

Post-Pandemic Municipal Practice

Berks County Bar Association Bench-Bar Conference

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Public Meetings and Other COVID-19-related Operational Changes

I. Meetings prior to the COVID-19 Emergency Declaration:

- Sunshine Act
 - 65 Pa. C.S. § 704: requires a physical meeting location for public participation, but it also permits virtual participation by local government officials.
 - Leading case on this is *Babac v. Milk Marketing Board*, 531 Pa. 391, 613 A.2d 551 (1992), which held that the term “meeting” in the Sunshine Act did not require a the members of the Board to be physically present if the members participate virtually such as to hear the comments of the public, listen to communications from other Board members, and timely speak on matters of their own concern.

- Borough Code
 - 8 Pa. C.S. § 1001(b) - A majority of the membership of council then in office shall constitute a quorum. Only council members physically present at a meeting place within the borough shall be counted in establishing a quorum.
 - 8 Pa. C.S. § 1001(c) - Also provides that council may provide for the participation of council members in council meetings by means of telecommunication devices, such as telephones or computer terminals, which permit, at a minimum, audio communication between locations, if a majority of the membership of council then in office is physically present at the advertised meeting place within the borough and a quorum is established at the convening or reconvening of the meeting.
 - The telecommunication device must allow the member to speak to and hear the comments and votes, if any, of the members of council who are physically present, as well as other members of council who may not be physically present and are also using a telecommunication device to participate in the meeting, and speak to and hear the comments of the public who are physically present at the meeting.
 - 8 Pa. C.S. § 1001(c)(4) - Additionally, Council may only authorize participation by telecommunication device for one or more of the following reasons:
 - illness or disability of the member of council;
 - care for the ill or newborn in the member's immediate family;
 - emergency; and
 - family or business travel.

- Township Codes
 - Neither Pennsylvania Township Code – for first or second class townships – contained the same definition of a quorum as the Borough Code and are free to make their own decision about returning to in-person meetings.

II. Meetings during the COVID Emergency Declaration:

- Act 15 of 2020 amended the Health and Safety Act to add the following:
 - Allows local governments to “conduct hearings, meetings, proceedings or other business through the use of an authorized telecommunications device until the expiration or termination of the COVID-19 disaster emergency.”
 - Further, stated that “notwithstanding any other provision of law, a hearing, meeting, proceeding or other business conducted through an authorized telecommunications device under this subsection shall not require the physical presence at a meeting location of a quorum of the participating members if a quorum is otherwise established by the participating members through the authorized telecommunications device.”
 - Required “public participation in a meeting, hearing or proceeding through an authorized telecommunication device or written comments.”
 - This section expired when the COVID-19 disaster emergency terminated on June 25, 2021.
 - Act 21 of 2021, signed on June 11, 2021, which extended until September 30, 2021, many of the suspensions to regulatory statutes and orders, rules, or regulations put in place as part of the COVID-19 disaster declaration, does not affect Act 15 of 2020, because Act 15 of 2020 was an act of the legislature.

III. Best Practices for Virtual and Hybrid Meetings

- Even if a physical meeting must now occur, do we keep other options?
- Providing reasonable opportunity for public attendance and participation
 - Clear instructions for participation
 - Managing public comment - on Zoom, submitted in advance, etc.
 - What happens if Municipal technology fails? Disclaimers?
- Possible solution for future large meetings/hearings?

III. Sunshine Act Amendment

- Signed into law June 30, 2021, will be effective as of August 29, 2021
- New Subsection: (C.1) **Notification of Agency Business to be Considered**
 - Requires public agencies to provide notification of the agenda that will be considered at a meeting.
 - The agenda includes each matter of agency business that will or may be the subject of deliberation or official agency action.
 - The act requires this notice to be posted in three ways:
 - If the agency has a publicly accessible internet website, the agency must post the agenda on the website no later than 24 hours in advance of the time of the convening of the meeting. While not in the act, PSATS

recommends the same to be posted on social media if the agency has a social media page.

