

## United Methodist Advocacy in Pennsylvania July 31, 2020

This month, the Pennsylvania General Assembly recessed for the summer. However, before recessing they sent a bunch of legislation to Governor Tom Wolf's desk—most of which the governor signed into law. Some of the legislation was bipartisan and some was not. Of course, squabbling over the Administration's efforts to handle the coronavirus pandemic continued.

Speaking of the pandemic, at the end of the month of July, in Pennsylvania overall, COVID-19 cases seem to be increasing slightly. The Southeastern part of the state is especially affected. Earlier in the month, Allegheny County experienced a jump in cases. Though that region is now seeing a decrease. It seems that Pennsylvania is experiencing rolling surges, here and there. **My perception is that we are caught in the flow of the pandemic, with no predicting its course.**

**Mental health specialists reported to a legislative panel their concern about the long-term psychological effects of the pandemic. Read about that and other political activity this past month, following:**

- **Bills Signed Into Law**
- **Two New Police Reform Laws**
- **Occupational Licensing Now Easier for Reformed Citizens**
- **More Bills Signed Into Law**
- **Bill to Regulate Delivery Robots**
- **Two Proposed PA Constitutional Amendments**
- **Right to Know During Time of Emergency**
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- **Methane Industry Tax Credits**
- **Regional Greenhouse Gas Initiative Controversary**
- **Fiscal Year Ended with Revenue Shortfall**
- **Levine Remarks on Transgender Hate Speech**
- **Former Senator Sentenced to Jail-Time**
- **Census Targets Low Response Areas**

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### Bills Signed Into Law

On July 1, Gov. Wolf signed several bills. Included were three on which I have previously reported:

- **House Bill 2171**, making sweeping reforms in the Pennsylvania State System of Higher Education (PASSHE), as the system is redesigning to address contemporary challenges that threaten its sustainability.
- **Senate Bill 595**, mandating insurance coverage for ultrasound screening and magnetic resonance imaging if a mammogram indicates the need for further imaging and a woman is deemed to be at increased risk for breast cancer.
- **Senate Bill 351**, adds “health care practitioners” as a protected class in the event of an assault. The new law classifies an assault on a health care practitioner as a felony. “Practitioner” is a catch-all term including anyone employed in a health care activity.

### Two New Police Reform Laws

On July 14, Gov. Tom Wolf signed into law two policing-reform bills. Speaking outside the Pennsylvania Commission on Crime and Delinquency building, the governor said Pennsylvania still needs a lot more work to improve the criminal justice system. Referring to the Black Lives Matter demonstrations following the death of George Floyd in the custody of Minneapolis police, Wolf talked of the need to eliminate systemic racism and to do more to improve education and health care.

One bill signed by the governor was **House Bill 1841**, sponsored by Rep. Harry Readshaw (D-Allegheny)—a United Methodist. It requires law enforcement agencies to perform background checks for job applicants, to examine prior employment as a law enforcement officer. The measure establishes an electronic database maintained by the Municipal Police Officers' Education and Training Commission (MPOETC) to provide information regarding any officer's prior use of excessive force or other misconduct.

The other bill was **House Bill 1910**, sponsored by Rep. Dan Williams (D-Chester). It requires MPOETC to develop in-service training for law enforcement officers, including instruction on the use of force and de-escalation tactics, warning signs of child abuse and awareness of intellectual disabilities and autism. The law also requires mental health evaluations of law enforcement officers as a condition of continued employment. The evaluation may take place upon request of a law enforcement officer, a police chief, or within 30 days of an incident involving the use of lethal force.

Other speakers at the bill signing called for action on two Senate-approved bills that have moved to the House:

**Senate Bill 459**, sponsored by Senate Minority Leader Jay Costa (D-Allegheny) to mandate that municipalities keep public records of use-of-force police incidents, including the reason for the use of force and any resulting injuries.

**Senate Bill 1205**, sponsored by Sen. Sharif Street (D-Philadelphia) to ban law enforcement officers from using a chokehold on individuals.

State Attorney General Josh Shapiro said there's a need for uniform training manuals for all 1,200 law enforcement agencies and more citizen participation on law enforcement oversight boards.

If you agree with the last two bills, call your state representative to urge passage of these measures during legislative sessions this fall.

