

Section of State and Local Government Law

STATE & LOCAL LAW NEWS

The Section serves as a collegial forum for its members, the profession, and the public to provide leadership and educational resources in urban, state, and local government law and policy.

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State & Local Law News provides information concerning current developments in the law of interest to state and local government lawyers, news about the activities of the Section, and other information of professional interest to Section members.

Any member of the ABA may join the Section by paying its annual dues of \$60. Subscriptions to State & Local Law News are available to non-lawyers for \$49.95 per year.

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The Editor invites submissions of articles for publication in State & Local Law News. Articles should be no longer than 1,500 words and lightly endnoted.

Address corrections should be sent to the American Bar Association Service Center.

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EDITOR

William J. Scheiderich
Spokane, WA
scheiderichbill@gmail.com

MANAGING EDITOR

Michaëlle Bradford
Chicago, IL

WELCOME TO THE NEW CHAIR

Please welcome Ms. Lai Sun Yee as our new Section Chair.

Ms. Yee serves and has served in the federal government in various positions. She was the Principal Advisor of Homeland Security for the Center for Naval Analyses (CNA). Ms. Yee also has an extensive record of service to the people of New York. She is the former New York State Assistant Deputy Secretary for Homeland Security, New York State Assistant Deputy Secretary for Criminal Justice, and General Counsel for the New York State Emergency Management Office.

Chair Yee served as the New York City Deputy Commissioner for Legal Services and General Counsel for the New York City Office of Emergency Management, where she worked in support of the City's response to the terrorist attack of September 11, 2001. She served as the Assistant Fire Commissioner of the Bureau of Investigation and Trials for the New York City Fire Department and worked as an attorney in the Fire Department Legal Division.

Yee also was the Counsel to the Bronx Borough President.

Chair Yee holds a Bachelor of Arts degree from Cornell University, a Juris Doctor degree from Cornell Law School, and a Master of Arts degree from the Naval Postgraduate School's Center for Homeland Defense and Security.

Please welcome her and meet with her at an ABA or Section meeting.

Special Notice to SLG Members: By Council vote on 10.24.24, the Council approved renaming the Section to "Section of State, Local, and Tribal Government Law." The date of our Section Annual Business Meeting is Saturday, August 9, 2025.

The Section has been working hard to incorporate Tribal Law issues in its area of expertise for over seven years. The Section has and continues to sponsor significant content, both written and digital/webinars, on inter-government relations, including Tribal governments. Renaming the Section to include Tribal law will more appropriately identify the scope of the Section's work. (Supporters include NNBA, Judicial Division's National Conference of Specialized Court Judges (NCSCJ), which includes some Tribal Judicial leaders; Criminal Justice Section, National Native American Bar Association (NNABA) and Immediate Past ABA President Mary Smith)

Cloudy Trends Ahead: What We Can Learn from Illinois' Far-Reaching, State-Level Zoning Protections for Solar Farms

By Donna Pugh, Mike Noonan, and Michelle Chew

For those interested in tracking trends in the zoning of solar farms, look no further than Illinois, where solar energy is rapidly growing.¹ In 2023, Illinois extended broad protections to developers interested in seeking zoning approvals for solar farms by rewriting 55 ILCS 5/5-12020 Commercial Wind Energy Facilities and Commercial Solar Energy Facilities (the “Statute”). The Statute greatly limits county boards’ discretion to deny solar projects in unincorporated areas when certain site characteristics are met.

The Illinois Statute

The Statute received much of its power from a 2022 amendment, effective January 27, 2023. That Amendment heavily limited counties’ discretion when handling siting applications for renewable energy farms in unincorporated areas when applications meet several statutory requirements. While the Statute applies to both commercial wind energy facilities and commercial solar energy facilities, for the purposes of this article, the scope is limited to commercial solar energy facilities in unincorporated areas where the county is the zoning authority.

The Statute defines commercial solar energy systems (“solar farms”) as any device that is ground-installed and generates electricity from the sun for wholesale or retail sale.² The energy generated from these devices may not be used primarily for consumption on the property where they are installed.³

The Illinois Environmental Council intended to prevent counties from enacting ordinances that prevented solar farms, which would harm the state’s climate goals in the Climate and Equitable Jobs Act, by decreasing counties’ discretion to deny zoning approvals for these facilities.⁴

Restrictions on Counties’ Discretion

While the Statute permits counties to establish standards for solar farms, the counties’ standards cannot be more restrictive than the provisions in the Statute.⁵

The Statute prevents counties from restricting the installation or use of solar farms unless the county passes an ordinance that complies with its provisions.⁶ Similarly, counties are prohibited by the Statute from placing restrictions on supporting facilities that would preclude the development of solar farms.⁷ The Statute also prevents counties from adopting zoning regulations that prohibit solar farms from being developed or operated in agricultural or industrial zones.⁸

Additionally, the Statute has many limiting provisions for a county’s approval process for siting requests. Counties may not deny a siting approval request, special use permit, or modifications to such requests if the request complies with (1) the Statute’s provisions, (2) the county’s zoning ordinance (which is required to comply with the Statute), and (3) any conditions imposed under state and federal statutes and regulations.⁹ The Statute also requires at least one public hearing with the zoning board of appeals for the county.¹⁰ This hearing cannot be held more than sixty days after the application for the facility is filed.¹¹

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If a special use permit is required for the solar farm, the Board of Appeals must give at least fifteen days’ notice before the hearing to any municipality to boundaries within 1.5 miles of any part of the property proposed as a special use.

