

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 892 Session of 2003

INTRODUCED BY PILEGGI, RAFFERTY, ERICKSON, EARLL, HUGHES, M. WHITE, ARMSTRONG, LEMMOND, WONDERLING AND WOZNIAK, AUGUST 29, 2003

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 11, 2004

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 THE DEFINITION OF "PROFESSIONAL <—
21 CONSULTANTS"; AND further providing for contents of
22 subdivision and land development ordinance AND FOR RELEASE <—
23 FROM IMPROVEMENT BOND.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 ~~Section 1. Section 503(1) of the act of July 31, 1968 <—~~
27 ~~(P.L.805, No.247), known as the Pennsylvania Municipalities~~

1 ~~Planning Code, reenacted and amended December 21, 1988~~
2 ~~(P.L.1329, No.170) and amended June 22, 2000 (P.L.495, No.68),~~
3 ~~is amended to read:~~

4 ~~Section 503.—Contents of Subdivision and Land Development~~
5 ~~Ordinance.—The subdivision and land development ordinance may~~
6 ~~include, but need not be limited to:~~

7 ~~(1) Provisions for the submittal and processing of~~
8 ~~plats, including the charging of review fees, and~~
9 ~~specifications for such plats, including certification as to~~
10 ~~the accuracy of plats and provisions for preliminary and~~
11 ~~final approval and for processing of final approval by stages~~
12 ~~or sections of development. Such plats and surveys shall be~~
13 ~~prepared in accordance with the act of May 23, 1945 (P.L.913,~~
14 ~~No.367), known as the "Engineer, Land Surveyor and Geologist~~
15 ~~Registration Law," except that this requirement shall not~~
16 ~~preclude the preparation of a plat in accordance with the act~~
17 ~~of January 24, 1966 (1965 P.L.1527, No.535), known as the~~
18 ~~"Landscape Architects' Registration Law," when it is~~
19 ~~appropriate to prepare the plat using professional services~~
20 ~~as set forth in the definition of the "practice of landscape~~
21 ~~architecture" under section 2 of that act. Review fees may~~
22 ~~include reasonable and necessary charges by the~~
23 ~~municipality's professional consultants or engineer for~~
24 ~~review and report thereon to the municipality and fees paid~~
25 ~~to an attorney engaged by the municipality for services~~
26 ~~related to a review of plats or development plans submitted~~
27 ~~to the municipality. Such review fees shall be based upon a~~
28 ~~schedule established by ordinance or resolution. Such review~~
29 ~~fees shall be reasonable and in accordance with the ordinary~~
30 ~~and customary charges by the municipal engineer or consultant~~

1 ~~or attorney for similar service in the community, but in no~~
2 ~~event shall the fees exceed the rate or cost charged by the~~
3 ~~engineer or consultant or attorney to the municipalities when~~
4 ~~fees are not reimbursed or otherwise imposed on applicants.~~

5 ~~(i) In the event the applicant disputes the amount~~
6 ~~of any such review fees, the applicant shall, within 14~~
7 ~~days of the applicant's receipt of the bill, notify the~~
8 ~~municipality that such fees are disputed, in which case~~
9 ~~the municipality shall not delay or disapprove a~~
10 ~~subdivision or land development application due to the~~
11 ~~applicant's request over disputed fees.~~

12 ~~(ii) In the event that the municipality and the~~
13 ~~applicant cannot agree on the amount of review fees which~~
14 ~~are reasonable and necessary, then the applicant and the~~
15 ~~municipality shall follow the procedure for dispute~~
16 ~~resolution set forth in section 510(g), provided that the~~
17 ~~professionals resolving such dispute shall be of the same~~
18 ~~profession or discipline as the [consultants]~~
19 ~~professionals whose fees are being disputed.~~

20 * * *

21 ~~Section 2. This act shall take effect in 60 days.~~

22 SECTION 1. SECTION 107(A) OF THE ACT OF JULY 31, 1968
23 (P.L.805, NO.247), KNOWN AS THE PENNSYLVANIA MUNICIPALITIES
24 PLANNING CODE, REENACTED AND AMENDED DECEMBER 21, 1988
25 (P.L.1329, NO.170), IS AMENDED BY ADDING A DEFINITION TO READ:
26 SECTION 107. DEFINITIONS.--(A) THE FOLLOWING WORDS AND
27 PHRASES WHEN USED IN THIS ACT SHALL HAVE THE MEANINGS GIVEN TO
28 THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES
29 OTHERWISE:

30 * * *

1 "PROFESSIONAL CONSULTANTS," PERSONS WHO PROVIDE EXPERT OR
2 PROFESSIONAL ADVICE, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS,
3 ENGINEERS, GEOLOGISTS, LAND SURVEYORS, LANDSCAPE ARCHITECTS OR
4 PLANNERS.