## Occupational Licensing Now Easier for Reformed Citizens

On July 1, Gov. Tom Wolf signed **Senate Bill 637** into law. The law removes barriers to state occupational licensing for individuals with a criminal record, unless their criminal history is directly related to the occupation in which they are seeking a license—also, sex crimes, drug trafficking, and some violent crimes remain banned. The intention is to reduce recidivism.

One of the changes is to remove vague language in licensing law. Previously, state occupational boards were permitted to determine an applicant's "moral character" or "moral turpitude" before issuing a license.

Gov. Wolf said, "Those restrictions put roadblocks in the way of people trying to put their lives back on track, and it reduced the pool of workers that made our state just a better place."

SB637 was sponsored by Sens. John DiSanto (R-Dauphin) and Judy Schwank (D-Berks).

## More Bills Signed into Law

On July 23, Gov. Tom Wolf signed more than a dozen bills into law. Some of those include:

- **House Bill 1459**, creating a mental wellness and stress management program for emergency responders.
- **House Bill 256**, lowering the thresholds for felony designations of assaults by inmates on corrections facility employees, and also establishing a third-degree felony if a law enforcement officer or correctional facility employee engages in a sexual act with an inmate or detainee.
- **House Bill 943**, prohibiting use of a "gag clause" in pharmacy contracts that prevent pharmacists from disclosing information to their customers that could reduce out-of-pocket costs for medications.
- **House Bill 632**, Peyton's Law, requiring information be provided to student athletes and their parents about EKG testing to detect underlying heart conditions. The bill requires students and parents sign the informational form before students participate in athletic activities.
- **House Bill 2455**, requiring the Governor and Department of Health to submit information to the legislature about COVID-19 testing.

## Bill to Regulate Delivery Robots

On July 6, the state Senate passed **Senate Bill 1199**, by a vote of 31-19. The bill would regulate Personal Delivery Devices (PDD). PDDs are autonomous robots and drones that deliver packages. The legislation defines a PDD as a device that weighs less than 550 pounds without cargo and goods, is equipped with an automated driving system and isn't capable of exceeding a speed of 12 miles per hour in a pedestrian area or trafficway or 25 miles per hour on the shoulder of a highway.

Bill sponsor, Sen. Ryan Aument (R-Lancaster) expressed the bill supporters' viewpoint, "The arrival of a global pandemic mandates the continued investment, creation and deployment of innovative technological tools and resources. Personal Delivery Devices are the exact type of technological advancement that can help businesses and residents of the Commonwealth overcome the challenges of these unprecedented times."

Most Democrats voted against the bill. Their caucus received messages opposing the bill from the Insurance Federation of Pennsylvania, Pennsylvania Municipal League, Teamsters Union and other groups, reported Senate Minority Leader Jay Costa (D-Allegheny).

SB1199 has moved to the House Transportation Committee for consideration.

The bill would set the following requirements for PDDs:

- They must be able to wait at crosswalks for pedestrians, and yield to vehicles and foot traffic ahead of them.
- They must have a braking system, visible lights and an ID number.
- Local officials cannot regulate such devices beyond the provisions of SB1199.
- A business operating a drone must have liability insurance and a remote monitor capable of controlling the device.
- Drones must be registered with the Federal Aviation Administration and commercial drone operators must follow FAA guidelines.

The state Unmanned Aircraft Systems Law of 2018 makes it a crime for a drone operator to conduct surveillance of a person in a private place, operate in a fashion to place someone in fear of bodily injury and provide or carry contraband.

## Two Proposed PA Constitutional Amendments

On July 15, two bills to amend the Pennsylvania Constitution received final approval in the Senate. One would change the way appellate court judges are elected. The other would limit a gubernatorial emergency declaration to 21 days, to be extended only by legislative concurrence.

Since these measures would change the state Constitution, they need to be approved a second time during the next legislative session (2021-2022). Finally, they would go before the voters as a referendum.

**House Bill 196**, was narrowly approved in the Senate, 26-24—it was approved in the House last December. It would allow the General Assembly to divide the state into seven Supreme Court districts, 15 Superior Court districts and nine Commonwealth Court districts for electing judges to these courts. Appellate judges are currently elected statewide.