- The agency must post the agenda at the location of the meeting and at the principal office of the agency.
 - The agency must make the agenda available to individuals in attendance at the meeting
- **New Section: 712.1 Notification of Agency Business Required and Exceptions**
 - An agency may not take official action on a matter of agency businesses at a meeting if the matter was not included in the notice of the agenda.
 - Four exceptions as to when an agency may take official action at a meeting if the matter was not included in the notice:
 - 1) Emergency business relating to a real or potential emergency involving a clear and present danger to life or property.
 - 2) New business arising within 24 hours before the meeting if the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement by the agency.
 - 3) Business arising during meeting if the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement by the agency.
 - 4) Changes to the agenda upon majority vote of the individuals present and voting during the conduct of a meeting. The reasons for any change to the agenda shall be announced at the meeting before any vote is conducted to make the change, and the agency may subsequently take official action on the matter added to the agenda.
 - If there are any changes to the agenda made pursuant to one of the exceptions, the amended agenda must be posted on the agency's website and at the agency's principal office location no later than the first business day following the meeting, and the change shall be reflected in the minutes

IV. Other Operational Challenges

- Physical limitations of meeting space - outdoor options, fire halls, etc.
- Office Hours / Staffing
 - By appointment only? No requirement for certain number of office hours.
- Contactless pay, online payment processing, etc.
- Employment Policies, Leave, etc.
- Budgeting and Financial Management

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 554 Session of 2021

INTRODUCED BY STEFANO, BROWNE, AUMENT, MARTIN, A. WILLIAMS, SCHWANK AND MASTRIANO, APRIL 13, 2021

AS AMENDED ON THIRD CONSIDERATION, JUNE 8, 2021

AN ACT

1 Amending Title 65 (Public Officers) of the Pennsylvania
2 Consolidated Statutes, in open meetings, further providing
3 for public notice and providing for notification of agency
4 business required and exceptions.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 709 of Title 65 of the Pennsylvania <--
8 Consolidated Statutes is amended by adding a subsection to read:

9 SECTION 1. SECTION 709(D) OF TITLE 65 OF THE PENNSYLVANIA <--
10 CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS AMENDED BY
11 ADDING A SUBSECTION TO READ:

12 § 709. Public notice.

13 * * *

14 (c.1) Notification of agency business to be considered. In <--
15 addition to any public notice required under this section, an
16 agency shall provide the following notification of agency
17 business to be considered at a meeting as follows:

18 (1) If the agency has a publicly accessible Internet
19 website, the agency shall post the agenda, which includes a

1 ~~listing of each matter of agency business that will be or may~~
2 ~~be the subject of deliberation or official action at the~~
3 ~~meeting, on the website no later than 24 hours in advance of~~
4 ~~the time of the convening of the meeting.~~

5 ~~(2) The agency shall post the agenda, which includes a~~
6 ~~listing of each matter of agency business that will be or may~~
7 ~~be the subject of deliberation or official action at the~~
8 ~~meeting, at the location of the meeting and at the principal~~
9 ~~office of the agency.~~

10 ~~(3) The agency shall make available to individuals in~~
11 ~~attendance at the meeting copies of the agenda, which include~~
12 ~~a listing of each matter of agency business that will be or~~
13 ~~may be the subject of deliberation or official action at the~~
14 ~~meeting.~~

15 (C.1) NOTIFICATION OF AGENCY BUSINESS TO BE CONSIDERED.-- <--

16 (1) IN ADDITION TO ANY PUBLIC NOTICE REQUIRED UNDER THIS
17 SECTION, AN AGENCY SHALL PROVIDE THE FOLLOWING NOTIFICATION
18 OF AGENCY BUSINESS TO BE CONSIDERED AT A MEETING AS FOLLOWS:

19 (I) IF THE AGENCY HAS A PUBLICLY ACCESSIBLE INTERNET
20 WEBSITE, THE AGENCY SHALL POST THE AGENDA, WHICH INCLUDES
21 A LISTING OF EACH MATTER OF AGENCY BUSINESS THAT WILL BE
22 OR MAY BE THE SUBJECT OF DELIBERATION OR OFFICIAL ACTION
23 AT THE MEETING, ON THE WEBSITE NO LATER THAN 24 HOURS IN
24 ADVANCE OF THE TIME OF THE CONVENING OF THE MEETING.

25 (II) THE AGENCY SHALL POST THE AGENDA, WHICH
26 INCLUDES A LISTING OF EACH MATTER OF AGENCY BUSINESS THAT
27 WILL BE OR MAY BE THE SUBJECT OF DELIBERATION OR OFFICIAL
28 ACTION AT THE MEETING, AT THE LOCATION OF THE MEETING AND
29 AT THE PRINCIPAL OFFICE OF THE AGENCY.

30 (III) THE AGENCY SHALL MAKE AVAILABLE TO INDIVIDUALS

1 IN ATTENDANCE AT THE MEETING COPIES OF THE AGENDA, WHICH
2 INCLUDE A LISTING OF EACH MATTER OF AGENCY BUSINESS THAT
3 WILL BE OR MAY BE THE SUBJECT OF DELIBERATION OR OFFICIAL
4 ACTION AT THE MEETING.

