nom\\_Form-Ltr.docx](http://www.puc.pa.gov/transport/gassafe/docs/PAOnCall/Damage_Prevention_Committee_Nom_Form-Ltr.docx) are available on the PUC website.

Creation of the committee was authorized by **Act 50 of 2017** [http://www.pucpa.gov/about\\_puc/press\\_releases.aspx?ShowPR=3918](http://www.pucpa.gov/about_puc/press_releases.aspx?ShowPR=3918) , which enhances Pennsylvania's Underground Utility Line Protection Act - also known as the "One Call Law."

In accordance with Act 50, membership on the DPC includes: non-municipal owned or affiliated facility owner industries, such as the electric, natural gas or petroleum pipelines, telephone, water or wastewater and cable television industries; excavators; municipal governments; and municipal authorities.

### About the DPC

The DPC is part of the PUC's independent Bureau of Investigation and Enforcement, which also includes the Pipeline Safety Division.

Modeled after successful programs in other states, the **focus of the committee** [http://www.puc.pa.gov/utility\\_industry/transportation/pipeline\\_safety/pa\\_one\\_call\\_enforcement.aspx](http://www.puc.pa.gov/utility_industry/transportation/pipeline_safety/pa_one_call_enforcement.aspx) is a reduction in the number of "hits" on underground utilities.

The DPC meets regularly to review alleged violations of the Act and makes determinations as to the appropriate response including, but not limited to, the issuance of warning letters or administrative penalties. The committee holds public meetings in Hearing Room 1 of the Commonwealth Keystone Building, Harrisburg, and each meeting is **livestreamed on the PUC's website** [http://www.puc.pa.gov/about\\_puc/live\\_streaming\\_video.aspx](http://www.puc.pa.gov/about_puc/live_streaming_video.aspx) , and **summaries of actions taken** at those meetings [http://www.puc.pa.gov/utility\\_industry/transportation/pa\\_one\\_call\\_enforcement/dpc\\_agendas\\_Actions.aspx](http://www.puc.pa.gov/utility_industry/transportation/pa_one_call_enforcement/dpc_agendas_Actions.aspx) also are posted online.

### **Digging Safety - PA One Call**

Every year, underground lines across the state are struck more than 6,000 times - which means that during the average workday a pipeline or other vital utility system is hit every 20 minutes. While underground lines are often "out of sight and out of mind," every hit poses a risk to the contractors and

homeowners who are doing the digging; to utility workers and emergency responders who are mobilized when lines are struck; and to bystanders who live, work or travel near the locations of the incidents.

State law requires contractors and residents to contact PA One Call <http://www.pa1call.org/> at least three business days prior to excavation - triggering alerts to all utilities within an intended digging area and prompting utilities to mark where their facilities are located. Pennsylvanians can dial 8-1-1 to connect with the One Call system, while out-of-state residents or businesses can call 1-800-242-1776.

### About the Bureau of Investigation & Enforcement

As the independent investigation and enforcement bureau of the PUC, I&E enforces state and federal pipeline safety and motor carrier safety laws and regulations and represents the public interest in ratemaking and service matters before the PUC's Office of Administrative Law Judge. I&E has the authority to bring enforcement action, seek emergency orders from the Commission or take other steps to ensure public safety.

**Source:** PUC Press Release, 9/23/2019

## **House Approves Klunk's Regulation Review Legislation**

**T**he House took steps on September 24, 2019 to upgrade state government by making sure existing regulations are relevant in the modern age when it approved Rep. Kate Klunk's (R-Hanover) **House Bill 1055** <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sind=0&body=H&type=B&BN=1055> .

"There is no time like the present to reshape and modernize government, and my legislation will allow for the review of the more than 153,000 regulatory restrictions on the books in Pennsylvania," Klunk said. "We have over a century of regulations cluttering our books. We

desperately need an office to step in to help us identify the regulations that are no longer working for Pennsylvanians.”

Klunk’s legislation would create the Independent Office of the Repealer, which would be tasked with the systematic review of existing regulations to ensure they are still relevant. This would give the public, educators, business, government entities, non-profits, and others a chance to submit recommendations during the review process.