If the developer of the solar farm requires a text amendment or a map amendment (an “Amendment”) to allow the solar farm, a municipality within 1.5 miles of the site or a township in a county with a population less than 600,000 and a plan commission can formally object to the Amendment.¹² If the municipality or township formally objects, the county board must have at least a three-quarters vote to pass the Amendment.¹³ However, this provision does not apply to special use permits.¹⁴ In the case of a zoning variation, where such decisions are made by the county board upon recommendation of the zoning board, and where the township with a plan commission in a county with a population under 600,000 or over three million, the county may not approve the variation without a favorable three-quarters vote.¹⁵

Setback Distances and Site Requirements

Setback distances for certain properties are established by the Statute. Subsection (e)(3) contains a table describing the required setback distances for various structures, which is reproduced below:

Setback Description	Setback Distance
Occupied Community Buildings and Dwellings on Nonparticipating Properties	150 feet from the nearest point on the outside wall of the structure.
Boundary Lines of Participating Property	None.
Public Road Rights-of-Way	50 feet from the nearest edge.
Boundary Lines of Nonparticipating Property	50 feet to the nearest point on the property line of the nonparticipating property.

Other requirements for the solar farm pertain to the solar farm’s perimeter and its solar arrays. For example, the solar farm needs to have at least a six-foot tall fence, but no taller than a twenty-five-foot tall fence, enclosing it.¹⁶ Additionally, a solar farm’s panels cannot be over twenty feet above the ground when the arrays are at full tilt.¹⁷

Overall, the Statute places many restrictions on counties’ abilities to deny siting requests, delay siting requests, and determine the specific details of the solar farm’s layout.

Recent Case Law Involving Siting of Renewable Energy Farms

Although, at the time of publishing, there are no cases interpreting the Statute for solar farms, there is an instructive case for wind farms, which the Statute also regulates in a similar way to solar farms. Illinois Courts have already faced a complex case regarding a wind farm in Knox County. Multiple plaintiffs attempted to prevent the approval of a conditional use permit and a height variation for Knox County Wind Farm.¹⁸ One of the claims brought by the plaintiffs alleged that the approval of the conditional use permit was arbitrary and violated their substantive due process rights.¹⁹ The Court’s response included reaffirming that it is the municipal body’s responsibility to determine the use and purpose of property, and the Court does not interfere with such decisions unless the municipality’s decision is arbitrary, capricious, or unrelated to the public health.²⁰ The Court used the rational-basis test to determine whether the

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regulation by the municipality was arbitrary, and the plaintiffs could not meet that bar.²¹

The plaintiffs also alleged the Zoning Board's approval of the height variation was against the manifest weight of the evidence.²² The Court disagreed, finding that the Counties Code and the Knox County Zoning Resolution allows for a variation when there are "practical difficulties or particular hardship".²³ The Court also restated that factual determinations by the Zoning Board are held to be true and correct unless the determination was made against the manifest weight of the evidence.²⁴ The Zoning Board based their approval on facts showing that the variation would substantially benefit the community because the project was unfeasible otherwise.²⁵ Therefore, the Court found the Zoning Board's approval of the variation to be valid.²⁶

While this case does not reference the Statute explicitly, the significance of the precedent set by this ruling is relevant to it. Because the Statute takes away county boards' discretion to deny applications, and precedent shows that courts give significant deference to the boards' approvals, the route for any plaintiff who wants to overturn the approval is burdened with significant legal hurdles.

Intergovernmental Conflicts Resulting from the Statute

There has been a lot of activity since the Statute limited counties' ability to deny solar farm siting applications. Conflicts between the state and counties and between counties and municipalities have arisen. Residents and neighboring municipalities want to deny siting applications based on the 1.5-mile planning radius codified in the Illinois Municipal Code.²⁷ However, developers are meeting this sentiment with lawsuits.

For example, a 960-acre solar farm will be constructed after the developer and Grundy County settled a lawsuit over subsection (g) of the Statute after the County Board originally denied the developer's siting request.²⁸ Vermilion County received threats of a lawsuit from a company whose siting request was denied by the County Board despite its request adhering to the Statute's requirements.²⁹

Hawthorne Woods Village tried to circumvent the Statute's reach by asserting jurisdiction over the land in question.³⁰ Originally, the land under consideration was within Lake County Zoning Board of Appeals' jurisdiction because it was unincorporated.³¹ The Village annexed the property, and the land is now under the Village's jurisdiction.³² The company that submitted the siting request withdrew its application and is pursuing all legal avenues available against the Village to reverse the annexation.³³

Other counties are complying with the Statute, but with some reservations. After two solar farm approvals, Tazewell County is concerned that the farms prevent future city growth due to the siting locations "blocking" the remaining direction left to expand.³⁴ Sangamon County reversed its original decision to deny a solar farm in part due to the restrictions on the Board's ability to deny the request.³⁵ Many board members and residents expressed reservations about the farm's impact on the area, questioning if their county was the best location.³⁶

Due to the numerous conflicts that have arisen since the Statute's overhaul, many attempts to water down its protections have been proposed, but none have passed.

Efforts to Erode the Statute

There are many proposed bills that attempt to weaken the Statute's broad protections of solar farms. However, as of the date of this publication, none of these efforts have been passed by the Illinois legislature:

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Setback Distances (House Bill 4135)

HB 4135 proposes an increase in the distance between the proposed solar farm and any adjacent structures.³⁷ Instead of requiring 150 feet between occupied community buildings or dwellings on nonparticipating properties and the proposed siting, the bill would require 500 feet, a much higher standard for solar developers to meet, making many projects economically unfeasible.³⁸

Labor Agreement Requirement (House Bill 4551)

HB 4551 proposes imposing another barrier to Counties' discretion to deny an application. This proposal would allow a County to deny a solar farm proposal only if there is no labor agreement with building trades located in the area where construction, modification, or improvements are to be made.³⁹ This is one example of a trend in Illinois whereby labor unions seek agreements from developers to utilize organized labor.