5 * * *

6 SECTION 2. SECTION 503(1) OF THE ACT, AMENDED JUNE 22, 2000
7 (P.L.495, NO.68), IS AMENDED TO READ:

8 SECTION 503. CONTENTS OF SUBDIVISION AND LAND DEVELOPMENT
9 ORDINANCE.--THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE MAY
10 INCLUDE, BUT NEED NOT BE LIMITED TO:

11 (1) PROVISIONS FOR THE SUBMITTAL AND PROCESSING OF
12 PLATS, INCLUDING THE CHARGING OF REVIEW FEES, AND
13 SPECIFICATIONS FOR SUCH PLATS, INCLUDING CERTIFICATION AS TO
14 THE ACCURACY OF PLATS AND PROVISIONS FOR PRELIMINARY AND
15 FINAL APPROVAL AND FOR PROCESSING OF FINAL APPROVAL BY STAGES
16 OR SECTIONS OF DEVELOPMENT. SUCH PLATS AND SURVEYS SHALL BE
17 PREPARED IN ACCORDANCE WITH THE ACT OF MAY 23, 1945 (P.L.913,
18 NO.367), KNOWN AS THE "ENGINEER, LAND SURVEYOR AND GEOLOGIST
19 REGISTRATION LAW," EXCEPT THAT THIS REQUIREMENT SHALL NOT
20 PRECLUDE THE PREPARATION OF A PLAT IN ACCORDANCE WITH THE ACT
21 OF JANUARY 24, 1966 (1965 P.L.1527, NO.535), KNOWN AS THE
22 "LANDSCAPE ARCHITECTS' REGISTRATION LAW," WHEN IT IS
23 APPROPRIATE TO PREPARE THE PLAT USING PROFESSIONAL SERVICES
24 AS SET FORTH IN THE DEFINITION OF THE "PRACTICE OF LANDSCAPE
25 ARCHITECTURE" UNDER SECTION 2 OF THAT ACT. REVIEW FEES MAY
26 INCLUDE REASONABLE AND NECESSARY CHARGES BY THE
27 MUNICIPALITY'S PROFESSIONAL CONSULTANTS [OR ENGINEER] FOR
28 REVIEW AND REPORT THEREON TO THE MUNICIPALITY. SUCH REVIEW
29 FEES SHALL BE BASED UPON A SCHEDULE ESTABLISHED BY ORDINANCE
30 OR RESOLUTION. SUCH REVIEW FEES SHALL BE REASONABLE AND IN

1 ACCORDANCE WITH THE ORDINARY AND CUSTOMARY CHARGES [BY THE
2 MUNICIPAL ENGINEER OR CONSULTANT] FOR SIMILAR SERVICE IN THE
3 COMMUNITY, BUT IN NO EVENT SHALL THE FEES EXCEED THE RATE OR
4 COST CHARGED BY THE [ENGINEER OR CONSULTANT TO THE
5 MUNICIPALITIES WHEN FEES] PROFESSIONAL CONSULTANT FOR
6 COMPARABLE SERVICES TO THE MUNICIPALITY FOR SERVICES WHICH
7 ARE NOT REIMBURSED OR OTHERWISE IMPOSED ON APPLICANTS. FEES
8 CHARGED TO THE MUNICIPALITY RELATING TO ANY APPEAL OF A
9 DECISION ON AN APPLICATION SHALL NOT BE CONSIDERED REVIEW
10 FEES AND MAY NOT BE CHARGED TO AN APPLICANT.

11 (I) THE GOVERNING BODY SHALL SUBMIT TO THE APPLICANT
12 AN ITEMIZED BILL SHOWING WORK PERFORMED, IDENTIFYING THE
13 PERSON PERFORMING THE SERVICES AND THE TIME AND DATE
14 SPENT FOR EACH TASK. NOTHING IN THIS SUBPARAGRAPH SHALL
15 PROHIBIT INTERIM ITEMIZED BILLING OR MUNICIPAL ESCROW OR
16 OTHER SECURITY REQUIREMENTS. IN THE EVENT THE APPLICANT
17 DISPUTES THE AMOUNT OF ANY SUCH REVIEW FEES, THE
18 APPLICANT SHALL, [WITHIN 14 DAYS OF THE APPLICANT'S
19 RECEIPT OF THE BILL] NO LATER THAN 45 DAYS AFTER THE DATE
20 OF TRANSMITTAL OF THE BILL TO THE APPLICANT, NOTIFY THE
21 MUNICIPALITY AND THE MUNICIPALITY'S PROFESSIONAL
22 CONSULTANT THAT SUCH FEES ARE DISPUTED AND SHALL EXPLAIN
23 THE BASIS OF THEIR OBJECTIONS TO THE FEES CHARGED, IN
24 WHICH CASE THE MUNICIPALITY SHALL NOT DELAY OR DISAPPROVE
25 A SUBDIVISION OR LAND DEVELOPMENT APPLICATION DUE TO THE
26 APPLICANT'S [REQUEST OVER DISPUTED] DISPUTE OVER FEES.
27 FAILURE OF THE APPLICANT TO DISPUTE A BILL WITHIN 45 DAYS
28 SHALL BE A WAIVER OF THE APPLICANT'S RIGHT TO ARBITRATION
29 OF THAT BILL UNDER SECTION 510(G).

