

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 349 Session of 2019

INTRODUCED BY HEFFLEY, GREINER, RYAN, MOUL, MILLARD, MACKENZIE, KNOWLES, EMRICK, HILL-EVANS, LAWRENCE, MALONEY, COX, TURZAI AND MASSER, FEBRUARY 1, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 27, 2019

AN ACT

1 Amending the act of November 10, 1999 (P.L.491, No.45), entitled
2 "An act establishing a uniform construction code; imposing
3 powers and duties on municipalities and the Department of
4 Labor and Industry; providing for enforcement; imposing
5 penalties; and making repeals," in adoption and enforcement
6 by municipalities, further providing for administration and
7 enforcement.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 501(b)(1), (2) and (3) and (c)(1) of the
11 act of November 10, 1999 (P.L.491, No.45), known as the
12 Pennsylvania Construction Code Act, ~~amended October 25, 2017~~
13 ~~(P.L.356, No.36)~~, are amended, subsection (b) is amended by
14 adding a paragraph and the section is amended by adding
15 subsections to read:

16 Section 501. Administration and enforcement.

17 * * *

18 (b) Municipal administration and enforcement.--This act may
19 be administered and enforced by municipalities in any of the

1 following ways:

2 (1) By the designation of an employee to serve as the
3 municipal code official to act on behalf of the municipality
4 for administration and enforcement of this act. A municipal
5 code official may utilize third-party agencies to supplement
6 the municipal code enforcement program's plan review and
7 inspection services or may utilize third-party agencies to
8 perform plan review and inspection services in categories
9 which its program does not possess the necessary personnel to
10 administer.

11 (2) By the retention of one or more construction code
12 officials or third-party agencies to act on behalf of the
13 municipality for administration and enforcement of this act.
14 This paragraph shall expire January 1, 2020.

15 (2.1) On and after January 1, 2020, by the retention of
16 two or more third-party agencies to act on behalf of the
17 municipality for administration and enforcement of this act.

18 (3) Two or more municipalities may provide for the joint
19 administration and enforcement of this act through an
20 intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A
21 (relating to intergovernmental cooperation). The following
22 apply:

23 (i) ~~Intermunicipal~~ INTERGOVERNMENTAL COOPERATION <--
24 agreements that provide for the joint administration and
25 enforcement of this act by utilizing third-party agencies
26 shall be in writing and conform to paragraph (2.1) on and
27 after January 1, 2020.

28 (ii) Professional service contracts entered into
29 with third-party agencies on or after the effective date
30 of this subparagraph for the purpose specified under

1 subparagraph (i) may not exceed three years.

2 (iii) The provisions of subsections (b.1), (b.2) and
3 (b.3) shall apply to ~~intermunicipal~~ INTERGOVERNMENTAL <--
4 COOPERATION agreements that provide for the joint
5 administration and enforcement of this act by utilizing
6 third-party agencies.

7 * * *

8 (b.1) Administration and enforcement by third-party
9 agencies.--A municipality opting to administer and enforce this
10 act by retaining two or more third-party agencies under
11 subsection (b) (2.1) shall be subject to the following
12 requirements:

13 (1) The services of the third-party agencies shall be
14 furnished and performed under written professional services
15 contracts with the municipality.

16 (2) In entering into professional services contracts
17 ~~under~~ ON OR AFTER THE EFFECTIVE DATE OF this subsection, the <--
18 governing body of the municipality shall take into
19 consideration all of the following:

20 (i) The qualifications of the third-party agency.

21 (ii) The fee schedule.

22 (iii) The availability of services.

23 (iv) The input of affected stakeholders.

24 (3) Third-party agencies contracting with the
25 municipality under this subsection may not be affiliated with
26 one another.