5 (2) THIS SUBSECTION SHALL NOT APPLY TO A CONFERENCE OR A
6 WORKING SESSION UNDER SECTION 707 (RELATING TO EXCEPTIONS TO
7 OPEN MEETINGS) OR AN EXECUTIVE SESSION UNDER SECTION 708
8 (RELATING TO EXECUTIVE SESSIONS).

9 (D) MEETINGS OF GENERAL ASSEMBLY IN CAPITOL COMPLEX.--
10 NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY,
11 IN CASE OF SESSIONS OF THE GENERAL ASSEMBLY, ALL MEETINGS OF
12 LEGISLATIVE COMMITTEES HELD WITHIN THE CAPITOL COMPLEX WHERE
13 BILLS ARE CONSIDERED, INCLUDING CONFERENCE COMMITTEES, ALL
14 LEGISLATIVE HEARINGS HELD WITHIN THE CAPITOL COMPLEX WHERE
15 TESTIMONY IS TAKEN AND ALL MEETINGS OF LEGISLATIVE COMMISSIONS
16 HELD WITHIN THE CAPITOL COMPLEX, THE REQUIREMENT FOR PUBLIC
17 NOTICE THEREOF SHALL BE COMPLIED WITH IF, NOT LATER THAN THE
18 PRECEDING DAY:

19 (1) THE SUPERVISOR OF THE NEWSROOM OF THE STATE CAPITOL
20 BUILDING IN HARRISBURG IS SUPPLIED FOR DISTRIBUTION TO THE
21 MEMBERS OF THE PENNSYLVANIA LEGISLATIVE CORRESPONDENTS
22 ASSOCIATION WITH A MINIMUM OF 30 COPIES OF THE NOTICE OF THE
23 DATE, TIME AND PLACE OF EACH SESSION, MEETING OR HEARING[.]
24 OR THE NOTICE IS PROVIDED VIA ELECTRONIC MEANS TO AN EMAIL
25 ADDRESS DESIGNATED BY THE PENNSYLVANIA LEGISLATIVE
26 CORRESPONDENTS ASSOCIATION.

27 (2) THERE IS A POSTING OF THE COPY OF THE NOTICE AT
28 PUBLIC PLACES WITHIN THE MAIN CAPITOL BUILDING DESIGNATED BY
29 THE SECRETARY OF THE SENATE AND THE CHIEF CLERK OF THE HOUSE
30 OF REPRESENTATIVES OR THE NOTICE IS POSTED ON THE PUBLICLY

1 ACCESSIBLE INTERNET WEBSITE OF THE GENERAL ASSEMBLY.

2 * * *

3 Section 2. Title 65 is amended by adding a section to read:

4 § 712.1. Notification of agency business required and
5 exceptions.

6 (a) Official action.--Except as provided in subsection (b),
7 (c), (d) or (e), an agency may not take official action on a
8 matter of agency business at a meeting if the matter was not
9 included in the notification required under section 709(c.1)
10 (relating to public notice).

11 (b) Emergency business.--An agency may take official action
12 at a regularly scheduled meeting or an emergency meeting on a
13 matter of agency business relating to a real or potential
14 emergency involving a clear and present danger to life or
15 property regardless of whether public notice was given for the
16 meeting.

17 (c) Business arising within 24 hours before meeting.--An
18 agency may take official action on a matter of agency business
19 that is not listed on a meeting agenda if:

20 (1) the matter arises or is brought to the attention of
21 the agency within the 24-hour period prior to the meeting;
22 and

23 (2) the matter is de minimis in nature and does not
24 involve the expenditure of funds or entering into a contract
25 or agreement by the agency.

26 (d) Business arising during meeting.--If, during the conduct
27 of a meeting, a resident or taxpayer brings a matter of agency
28 business that is not listed on the meeting agenda to the
29 attention of the agency, the agency may take official action to
30 refer the matter to staff, if applicable, for the purpose of

1 researching the matter for inclusion on the agenda of a future
2 meeting, or, if the matter is de minimis in nature and does not
3 involve the expenditure of funds or entering into a contract or
4 agreement, the agency may take official action on the matter.