30 (II) IN THE EVENT THAT THE [MUNICIPALITY]

1 MUNICIPALITY'S PROFESSIONAL CONSULTANT AND THE APPLICANT
2 CANNOT AGREE ON THE AMOUNT OF REVIEW FEES WHICH ARE
3 REASONABLE AND NECESSARY, THEN THE APPLICANT AND THE
4 MUNICIPALITY SHALL FOLLOW THE PROCEDURE FOR DISPUTE
5 RESOLUTION SET FORTH IN SECTION 510(G), PROVIDED THAT THE
6 [PROFESSIONALS] ARBITRATOR RESOLVING SUCH DISPUTE SHALL
7 BE OF THE SAME PROFESSION OR DISCIPLINE AS THE
8 [CONSULTANTS] PROFESSIONAL CONSULTANT WHOSE FEES ARE
9 BEING DISPUTED.

10 (III) SUBSEQUENT TO A DECISION ON AN APPLICATION,
11 THE GOVERNING BODY SHALL SUBMIT TO THE APPLICANT AN
12 ITEMIZED BILL FOR REVIEW FEES, SPECIFICALLY DESIGNATED AS
13 A FINAL BILL. THE FINAL BILL SHALL INCLUDE ALL REVIEW
14 FEES INCURRED AT LEAST THROUGH THE DATE OF THE DECISION
15 ON THE APPLICATION. IF FOR ANY REASON ADDITIONAL REVIEW
16 IS REQUIRED SUBSEQUENT TO THE DECISION, INCLUDING
17 INSPECTIONS AND OTHER WORK TO SATISFY THE CONDITIONS OF
18 THE APPROVAL, THE REVIEW FEES SHALL BE CHARGED TO THE
19 APPLICANT AS A SUPPLEMENT TO THE FINAL BILL.

20 * * *

21 SECTION 3. SECTION 510(G) OF THE ACT IS AMENDED TO READ:

22 SECTION 510. RELEASE FROM IMPROVEMENT BOND.--* * *

23 (G) THE MUNICIPALITY MAY PRESCRIBE THAT THE APPLICANT SHALL
24 REIMBURSE THE MUNICIPALITY FOR THE REASONABLE AND NECESSARY
25 EXPENSE INCURRED [FOR] IN CONNECTION WITH THE INSPECTION OF
26 IMPROVEMENTS. THE APPLICANT SHALL NOT BE REQUIRED TO REIMBURSE
27 THE GOVERNING BODY FOR ANY INSPECTION WHICH IS DUPLICATIVE OF
28 INSPECTIONS CONDUCTED BY OTHER GOVERNMENTAL AGENCIES OR PUBLIC
29 UTILITIES. THE BURDEN OF PROVING THAT ANY INSPECTION IS
30 DUPLICATIVE SHALL BE UPON THE OBJECTING APPLICANT. SUCH

1 REIMBURSEMENT SHALL BE BASED UPON A SCHEDULE ESTABLISHED BY
2 ORDINANCE OR RESOLUTION. SUCH EXPENSE SHALL BE REASONABLE AND IN
3 ACCORDANCE WITH THE ORDINARY AND CUSTOMARY FEES CHARGED BY THE
4 [MUNICIPAL ENGINEER OR CONSULTANT] MUNICIPALITY'S PROFESSIONAL
5 CONSULTANT FOR WORK PERFORMED FOR SIMILAR SERVICES IN THE
6 COMMUNITY, BUT IN NO EVENT SHALL THE FEES EXCEED THE RATE OR
7 COST CHARGED BY THE [ENGINEER OR] PROFESSIONAL CONSULTANT TO THE
8 [MUNICIPALITIES] MUNICIPALITY FOR COMPARABLE SERVICES WHEN FEES
9 ARE NOT REIMBURSED OR OTHERWISE IMPOSED ON APPLICANTS.