Additional Notice Requirement (House Bill 3920):

HB 3920 proposes an additional notice requirement for the solar farm owner.⁴⁰ The bill proposes that the solar farm owner provide notice to all municipalities and townships that are within 1.5 miles of the proposed farm and provide notice to all property owners whose properties are on the boundary of the farm within thirty days of the application submission by the owner.⁴¹ This differs from the current Statute, which only requires a notice of the public hearing be published in a newspaper of general circulation in the county.⁴²

Permitting Prior County Zoning Provisions to Remain in Effect (House Bill 4422, Senate Bill 2892)

Other bills propose that any prior county provisions that pertain to solar farms in effect before the Statute should continue to be in effect for that county.⁴³ Neither bill allows for the Statute's protections to affect the county's provisions if the provision was effective as of January 27, 2023.⁴⁴

Changes to Siting Request Process (House Bill 3146 and House Bill 4037)

Finally, there are some proposed changes to the siting application process. For example, HB 3146 proposes a requirement for a comprehensive agricultural drainage plan to be included in the application to prevent surface or subsurface drainage impacts on land within and outside the solar farm's footprint.⁴⁵ This differs from the current Statute, which only requires an agricultural impact mitigation agreement ("AIMA") with the Department of Agriculture.⁴⁶ The standard solar farm AIMA has provisions regarding underground drainage tiles, requiring the facility owner to repair the lines or to install new drainage tile lines of comparable quality and cost as the originals if there is damage.⁴⁷ However, the standard contract does not address concerns about surface drainage impacts.

HB 4037 proposes preventing a solar farm from being placed on a property where the soil's crop productivity index is greater than 110 per University of Illinois at Urbana-Champaign's optimum crop productivity ratings of Illinois soil. The bill also proposes land reclamation and recycling plans to be submitted in a developer's application.⁴⁸ These plans must be filed with the Department of Agriculture before the public hearing, discuss how the land will be returned to its original state, and discuss how the materials used for constructing the farm will be recycled.⁴⁹ The standard AIMA with the Department of Agriculture does not expressly state that the land must be returned to its original state but instead mentions that best efforts should be used to return the topsoil as close as reasonably possible to its original depth and contour.⁵⁰ Additionally, the standard contract does not require the deconstruction plan to mandate the recycling of materials after the facility has reached the end of its useful life.⁵¹

Conclusion

While there are many proposed changes to the Statute, the law remains firm with its far-reaching zoning protections for solar farm developments. Nonetheless, conflicts between and among local governments, developers, and neighboring objectors continue unabated while questions surrounding the law remain to be answered. Efforts to thwart the development of solar farms and water down the Statute are likely to continue, but the Statute's broad protections intending to increase renewable energy farms remain intact.

Donna Pugh is a Partner with Foley & Lardner whose practice is concentrated on land use, zoning, and incentives involving the development of land.

Mike Noonan is Special Counsel with Foley & Lardner who specializes in land use, zoning, and incentives involving the development of land.

Michelle Chew is a Summer Associate with Foley & Lardner in business law.

Endnotes

1. Leonardo David, *How Much Do Solar Panels Cost in Illinois*, MARKETWATCH, <https://www.marketwatch.com/guides/solar/solar-panel-cost-illinois/#:~:text=The%20solar%20power%20industry%20is,clean%20energy%20use%20by%202040> (July 20, 2024).
2. 55 ILCS § 5/5-12020(a), 35 ILCS § 200/10-720.
3. 35 ILCS § 100/10-720.
4. Illinois Environmental Council, *Bill Defending CEJA and Protecting Local Clean Energy Projects Passes During Lame Duck Session*, (January 11, 2023), <https://ilenviro.org/bill-defending-ceja-and-protecting-local-clean-energy-projects-passes-during-lame-duck-session/>.
5. 55 ILCS § 5/5-12020(b). This section also provides that a county can regulate the siting of a commercial wind energy facility for unincorporated areas of the county outside the zoning jurisdiction of a municipality and surrounding 1.5-mile radius.
6. *Id.* § 5/5-12020(g).
7. *Id.*
8. *Id.* § 5/5-12020(h).
9. *Id.* § 5/5-12020(g).
10. *Id.* § 5/5-12020(c).
11. *Id.*
12. *Id.* § 5/5-12014(b), (c).
13. *Id.*
14. *Id.*
15. *Id.* § 5/5-12009.
16. *Id.* § 5/5-12020(e)(4).
17. *Id.* § 5/5-12020(e)(5).
18. *Erickson v. Knox County Wind Farm, LLC*, No. 4-23-0726, 2024 Ill. App. LEXIS 1256 at P1 (May 29, 2024).
19. *Id.* at P107.
20. *Id.* at P109.
21. *Id.* at P112.
22. *Id.* at P121-24.
23. *Id.* at P125-26.
24. *Id.* at P122.
25. *Id.* at P125.
26. *Id.* at P126.