5 ~~(e) Changes to agenda. Upon majority vote of the~~ <--
6 ~~individuals present and voting during the conduct of a meeting,~~
7 ~~an agency may add a matter of agency business to the agenda. The~~
8 ~~reasons for the changes to the agenda shall be announced at the~~
9 ~~meeting before any vote is conducted to make the changes to the~~
10 ~~agenda. The agency may subsequently take official action on the~~
11 ~~matter added to the agenda. The agency shall post the amended~~
12 ~~agenda on the agency's publicly accessible Internet website, if~~
13 ~~available, and at the agency's principal office location no~~
14 ~~later than the first business day following the meeting at which~~
15 ~~the agenda was changed.~~

16 (E) CHANGES TO AGENDA.-- <--

17 (1) UPON MAJORITY VOTE OF THE INDIVIDUALS PRESENT AND
18 VOTING DURING THE CONDUCT OF A MEETING, AN AGENCY MAY ADD A
19 MATTER OF AGENCY BUSINESS TO THE AGENDA. THE REASONS FOR THE
20 CHANGES TO THE AGENDA SHALL BE ANNOUNCED AT THE MEETING
21 BEFORE ANY VOTE IS CONDUCTED TO MAKE THE CHANGES TO THE
22 AGENDA. THE AGENCY MAY SUBSEQUENTLY TAKE OFFICIAL ACTION ON
23 THE MATTER ADDED TO THE AGENDA. THE AGENCY SHALL POST THE
24 AMENDED AGENDA ON THE AGENCY'S PUBLICLY ACCESSIBLE INTERNET
25 WEBSITE, IF AVAILABLE, AND AT THE AGENCY'S PRINCIPAL OFFICE
26 LOCATION NO LATER THAN THE FIRST BUSINESS DAY FOLLOWING THE
27 MEETING AT WHICH THE AGENDA WAS CHANGED.

28 (2) THIS SUBSECTION SHALL NOT APPLY TO A CONFERENCE OR A
29 WORKING SESSION UNDER SECTION 707 (RELATING TO EXCEPTIONS TO
30 OPEN MEETINGS) OR AN EXECUTIVE SESSION UNDER SECTION 708

1 (RELATING TO EXECUTIVE SESSIONS).

2 (f) Minutes.--If action is taken upon a matter of agency
3 business added to the agenda under this section, the minutes of
4 the meeting shall reflect the substance of the matter added, the
5 vote on the addition and the announced reasons for the addition.

6 Section 3. This act shall take effect in 60 days.

POST-PANDEMIC PRACTICE - EMPLOYMENT ISSUES

Joan E. London

Kozloff Stoudt Attorneys

I. VACCINATION: MANDATORY, “STRONGLY ENCOURAGED,” OR OPTIONAL?

- In its Guidance on Pandemic Preparedness (2009) published in light of the emergence of H1N1 influenza, EEOC advised that employers could require employees to be vaccinated against infectious disease.
- Employers can encourage and likely even require COVID-19 vaccination. For example, a Texas federal court rejected an attempt by employees of Houston Methodist Hospitals to challenge the legality of the hospital system’s vaccination mandate, and other courts, including the US Supreme Court, have rejected or refused to hear appeals on challenges to mandatory vaccination policies in employment and college contexts.
- If employees are under a collective bargaining agreement, the employer may need to reach an agreement with the union before mandating vaccination, as it may be a term or condition of employment subject to bargaining.
- Some public employers are requiring vaccines, or, alternatively, mandatory weekly testing, masking, and/or distancing requirements, including:
 - Federal employees and on-site contractors
 - Employees of the US Department of Veterans’ Affairs
 - State employees in NY, VA, WA, and HI and for health care and human services state agency employees in MD, OR, and CA.
 - Municipal workers, including teachers and police, in NYC
 - In PA, state employees working in hospitals, health care settings, and veterans’ homes will need to be vaccinated or be tested weekly for COVID-19 by September 7, 2021
- Employer policies on vaccination must comply with workplace civil rights laws, including:

- Americans with Disabilities Act (ADA)
- Title VII of the Civil Rights Act of 1964 (Title VII)
- State laws such as the Pennsylvania Human Relations Act (PHRA)

II. CAN THE EMPLOYEE SAY “NO” TO VACCINATION - LEGALLY PROTECTED REASONS FOR REFUSAL

- ADA
 - Medical conditions that render an employee unable to take vaccine
 - Known allergy to vaccine ingredients
 - Past severe allergic reaction to vaccine
 - Other health condition where physician recommends against vaccination at this time, especially since the vaccination is under Emergency Use Authorization (EUA) by the FDA
 - ADA prohibits practices and policies in the workplace having a tendency to screen out individuals with disabilities.
 - ADA, however, allows employers to require that an employee not impose a “direct threat” to the health or safety of individuals in the workplace.
 - If a vaccination requirement would screen out a worker with a disability, the employer must show that the unvaccinated employee would present a “direct threat.”
 - A “direct threat” is defined as a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”
 - The presence of a “direct threat,” according to EEOC, should be evaluated using four criteria, and will differ depending on the workplace:

