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As lawmakers seek to exempt construction from governor's shutdown order, Wolf doubles down

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BY: JUSTIN SWEITZER

([HTTPS://THEPLSREPORTER.COM/AUTHOR/JUSTINSWEITZERMYPLS-COM/](https://theplsreporter.com/author/justinsweitzermypls-com/)) APRIL 2, 2020

Governors across the country have restricted business operations and limited social gatherings in an attempt to curtail the spread of the novel coronavirus. But Pennsylvania Gov. Tom Wolf is resisting pushback from critics who say his administration's list of businesses that may remain open during the COVID-19 outbreak is arbitrary and overly-restrictive.

The March 19 order urging all “non-life-sustaining” businesses to close has left some industries — like the construction trades — calling on Wolf to make the order more flexible. The administration responded by implementing a waiver process that allows the Department of Community and Economic Development to make case-by-case determinations on whether a business can remain open or not.

But some lawmakers and construction industry leaders say the case-by-case waivers don't go far enough. House Speaker Mike Turzai (R-Allegheny) is pushing legislation that would require DCED to issue an industry-wide waiver exempting public and private construction from Wolf's order, as long as they comply with social distancing guidelines set by the Centers for Disease Control and Prevention.

Turzai says the legislation, House Bill 2400, has over 100 co-sponsors and could receive a committee vote as early as next week.



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“Folks need purpose and hope. They need jobs to take care of themselves and their families,” Turzai said in a statement. “We need to allow economic activity that can be safely done following CDC protocols for mitigation to move forward. Let’s start with construction. Projects started, small and large, need to continue. Mitigation efforts are or can be put in place.”

A spokesperson for Wolf said Thursday that the governor does not support Turzai’s legislation.

Construction leaders largely share Turzai’s assessment. Jon O’Brien, the executive director of the Keystone Contractors Association, told *The PLS Reporter* that the General Contractors Association of Pennsylvania has developed a COVID-19 safety plan ([https://www.keystonecontractors.com/resources/Documents/PA%20COVID%2019%20Plan%20for%20Construction.pdf?](https://www.keystonecontractors.com/resources/Documents/PA%20COVID%2019%20Plan%20for%20Construction.pdf?mc_cid=e7de6cda95&mc_eid=f469f422e6)

[mc_cid=e7de6cda95&mc_eid=f469f422e6](https://www.keystonecontractors.com/resources/Documents/PA%20COVID%2019%20Plan%20for%20Construction.pdf?mc_cid=e7de6cda95&mc_eid=f469f422e6)) that contractors intend to use if they are allowed to go back to work.

The plan outlines a number of precautions that contractors would take, including setting up handwashing stations, altering schedules to reduce person-to-person contact, conduct risk and task hazard analyses for projects and job sites, while also disinfecting reusable supplies and equipment.

O’Brien said that the GCAP safety plan, coupled with the fact that many job sites like schools and other buildings are now unoccupied due to business closures, presents an opportunity to continue construction in a safe manner.

“I think we all want the same thing. We want a healthy Pennsylvania, we want a strong economy in Pennsylvania and we feel that we have the right technique, procedures and practices in place to make sure our workers are safe on job sites,” O’Brien said.

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Other states have been more lenient with what construction is allowed to continue. New York Gov. Andrew Cuomo's list of essential businesses (<https://esd.ny.gov/guidance-executive-order-2026>) includes emergency construction, work on health care facilities, roads and bridges, as well as affordable housing and homeless shelters. Meanwhile, Maryland Gov. Larry Hogan listed commercial and residential construction companies (<https://governor.maryland.gov/wp-content/uploads/2020/03/OLC-Interpretive-Guidance-COVID19-04.pdf>) as essential businesses under his order.

Wolf's list of life-sustaining businesses originally only allowed for emergency repairs, but it has since been amended to allow for construction at health care facilities. O'Brien added that Wolf's office has said that construction projects at Pennsylvania schools are not subject to the business closure order.

To date, the administration has received over 34,000 requests for waivers and approved over 15,000, according to the Department of Community and Economic Development. Over 8,600 waiver requests have been denied. The department also determined that another 8,000 businesses do not need waivers under the governor's order, a department spokesperson said.

O'Brien said that while the waiver process is well-meaning, it's not being executed as effectively as some would like. He pointed to contractors who submitted the same waiver requests to DCED multiple times, only to have them denied at first but approved later by different staff members.

"I think the governor's intentions are in the right place for sure," O'Brien said, noting that the administration's decision to issue waivers on a case-by-case basis demonstrates that the order was too restrictive. "I think we're seeing now that perhaps this shotgun approach wasn't the best approach."

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But while DCED will be fielded waiver applications through April 3, the relief that Turzai and other lawmakers are looking for isn't going to get support from Wolf.

Lyndsay Kensinger, a spokesperson for the governor, told *The PLS Reporter* that Wolf does not support exempting public and private construction from his order, suggesting that it could lessen the impact of his efforts to reduce the spread of COVID-19.

Kensinger said that claims that attempt to frame Pennsylvania as an outlier with its approach to construction are “completely false,” adding that the National Governors Association has sought guidance from the Wolf Administration on COVID-19 mitigation efforts.

“The governor’s highest priority remains protecting Pennsylvanians’ health and safety as the state works to mitigate the spread of COVID-19. As we prepare for the surge, we should be focused on the implementation of our mitigation plan,” Kensinger said. “Now is not the time to ease up on strong mitigation tactics that can help flatten the curve and ease the burden likely to be placed on our healthcare system.”

Justin Sweitzer is a State Government Reporter for The PLS Reporter. Have a question, comment or tip? Email: justinsweitzer@mypls.com (<mailto:justinsweitzer@mypls.com>).

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