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27. See 65 ILCS § 5/11-12-5(1); see also Steve Lord, *Aurora to Protest Solar Project Near City's Far West Side*, CHICAGO TRIBUNE (May 30, 2024), <https://www.chicagotribune.com/2024/05/30/aurora-to-protest-solar-project-near-citys-far-west-side/>.
28. Justin Ritz, *960-Acre Solar Farm Will Be Constructed in Grundy Co. After Lawsuit Settled*, WCSJ NEWS (April 1, 2024), https://www.wcsjnews.com/news/local/960-acre-solar-farm-will-be-constructed-in-grundy-co-after-lawsuit-settled/article_9ed5c51a-f02a-11ee-98ae-4bdd4ffbe59c.html.
29. Bill Pickett, *Company Sues County Board Over Solar Facility Vote*, VERMILION COUNTY FIRST, (July 5, 2024), <https://vermilioncountyfirst.com/2024/07/05/company-sues-county-board-over-solar-facility-vote/>.
30. The Real Deal, *Renewable Properties Withdraws Solar-Energy Plans in Hawthorn Woods*, (April 2, 2024, 6:00 P.M.), <https://therealdeal.com/chicago/2024/04/02/renewable-properties-withdraws-solar-energy-plans-near-chicago/>.
31. *Id.*
32. *Id.*
33. *Id.*
34. Benjamin Fries, *East Peoria Considering Legal Action Over Solar Farm Project*, CENTRAL ILLINOIS PROUD (June 28, 2024), <https://www.centralillinoisproud.com/news/local-news/east-peoria-considering-legal-action-over-solar-farm-project/>.
35. Dean Olsen, *Board Reverses Solar Vote*, ILLINOIS TIMES (July 20, 2023), <https://www.illinoistimes.com/news-opinion/board-reverses-solar-vote-17133562>.
36. *Id.*
37. H.R. 4135, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
38. *Id.*
39. H.R. 4551, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
40. H.R. 3920, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
41. *Id.*
42. 55 ILCS § 5/5-12020(c).
43. H.R. 4422, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023); S.B. 2892, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
44. H.R. 4422; S.B. 2892.
45. H.R. 3146, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
46. 55 ILCS § 5/5-12020(c).
47. Illinois Department of Agriculture, *Agricultural Impact Mitigation Agreements*, [Illinois.gov](https://agr.illinois.gov/content/dam/soi/en/web/agr/resources/aima/documents/std-solar-aima.pdf) 6-7 (August 19, 2019), <https://agr.illinois.gov/content/dam/soi/en/web/agr/resources/aima/documents/std-solar-aima.pdf>.
48. H.R. 4037, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023).
49. *Id.*
50. Illinois Department of Agriculture, *supra* note 47.
51. *Id.* at 4, 10-11.

Recap of 2024 ABA Annual Meeting—Chicago

August 1–3, 2024

THURSDAY, August 1, 2024

CLE in the City Election Law program

Lawyers Saving Democracy: The Roles Lawyers Can Play in the Election Process

This panel provided insight into the various roles attorneys can play in the election process. These panelists also represent different types of organizations in the election space that attorneys viewing this program will also have in their local communities.

Moderators: William Kresse & Juan Thomas, Members of the Advisory Commission to the ABA Democracy Task Force

Speakers:

David Becker, Founder and Executive Director, Center for Election Innovation & Research.

Ross D. Secler, Partner, Odelson, Murphey, Frazier & McGrath, Ltd.; Chair, Election Law Committee, Chicago Bar Association.

John Fogarty, Law Office of John Fogarty, Jr.; General Counsel, Illinois Republican Party; Vice President, Governor, and former General Counsel, Republican National Lawyers Association.

Ed Mullen, Mullen Law Firm, Chicago, IL

Adam Lasker, Lasker Law LLC; General Counsel, Chicago Board of Election Commissioners.

Tanya Clay House, Executive Vice President Campaigns and Advocacy, Hip Hop Caucus; Consultant for the ABA Perfecting Democracy & Voting Rights Project; Former National Policy Director, Lawyers Committee for Civil Rights.

Angie Pitha, Project Lead, Election Official Legal Defense Network.

Jason Kaune, Chair, ABA Standing Committee on Election Law; Poll Worker, Esq.

SLG Zoning, Land Use & Cannabis: How to approach and navigate land use and zoning issues in emerging cannabis markets (CLE 1)

Panelists discussed land use and zoning challenges both operators and governments face with the expansion of legal cannabis use and sales across the nation.

By the end of the session, participants were able to understand the landscape of cannabis regulations and how to navigate existing or new land use restrictions when trying to operate cannabis facilities. This panel included leading experts on cannabis and land use discussing a topic that is becoming increasingly important to many state, tribal, and local government practitioners as well as real estate, business, and government relations attorneys.

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Moderator: Anamaria Hazard Meanes, Senior Managing Associate, Dentons US LLP, Atlanta, GA

Speakers:

Brie Coyle Jones, Partner and Chief Diversity Officer, Miller Nash LLP, Seattle, WA

Hannah M. King, Partner, Dentons Bingham Greenebaum LLP, Portland, ME

Sarah Pennington Richards, Associate, Dentons Bingham Greenebaum LLP, Louisville, KY

SLG Disenfranchising the First Americans - Native American Voting Rights (CLE 2)

Native Americans continue to lag behind other ethnic groups in rates of voter registration, turnout, and representation at all levels of government. 100 years after the Indian Citizenship Act, this panel reflected on the history and state of the Native American franchise. This panel also touched on recent elections where Native Americans were critical voting blocs, ongoing challenges that Native American voters face, and how the law can advance the Native Vote.

View the on-demand video at <https://ambar.org/lgvoting>.