- The duration of the risk
 - The nature and severity of the potential harm
 - The likelihood of occurrence of potential harm
 - The imminence of potential harm
- If an employee who cannot be vaccinated poses a direct threat, the employer is required to determine whether a reasonable accommodation can be made, evaluating:
- Employee's job functions
 - Whether there is an alternative job that the employee could do during the most hazardous time, which does not have the same safety concerns if the employee is not vaccinated
 - How critical it is to the employer's operations that the employee be vaccinated
- Employer and employee are required to engage in the interactive process to determine if a reasonable accommodation is possible, and what accommodations would be reasonable (e.g., not create an "undue hardship"). Accommodations include:
- Remote work where possible (still subject to FLSA minimum wage and overtime requirements)
 - Modified hours or job responsibilities which temporarily re-assign or re-distribute non-essential job functions
 - Temporary assignment to vacant position, but not required to create a position, or violate an established seniority system for assignments
 - Mandatory distancing employees or public
 - Enhanced PPE provided (N-95 mask as opposed to cloth)

- Required masking regardless of vaccination status of others in the workplace

III. TITLE VII RELIGIOUS ACCOMMODATION

- Protections for individuals of “sincerely held religious belief” prohibiting vaccination, such as:
 - “Vaccination constitutes interference with God’s will”
 - Opposition to vaccines using cell lines derived from abortion
 - Opposition to vaccine ingredients violating religious laws (e.g., gelatin derived from pigs or cows)
- Personal or political opposition is not sufficient for refusal if vaccination is mandatory.
- If an accommodation cannot be reached, then the employer may exclude the employee from the workplace, but it does not mean that the employer can automatically exclude the employee.
- Title VII requires an employer to accommodate an employee’s sincerely held religious belief, practice, or observance unless it would create an undue hardship on the business.
 - An “undue hardship” is created by an accommodation that has more than a “de minimis” (very small) cost or burden on the employer
 - The definition of “religion” is broad, and protects religious beliefs or practices which may or may not be familiar to the employer
 - Although the employer should assume that the request is based on sincere belief, the employer may ask for additional supporting information on the belief or practice
 - The leaders of most of the religions practiced in this country and major religions worldwide have encouraged followers to be vaccinated.

IV. VACCINE HESITANCY

- To date, approximately 69% of American adults have received at least one dose of the vaccine, and approximately 60% are fully vaccinated.
- Vaccine hesitancy is common: Gallup and Kaiser Foundation surveys have shown that between 14-26% of Americans surveyed will “probably not” or “definitely not” be vaccinated.
- Reasons
 - “Wait and see” on possible side effects
 - Fear of long-term adverse effects due to speed of rollout
 - “I don’t want to be a guinea pig”
 - Distrust of government, healthcare professionals, educators, the media, and pharmaceutical companies
 - Conspiracy theories online, especially on social media
 - Cultural and ideological reasons.
- Overcoming Employee Hesitancy
 - Education on mRNA vaccines such as Pfizer and Moderna and how they do and don’t work (they don’t “change your DNA,” for example, and this type of vaccine has been in development for 30 years)
 - Financial Incentives, such as bonuses or gift cards
 - Making obtaining the vaccine as easy as possible
 - Covering costs associated with obtaining the vaccine
 - Providing paid time off for employees to get the vaccine and recover from any side effect

V. PRIVACY LAWS AND RETURN TO WORK

- Vaccination status, and COVID-19 test results are “Protected Health Information” (PHI) under the Health Insurance Portability and Accountability Act (HIPAA)
 - It is not a HIPAA violation for an employer to ask employee vaccination status or test result.
 - It would, however, violate HIPAA for the employer to disclose this information to unauthorized persons without employee consent.
 - Vaccine and testing information as to individual employees should be addressed in employee privacy policies.
- EEOC has confirmed that asking an employee his or her vaccination status, in and of itself, does not violate federal civil rights laws, such as the ADA, Genetic Information Nondiscrimination Act (GINA) or Title VII.
 - Asking the employee why he or she is not vaccinated may, however, elicit information which is subject to those laws and places employee under their protected classes.
 - The employee may refuse an employer request for proof of vaccination, but employer has the right to treat the employee as unvaccinated, and require mask, distancing, or other measures.

