

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1469 Session of 2017

INTRODUCED BY HEFFLEY, MCGINNIS, MILLARD, MALONEY, PHILLIPS-HILL, COX, WHEELAND, ZIMMERMAN AND MICCARELLI, MAY 31, 2017

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 28, 2017

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-; AND, IN TRAINING AND CERTIFICATION OF <--
8 INSPECTORS, FURTHER PROVIDING FOR TRAINING OF INSPECTORS.

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

11 Section 1. Section 501 of the act of November 10, 1999 <--
12 (P.L.491, No.45), known as the Pennsylvania Construction Code-
13 Act, is amended by adding a subsection to read:

14 Section 501. Administration and enforcement.

15 * * *

16 SECTION 1. SECTION 501(B) (1), (2) AND (3) OF THE ACT OF <--
17 NOVEMBER 10, 1999 (P.L.491, NO.45), KNOWN AS THE PENNSYLVANIA
18 CONSTRUCTION CODE ACT, ARE AMENDED AND THE SECTION IS AMENDED BY
19 ADDING SUBSECTIONS TO READ:

20 SECTION 501. ADMINISTRATION AND ENFORCEMENT.

1 * * *

2 (B) MUNICIPAL ADMINISTRATION AND ENFORCEMENT.--THIS ACT MAY
3 BE ADMINISTERED AND ENFORCED BY MUNICIPALITIES IN ANY OF THE
4 FOLLOWING WAYS:

5 (1) BY THE DESIGNATION OF AN EMPLOYEE TO SERVE AS THE
6 MUNICIPAL CODE OFFICIAL TO ACT ON BEHALF OF THE MUNICIPALITY
7 FOR ADMINISTRATION AND ENFORCEMENT OF THIS ACT. A MUNICIPAL
8 CODE OFFICIAL MAY UTILIZE THIRD-PARTY AGENCIES TO SUPPLEMENT
9 THE MUNICIPAL CODE ENFORCEMENT PROGRAM'S PLAN REVIEW AND
10 INSPECTION SERVICES OR MAY UTILIZE THIRD-PARTY AGENCIES TO
11 PERFORM PLAN REVIEW AND INSPECTION SERVICES IN CATEGORIES
12 WHICH ITS PROGRAM DOES NOT POSSESS THE NECESSARY PERSONNEL TO
13 ADMINISTER.

14 (2) BY THE RETENTION OF ONE OR MORE [CONSTRUCTION CODE
15 OFFICIALS OR] THIRD-PARTY AGENCIES TO ACT ON BEHALF OF THE
16 MUNICIPALITY FOR ADMINISTRATION AND ENFORCEMENT OF THIS
17 ACT[.], EXCEPT THAT THE PROVISIONS OF SUBSECTION (B.1) SHALL
18 APPLY IF THE MUNICIPALITY CONTRACTS WITH ONLY ONE THIRD-PARTY
19 AGENCY FOR ADMINISTRATION AND ENFORCEMENT.

20 (3) TWO OR MORE MUNICIPALITIES MAY PROVIDE FOR THE JOINT
21 ADMINISTRATION AND ENFORCEMENT OF THIS ACT THROUGH AN
22 INTERMUNICIPAL AGREEMENT UNDER 53 PA.C.S. CH. 23 SUBCH. A
23 (RELATING TO INTERGOVERNMENTAL COOPERATION)[.], EXCEPT THAT
24 THE PROVISIONS OF SUBSECTION (B.1) SHALL APPLY IF THE
25 AGREEMENT PROVIDES FOR ONLY ONE THIRD-PARTY AGENCY FOR
26 ADMINISTRATION AND ENFORCEMENT.

27 * * *

28 (B.1) EXCLUSIVE ADMINISTRATION AND ENFORCEMENT.--THE
29 FOLLOWING APPLY:

30 (1) IF A MUNICIPALITY CONTRACTS WITH ONE THIRD-PARTY

1 AGENCY FOR ADMINISTRATION AND ENFORCEMENT OF THIS ACT, AN
2 APPLICANT MAY UTILIZE THE SERVICES OF ANOTHER THIRD-PARTY
3 AGENCY IF THE ALTERNATIVE THIRD-PARTY AGENCY AGREES TO REMIT
4 A SURCHARGE FOR ITS SERVICES TO THE MUNICIPALITY. THE
5 SURCHARGE SHALL BE A PERCENTAGE OF THE TOTAL AMOUNT OF FEES
6 CHARGED BY THE ALTERNATIVE THIRD-PARTY AGENCY. THE PERCENTAGE
7 SHALL BE ESTABLISHED BY THE MUNICIPALITY BY ORDINANCE AS A
8 PERCENTAGE NOT TO EXCEED 10%. IF THE MUNICIPALITY FAILS TO
9 ESTABLISH A SURCHARGE AS SPECIFIED UNDER THIS PARAGRAPH, THE
10 SURCHARGE SHALL BE 1% OF THE TOTAL FEES CHARGED BY THE
11 ALTERNATIVE THIRD-PARTY AGENCY FOR THE ALTERNATIVE THIRD-
12 PARTY AGENCY'S SERVICES ON A PROJECT.

