

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1639 Session of 2011

INTRODUCED BY SANTARSIERO, BRADFORD, BRIGGS, CALTAGIRONE,
 FABRIZIO, HORNAMAN, PASHINSKI, ROSS, K. SMITH, SWANGER AND
 WAGNER, JUNE 7, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JUNE 7, 2011

AN ACT

1 Amending the act of July 31, 1968 (P.L.805, No.247), entitled,
 2 as amended, "An act to empower cities of the second class A,
 3 and third class, boroughs, incorporated towns, townships of
 4 the first and second classes including those within a county
 5 of the second class and counties of the second through eighth
 6 classes, individually or jointly, to plan their development
 7 and to govern the same by zoning, subdivision and land
 8 development ordinances, planned residential development and
 9 other ordinances, by official maps, by the reservation of
 10 certain land for future public purpose and by the acquisition
 11 of such land; to promote the conservation of energy through
 12 the use of planning practices and to promote the effective
 13 utilization of renewable energy sources; providing for the
 14 establishment of planning commissions, planning departments,
 15 planning committees and zoning hearing boards, authorizing
 16 them to charge fees, make inspections and hold public
 17 hearings; providing for mediation; providing for transferable
 18 development rights; providing for appropriations, appeals to
 19 courts and penalties for violations; and repealing acts and
 20 parts of acts," providing for review fees.

21 The General Assembly of the Commonwealth of Pennsylvania

22 hereby enacts as follows:

23 Section 1. Section 603 of the act of July 31, 1968 (P.L.805,
 24 No.247), known as the Pennsylvania Municipalities Planning Code,
 25 reenacted and amended December 21, 1988 (P.L.1329, No.170), is
 26 amended by adding a subsection to read:

1 Section 603. Ordinance Provisions.--* * *

2 (m) Zoning ordinances may include provisions for the
3 charging of review fees for the municipality's evaluation of
4 conditional use applications pursuant to express standards and
5 criteria set forth in the zoning ordinance, consistent with
6 subsection (c)(2) and section 913.2. Review fees may include
7 reasonable and necessary charges by the municipality's
8 professional consultants for review and report on a conditional
9 use application to the municipality. Review fees charged under
10 this subsection shall be based upon a schedule established by
11 ordinance or resolution and shall be in accordance with the
12 ordinary and customary charges for similar service in the
13 community, but in no event shall the fees exceed the rate or
14 cost charged by the professional consultants for comparable
15 services to the municipality for services which are not
16 reimbursed or otherwise imposed on applicants. Review fees
17 charged under this subsection shall not duplicate review fees
18 charged under section 503(1). Fees charged to the municipality
19 relating to any appeal of a decision on an application shall not
20 be considered review fees and may not be charged to an
21 applicant.

22 (1) Upon making a decision on an application, the
23 governing body shall submit to the applicant an itemized bill
24 showing work performed, identifying the person performing the
25 services and the time and date spent for each task.

26 (2) In the event the applicant disputes the amount of
27 any such review fees, the applicant shall, not later than 30
28 days after the date of transmittal of the bill to the
29 applicant, notify the municipality and the municipality's
30 professional consultant that such fees are disputed and shall

1 explain the basis of its objections to the fees charged.
2 Failure of the applicant to dispute a bill within 30 days of
3 transmittal of the bill shall be a waiver of the applicant's
4 right to arbitration of that bill pursuant to this
5 subsection.

6 (3) If, within 30 days after the applicant's
7 notification of dispute, the applicant and the municipality's
8 professional consultant cannot agree on the amount of review
9 fees that are reasonable and necessary, then the applicant
10 shall have the right to request the appointment of another
11 professional consultant to serve as an arbitrator. The
12 applicant and municipality's professional consultant shall,
13 within 20 days of the request and by mutual agreement,
14 appoint an arbitrator to review any disputed bills and make a
15 determination as to the amount thereof that is reasonable and
16 necessary. The arbitrator shall be of the same profession as
17 the professional consultant whose fees are being challenged.

18 (4) In the event that the municipality's professional
19 consultant and applicant cannot agree upon the arbitrator to
20 be appointed within 20 days of the request for appointment,
21 then, upon application of either party, the president judge
22 of the court of common pleas of the judicial district in
23 which the municipality is located or, if at the time there be
24 no president judge, then the senior active judge then sitting
25 shall appoint such arbitrator, who, in that case, shall be
26 neither the municipality's professional consultant nor any
27 professional consultant who has been retained by, or
28 performed services for, the municipality or the applicant
29 within the preceding five years.

30 (5) The arbitrator so appointed shall hear such evidence

1 and review such documentation as the arbitrator in his sole
2 opinion deems necessary and shall render a decision not later
3 than 50 days after the date of appointment. Based on the
4 decision of the arbitrator, the applicant or the
5 municipality's professional consultant shall be required to
6 pay any amounts necessary to implement the decision within 60
7 days following the decision. In the event the municipality
8 has paid the professional consultant an amount in excess of
9 the amount determined to be reasonable and necessary, the
10 professional consultant shall within 60 days reimburse the
11 excess payment.

12 (6) The fee of the arbitrator shall be paid by the
13 applicant if the review fee charged is sustained by the
14 arbitrator, otherwise, it shall be divided equally between
15 the municipality's professional consultant and the applicant.
16 If the disputed fees are found to be excessive by more than
17 \$5,000, the arbitrator shall have the discretion to assess an
18 amount greater than 50% of the arbitration fee against the
19 municipality's professional consultant. The governing body
20 and the consultant whose fees are the subject of the dispute
21 shall be parties to the proceeding.

22 Section 2. This act shall take effect immediately.