27 ~~(4) A professional services contract between a~~ <--
28 ~~municipality and a third party agency in effect on the~~
29 ~~effective date of this subsection may remain in effect for~~
30 ~~the purpose of satisfying the requirement that the~~

~~municipality retain two or more third party agencies under subsection (b) (2.1).~~

~~(5) (4) A professional services contract entered into between a municipality and a third-party agency on or after the effective date of this subsection may not exceed three years.~~ <--

~~(6) (5) The permit applicant from the municipality shall choose from the third-party agencies approved and contracted by the municipality. The permit applicant may only utilize the services of the permit applicant's selected third-party agency for the services required under this act and associated with the permit applicant's project.~~ <--

(b.2) Waiver.--If a municipality opts to administer and enforce this act under subsection (b) (2.1) but cannot obtain an offer from a third-party agency to fulfill the need to have at least two third-party agencies, the municipality may be relieved from the requirement of retaining two third-party agencies by completing a certification form, subject to the following:

(1) The municipality must complete the certification form before the contract with the selected third-party agency is executed and must maintain the form throughout the life of the contract with the third-party agency.

(2) The certification form must be completed annually.

(3) A copy of the certification form must be filed with the department. The department shall maintain a list of municipalities that have filed a certification form on the department's publicly accessible Internet website.

(4) The department shall furnish the certification form which must:

(i) Require the municipality to disclose the methods

1 and dates of the public solicitation. For purposes of
2 meeting this requirement, the municipality shall
3 advertise requests for proposals and announce the
4 solicitation at a public meeting.

5 (ii) Require the municipality to disclose the number
6 of qualified bids received to the public solicitation.

7 (iii) Contain a statement that the information
8 provided by the municipality is in compliance with 18
9 Pa.C.S. § 4904 (relating to unsworn falsification to
10 authorities).

11 (iv) Contain a statement that the department does
12 not have the discretion to deny waiver requests.

13 (b.3) Duties of municipalities.--If a municipality contracts
14 with third-party agencies for the administration and enforcement
15 of this act, the municipality shall:

16 (1) Ensure that the form utilized for a permit
17 application notifies an applicant of all of the following:

18 (i) The third-party agency is acting on behalf of
19 the municipality.

20 (ii) An applicant may inform the governing body of
21 complaints about the third-party agencies' services,
22 including reports of incompetence or gross negligence, a
23 failure to abide by a time period specified under this
24 act, unprofessional behavior or discrimination based on
25 personal bias against the applicant.

26 (iii) The department certifies third-party agencies
27 and investigates complaints due to violations of this
28 act, incompetence or gross negligence, fraud, deceit or
29 acts of moral turpitude.

30 (iv) The department has a publicly accessible

1 Internet website that includes the form for filing a
2 complaint under subparagraph (iii).

3 (2) Maintain a record of complaints submitted under
4 paragraph (1)(ii).

5 (c) Board of appeals.--

6 (1) A municipality which has adopted an ordinance for
7 the administration and enforcement of this act or
8 municipalities which are parties to an agreement for the
9 joint administration and enforcement of this act shall
10 establish or designate a board of appeals as provided by
11 regulations promulgated by the department to hear appeals
12 from decisions of the code administrator[.] subject to the
13 following:

14 (i) Members of the municipality's governing body may
15 not serve as members of the board of appeals.

16 (ii) A municipality may establish a board of appeals
17 or may establish or designate a joint board of appeals in
18 accordance with 53 Pa.C.S. Ch. 23 Subch. A (relating to
19 intergovernmental cooperation).

20 (iii) A city of the first class may designate an
21 existing departmental board that has jurisdiction over
22 building standard appeals to act as the board of appeals
23 of the city of the first class and advise the appropriate
24 department that oversees building standards as to whether
25 an appeal should be granted, modified or rejected. The
26 department shall render final decision on requests for
27 appeal.

28 * * *

29 Section 2. The department may issue regulations to establish
30 or clarify procedures necessary to effectuate the intent of this

1 act.

2 Section 3. The provisions of this act are severable. If any
3 provision of this act or its application to any person or
4 circumstance is held invalid, the invalidity shall not affect
5 other provisions or applications of this act which can be given
6 effect without the invalid provision or application.

7 Section 4. This act shall take effect immediately.