Moderator: Blair Tarman-Toner, Associate Attorney General Chickasaw Nation

Speakers:

Patty Ferguson-Bohnee, Clinical Director of the Arizona State University Indian Legal Clinic

Torey Dolan, William H. Hastie Fellow at the University of Wisconsin Law School

Nicole Hansen, Elections Counsel, Committee on House Administration, U.S. House of Representatives

Co-sponsor: Standing Committee on Election Law, Standing Committee on the Law Library of Congress

FRIDAY, August 2, 2024

Safeguarding Public Officials: Protecting Judges, Civil Servants, and the Rule of Law

Defusing the violence against judges, as courts are under attack.

Las Vegas law clerk Michael Lasso jumped into action last January when a judge was attacked in the courtroom. Lasso fought off the judge's assailant – but others on the bench have not been as fortunate.

Lasso told his story at “Safeguarding Public Officials: Protecting Judges, Civil Servants and the Rule of Law,” on Aug. 2 at the American Bar Association Annual Meeting in Chicago, where he joined other colleagues of the court to report on an alarming rise in threats and acts of violence against them – and the new efforts sprouting up to address the problem.

Credible threats of harm against the judiciary have risen sharply, from 175 in 2019 to 500 in 2023, said former Maryland district judge Paul W. Grimm, now retired, who helped to launch a new institute for judicial legal reform, the Bolch Judicial Institute at Duke Law School, where he is the director.

Last year fellow Maryland jurist Andrew Wilkerson, a county circuit court judge, was killed in the driveway of his home following his ruling in a child custody case, said the state's Supreme Court Justice Matthew J. Fader, illustrating how the violence has spread beyond the courtroom and providing an

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example of how family law judges are at highest risk.

The tragedy sparked Maryland legislators to act on the vulnerabilities in the state's justice system.

The Maryland General Assembly recently passed the Judge Andrew Wilkerson Judicial Security Act, which took effect in June. The bill establishes a pathway for judicial officers in Maryland to get their personal information removed from the internet, explained Fader.

Concurrently, change is underway on the national level.

In June, the U.S. Senate passed the bipartisan Countering Threats and Attacks on Our Judges Act, legislation that stressed the need to help protect the safety of judges and others who work in state courthouses nationwide. The bill, now under consideration in the U.S. House of Representatives, will create a new resource center to provide threat monitoring, training and the opportunity to conduct research related to best practices for court security.

The ABA House of Delegates session that will close the 2024 Annual Meeting will consider Resolution 516, which urges Congress to pass the bill.

The violence extends beyond judges, impacting others in the public sector.

Election workers have received physical, sexual, racist and anti-Semitic threats that have even included threats against their children, said David Becker, executive director and founder of the Center for Election Innovation & Research in Washington, D.C., who noted that some states have passed laws to criminalize such behaviors.

Becker created the Elected Officials Legal Defense Network to connect election officials with pro bono lawyers and professionals who can provide advice and assistance.

Becker said it "saddens" him that the nonprofit needs to offer this type of service but predicts even more help will be needed beyond the current election cycle.

Legal professionals interested in volunteering with the network may contact the organization.

"Safeguarding Public Officials: Protecting Judges, Civil Servants and the Rule of Law" was sponsored by the Judicial Division and the Government and Public Sector Lawyers Division.

View on-demand video at <https://ambar.org/lgsafeguarding>.

Source: ABA News

Co-sponsors: Judicial Division; Judicial Division - National Conference of Specialized Court Judges; Judicial Division - Judicial Security Committee; Government and Public Sector Lawyers Division; Standing Committee on Election Law; Young Lawyers Division; Criminal Justice Section; National Judicial College; Administrative Law; Civil Rights and Social Justice

Moderator: David Sumner, Executive Director, Pennsylvania Independent Regulatory Review Commission, Harrisburg, PA

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Speakers:

David Becker, Executive Director and Founder, Center for Election Innovation & Research, Washington, DC

Hon. Matthew J. Fader, Chief Justice, Supreme Court of Maryland

Hon. Paul W. Grimm (ret.), David F. Levi Professor of the Practice of Law, Director of the Bolch Judicial Institute at Duke Law School and served as a district judge of the United States District Court for the District of Maryland

Michael Lasso, Clerk to the judge Mary Kay Holthus, Clark County District Court, Las Vegas

Ashley Weathers, Assistant Attorney General, North Carolina Department of Justice, SLG Elizabeth Clark Young Lawyers Fellow, Raleigh, NC

SLG Sheetz and the Future of Takings Jurisprudence SLG (CLE 3)

Panelists discussed the recently decided *Sheetz v. County of El Dorado, California*, how this decision affected the Nolan/Dolan test, and what questions SCOTUS left unanswered.

By the end of the session, participants were able to understand the background of the *Sheetz* decision and what the SCOTUS's decision means from one of the attorneys who represented Mr. Sheetz. This panel included experts on takings and exactions jurisprudence discussing a topic that can affect the future of state and local government regulations important to many state and local government practitioners as well as real estate, business, and government relations attorneys.

Moderator: Makenna X. Johnson, Associate, Davis Graham & Stubbs, Denver, CO

Speakers:

Brian T. Hodges, Senior Attorney, Pacific Legal Foundation, Poulsbo, WA

Co-sponsor: ABA Real Property Trusts and Estates

SLG Jefferson B. Fordham Awards Luncheon

In 1998, the ABA Section of State and Local Government Law was inspired to establish the Jefferson B. Fordham Awards to honor the accomplishments of practitioners and institutions active in the varied areas of practice associated with State and Local Government Law.