Supporters contend the measure would ensure regional interests are represented on the highest courts. Presently, over half of all the judges on these courts are from Allegheny or Philadelphia Counties.

Opponents say the changes will cause the courts to become less neutral and independent, the selection process subject to regional politics, compromising the system of checks and balances.

**Senate Bill 1166**, concerns the gubernatorial disaster declaration process. Currently, though not part of the Constitution, state law allows the governor to declare an emergency for up to 90 days. Thereafter, the order can be renewed. The legislature can only terminate the renewed order with a supermajority vote.

SB1166 would limit a governor's disaster or emergency declaration to three weeks, with an extension dependent on agreement by the General Assembly. Furthermore, a governor could not create a new emergency order, for the same situation, without approval of the General Assembly.

The bill would also add a new section to the state Constitution that would prohibit denying or abridging equality of rights because of race or ethnicity.

SB1166 was approved in the House, 115-86, a day later it was approved back in the Senate, 33-17.

Supporters say the governor has abused his power under his recent COVID-19 disaster declaration. Limiting the length of an emergency declaration would ensure greater cooperation among the branches of government during an emergency and restore the system of checks and balances.

Opponents argue that 21 days is an abstract figure and might not be enough to properly address an emergency. To include the General Assembly in this decision-making will only add more voices, confusing the situation.

### **Right to Know During Time of Emergency**

On July 16, **House Bill 2463** was presented to Gov. Tom Wolf. The bill passed unanimously in both the state House and Senate. HB2463 would require state agencies to respond to Right To Know (RTK) requests according to protocol, even if an agency has been forced to close its physical location because of an emergency declaration.

Gov. Wolf originally indicated he planned to veto the legislation. Rep. Seth Grove (R-York) observed that the last time a unanimously-approved bill was vetoed by a Pennsylvania governor was in 1978. Rep. Grove is prime sponsor of HB2463

The Wolf Administration claimed HB2463 made no allowances for the health and safety of Commonwealth employees who might need to access physical offices to process RTK requests. The governor also claimed opposition because it could expose information related to “critical infrastructure and other public safety sectors.”

Rep. Grove responded, “State government has successfully demonstrated its portability during the COVID-19 pandemic as many aspects of it smoothly transitioned when asked to work from a remote location. With today’s technology, RTK requests can be asked and answered quickly and flawlessly without exposing confidential information.”

In March, at the time of the pandemic declaration of emergency, the Office of Open Records (OOR) informed agencies that under the emergency they can take reasonable measures to deal with RTK Law requests. Melissa Melewsy, media law counsel with the Pennsylvania News Media Association—representing the state’s media outlets—said, “I think it’s unfortunate that many agencies interpreted that as saying we can just not answer or deny Right-to-Know requests during the state of emergency, and that’s not really a workable option.”

Melewsy said state agencies decided not to answer requests because of the emergency. Wolf’s office did make attempts to answer questions, but those answers required additional follow up, which was lacking. Without a RTK process, “(You) can’t file an appeal to the Office of Open Records or a court or get any kind of third-party, independent oversight, which is really the crux of the problem. Just because you request information doesn’t mean you get access to it... the law is there so requesters can pursue their legal rights to the next step....”

On July 26, Gov. Wolf announced he would allow HB2463 to become law without his signature. The previous day, Erik Arneson, executive director of OOR, pointed out that if HB2463 were to become law, “any guidelines published by OOR would protect the health and safety of agency employees” and agencies would continue to be able to avail themselves of the exemptions in the existing Right-to-Know Law. Wolf cited Arneson’s assurances as a reason to allow the bill to become law.

### **Supreme Court Allows Continuation of Emergency**

On July 1, the Pennsylvania Supreme Court ruled in favor of Gov. Tom Wolf regarding the matter of the General Assembly’s resolution to end the governor’s pandemic emergency declaration.

This concludes the struggle that began June 10—included in my report for June—when the two chambers of the Legislature concurrently adopted **House Resolution 836**, to terminate Gov. Wolf’s pandemic emergency declaration.

The high court determined that the General Assembly cannot act unilaterally to end Wolf’s declaration and the basis for their effort to do so is unconstitutional. Furthermore, the General Assembly, by statute, gave emergency declaration power to the governor, in the first place.