10 (1) THE GOVERNING BODY SHALL SUBMIT TO THE APPLICANT AN
11 ITEMIZED BILL SHOWING THE WORK PERFORMED IN CONNECTION WITH
12 THE INSPECTION OF IMPROVEMENTS PERFORMED, IDENTIFYING THE
13 PERSON PERFORMING THE SERVICES AND THE TIME AND DATE SPENT
14 FOR EACH TASK. IN THE EVENT THE APPLICANT DISPUTES THE AMOUNT
15 OF ANY SUCH EXPENSE IN CONNECTION WITH THE INSPECTION OF
16 IMPROVEMENTS, THE APPLICANT SHALL, [WITHIN TEN WORKING DAYS
17 OF THE DATE OF BILLING] NO LATER THAN 30 DAYS AFTER THE DATE
18 OF TRANSMITTAL OF A BILL FOR INSPECTION SERVICES, NOTIFY THE
19 MUNICIPALITY AND THE MUNICIPALITY'S PROFESSIONAL CONSULTANT
20 THAT SUCH INSPECTION EXPENSES ARE DISPUTED AS UNREASONABLE OR
21 UNNECESSARY AND SHALL EXPLAIN THE BASIS OF THEIR OBJECTIONS
22 TO THE FEES CHARGED, IN WHICH CASE THE MUNICIPALITY SHALL NOT
23 DELAY OR DISAPPROVE A REQUEST FOR RELEASE OF FINANCIAL
24 SECURITY, A SUBDIVISION OR LAND DEVELOPMENT APPLICATION OR
25 ANY APPROVAL OR PERMIT RELATED TO DEVELOPMENT DUE TO THE
26 APPLICANT'S [REQUEST OVER DISPUTED ENGINEER EXPENSES.]
27 DISPUTE OF INSPECTION EXPENSES. FAILURE OF THE APPLICANT TO
28 DISPUTE A BILL WITHIN 30 DAYS SHALL BE A WAIVER OF THE
29 APPLICANT'S RIGHT TO ARBITRATION OF THAT BILL UNDER THIS
30 SECTION.

1 (1.1) SUBSEQUENT TO THE FINAL RELEASE OF FINANCIAL
2 SECURITY FOR COMPLETION OF IMPROVEMENTS FOR A SUBDIVISION OR
3 LAND DEVELOPMENT, OR ANY PHASE THEREOF, THE PROFESSIONAL
4 CONSULTANT SHALL SUBMIT TO THE GOVERNING BODY A BILL FOR
5 INSPECTION SERVICES, SPECIFICALLY DESIGNATED AS A FINAL BILL.
6 THE FINAL BILL SHALL INCLUDE INSPECTION FEES INCURRED THROUGH
7 THE RELEASE OF FINANCIAL SECURITY.

8 (2) IF[, WITHIN 20 DAYS FROM THE DATE OF BILLING, THE
9 MUNICIPALITY] THE PROFESSIONAL CONSULTANT AND THE APPLICANT
10 CANNOT AGREE ON THE AMOUNT OF EXPENSES WHICH ARE REASONABLE
11 AND NECESSARY, THEN THE APPLICANT [AND MUNICIPALITY] SHALL
12 HAVE THE RIGHT, WITHIN 45 DAYS OF THE TRANSMITTAL OF THE
13 FINAL BILL OR SUPPLEMENT TO THE FINAL BILL TO THE APPLICANT,
14 TO REQUEST THE APPOINTMENT OF ANOTHER PROFESSIONAL CONSULTANT
15 TO SERVE AS AN ARBITRATOR. THE APPLICANT AND PROFESSIONAL
16 CONSULTANT WHOSE FEES ARE BEING CHALLENGED SHALL [JOINTLY],
17 BY MUTUAL AGREEMENT, APPOINT ANOTHER PROFESSIONAL [ENGINEER
18 LICENSED AS SUCH IN THE COMMONWEALTH OF PENNSYLVANIA]
19 CONSULTANT TO REVIEW [THE SAID EXPENSES] ANY BILLS THE
20 APPLICANT HAS DISPUTED AND WHICH REMAIN UNRESOLVED AND MAKE A
21 DETERMINATION AS TO THE AMOUNT THEREOF WHICH IS REASONABLE
22 AND NECESSARY. THE ARBITRATOR SHALL BE OF THE SAME PROFESSION
23 AS THE PROFESSIONAL CONSULTANT WHOSE FEES ARE BEING
24 CHALLENGED.