The 2024 Jefferson Fordham honorees:

Daniel J. Curtin, Jr. Lifetime Achievement Award

Erica Levine Powers, Past Section Chair, Albany, NY

Zaldwaynaka L. Scott, President, Chicago State University, Chicago, IL

Anita P. Miller Advocacy Award

Elizabeth M. Yang, Chair, SLG Election Committee,

President, WStrong LLC, Reston, VA

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Law Office Accomplishment Award

Illinois Office of Attorney General, Criminal Justice Division

SLG It Takes a Village: How Local Governments [or Chicago], Non-Profits, and Pro Bono Attorneys Are Responding to the New Wave of Immigrants. (CLE 4)

The current influx of new immigrants, many asylum seekers, has presented significant challenges for state and local governments. Chicago has been no exception. This panel discussed how Chicago is addressing the challenges it has had to meet the needs of these new arrivals, the legal and humanitarian issues these new immigrants are facing, and the critical role non-profits and pro bono legal counsel have played in the process.

Moderator: Ron Kramer, Seyfarth Shaw LLP, Chicago, Illinois

Speakers:

Katherine Greenslade, Legal Director, The Resurrection Project

Michelle Jacobson | Partner, Fragomen, Del Rey, Bernsen & Loewy, LLP, Chicago, IL
Ellen Miller, Pro Bono Manager, National Immigrant Justice Center,

Beatriz Ponce de León, Deputy Mayor of Immigrant, Migrant and Refugee Rights, Office of the Mayor

Co-sponsor: Commission on Immigration

SATURDAY, AUGUST 3, 2024

SLG Ensuring Trust in Our Institutions (CLE 5)

Why Americans distrust government – and what to do about it.

A breakdown in public education is a primary reason that a record number of Americans distrust government, said panelists on Aug. 3 during the American Bar Association Annual Meeting session, “Ensuring Trust in Our Institutions.”

Underinvestment in civics is causing a disconnect between Americans’ understanding of their role as voters and the impact of their ballot, said Skye Perryman, president of Democracy Forward, an advocacy group that advances democracy and social progress through litigation, policy and public education and regulatory engagement.

“Because of the erosion in our civic education... we’re now seeing that people can’t make sense of [their government,]” Perryman said. “When you can’t make sense of it, you start having a deep-seated distrust in the types of institutions that can help make it better—like voting or demanding more of your elected representatives.”

Distrust has also been stoked by the institutions themselves. The courts’ “intentionally” opaque procedures related to compliance with their orders and other directives discourage an understanding of their purpose and contributes to a lack of confidence in the justice system, Hannaford said.

Greater participation in civic duties boosts trust in government. People who have served on juries have more trust and higher regard for their local courts, Hannaford said. “But we have very few jury trials,

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which puts a lot of pressure today on how we can use this lovely mechanism that could improve our democratic institutions.” Adding to the challenge, she said, is the increase in non-response and failure-to-appear rates among potential jurors.

Panelist Kyle George said that lawyers are essential to a turnaround by strengthening democratic processes.

A former first assistant attorney general in Nevada and former general counsel to the governor, George explained that “lawyers play a critical role in keeping our system together...and it’s important that we don’t lose faith; that we don’t lose energy; that we don’t lose sight of the role we have in this.”

Among other areas of needed focus, Bill Kresse, a Chicago Board of Election commissioner, and certified public accountant, suggested that training CPAs as certified election auditors, crafting a model election code, and educating students better about the court system can all help to reinforce our democratic processes.

“Voter confidence is at a historic low. Democracy requires elections, and if people lose faith in elections, you’re kind of losing your democracy.”

Stephen Cobb, ABA Section of State and Local Government Democracy Fellow, moderated the program.

“Ensuring Trust in Our Institutions” was sponsored by the Section of State and Local Government Law.

Source: ABA News

Moderator: Stephen Cobb, Member | Cozen O’Connor; SLG Democracy Fellow, Washington DC

Speakers:

Bill Kresse, Commissioner, Chicago Board of Election Commissioners

Paula Hannaford, National Center for State Courts

Skye Perryman, President of Democracy Forward

Kyle George, former First Assistant AG (Nevada), former General Counsel to Governor of Nevada

SUNDAY, AUGUST 4, 2024

3:00 to 5:00 p.m.

Margaret Brent Awards Ceremony

ABA Section of State and Local Government 2023-24 Law Student Awards

As of October 8, 2024, the ABA Section of State and Local Government is pleased to announce the 2023-24 Law Student Awards. These awards are given for academic excellence in a course completed in Land Use Law or Local Government Law. Deans and professors have nominated the following students from Loyola University New Orleans College of Law:

- Emma Collin
- Jada Doucet
- Molly Liberto
- Lillian McLemore
- Aubrey Rector
- Dalton Smith

Young Lawyers and Law Students Writing Competition

The State and Local Government Law Section of the ABA is holding its annual Writing Competition, with the winner to be published in the Section's Law Review, The Urban Lawyer.

The Section invites all those who qualify as young lawyers (less than 36 years old or in practice for less than 10 years) and law students to submit articles of 25-50 pages in length, and properly footnoted, on any topic of state or local government law of their choice.

Membership in the ABA as a Law Student or in the ABA Young Lawyer Division is encouraged but is not required to enter the competition (join at <https://ambar.org/join>). Articles are due to the Section by January 15, and the winners will be announced by February 15. The Urban Lawyer Submission Guidelines are available at https://www.americanbar.org/content/dam/aba/administrative/state_local_government/articleproposalform.pdf

For more information, visit the Young Lawyers Division at <https://www.americanbar.org>.