VI. WHAT THE FUTURE MAY HOLD FOR MUNICIPAL EMPLOYERS

- Work area modifications to allow greater distancing between employees’ work spaces;
- Workplace HVAC modifications for better ventilation (possible use of ARPA funds)
- Physical barriers at reception desks, where employees deal directly with the public
- More ability for remote work for office jobs, in the event of future surges in cases or new variants

American Rescue Plan

I. Purpose and Objectives: To provide an infusion of resources to recover from the pandemic and address its economic fallout. The Plan will deliver \$350 billion for state and local governments to respond to the impacts of the COVID-19 pandemic. Its four stated funding objectives are to:

- 1) Support COVID-19 response efforts to decrease the spread of the virus and bring the pandemic under control;
- 2) Replace lost public sector revenue;
- 3) Support economic stabilization for households and businesses; and
- 4) Address systemic public health and economic challenges

II. Funds Allocations

A. Direct Recipients

- 1) States and D.C. - \$195.3 billion
- 2) Counties - \$65.1 billion
- 3) Metropolitan Cities - \$45.6 billion
- 4) Tribal Governments - \$20.0 billion
- 5) Territories - \$4.5 billion

B. Indirect Recipients - Non-entitlement units of government (local governments) - \$19.5 billion

- 1) Local governments will receive funds through their state governments
- 2) Local governments should expect to receive funds in two allocations: 50% provided starting this month; and the balance in May of 2022, unless in a state that experienced a net increase of the unemployment rate of more than 2 percentage points from February 2020 to latest available data as of date of certification will receive funds in a single payment

III. Eligible Uses

A. Public Health Responses

- 1) Programs and services to contain and mitigate the spread of the virus, including:
 - a) Vaccination programs
 - b) Medical expenses
 - c) Contact tracing
 - d) PPE purchases
 - e) Contact tracing programs
 - f) Public communication efforts
 - g) Enforcement of public health orders
 - 2) Services to address behavioral healthcare needed exacerbated by the crisis;
 - 3) Payroll and covered benefits expenses for public health, healthcare, human services, and similar employees, to the extent that they work on the COVID-19 response. For public health and safety workers, recipients can use these funds to cover the full payroll and covered benefits costs for employees or operating units or divisions primarily dedicated to the COVID-19 response.
- B. Addressing the negative economic impacts caused by the public health emergency:
- 1) Assistance to workers and families
 - 2) Support for small businesses (loans, grants, in-kind assistance)
 - 3) Support for recovery of tourism, travel, and hospitality industries
 - 4) Rebuilding public sector capacity
 - a) Rehiring public sector staff
 - b) Building internal capacity to successfully implement economic relief programs
 - c) Investments in data analysis
 - d) Targeted outreach
 - e) Technology infrastructure

f) Impact evaluations

C. Serving the hardest hit communities and families:

- 1) Addressing health disparities and social determinants of health
- 2) Investments of housing and neighborhoods
- 3) Addressing educational disparities
- 4) Promoting healthy childhood environments

D. Replacing lost public sector revenues:

- 1) If a municipality is facing budget shortfalls, it may use Recovery Funds to avoid cuts to government services
- 2) Funds can be used to replace lost revenue, calculated by beginning with the last full fiscal year prior to the pandemic (2019) and projects forward at either the recipient's average annual revenue growth over the three full years prior to the public health emergency or 4.1%, which is the national average state and local revenue growth rate from 2015-2018.
 - a) The Final Rule allows recipients to presume any diminution in local revenue is due to the COVID-19 pandemic.
 - b) Once a shortfall is identified, recipients have broad latitude to use the funding to support government services, up to this amount of lost revenue.

E. Premium pay for essential workers:

- 1) May be provided directly, or through grants to private employers to essential workers, including:
 - a) Nursing home staff, hospital staff, and home care setting staff
 - b) Farm workers, and workers at food production facilities, grocery stores, and restaurants

- c) Janitors and sanitation workers
 - d) Public health and safety staff
 - e) Truck drivers, transit staff, and warehouse workers
 - f) Childcare workers, educators, and school staff
 - g) Social service and human services staff.
- 2) Prioritize for lower income workers.
 - 3) If the funds would increase the worker's total pay above 150% of the greater of the state or county average annual wage it requires justification of how it responds to the needs of those workers.

F. Investing in water and sewer infrastructure:

- 1) Investment in necessary improvements, including projects addressing the impacts of climate change.
- 2) Drinking water projects - Building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines
- 3) Wastewater Infrastructure Projects - Publicly owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating wastewater reuse, and securing publicly owner treatment works.

G. Investing in broadband infrastructure:

- 1) To be made in areas that are currently not served or underserved (lacking a wireline connection that reliably delivers minimum speeds of 15 Mbps download and 3 Mbps upload).
- 2) Recipients encouraged to prioritize projects that achieve last-mile connection to households and businesses.
- 3) Recipients generally should build broadband infrastructure with modern technologies in mind, specifically those

projects that deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds

IV. Ineligible Uses

- A. States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent.
- B. No recipient may use this funding to make a deposit to a pension fund.

