



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

**TESTIMONY BY  
THE PENNSYLVANIA STATE ASSOCIATION OF  
TOWNSHIP SUPERVISORS**

**BEFORE THE  
HOUSE LOCAL GOVERNMENT COMMITTEE**

**ON**

**HB 904**

**PRESENTED BY**

**ELAM M. HERR  
ASSISTANT EXECUTIVE DIRECTOR**

**AUGUST 1, 2007**

**LAFAYETTE COLLEGE  
EASTON, PENNSYLVANIA**

4855 Woodland Drive ■ Enola, PA 17025-1291 ■ Internet: [www.psats.org](http://www.psats.org)

PSATS ■ Pennsylvania Township News ■ Telephone: (717) 763-0930 ■ Fax: (717) 763-9732

Trustees Insurance Fund ■ Unemployment Compensation Group Trust ■ Telephone: (800) 382-1268 ■ Fax: (717) 730-0209

Chairman Freeman and members of the House Local Government Committee:

Good afternoon. My name is Elam M. Herr, and I am the assistant executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,456 townships in Pennsylvania represented by the Association.

Townships are home to more than 5.4 million Pennsylvanians, nearly 42 percent of all state residents. These townships are very diverse, ranging from rural, agricultural communities with fewer than 200 residents to more urban, populated communities with populations approaching 70,000 residents.

Pennsylvania townships continue to grow faster in population than any other type of municipal government in Pennsylvania. Since 95 percent of the state's land area is found in townships, townships in general have more land available for new growth and development to occur. This growth has created formidable challenges for township governments and their current residents in meeting the demands of new residents for paved roads, sewage systems, police and fire protection, recreation, and many other services. At times, this growth occurs suddenly and unexpectedly and can quickly render a municipalities land use ordinances woefully out of date.

We are here today to testify in support of House Bill 904 (*PN 1056*), which would amend the Pennsylvania Municipalities Planning Code to authorize municipalities to place a temporary moratorium on new development by enacting an ordinance to suspend the acceptance of applications for development. The bill would also allow a landowner or developer to apply for a waiver from a moratorium.

The Association strongly supports legislation to authorize temporary development moratoriums. Our members reaffirmed this position at the 2007 PSATS State Convention by adopting the following resolution:

07-68 RESOLVED, That PSATS seek legislation to amend the Pennsylvania Municipalities Planning Code to permit municipalities to impose temporary moratoriums on new subdivisions and land development while they revise their comprehensive plans and land use ordinances.

By temporarily delaying development, a municipality would be allotted the necessary time to appropriately revise its comprehensive plan, SALDO ordinance, or zoning ordinance to best address issues associated with growth. Under HB 904, the municipality would first have to demonstrate that the needed revisions to its land use ordinances would improve the health, safety, or environment of the municipality. This authorization would be particularly beneficial to those municipalities experiencing rapid, and possibly unexpected, growth.

For years, townships in Pennsylvania assumed that they had the power to enact moratoriums on subdivision and land development approvals. However, in 2001, the

Pennsylvania Supreme Court ruled in *Naylor v. Township of Hellam*, 773 A.2d 770 (Pa., June 20, 2001) that municipalities do not have the power to impose moratoriums on subdivision and land development approvals. The Court was clear in its decision: "This appeal presents the issue of whether a municipality may enact a temporary moratorium on certain types of subdivision and land development while the municipality revises its zoning and subdivision land development ordinances. We hold that the Municipalities Planning Code...does not grant a municipality such power..." *Id.* at 772. The Court determined that it is the legislature, not the courts, that must decide whether to extend the power of imposing temporary moratoriums to municipalities.

Temporary and reasonably based moratoria maintain the status quo while a municipality addresses the problems created by overwhelming land development and is an essential planning and regulatory tool. The power to enact temporary moratoria on land development for the purposes of addressing unanticipated problems created by such development is a logical component of the municipal planning and regulatory function. The courts have generally upheld moratoria for as long as 2 years.

Both the National Trust for Historic Preservation and the American Planning Association recognize the legitimate use of development moratoria. Essentially, a development moratorium is a temporary halt on new development, often a specific type, while the municipality examines the impact of proposed development and adjusts its land use ordinances to mitigate the harmful impacts of development. The APA's *Growing Smart Legislative Guidebook* contains a chapter on development moratoria, including a commentary and suggested statutory provisions. We believe that HB 904 generally follows these suggested provisions.

In 2002, the U.S. Supreme Court ruled in *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) that temporary, government-imposed development moratoria are not automatically a regulatory taking of private property requiring just compensation. The Supreme Court noted that the consensus in the planning community appears to be that temporary development moratoriums are an essential tool of successful development. And, in fact, the Court found that the 32 months required by TRPA to develop its plan was not unreasonable.

Many moratoria that have been put in place across the country temporarily restrict a specific type of development. In some cases the limit is on superstores over a certain number of square feet. Easton, Maryland placed a 3-month moratorium on development of stores larger than 25,000 square feet in 1999. The planning commission studied large-scale retail during the moratorium, held public hearings, and issued a report. Based on the planning commission's findings, the town adopted an ordinance restricting new retail stores to no more than 65,000 square feet.

It has long been established by the courts that in order to be a legitimate temporary moratorium, proper safeguards must be included and the moratorium cannot be used as a means to simply stop development. Such an ordinance must be specific and reasonable. To be reasonable, the ordinance must be enacted in good faith, be non-

discriminatory, and be limited in duration. Steady progress should be made in studying and developing the needed improvements to the land use ordinances, as well as plans for needed infrastructure improvements. We believe that HB 904 follows these standards

While we support the authorization of temporary development moratoria in HB 904, we do have a few questions and concerns with some of the bill's requirements.

Sections 803-B(c) and Section 804-B (a) require that a hearing on a proposed temporary moratorium be held both before and after the municipality compiles findings documenting the need for the moratorium. We question the need for two hearings and suggest that it would be more appropriate to hold a "post" findings hearing where there is a document that the public can review.

Under HB 904, could moratoriums be specific to a type of development, such as retail establishments over a certain square footage? Or is it envisioned that the moratoriums would be more general?

The preordinance moratorium provisions in Section 804-B appear to be an attempt at addressing issues with the pending ordinance doctrine. However, there would be a minimum of a 10-day period from the time the advertisement is placed until the preordinance moratorium is adopted, which would leave time for plans to be filed. We recommend that this issue be examined at length and are willing to assist with this legally complex issue.

In Section 805-B(b)(2), a municipality would need to hold a pre-finding hearing. Again, we suggest a post-finding hearing to give the public a document to discuss and would be more appropriate.

Section 806-B would require the municipality to hold a hearing on each waiver request. We suggest that a hearing may be unnecessary and that the waiver could be more appropriately addressed in a public meeting.

Again, PSATS strongly supports the need for authorization for temporary development moratoriums and commends the sponsors of HB 904 on their hard work. We would be happy to work with the sponsors and the interested parties to attempt to fine-tune this important legislation.

Thank you for the opportunity to testify before you today on this much-needed land use tool. I will now attempt to answer any questions that you may have.