13 (2) IN ACCORDANCE WITH THE MUNICIPALITY'S
14 OVERALL PERMITTING PROCESS FOR A PROJECT, THE MUNICIPALITY
15 SHALL NOTIFY THE APPLICANT THAT THE APPLICANT MAY UTILIZE THE
16 SERVICES OF AN ALTERNATIVE THIRD-PARTY AGENCY OF THE
17 APPLICANT'S CHOICE FOR THE CONSTRUCTION REQUIREMENTS OF THE
18 APPLICATION COVERED BY THIS ACT, INCLUDING ALL PLAN REVIEW
19 AND INSPECTION SERVICES. THE APPLICANT SHALL BE NOTIFIED OF
20 THE INFORMATION REQUIRED UNDER SUBSECTION (B.2).

21 (3) THE APPLICANT SHALL NOTIFY THE MUNICIPALITY AND ITS
22 CONTRACTED THIRD-PARTY AGENCY OF ITS INTENT TO UTILIZE AN
23 ALTERNATIVE THIRD-PARTY AGENCY FOR THE CONSTRUCTION
24 REQUIREMENTS REQUIRED BY THIS ACT FOR A PROJECT. THE
25 APPLICANT SHALL PROVIDE, IN ITS NOTIFICATION, THE NAME OF THE
26 ALTERNATIVE THIRD-PARTY AGENCY THAT WILL BE UTILIZED AND
27 APPROPRIATE CONTACT INFORMATION.

28 (4) BEFORE PERFORMING SERVICES ON A PROJECT, THE
29 ALTERNATIVE THIRD-PARTY AGENCY BEING UTILIZED BY THE
30 APPLICANT SHALL NOTIFY THE MUNICIPALITY AND ITS CONTRACTED

1 THIRD-PARTY AGENCY THAT IT IS PERFORMING SERVICES REQUIRED BY
2 THIS ACT ON THE PROJECT FOR THE APPLICANT. ON THE DATE OF
3 ISSUANCE OF THE PERMIT REQUIRED BY THIS ACT, THE ALTERNATIVE
4 THIRD-PARTY AGENCY SHALL PROVIDE THE MUNICIPALITY AND ITS
5 EXCLUSIVE THIRD-PARTY AGENCY WITH A COPY OF THE PERMIT ISSUED
6 FOR THE PROJECT AND THE APPROVED PLANS OF RECORD FOR THE
7 PROJECT.

8 (5) THE APPLICANT SHALL UTILIZE THE SERVICES OF THE
9 ALTERNATIVE THIRD-PARTY AGENCY FOR ALL REQUIREMENTS OF THIS
10 ACT ASSOCIATED WITH A PROJECT.

11 (6) ON THE DATE OF ISSUANCE OF THE FINAL INSPECTION
12 REPORT FOR A PROJECT, THE ALTERNATIVE THIRD-PARTY AGENCY
13 SHALL FORWARD THE FOLLOWING TO THE MUNICIPALITY AND THE
14 MUNICIPALITY'S THIRD-PARTY AGENCY:

15 (I) THE FINAL INSPECTION REPORT THAT WAS ISSUED FOR
16 THE PROJECT.

17 (II) A SUMMARY OF TOTAL FEES CHARGED TO THE
18 APPLICANT.

19 (III) PAYMENT OF THE SURCHARGE ASSESSED UNDER
20 PARAGRAPH (1).

21 (IV) THE FEE REQUIRED UNDER SECTION 703(A).

22 (V) ANY ADDITIONAL DOCUMENTATION ASSOCIATED WITH THE
23 PROJECT THAT IS REQUESTED BY THE MUNICIPALITY.

24 (7) THE MUNICIPALITY OR ITS CONTRACTED THIRD-PARTY
25 AGENCY, WHICHEVER IS APPLICABLE, SHALL ACCEPT THE FINAL
26 INSPECTION REPORT WITH RESPECT TO THE REQUIREMENTS OF THIS
27 ACT. THE CONTRACTED THIRD-PARTY AGENCY SHALL BE IMMUNE FROM
28 ANY CIVIL LIABILITY ASSOCIATED WITH CONTENTS OF THE FINAL
29 INSPECTION REPORT.