Included in the bill is a provision that the office would cease operations in June 2025 to ensure yet another government bureaucracy isn’t created. Another aspect of the bill is that for every new regulation enacted, two must be removed from the books.

“This standard has worked at the federal level helping to save billions of dollars,” added Klunk. “Imagine the potential positive impact to Pennsylvanians if a similar effort were implemented here in the Commonwealth. This bill coupled with the other regulatory reform bills passed by the House earlier this year will promote government efficiency and will help to propel Pennsylvania’s already thriving economy forward.”

House Bill 1055 is part of efforts to transform state government so that it works for all Pennsylvanians while lowering costs. This effort also goes together with bills the House passed earlier this year to reform and improve the state’s regulatory process.

“I have heard the stories of business owners, directors of non-profits, and local elected officials who have to navigate through Pennsylvania’s mountain of regulations. We must work to reduce the number of hoops they have to jump through. Those hoops hamper job and business growth and keep Pennsylvania from realizing its full economic potential.”

**Source:** Rep. Klunk’s Press Release, 9/24/2019

## **Lt. Gov. John Fetterman Signs Writ Calling Special**

## **Election to Replace Former State Sen. Mike Folmer**

**O**n September 25, 2019, Lt. Gov. John Fetterman signed a writ calling for a special election in the 48th Senate District of Pennsylvania to fill the seat left vacant with the resignation of former state Sen. Mike Folmer.

The special election will be held Tuesday, January 14, 2020, which Fetterman said represents the earliest possible date for restoring representation to the people of the 48th District. Folmer, a four-term Republican senator, resigned September 18 after being arrested on child pornography charges.

"The necessity of this election was born out of the tragedy of alleged exploitation of children," Fetterman said. "There should be no political angling in determining when or how this election will be held. The people of the 48th deserve representation as soon as possible."

The special election must be held at least 60 days from the time of the senator's resignation. According to the Department of State, statutes also require machines to be locked for 20 days after the November 5 election, so counties cannot start preparing for the special election until early December.

The district includes all of Lebanon County and portions of Dauphin and York Counties. In Dauphin, the district includes Conewago, Londonderry, Swatara and Lower Swatara townships and Highspire, Middletown, Paxtang, Royalton, and Steelton. In York, it includes Conewago, East Manchester, Newberry and Springettsbury townships and Goldsboro, Lewisberry, Manchester, Mount Wolf, and York Haven.

**Source:** Lt. Governor Fetterman Press Release, 9/25/2019

## **Gov. Wolf, Lt. Gov. Fetterman Announce Report, Next Steps After Adult-Use**

# Recreational Marijuana Tour

On September 25, 2019, Governor Tom Wolf and Lt. Governor John Fetterman held a press conference to announce the final report from the Lt. Gov's statewide recreational marijuana tour and proposed next steps as a result of input from thousands of Pennsylvanians who attended a listening session or submitted input via an online form.

"The Lt. Gov. made good on his promise to visit all 67 counties to hear from Pennsylvanians about whether or not they support the legalization of adult-use recreational marijuana in the state," Gov. Wolf said. "And among the many who voiced their opinions, the majority supported legalization."

In addition to the public and media, all local elected officials were invited to each tour stop. By a show of hands, a majority of attendees supported legalization in all but a handful of counties. **Key takeaways from the tour are included in the report, available here** <https://www.governor.pa.gov/wp-content/uploads/2019/09/Pennsylvania-Report-on-Adult-Use-Recreational-Marijuana-1.pdf> .

The report is comprised of two sections. The first section examines the volumes of correspondence received through an online form hosted on the governor's website, remarks made, and comment cards received at tour stops, and all other comments received by the lieutenant governor's office in various formats.

It includes a county-by-county breakdown of support and opposition, including the most common arguments received for and against legalization during the tour.

The second section highlights positive and negative results of legalization among individual states where recreational marijuana has been legalized.

Lt. Gov. Fetterman said he appreciates the comments from thousands of Pennsylvanians he met during the tour, and those who forwarded their

comments through the online form and via other means.

"We've heard you, and this announcement today is our earnest effort to bring about the changes you've told us you want," Fetterman said.