V. Time Line - Important dates related to the American Rescue Plan's recovery funds:

- **March 3, 2021:** The beginning of the funds' "covered period."
- **July 16, 2021:** Deadline to comment on Treasury's interim final rule.
- **Aug. 31, 2021:** Deadline to submit first interim report to Treasury.
- **Aug. 31, 2021:** Deadline for counties with populations greater than 250,000 to submit first recovery plan performance report to Treasury.
- **Oct. 31, 2021:** Deadline to submit first quarterly project and expenditure report. This reporting date applies to all counties.
- **Dec. 31, 2024:** Deadline for counties to obligate all recovery funds for specific projects and programs or risk having Treasury claw back the funds.
- **Dec. 31, 2026:** Deadline for counties to spend all recovery funds and complete all associated projects or return the funds to Treasury.

VI. Some Points for Discussion - The pandemic is global, but with many local impacts.

- A. What were some of the impacts that your communities experienced, or continuing to experience?
 - Closures and limitations on operations of small businesses, restaurants, and hospitality - how did this impact tax revenues (loss of BPT, EIT, and Amusement Tax Revenues, for example)
 - Impacts on those municipalities which have trails, parks, and recreational facilities with increased use due to business restrictions, stay at home and safer at home orders, and preference for outdoor activity (wear and tear on facilities and equipment)

- Less ability to perform basic maintenance due to lowered tax revenues, or employees who were out due to illness
- Did anyone need to set up testing or vaccination clinic sites – associated costs?

B. How will we make plans for the use of this money?

- Take your time. We are at the stage of an interim final rule, and have until 2024 to obligate the money and until 2026 to spend it.
- Look at plans already in place for improvements to sewer, water, stormwater, and broadband. What is there as a priority now? Public safety? Human services? Improvements to parks and core areas? How can this money fund some of those plans?
- How will you as officials engage your communities in discussions of use of the funding? Is public-private partnership a consideration in projects and initiatives?

American Rescue Plan Act Funds - Allowable Use Matrix

| Category | Subcategory | Guidance Language |
|---|--|---|
| COVID-19 Response and Prevention | | |
| Healthcare | | Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses |
| Healthcare | Communication | Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19 |
| Healthcare | Congregate Care Facilities | COVID-19-related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities |
| Healthcare | Data Systems | Expenses related to establishing or enhancing public health data systems |
| Healthcare | Disinfection | Expenses for disinfection of public areas and other facilities in response to the COVID-19 public health emergency |
| Healthcare | Emergency Medical Response | Emergency medical response expenses, including emergency medical transportation, related to COVID-19 |
| Healthcare | Healthcare Access Vulnerable Populations | Support for vulnerable populations to access medical or public health services |
| Healthcare | Healthcare Capacity | Enhancement to health care capacity, including through alternative care facilities |
| Healthcare | Long-term care | Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome |
| Healthcare | Medical Facilities | Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs |

| Category | Subcategory | Guidance Language |
|-----------------|--------------------------------|---|
| Healthcare | Medical Supplies and PPE | Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment (PPE) |
| Healthcare | Mental and Behavioral Health | Mental health treatment, substance misuse treatment, and other behavioral health services |
| Healthcare | Monitoring and Contact Tracing | Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants |
| Healthcare | Paid leave | Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions |
| Healthcare | Public Health Enforcement | Enforcement of public health orders |
| Healthcare | Public Hospitals, Clinics | COVID-19-related expenses of public hospitals, clinics, and similar facilities |
| Healthcare | Quarantine and Isolation | Expenses for quarantining or isolation of individuals |
| Healthcare | TA Support | Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety |
| Healthcare | Telemedicine | Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment |
| Healthcare | Ventilation Systems | Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities |

Medical Expenses

| | |
|------------|-------------------------------|
| Healthcare | Behavioral Health Services |
| Healthcare | Crisis Intervention |
| Healthcare | Hotlines and Warmlines |
| Healthcare | Infectious Disease Prevention |

| Category | Subcategory | Guidance Language |
|-------------------------------------|----------------------------|---|
| Healthcare | Mental Health Treatment | |
| Healthcare | Overdose Prevention | |
| Healthcare | Services or Outreach | Services or outreach to promote access to physical or behavioral health primary care and preventative medicine |
| Healthcare | Substance Misuse Treatment | |
| Payroll and Covered Benefits | | |
| Payroll and Benefits | Public Safety | |
| Payroll and Benefits | Public Health | |
| Payroll and Benefits | Healthcare | |
| Payroll and Benefits | Human Services | |
| Payroll and Benefits | Similar Employees | To the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency |
| Benefits | Leave | All types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty) |
| Benefits | Insurance | Employee Insurance (health, life, dental, vision) |
| Benefits | Retirement | Pensions, 401k, unemployment benefit plans (federal and state) |
| Benefits | Workers Compensation | |
| Benefits | FICA | Including Social Security and Medicare taxes |
| Healthcare Programs | | |
| Healthcare Outcomes | Benefits Navigators | Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services |
| Healthcare Outcomes | Community Health Workers | Funding community health workers to help community members access health services and services to address the social determinants of health |