Review: Buffalo's Waterfront Renaissance: Citizen Activists, NGOs, and the Canalside Project

By Erica Levine Powers

This outstanding book is of special interest to state and local government officials, agency employees, professional planners, NGO founders and board members, policy wonks, lawyers, students at all levels, and every individual who has ever wondered how to get their point across and change their environs for the better.

It highlights the multi-year political and legal battles that culminated in the renaissance of the Buffalo, NY waterfront on Lake Erie, with its Inner Harbor and Outer Harbor, and the Buffalo River. It describes the NGOs founded by concerned citizens for environmental and architectural preservation and the communities that developed out of these organizations. The book emphasizes that local and state officials and entities, agencies, and private sector developers and consultants, might discover that benefits, including economic benefits, derive from paying attention, early on, to the views of people who live there.

I had the privilege of teaching in the Master of Regional Planning program of the Department of Geography and Planning at the State University of New York, Albany (SUNY Albany), alongside Gene Bunnell, who had the office next door. He is a masterful storyteller, historically driven, detail-oriented, and completely engaged with the human aspects of planning and citizen action.

Gene Bunnell graduated from Wesleyan University, earned a Master of City Planning degree from the Harvard Graduate School of Design, and worked as an urban planner in the public sector for 15 years, first for the Massachusetts Department of Community Affairs Office of Local Assistance and then as Director of Planning and Development for the City of Northampton MA. He earned his PhD at the London School of Economics and Political Science in 1993 and launched a career teaching planning in the Department of Urban and Regional Planning at the University of Wisconsin-Madison and the Department of Geography and Planning at SUNY Albany.

Drawing on his experience as a public sector planner, in **Making Places Special: Stories of Real Places Made Better by Planning** (Planners Press 2002), Bunnell looked in depth at Chattanooga TN, Providence RI, Charleston SC, Duluth MN, and San Diego CA, with side trips to Madison WI, Westminster CO, Wichita KA, and Burlington MA, and a final chapter of lessons learned.

Bunnell returned to Providence, RI, to write **Transforming Providence: Rebirth of a Post-Industrial City** (Troy Bookmakers 2017). In 2018, he began a book on the transformation of another post-industrial city. **Buffalo's Waterfront Renaissance** builds on the depth of his knowledge of Buffalo, NY, where he was born and raised, and his credibility there. It is based on his analysis of documents, plans, environmental impact statements, correspondence, and related newspaper articles; discussions with leaders of advocacy groups, such as the Friends of the Buffalo River and Our Outer Harbor; and robust conversations with Robert F. Shibley, Dean of the University of Buffalo's School of Architecture and Planning.

The book begins with the history of Buffalo as a transportation and commercial hub, initially for grain and flour, resulting from the 19th-century construction of the Erie Canal, followed by railroads and

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industrialization, such as steel plants. However, by the mid-20th century, construction of the St. Lawrence Seaway eliminated Buffalo's role as a major port on the Great Lakes. This decline was compounded by urban renewal, financial problems with public housing, the adverse consequences of highway construction, and later de-industrialization due to the global economy. In addition, toxic waste from industry adversely impacted water quality and the natural environment. Fortunately, citizen awareness and action, starting in small increments and proceeding with patience and persistence, created change.

The chapters that set out the planning and revitalization of the Inner Harbor, the Buffalo River, and the Outer Harbor provide a wealth of fascinating detail, plan by plan, applications, public records, and ultimately court cases, attributable to the author's insight and patience as a planner and historian. There are annotated photographs, maps, and specially-produced GIS. Articles from the regional newspaper, *The Buffalo News*, are supplemented by two local online news outlets, *Buffalo Rising*, founded in 2003, and *Investigative Post*, founded in 2012.

At its core, the book stresses the importance of planning based on what the people who live in the community think is necessary and appropriate, and the adverse consequences when that isn't done. The political aspects of Buffalo's waterfront revitalization are insightful: for example, when and why a mayor shelved a plan or a governor espoused a particular project.

In a declining economy with a shrinking tax base, the availability of state and federal money must have seemed irresistible, even if the specific requirements of certain funding might be contrary to the development being proposed. Often, state and federal money was used to hire outside consultants from distant places whose proposals did not take local concerns into account; when, for whatever reason, the project lapsed, the plan was shelved, but the preparatory funding had been spent.

The Buffalo zoning code, adopted in 1953, was updated only in 2016 as the Green Code. Once it was adopted, most of the Outer Harbor was designated for green space, but one Common Council member was unwilling to prohibit the development of housing on the one remaining 20-acre parcel. The owner proposed a multi-story glass-walled apartment tower on the Outer Harbor, where sunami-like storm surges on the lake, combined with blizzard conditions that would close the Skyway and access roads, could imperil the residents' lives and leave them stranded. In 2020, the proposal was abandoned, and the property is for sale.

What was the role of citizens and NGOs during this period? Each chapter includes descriptions of patient, persistent, and, one might say, heroic efforts to articulate concerns and follow through to initiate, negotiate, and preserve open space for the use and benefit of all Buffalo citizens in the face of being ignored by Erie Canal Harbor Development Corporation (ECHDC), the state agency charged with managing redevelopment. For example, to protect the Outer Harbor, a number of NGOs and stakeholder groups formed Our Outer Harbor (OOH), a coalition that included environmental groups, sportsmen's clubs, environmental justice organizations, and the League of Women Voters. Outer Harbor planning became more participatory, including three public hearings by ECHDC where members of the public prioritized maintaining usable green space and creating more and better public access to the water.