**Reacting to the decision, Senate Majority Leader Jake Corman (R-Centre) and Senate President Pro Tem Joe Scarnati (R-Jefferson) in a joint statement said, “The Court has essentially granted the Governor King status.” Some proponents of HR836 attribute the Court’s decision to the fact that its bench consists of a majority of Democrats.**

### **Wolf Turns Back Pandemic Reopening**

On July 15, during a press conference, Gov. Tom Wolf announced a reversal of some of his pandemic green phase reopening provisions. He ordered a suspension of on-premises alcohol consumption in bars. The governor said this was because of “an unsettling climb in new COVID-19 cases throughout Pennsylvania.”

The only way to receive on-premises alcohol service is to order alcohol as part of sit-down, dine-in meal at a table or booth. Restaurants are ordered to limit indoor occupancy to 25 percent of stated fire code maximum occupancy—including staff.

Allegheny County took similar action in late June, in response to an increase in virus cases attributed to crowded conditions at bars, restaurants, and other businesses serving alcohol. Philadelphia has implemented similar policies.

The governor is also urging telework by employees. Indoor events and gatherings of more than 25 persons are prohibited, and outdoor events and gatherings of more than 250 persons are prohibited.

Wolf said the targets of his order were developed based on what his administration’s public health experts have identified as the three catalysts that have allowed COVID-19 “to reach our Commonwealth once again.”

First, some Pennsylvanians have been ignoring the mask-wearing requirements when they are visiting Pennsylvania bars and restaurants.

Second, travel both by Pennsylvanians returning from hot-spot states and by out-of-state visitors.

Third, a lack of national coordination, resulting in some states not committing to the things needed to prevent the virus from spreading.”

**Wolf said his administration believes additional virus increases are coming. Along with the governor, Dr. David Rubin, director of PolicyLab at Children’s Hospital of Philadelphia, said the model he and his colleagues developed suggests the virus is making its way back to the northeast United States from the current hot-spots in the southern, southwestern and western regions of the country.**

## **COVID Testing Completed in All Nursing Facilities**

On August 28, state Health Secretary Dr. Rachel Levine announced that all of Pennsylvania’s 693 nursing homes have completed testing all residents and staff for COVID-19, at least once. On June 8, Levine ordered all skilled nursing facilities to complete testing by July 24. She said, “We provided nursing home owners and operators with the resources they needed to complete this huge task and we are appreciative for their cooperation.”

Levine said this was necessary as part of the Health Department’s reopening guidance to allow skilled nursing facilities to resume visitation, communal dining, activities, etc. She said those who wish to resume visiting loved ones need to contact the particular facility for visiting information.

Personal care homes, assisted living residences and immediate care facilities licensed by the Department of Human Services must complete universal testing by August 31.

## **Anticipating Mental Health Effects of the Pandemic**

On July 28, the state House Human Services Committee heard testimony on the COVID-19 pandemic’s impact on mental health.

Kristen Houser who directs the Office of Mental Health and Substance Abuse of the state Department of Human Services told the panel, “Our office is among thousands of behavioral health entities across the country that believe behavioral health needs created by this pandemic will be much longer lasting than the health crisis. We fully anticipate to feel and treat the impact of COVID-19 for the years to come.”

Houser was among several mental health specialists who spoke. She said the pandemic has led to isolation and created feelings of helplessness, hopelessness, anxiety, fear of the unknown and unresolved grief that can have a negative impact on behavioral health in the form of depression, substance abuse and even suicide. Citing the Medicaid Research Center at the University of Pittsburgh, Houser said Pennsylvania could experience an increase in enrollment of Medicaid-supported behavioral healthcare ranging from 1.2 million to 1.34 million. depending on different scenarios involving unemployment and the recovery, according to a preliminary report in April from the Medicaid Research Center at the University of Pittsburgh that Houser cited.

Some of those testifying spoke of the challenges facing workers in the mental health field worried about providing care while also worried about the risk of getting infected themselves or infecting their families. Several urged that mental health workers receive priority in getting COVID-19 tests and personal protective equipment.

## State Park Usage Increases, Infrastructure Needs Attention

On July 22, the Department of Conservation and Natural Resources (DCNR) outlined priorities to address a backlog of more than \$1 billion in necessary infrastructure work in the state parks and forests. However, visitation to the parks and forests has spiked upward during the pandemic.