30 (8) THE MUNICIPALITY OR ITS CONTRACTED THIRD-PARTY

1 AGENCY MAY WITHHOLD ISSUANCE OF THE CERTIFICATE OF OCCUPANCY
2 FOR A PROJECT IF THE ALTERNATIVE THIRD-PARTY AGENCY FAILS TO
3 COMPLY WITH PARAGRAPH (6).

4 (9) THE MUNICIPALITY MAY NOTIFY THE DEPARTMENT OF A
5 POSSIBLE VIOLATION OF THIS ACT IF AN ALTERNATIVE THIRD-PARTY
6 AGENCY FAILS TO COMPLY WITH PARAGRAPH (6). UPON RECEIVING
7 NOTICE BY THE MUNICIPALITY, THE DEPARTMENT SHALL CONDUCT AN
8 INVESTIGATION. THE DEPARTMENT MAY CONSIDER AN INTENTIONAL
9 FAILURE TO COMPLY WITH PARAGRAPH (6) AS JUST CAUSE FOR
10 DECERTIFICATION OF THE ALTERNATIVE THIRD-PARTY AGENCY UNDER
11 SECTION 701(H).

12 (10) A PROFESSIONAL SERVICES CONTRACT BETWEEN A
13 MUNICIPALITY AND A THIRD-PARTY AGENCY FOR THE
14 EXCLUSIVE ADMINISTRATION AND ENFORCEMENT OF THIS ACT IN
15 EFFECT BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION SHALL
16 REMAIN IN EFFECT AND THE PROVISIONS OF THIS SUBSECTION SHALL
17 APPLY UPON THE EXPIRATION OF THE ORIGINAL TERMS OF THE
18 PROFESSIONAL SERVICES CONTRACT.

19 ~~(b.1)~~ (B.2) Administration and enforcement by third-party <--
20 agencies.--If a municipality contracts with one or more third-
21 party agencies for the administration and enforcement of this
22 act, the municipality shall have the following duties:

23 (1) Ensuring that the form utilized for a permit
24 application notifies an applicant of all of the following:

25 (i) The authority of a third-party agency exists as
26 a result of a contract approved by the governing body of
27 the municipality, or as a result of intermunicipal
28 agreement under 53 Pa.C.S. Ch. 23 Subch. A entered into
29 by the municipality.

30 (ii) An applicant may inform the governing body of

1 the municipality of complaints about a third-party
2 agency's services, including reports of incompetence or
3 gross negligence, a failure to abide by a time period
4 specified under this act, rude or unprofessional behavior
5 or discrimination based on personal bias against the
6 applicant.

7 (iii) The department certifies third-party agencies
8 and investigates complaints about service, including
9 complaints due to violations of this act, incompetence or
10 gross negligence, fraud, deceit or acts of moral
11 turpitude.

12 (iv) The department has a publicly accessible
13 Internet website which includes the form for filing a
14 complaint about service under subparagraph (iii).

15 (2) Maintaining a record of complaints submitted under
16 paragraph (1)(ii).

17 * * *

18 SECTION 2. SECTION 701 OF THE ACT IS AMENDED BY ADDING A <--
19 SUBSECTION TO READ:

20 SECTION 701. TRAINING OF INSPECTORS.

21 * * *

22 (H.1) CODE ADMINISTRATOR COMPLAINTS.--THE FOLLOWING APPLY:

23 (1) THE DEPARTMENT SHALL ACCEPT AND REVIEW A COMPLAINT
24 SUBMITTED BY A BUILDING PERMIT APPLICANT ABOUT A CODE
25 ADMINISTRATOR AND THE SECRETARY SHALL HAVE THE DISCRETION TO
26 ENFORCE REMEDIAL ACTIONS IF NECESSARY, INCLUDING ACTIONS TO
27 DECERTIFY THE CODE ADMINISTRATOR OR REVOKE THE CODE
28 ADMINISTRATOR'S CERTIFICATION FOR A PERIOD OF TIME AS
29 DETERMINED BY THE SECRETARY. THE DEPARTMENT SHALL REVIEW A
30 COMPLAINT ABOUT A CODE ADMINISTRATOR REGARDING ANY OF THE

1 FOLLOWING ALLEGATIONS:

2 (I) INCOMPETENCE, NEGLIGENCE OR UNETHICAL CONDUCT.