The final chapter contains the following lessons learned:

- Big Projects Failed to Revive Lower Main Street and the Inner Harbor.
- The State Agency Was Officially Empowered, but Citizens Were not Powerless.
- Not All Preservationists in Agreement.
- Buffalo's Local Newspaper Helps Hold the State Agency Accountable.
- How Waterfront Planning Should be Conducted, identified by Dean Robert F. Shibley

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- “A well-conducted planning process should expand the range of ideas and options being considered, increase peoples’ imaginations regarding what might be possible, and make it possible to compare and evaluate possible outcomes from different points of view.” (February 22, 2021, in Bunnell, *Buffalo’s Waterfront Renaissance*, at 206).
- Have people with different interests and backgrounds participate in the process.
- Encourage the expression of divergent views and don’t attempt to dictate the outcome.
- Don’t allow any one segment of the community to dominate the process.
- Incorporate and be attuned to local values and allegiances.
- Make good use of expert knowledge and professional expertise.
- The consultants conducting the planning process need to be prepared to “speak truth to power” and tell those paying them things they don’t want to hear.
- Give the State Agency Some Credit.
 - The state government became heavily invested in having Buffalo’s waterfront successfully redeveloped.
 - Citizen advocates and NGOs provided inspiration and imagination, but state agencies or the federal government provided much of the money needed to accomplish this.
- Underappreciated Ways to Achieve Economic Development:
 - Improving Environmental Quality: “[get] elected leaders to rethink what makes a good community and place greater value on strengthening environmental quality and quality of life, as opposed to placing the greatest importance on the immediate economic returns of development.” (Jedlicka, interview, February 13, 2019, in Bunnell, *Buffalo’s Waterfront Renaissance*, at 210).
 - Historic Preservation
- The Job is Never Done: The Impact of Climate Change.

In conclusion [notwithstanding the demolition of buildings important to the city’s industrial heritage], “preservationists and NGOs can take solace in knowing that a remarkably broad public consensus has developed in Buffalo concerning the importance of preserving the city’s historically and architecturally significant sites and buildings. That public consensus may well turn out to be one of the most consequential and enduring outcomes produced by Buffalo’s waterfront renaissance.” (Bunnell, *Buffalo’s Waterfront Renaissance*, at 218).

Erica Levine Powers is a mediator and a land use regulatory and transactional lawyer in Albany, NY. She is an affiliated scholar in the Department of Geography & Planning at SUNY Albany.

Development by Agreement: A Tool Kit for Land Developers and Local Government, Second Edition

Authored by Julie A. Tappendorf, Cecily Barclay and Matthew Gray

Landowners and local governments often use agreements to increase public benefits and reduce uncertainty surrounding proposed developments.

The second edition of this guide provides an overview of problems faced by land developers and local governments that can easily be solved by development and annexation agreements.



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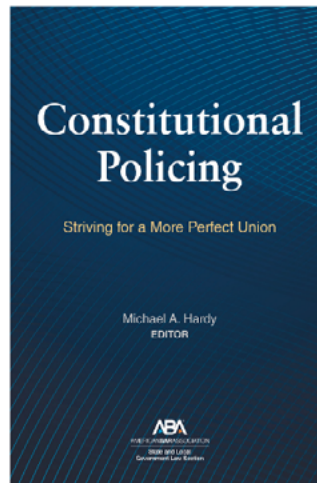
New Releases from State and Local Government Law Section

Constitutional Policing: Striving for a More Perfect Union

Edited by Michael A. Hardy

There is little debate that most communities want to be safe in their persons and their homes. There is much debate about how we as a nation can get to a place where communities feel secure in their relationships with those who are tasked with policing our communities. This guide provides a litigation road map in the area of policing and civilian/governmental oversight of policing.

May 2023 · 232 pages · 6x9 · Paperback/eBook · ISBN: 9781639053049 · Product code: 5330259 · Non-Member: \$99.95 · ABA Member: \$89.95 · Section Member: \$79.95

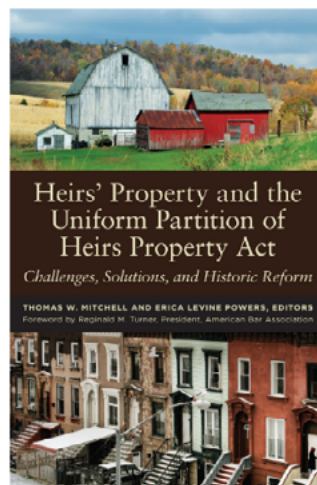


Heirs' Property and the Uniform Partition of Heirs Property Act: Challenges, Solutions, and Historic Reform

Edited by Thomas W. Mitchell and Erica Levine Powers

Heirs' Property and the Uniform Partition of Heirs Property Act: Challenges, Solutions, and Historic Reform addresses many challenges that have plagued disadvantaged families that own so-called heirs' property. The book also discusses a range of solutions to these problems, including legal reform measures, proactive legal planning to avoid heirs' property ownership or to resolve it, and wealth building strategies for heirs' property owners.

July 2021 · 258 pages · 7x10 · Paperback/eBook · ISBN: 9781639051205 · Product code: 5330257 · Non-Member: \$79.95 · ABA Member: \$71.95 · Section Member: \$63.95



Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials, Third Edition

Edited Jennifer G. Rodgers and Evan A. Davis

This book is essential reading for government lawyers who want an introduction to various topics within the practice of government ethics, particularly at the state and local levels. With a series of chapters authored by experts in the field, it provides practical insights to help lawyers and their public sector clients choose the most ethical course of conduct.

July 2021 · 338 pages · 7x10 · Paperback/eBook · ISBN: 9781639051533 · Product code: 5330258 · Non-Member: \$129.95 · ABA Member: \$116.95 · Section Member: \$103.95



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