| Category | Subcategory | Guidance Language |
|---------------------|------------------------|--|
| Healthcare Outcomes | Community Violence | Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic |
| Healthcare Outcomes | Housing | Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness |
| Healthcare Outcomes | Lead-Based Paint | Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children |
| Healthcare | Planning and Execution | Planning and analysis to improve programs addressing COVID-19 including: consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis |

Negative Economic Impact

| | | |
|-----------------------|----------------------|---|
| Healthcare | Children | Promoting healthy childhood environments |
| Education | Education | Addressing educational disparities |
| Unemployment and Jobs | Government Employees | Rehiring State, local, and Tribal Government staff |
| Stronger Communities | Housing and Business | Building stronger communities through investments in housing and neighborhoods |
| Other | Impacted Industry | Aid to impacted industries |
| Direct Assistance | Individuals | Assistance to households |
| Other | Other | <p>These would not be within the scope of this allowable use category, although may be allowable “under other eligible use categories” and their criteria:</p> <p>a) Responds to a specific pandemic public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact (e.g., affordable housing in a QTC);</p> <p>b) Provides government services broadly to the extent of their reduction in revenue;</p> <p>c) Expends in “infrastructure if it is ‘necessary’ and in water, sewer, or broadband”</p> |

| Category | Subcategory | Guidance Language |
|-----------------------|---------------------------------|--|
| Unemployment and Jobs | Programs | Expenses to improve efficacy of economic relief programs |
| Unemployment and Jobs | Small Businesses/ Nonprofits | Small businesses and nonprofits |
| Unemployment and Jobs | Unemployment Insurance | Assistance to unemployed workers, state unemployment insurance trust funds |

Premium Pay

| | | |
|-------------|--|--|
| Premium Pay | | Compensate essential workers for heightened risk due to COVID-19 and must be entirely additive to a worker's regular rate of wages and other remuneration. Premium pay may not be used to reduce or substitute for a worker's normal earnings. This may be, and is encouraged to, be provided retrospectively. |
|-------------|--|--|

Government Services (Inclusions)

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|----------------|--|--|
| Infrastructure | | Maintenance or pay-go funded building of infrastructure, including roads |
| IT | | Modernization of cybersecurity, including hardware |
| Healthcare | | Health services |
| Environment | | Environmental remediation |
| Education | | School or educational services |
| Public Safety | | The provision of police, fire, and other public safety measures |

Drinking Water State Revolving Fund

| | | |
|----------------|----------------------|---|
| Infrastructure | Storage | Storage, consolidation, and new systems development |
| Infrastructure | Water Rehabilitation | Source rehabilitation and decontamination |
| Infrastructure | Water Treatment | Treatment, transmission and distribution (including lead service line replacement); energy efficiency measures for publicly-owned treatment works |

EPA Clean Water State Revolving Fund

| | | |
|----------------|----------------------|---|
| Infrastructure | Decentralized Water | Construction, improvements, or repairs to decentralized wastewater treatment systems, stormwater systems |
| Infrastructure | Treatment Facilities | Construction of publicly-owned treatment works, nonpoint source pollution management, national estuary program projects |

| Category | Subcategory | Guidance Language |
|------------------------|--------------------|--|
| Infrastructure | Other | Create green infrastructure, water conservation, efficiency, and reuse measures, watershed pilot projects, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act |
| Infrastructure | Pollution | Control non-point sources of pollution, protect waterbodies from pollution |
| Infrastructure | Reliance | Improve resilience of infrastructure to severe weather events |
| Infrastructure | Stormwater | Stormwater systems |
| Broadband | | |
| Infrastructure | Broadband | Provide services meeting adequate speeds and are provided to unserved and underserved households and businesses |
| Infrastructure | Broadband | Provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. The Interim Final Rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project. |
| Infrastructure | Broadband | Requires eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. |
| Loss of Revenue | | |
| Government Services | | <p>Recalculating Revenue Loss: recipients have the option to re-calculate revenue loss on an ongoing basis throughout the program.</p> <p>Calculating Revenue Loss: Recipients will look at general revenue in the aggregate, rather than on a source-by-source basis.</p> |

(Source: <https://www.wittobriens.com/resources/summary-of-treasurys-arpa-interim-final-rule-guid>)