3 (II) FAILURE TO ABIDE BY A DEADLINE SPECIFIED UNDER
4 THIS ACT FOR A CODE ENFORCEMENT ACTION WHICH RESULTS IN
5 AN UNDULY DELAY IN THE PROGRESS OF A PROJECT.

6 (III) DUPLICATIVE, UNDISCLOSED OR EXORBITANT FEES
7 ASSESSED AS A RESULT OF A CODE ENFORCEMENT ACTION.

8 (IV) AN INTERPRETATION OF THE UNIFORM CONSTRUCTION
9 CODE WHICH DEMONSTRATES PROFESSIONAL INCOMPETENCE OR
10 DIFFERS FROM STANDARD PRACTICE, INCLUDING THE
11 ESTABLISHMENT OF A DIFFERENT REQUIREMENT AFTER PLAN
12 APPROVAL.

13 (V) A VIOLATION OF 34 PA. CODE § 401.14 (RELATING TO
14 DECERTIFICATION OR REFUSAL TO CERTIFY).

15 (2) AFTER REVIEWING A COMPLAINT AS SPECIFIED UNDER
16 PARAGRAPH (1), THE DEPARTMENT SHALL HAVE THE FOLLOWING
17 DUTIES:

18 (I) NOTIFYING THE MUNICIPALITY WHERE THE CODE
19 ADMINISTRATOR SUBJECT TO THE COMPLAINT IS BEING UTILIZED
20 AS TO THE EXISTENCE OF THE COMPLAINT AND RECOMMENDING
21 REMEDIAL ACTIONS THAT THE DEPARTMENT DETERMINES TO BE
22 NECESSARY TO CORRECT DEFICIENCIES.

23 (II) NOTIFYING THE CODE ADMINISTRATOR WHO IS THE
24 SUBJECT OF THE COMPLAINT.

25 (III) INVESTIGATING THE COMPLAINT.

26 (3) THE SECRETARY MAY ISSUE AN ORDER TO A MUNICIPALITY
27 TO ALLOW A BUILDING PERMIT HOLDER WHO SUBMITTED A COMPLAINT
28 UNDER THIS SUBSECTION TO UTILIZE ANOTHER THIRD-PARTY AGENCY
29 OF THE BUILDING PERMIT HOLDER'S CHOICE FOR ANY REMAINING CODE
30 ENFORCEMENT ACTIONS NECESSARY TO UTILIZE A PROJECT. THE ORDER

1 MAY ALSO INCLUDE A PROVISION TO ALLOW THE BUILDING PERMIT
2 HOLDER TO PERMANENTLY UTILIZE A THIRD-PARTY AGENCY OF THE
3 PERMIT HOLDER'S CHOICE FOR FUTURE PROJECTS IN THE
4 MUNICIPALITY IF THE SECRETARY DEEMS THAT IT IS POSSIBLE THAT
5 THE BUILDING PERMIT HOLDER WILL BE RETALIATED AGAINST FOR
6 FILING A COMPLAINT TO THE DEPARTMENT BY A CODE ADMINISTRATOR.

7 (4) IF A BUILDING PERMIT APPLICANT MAKES A COMPLAINT TO
8 THE DEPARTMENT CONCERNING A THIRD-PARTY AGENCY OR CODE
9 ADMINISTRATOR, THE DEPARTMENT MAY NOT DISCLOSE THE IDENTITY
10 OF THE BUILDING PERMIT HOLDER'S COMPLAINT WITHOUT THE
11 BUILDING PERMIT HOLDER'S CONSENT UNLESS DISCLOSURE IS
12 UNAVOIDABLE AS A RESULT OF AN INVESTIGATION OF A CODE
13 ADMINISTRATOR UNDER THIS SUBSECTION.

14 (5) A CODE ADMINISTRATOR MAY NOT DISCRIMINATE, THREATEN,
15 COERCE OR OTHERWISE RETALIATE AGAINST A BUILDING PERMIT
16 APPLICANT WHO FILES A COMPLAINT UNDER THIS SUBSECTION. A
17 PERSON WHO ALLEGES A VIOLATION OF THIS PARAGRAPH MAY BRING A
18 CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR
19 APPROPRIATE INJUNCTIVE RELIEF OR DAMAGES WITHIN 180 DAYS OF
20 OCCURRENCE OF THE ALLEGED VIOLATION.

21 * * *

22 Section 2 3. The department may issue regulations to <--
23 establish or clarify procedures necessary to effectuate the
24 intent of this act.

25 Section 3 4. This act shall take effect in 60 days. <--