25 (3) THE [PROFESSIONAL ENGINEER] ARBITRATOR SO APPOINTED
26 SHALL HEAR SUCH EVIDENCE AND REVIEW SUCH DOCUMENTATION AS THE
27 [PROFESSIONAL ENGINEER] ARBITRATOR IN HIS OR HER SOLE OPINION
28 DEEMS NECESSARY AND SHALL RENDER A DECISION [WITHIN] NO LATER
29 THAN 50 DAYS [OF THE BILLING DATE. THE APPLICANT] AFTER THE
30 DATE OF APPOINTMENT. BASED ON THE DECISION OF THE ARBITRATOR,

1 THE APPLICANT OR THE PROFESSIONAL CONSULTANT WHOSE FEES WERE
2 CHALLENGED SHALL BE REQUIRED TO PAY [THE ENTIRE AMOUNT
3 DETERMINED IN THE DECISION IMMEDIATELY.] ANY AMOUNTS
4 NECESSARY TO IMPLEMENT THE DECISION WITHIN 60 DAYS. IN THE
5 EVENT THE MUNICIPALITY HAS PAID THE PROFESSIONAL CONSULTANT
6 AN AMOUNT IN EXCESS OF THE AMOUNT DETERMINED TO BE REASONABLE
7 AND NECESSARY, THE PROFESSIONAL CONSULTANT SHALL WITHIN 60
8 DAYS REIMBURSE THE EXCESS PAYMENT.

9 (4) IN THE EVENT THAT THE [MUNICIPALITY] MUNICIPALITY'S
10 PROFESSIONAL CONSULTANT AND APPLICANT CANNOT AGREE UPON THE
11 [PROFESSIONAL ENGINEER] ARBITRATOR TO BE APPOINTED WITHIN 20
12 DAYS OF THE [BILLING DATE] REQUEST FOR APPOINTMENT OF AN
13 ARBITRATOR, THEN, UPON APPLICATION OF EITHER PARTY, THE
14 PRESIDENT JUDGE OF THE COURT OF COMMON PLEAS OF THE JUDICIAL
15 DISTRICT IN WHICH THE MUNICIPALITY IS LOCATED (OR IF AT THE
16 TIME THERE BE NO PRESIDENT JUDGE, THEN THE SENIOR ACTIVE
17 JUDGE THEN SITTING) SHALL APPOINT SUCH [ENGINEER] ARBITRATOR,
18 WHO, IN THAT CASE, SHALL BE NEITHER THE [MUNICIPAL ENGINEER]
19 MUNICIPALITY'S PROFESSIONAL CONSULTANT NOR ANY PROFESSIONAL
20 [ENGINEER] CONSULTANT WHO HAS BEEN RETAINED BY, OR PERFORMED
21 SERVICES FOR, THE MUNICIPALITY OR THE APPLICANT WITHIN THE
22 PRECEDING FIVE YEARS.

23 (5) [THE FEE OF THE APPOINTED PROFESSIONAL ENGINEER FOR
24 DETERMINING THE REASONABLE AND NECESSARY EXPENSES SHALL BE
25 PAID BY THE APPLICANT IF THE AMOUNT OF PAYMENT REQUIRED IN
26 THE DECISION IS EQUAL TO OR GREATER THAN THE ORIGINAL BILL.
27 IF THE AMOUNT OF PAYMENT REQUIRED IN THE DECISION IS LESS
28 THAN THE ORIGINAL BILL BY \$1,000 OR MORE, THE MUNICIPALITY
29 SHALL PAY THE FEE OF THE PROFESSIONAL ENGINEER, BUT OTHERWISE
30 THE MUNICIPALITY AND THE APPLICANT SHALL EACH PAY ONE-HALF OF

1 THE FEE OF THE APPOINTED PROFESSIONAL ENGINEER.] THE FEE OF
2 THE ARBITRATOR SHALL BE PAID BY THE APPLICANT IF THE REVIEW
3 FEE CHARGED IS SUSTAINED BY THE ARBITRATOR, OTHERWISE IT
4 SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES. IF THE DISPUTED
5 FEEES ARE FOUND TO BE EXCESSIVE BY MORE THAN \$5,000, THE
6 ARBITRATOR SHALL HAVE THE DISCRETION TO ASSESS THE
7 ARBITRATION FEE IN WHOLE OR IN PART AGAINST EITHER THE
8 APPLICANT OR THE PROFESSIONAL CONSULTANT. THE GOVERNING BODY
9 AND THE CONSULTANT WHOSE FEES ARE THE SUBJECT OF THE DISPUTE
10 SHALL BE PARTIES TO THE PROCEEDING.

11 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.