TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

BEFORE THE
SENATE STATE GOVERNMENT COMMITTEE

ON

SB 492 *(PN 591)* and HB 2524 *(PN 3235)*

PRESENTED BY

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Chairman Argall, Chairman Street, and members of the Senate State Government Committee:

Good morning. My name is Joe Gerdes and I am the director of government relations for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,454 townships in Pennsylvania represented by the Association.

PSATS represents Pennsylvania's 1,454 townships of the second class and is committed to preserving and strengthening township government and securing greater visibility and involvement for townships in the state and federal political arenas. Townships of the second class cover 95% of Pennsylvania's land mass and represent more residents — 5.7 million Pennsylvanians — than any other type of political subdivision in the commonwealth.

Our membership strongly supports open and transparent government and have worked to promote a fair and balanced Right-to-Know Act. Over the course of the last decade and a half, it has become clear that this important law needs some critical revisions and improvements as a result of inconsistent interpretations by the Courts and the Office of Open Records. In addition, the inability to recover the costs of compliance has proven to be a burdensome mandate for many of our communities, so much so that the need for reform has become a priority for our members and their taxpayers.

While PSATS strongly supports the public's right to view and obtain copies of municipal public documents, we must take this opportunity to note that current Right-to-Know Law places a financial burden on municipalities *(and therefore local taxpayers)*, which was recognized by the SR 323 Report on Unfunded Mandates.

Since its implementation, townships across the state have expressed concern with certain aspects of the law that they feel are burdensome. These concerns have generally covered three areas, 1) the inability to recover costs incurred by requesters *(particularly commercial requesters)* which must be paid by the taxpayers, 2) privacy concerns over certain types of sensitive information that are public under the act, and 3) concerns with requesters who use the law to harass agencies. **Senate Bill 492** *(PN 591)* would make significant strides to address the first two areas and we applaud this committee for hearing our comments today. While it won't solve all the challenges with this law, it would make major improvements.

Our comments today will focus on **SB 492** *(PN 591)* and **HB 2524** *(PN 3235)*. We are not taking a position on **SB 488** *(PN 517)*.

Commercial requests *(definition in Section 102, Section 505(d), and Section 1307 (g.1))*. Commercial interests, particularly out-of-state businesses, are using public records about law-abiding citizens and taxpayers for private gain, often free-of-charge under existing Office of Open Records fee schedules. In fact, a 2016 study by the OOR found that 26 percent of all the requests for public documents received that year were

from outside of Pennsylvania, with almost 71 percent of these being made for a commercial purpose. The study also found that local governments overwhelmingly complied with the law.

For example, a frequent complaint is that businesses and vendors are requesting copies of building permits and other documents for solicitation purposes. We don't know whether these entities plan to sell satellite dishes, yard services, pools, etc. This is concerning because municipalities can only charge for copying and mailing costs and not the staff time needed to fulfill these commercial requests. Taxpayers are currently forced to subsidize the marketing expenses of these profit-making entities.

We believe SB 492 would significantly improve on the current law by allowing agencies to require a requester to certify in writing whether a request is for a commercial purpose on a form that would be developed by the OOR. The bill would authorize local agencies to assess search, review, retrieval, and redaction fees, including staff time, for records requested for a commercial purpose, and would exempt media and educational or scholarly requests. These charges would be limited to no more than the hourly wage of the lowest-paid employee capable of searching, retrieving, reviewing, and providing for redaction of the information necessary to comply with the request. **We support the commercial fee language in SB 492 *(PN 591)* as written.**

We also support SB 312 *(PN 322),* which this committee reported out last year. SB 312 contains similar commercial fee language to SB 492 but would also allow fees to be charged for performing duplication and would allow for the parties to agree on alternative fees.

In contrast, **we must oppose the commercial fee language in HB 2524** *(PN 3235)*. As passed the House, this bill would only allow commercial fees to be charged if a requester is obtaining names and addresses from the record for the purposes of commercial solicitation or the direct use of a record for sale or resale. We believe that these reasons are overly narrow, particularly compared to the language in SB 492. In addition, amendments added on the floor provide broad and vague carveouts for records related to insurance, real estate, and a final catch all that would, among other things, exempt records to be used for the purpose of identity theft from commercial fees! These carveouts make it virtually impossible to determine what, if any, commercial requests could be subject to these fees, therefore making any such "reforms" meaningless to our members.

Identity theft and fraud concerns under the RTKL *(Section 708(b)(31)*). There are real concerns with disclosing local government financial account numbers due to the potential for fraudulent use of this information. SB 492 would address this issue and clearly exempt agency banking account and routing numbers, credit card numbers, and passwords from disclosure. We believe that this change will protect taxpayer funds while keeping the substance and content of financial documents in the open.