Director of the DCNR facility design and construction bureau, Alfred Uzokwe, reported that priority is given to dam and bridge repair and to buildings with potentially dangerous structural deficiencies. DCNR is responsible for 4,275 buildings, 133 dams, 926 bridges and culverts, 68 sewage treatment plants and 173 water treatment plants in the state parks in forests. The bureau has developed an index that calculates a building's repair needs, building code deficiencies, the replacement cost and importance to the agency's public mission.

Use of park facilities has increased as the public seeks social activity compatible with social distancing. "The parks are really full," said DCNR Secretary Cindy Adams Dunn. The 121 parks report a total of 6.6 million visits in June compared to 5.6 million visits in June 2019, and 5.8 million visits in May compared to 4.2 million visits in May 2019, she added.

**Uzokwe said that current sources used to pay for DCNR infrastructure repairs do not cover the price tag. One of the main sources of funding comes from real estate transfer tax revenue, entitled Key 93—that could potentially be diverted for other purposes.**

## Methane Industry Tax Credit

On July 23, Gov. Tom Wolf signed **House Bill 732** into law, creating the Local Resource Manufacturing Tax Credit Program. The bill offers tax credits to businesses that use methane, the main constituent of natural gas, in the making of fertilizers and other petrochemical products. It is hoped that this measure will attract industries and produce billions of dollars in economic development.

The program will offer a credit at 20 percent of annual tax liabilities to eligible companies. The credit would only be awarded once the initial 30-month construction phase of a project facility is complete and the plant is fully operational, and as long as the construction and operation of the facility creates at least 800 prevailing wage construction jobs and permanent full-time jobs, the company pay all taxes due during the multi-year construction phase of the facility, and the facility utilize carbon capture and sequestration technology when economically able.

Supporters estimate the program will generate over \$600 million in annual labor income and leverage over \$1.6 billion in economic output, with two companies currently interested in the type of investment necessary to be eligible for the program.

This act is the product of compromise by the Governor, the Legislature and labor and industry groups. Gov. Wolf vetoed an earlier version of this bill, in March, saying the Legislature didn't involve him in the process to create the tax credit.

## Regional Greenhouse Gas Initiative Controversy

On July 8, the state House passed **House Bill 2025**, by a vote of 130-71. The bill would require the governor to receive legislative approval before entering into the Regional Greenhouse Gas Initiative (RGGI), an interstate compact imposing a carbon dioxide tax on the state's energy generators, for the purpose of reducing air pollution emissions. Gov. Tom Wolf is attempting to join the RGGI through an Executive Order.

The bill now goes to the Senate.

Supporters of the measure argue that the Legislature needs a direct say on the matter, because joining the compact could result in lost jobs. During floor debate, House Majority Leader Kerry Benninghoff (R-Centre) said that the governor lacks the authority to enter the Initiative on his own and that other states that entered it did so with legislative approval.

Opponents say that as a greenhouse gas generator, Pennsylvania needs to take responsibility to lower carbon-dioxide emissions. Rep. Greg Vitali (D-Delaware) said the legislative branch would have input through hearings before the state Environmental Quality Board, action by the Independent Regulatory Review Commission and legislative veto power over their actions.

Gov. Wolf is expected to veto HB2025 if it comes to his desk.

### **Fiscal Year Ended with Revenue Shortfall**

Pennsylvania's 2019-20 fiscal year ended June 30. It ended with a revenue shortfall. However, that is due partly to the COVID-19 pandemic.

The overall shortfall amounted to \$3.2 billion. This is 7.4 percent lower than collections the previous year, FY2018-19. The budget approved by the Legislature for FY2019-20 anticipated a revenue increase of 2.3 percent higher than the previous year.

The state Independent Fiscal Office attributed some of the shortfall to \$1.36 billion in lost revenue from reduced economic activity and \$1.91 billion that was shifted into Fiscal Year 2020-21 due to delayed tax payment deadlines, as a result of the coronavirus.

The Commonwealth's three primary sources of General Fund revenue—the personal income tax, the sales and use tax and the corporate net income tax—All performed below estimates for the full fiscal year.