In addition to announcing the report, Gov. Wolf and Lt. Gov. Fetterman called for three actions:

1. Asking the legislature to get a bill to the governor's desk that decriminalizes non-violent and small cannabis-related offenses.
2. Seeking a path to restorative justice through the expungement of past convictions of non-violent and small cannabis-related crimes.
3. Calling on the General Assembly to seriously debate and consider the legalization of adult-use, recreational marijuana.

"We now know the majority of Pennsylvanians are in favor of legalization, and that includes me," Gov. Wolf said. "I look forward to seeing what we can accomplish together, especially the criminal justice reforms I am proposing today, which will have an immediately positive influence on thousands of families across Pennsylvania. "Thank you again to Lt. Gov. Fetterman for conducting this important research, and to all the Pennsylvanians who took the time to attend a tour stop, write a letter or make a phone call to make their opinion known."

**Source:** Governor Wolf's Press Office, 9/25/2019

## Senate Committee OKs Bill to Limit Public's Right to Know Why a Regulation is being proposed

On September 25, the Senate Intergovernmental Operations Committee reported out **Senate Bill 398** (Gordner-R-Columbia) <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sInd=0&body=S&type=B&bn=3>

98 which would amend the Regulatory Review Act to prohibit agencies from publishing a statement letting the public know why they are proposing new or amended regulations when they are asking the public for comments.

The vote to report the bill out of Committee was 6 to 5, with Republicans supporting, except for Sen. Tom Killion (R--Delaware) who voted no. **The bill now goes to the full Senate for consideration.**

### Background

State agencies have included a statement of the purpose and need for a new regulation or why regulation changes are being made in their formal Pennsylvania Bulletin notices to the public since before the 1982 Regulatory Review Act was passed.

Since 1982, the Independent Regulatory Review Commission has required agencies to include a description of why a regulation is needed-- "Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit."

In the case of a recent Environmental Quality Board regulation to lower the sulfur content limit for heating oil from 500 to 15 ppm, the Background and Purpose part of the PA Bulletin notice inviting public comments describes in plainer language why the rulemaking is needed-- to address regional haze and visibility impairment as directed by the U.S. Environmental Protection Agency and why it's important to people's health to reduce haze caused by tiny pollution particles and how haze is formed.

It also includes a description of the federal requirements and what DEP has done previously on this particular issue and why it is important to meeting air quality standards within Pennsylvania. And in this case, what Philadelphia has done to adopt a similar requirement.

It also outlines what steps DEP took to review the regulation with various advisory committees and stakeholders before the Environmental Quality Board adopted it as a proposed rule for public comment.

This is handy information for the public to have.

Under Senate Bill 398, only members of the General Assembly and the Independent Regulatory Review Commission would have this information provided to them as part of the regulatory package.

It would no longer be included in the PA Bulletin notice for the public, businesses and other stakeholders who want to comment on a regulation.

### And why?

Sen. Gordner said in his co-sponsor memo to colleagues: "Additionally, the legislation will allow agencies to provide statements of purpose (SOPs) to IRRC and the [House and Senate] committees, but will remove the requirement that those statements be published in the Pennsylvania Bulletin. There have been instances when courts have interpreted SOPs in a way that is either inconsistent with the regulations themselves or inconsistent with the intent of the General Assembly. This legislation seeks to correct those instances."

Gov. Wolf vetoed similar legislation sponsored by Sen. Gordner in 2016 saying, "this bill decreases the transparency in state government by preventing state agencies from publishing explanations of why regulations are needed. Public notice, which is required by current law, helps inform interested parties of the need and reason behind the changes in the rules. We should be increasing -- not decreasing -- transparency in our government."

Of course that information would still be on the record with House and Senate members and the IRRC. The public could also get it, but not without digging, in DEP's case, through the **Environmental Quality Board webpage** <https://www.dep.pa.gov/PublicParticipation/EnvironmentalQuality/Pages/2019-Meetings.aspx> to find the original posting of that information that would go directly to House and Senate members and IRRC.

So what's the point? To try to get a small legal advantage.

But to people in the real world what it really does is make it harder for the public, businesses and

other stakeholders to know why a regulation is being proposed.

**Source:** PA Environmental Digest, 9/30/2019

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*This newsletter provides general information, not legal advice as to any specific matter. It should not be used as a substitute for appropriate legal advice.*