Personal financial information *(definition in Section 102 and Section 708(b)(6))* needs to be protected. We believe that a local government's financial information is, and should remain, fully open to public scrutiny. This includes the salaries paid to employees, benefits available to employees and aggregate costs of these benefits, and any reimbursable expenses. However, once we pay our employees, these funds become the employee's property and, at this point, employee payroll deductions and taxes should be shielded from public view. In addition, we agree that an individual employees' benefit election and their dependent information should be protected. SB 492 would make this appropriate clarification to the definition of "personal financial information," while ensuring that salaries, health plans, retirement plans, and aggregate employer costs for these plans remain open. The courts have already ruled that personal tax information is protected under federal law and SB 492 would provide further helpful clarification by amending the statute.

While we are not asking for the bill to be further amended at this time, our membership strongly supports taking additional steps to protect our employee's personal information, such as age, gender, race, home address, and date of birth. For safety and to prevent identity theft, public employees should be entitled to privacy for their personal information.

While HB 2524 would make nearly identical changes, we oppose HB 2524 due to its language on commercial requests, as stated earlier, as well as its language on vexatious requests. In contrast, **we support HB 978**, currently in this committee, which addresses only the identity theft and personal financial information concerns described above.

Vexatious requests. PSATS supports **SB 552**, which would allow townships to petition the Office of Open Records for relief from a vexatious requester. A "vexatious requester" is someone who uses the Right-to-Know Law with malicious intent to intimidate, harass, or punish an agency, resulting in wasting taxpayer dollars and resources. While such requesters are rare, they cause significant financial and administrative burdens on the townships that they attack. **We believe that SB 552, which passed the Senate last year, should move forward with SB 492 or be included as part of SB 492.**

We must oppose the vexatious request language in HB 2524. The requirement to demonstrate clear and convincing evidence that a requester has, by their conduct, demonstrated an intent to annoy or harass the agency is an extremely high standard to meet. In addition, HB 2524 prohibits the use of the number of requests filed or the number of records sought as the sole means to determine whether a request is vexatious. We believe that the standard set in SB 552 is sufficiently high and would be subject to a review with due process by the Office of Open Records, which could grant relief to the local government. In addition, HB 2524 would prohibit a local government that failed to prove a requester is vexatious from pursing this procedure for any individual or entity from 12 months. We do not believe that the language in HB 2524 would provide the limited, meaningful relief that we are requesting for our members.

Party to litigation. Townships have reported that individuals are submitting requests that look like litigation discovery. These are expensive requests to fulfill due to the amount of research required. As such, we support language in the Section 506 that would allow an agency to deny requests to a party that is involved in pending litigation or which was previously made in discovery. This provision would not impose on anyone's rights, but simply aim to prevent continued abuse of the system at taxpayers' expense.

Inmates. Another major public policy question is the degree to which convicted, incarcerated individuals should be able to make use of the Right-to-Know Law, which is almost exclusively at taxpayer expense. According to the OOR's 2016 report, inmates filed 1,414 appeals in 2015, which is 48 percent of all appeals and more than any other requester group. Certainly information that relates to inmates, their case, and their care should be reasonably accessible to them. However, inmates use the time on their hands to submit voluminous requests, often to the local government responsible for putting them behind bars. We support reasonable restrictions on the records that an inmate may request.

Appeals process. While we can support an extension of the appeals timeframe, we are concerned that the increase from 15 business days to 60 calendar days in Section 1101 is extensive and could be burdensome for townships that must hold onto the denied materials until the appeal is complete. We respectfully ask that this change be shortened.

This section would also clarify that the appeal must include a copy of the original request, the agency denial, and other information the requester believes to be relevant. Our members have previous experience with frivolous appeals to the OOR for which no request had been made.

Other provisions. We can support many of the other provisions in SB 492 that we believe would be helpful, such as the clarification that an agency would not be required to transcribe a proceeding, an expensive undertaking, solely for the purpose of responding to a request in Section 707(c).

In closing, we ask that you consider these important changes to the Right-to-Know law that we believe balance the public's right to open access with the agency's need to responsibly manage taxpayers' funds. While SB 492 could be improved upon, we believe that it would provide meaningful relief to our members in its current form, particularly if it moves with SB 552. In contrast, HB 2524 falls short of the significant and meaningful relief that our members and their taxpayers need from the RTKL. As such, **we support SB 492 and ask that it be reported from committee, while we must continue to oppose HB 2524**. We look forward to a continued working relationship with you on this important issue as you move towards updating this law.