### **Levine Remarks on Transgender Hate Speech**

On July 28, to begin her daily pandemic update, Dr. Rachel Levine addressed transphobic comments directed toward her and the LGBTQ community. The following text consists of excerpts from a press release accompanying her remarks.

Dr. Levine speaking:

"I feel that I must personally respond to the multiple incidents of LGBTQ harassment and specifically transphobia directed at me that have been reported in the press.

"I would first like to sincerely thank Governor Wolf for his continued support and comments last week. The LGBTQ community has made so much progress under Governor Wolf's leadership during his time in office.

"But I want to emphasize that while these individuals may think they are only expressing their displeasure with me, they are in fact hurting the thousands of LGBTQ Pennsylvanians who suffer directly from these current demonstrations of harassment.

"Your actions perpetuate a spirit of intolerance and discrimination against LGBTQ individuals and specifically transgender individuals.

"It is only one month ago that the Supreme Court prohibited discrimination in the workplace due to sexual orientation and gender identity.

"But LGBTQ individuals still can be denied housing and public accommodations in most places in Pennsylvania that do not have local nondiscrimination ordinances.

"In addition, the most vulnerable among us continue to suffer including, LGBTQ individuals of color, LGBTQ youth and seniors, and LGBTQ immigrants.

"Transgender women of color continue to be not only harassed but are more likely to suffer violence and even murder.

"To the perpetrators of these actions, if your apologies are sincerely given, then I accept your apologies.

"But an apology is the beginning, not the end of the conversation.

"I call on you, and all Pennsylvanians, to work towards a spirit of not just tolerance but a spirit of acceptance and welcoming towards LGBTQ individuals.

"We all need to foster that spirit of acceptance and welcoming to LGBTQ individuals and celebrate the wonderful diversity of our commonwealth.

"To all LGBTQ young people, it is okay to be you. It is okay to stand up for your rights and your freedoms.

"As for me...

"I have no room in my heart for hatred and frankly I do not have time for intolerance.

"My heart is full with a burning desire to help people and my time is full with working towards protecting the public health of everyone in Pennsylvania from the impact of the global pandemic due to COVID-19."

### **Former Senator Sentenced to Jail-Time**

On July 21, 64-year-old former state Sen. Mike Folmer (R-Lebanon) was sentenced by Lebanon County Senior Judge Joseph Madenspacher to a one to two year jail term for possession of child pornography. The judge also ordered Folmer to 8 years of probation. Folmer will have to register with state police as a sex offender for a period of 15 years. The prison term was to begin immediately upon sentencing.

Folmer was a powerful legislator and a leading proponent for making medical marijuana legal in Pennsylvania. He pleaded guilty to child porn possession charges in February. Last year state investigators found three child porn images on his private cell phone. The investigation into Folmer began in early 2019, when the National Center for Missing and Exploited Children received a complaint from the social media site Tumblr, reporting an image of child pornography that was uploaded to the site.

Folmer's attorney, Brian Perry, said, "He had an addiction to pornography. Counseling has helped him to overcome that addiction, to control it."

Folmer, who professes Christian faith, said, "I let my Lord down. I let my family down. I let my constituents down." He said he is drawing strength from his faith, especially from Psalm 51 in which King David sought God's forgiveness after committing adultery with Bathsheba. "The Lord accepts a broken, contrite spirit," Folmer said. "And that's me. I want a chance to continue to heal."

### **Census Targets Low-Response Areas**

This month, the U.S. Census Bureau began a Mobile Questionnaire Assistance Program, sending census workers to "hot spots" where the census response rate has been low.

The 2020 U.S. Census was officially launched on April 1. Households could respond by mail, online or by phone. The bureau is now using data to reach areas where response has been lagging. Pennsylvania's response rate has been 65 percent—the national average is 62 percent. However, the response rate is not uniform and there are localities in Pennsylvania where census response has been below 50 percent.

On July 30, enumerators will begin canvassing 35 areas across the nation where census response has been low. This will be followed by a nationwide missing household canvass starting August 11.

The nationwide canvass is scheduled to end on October 31.

Census data is used to determine how much federal aid Pennsylvania receives. Currently, the state receives more than \$26 billion annually for a wide range of purposes, including Medicaid, education and transportation. Census figures will also determine the number of congressional seats and Electoral College votes for Pennsylvania during the next decade.

### **Dai Morgan**