

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 1787** Session of  
2007

INTRODUCED BY McILVAINE SMITH, QUINN, FREEMAN, STEIL, BRENNAN, CARROLL, COSTA, CURRY, EVERETT, FRANKEL, GIBBONS, GOODMAN, GRUCELA, HARPER, HORNAMAN, JAMES, JOSEPHS, KESSLER, KING, KORTZ, KOTIK, KULA, LEACH, LENTZ, MAHONEY, MCGEEHAN, MELIO, MUNDY, M. O'BRIEN, O'NEILL, PASHINSKI, PAYTON, PETRI, ROEBUCK, RUBLEY, SCHRODER, SHIMKUS, K. SMITH, TANGRETTI, R. TAYLOR, THOMAS, VEREB, VITALI, WAGNER, WALKO AND WATSON, AUGUST 1, 2007

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, AUGUST 1, 2007

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," further providing for municipal curative  
21 amendments; and providing for procedure for municipal  
22 curative amendment subsequent to appellate court decision.

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

25 Section 1. Section 609.2 of the act of July 31, 1968

1 (P.L.805, No.247), known as the Pennsylvania Municipalities  
2 Planning Code, reenacted and amended December 21, 1988  
3 (P.L.1329, No.170), is amended to read:

4 Section 609.2. Procedure for Municipal Curative  
5 Amendments.--If a municipality determines that its zoning  
6 ordinance or any portion thereof is substantially invalid, it  
7 shall take the following actions:

8 (1) A municipality shall declare by formal action, its  
9 zoning ordinance or portions thereof substantively invalid  
10 and propose to prepare a curative amendment to overcome such  
11 invalidity. Within 30 days following such declaration and  
12 proposal the governing body of the municipality shall:

13 (i) By resolution make specific findings setting  
14 forth the declared invalidity of the zoning ordinance  
15 which may include:

16 (A) references to specific uses which are either  
17 not permitted or not permitted in sufficient  
18 quantity;

19 (B) reference to a class of use or uses which  
20 require revision; or

21 (C) reference to the entire ordinance which  
22 requires revisions.

23 (ii) Begin to prepare and consider a curative  
24 amendment to the zoning ordinance to correct the declared  
25 invalidity.

26 (2) Within 180 days from the date of the declaration and  
27 proposal, the municipality shall enact a curative amendment  
28 to validate, or reaffirm the validity of, its zoning  
29 ordinance pursuant to the provisions required by section 609  
30 in order to cure the declared invalidity of the zoning

1 ordinance.

2 (3) Upon the initiation of the procedures, as set forth  
3 in clause (1), the governing body shall not be required to  
4 entertain or consider any landowner's curative amendment  
5 filed under section 609.1 nor shall the zoning hearing board  
6 be required to give a report requested under section 909.1 or  
7 916.1 subsequent to the declaration and proposal based upon  
8 the grounds identical to or substantially similar to those  
9 specified in the resolution required by clause (1)(a). Upon  
10 completion of the procedures as set forth in clauses (1) and  
11 (2), no rights to a cure pursuant to the provisions of  
12 sections 609.1 and 916.1 shall, from the date of the  
13 declaration and proposal, accrue to any landowner on the  
14 basis of the substantive invalidity of the unamended zoning  
15 ordinance for which there has been a curative amendment  
16 pursuant to this section.

17 (4) A municipality having utilized the procedures as set  
18 forth in clauses (1) and (2) may not again utilize said  
19 procedure for a [36-month] 24-month period following the date  
20 of the enactment of a curative amendment, or reaffirmation of  
21 the validity of its zoning ordinance, pursuant to clause (2);  
22 provided, however, if after the date of declaration and  
23 proposal there is a substantially new duty or obligation  
24 imposed upon the municipality by virtue of a change in  
25 statute or by virtue of a Pennsylvania Appellate Court  
26 decision, the municipality may utilize the provisions of this  
27 section to prepare a curative amendment to its ordinance to  
28 fulfill said duty or obligation.

29 Section 2. The act is amended by adding a section to read:  
30 Section 609.3. Procedure for Municipal Curative Amendment

1 Subsequent to Appellate Court Decision.--If a Pennsylvania  
2 appellate court determines that a municipal zoning ordinance or  
3 any portion thereof is substantially invalid, the municipality  
4 may take the following actions:

5 (1) A municipality shall declare by formal action its  
6 zoning ordinance or portions thereof may be substantially  
7 invalid and propose to prepare a curative amendment to  
8 overcome the invalidity identified in the appellate court  
9 decision. Within 30 days of the date that the appellate court  
10 decision is filed, the governing body of the municipality  
11 shall:

12 (i) By resolution make specific findings setting  
13 forth the declared invalidity of the ordinance.

14 (ii) Begin to prepare and consider a curative  
15 amendment to the zoning ordinance to correct the declared  
16 invalidity.

17 (2) Within 270 days from the date that the decision of  
18 the appellate court is filed, the municipality shall enact a  
19 curative amendment to validate or reaffirm the validity of  
20 its zoning ordinance pursuant to the requirements of section  
21 609 to cure the declared invalidity of the zoning ordinance  
22 by the appellate court.

23 (3) When a municipality elects to follow the procedure  
24 set forth in clause (1):

25 (i) The governing body shall not be required to  
26 entertain or consider any landowner's curative amendment,  
27 based on grounds identical to or substantially similar to  
28 those specified in the resolution required by clause  
29 (1)(i), filed under section 609.1, from the date that the  
30 decision of the appellate court is filed.

1           (ii) Similarly, the zoning hearing board shall not  
2 be required to make a determination under section 909.1  
3 or 916.1 based on grounds identical to or substantially  
4 similar to those specified in the resolution required by  
5 clause (1)(i), from the date that the decision of the  
6 appellate court is filed.

7           (iii) Upon completion of the procedures set forth in  
8 clauses (1) and (2), no right to a cure pursuant to the  
9 provisions of sections 609.1 and 916.1 shall, from the  
10 date that the decision of the appellate court is filed,  
11 accrue to any landowner on the basis of the substantive  
12 invalidity of the unamended zoning ordinance for which  
13 there has been a curative amendment pursuant to this  
14 section.

15           (4) A municipality having utilized the procedure as set  
16 forth in clause (1) may not again utilize the procedure.  
17 However, if there is a substantially new duty or obligation  
18 imposed upon the municipality by virtue of a Pennsylvania  
19 appellate court decision, the municipality may utilize the  
20 provisions of this section to prepare a curative amendment to  
21 its ordinance to fulfill the duty or obligation.

22       Section 3. This act shall take effect in 60 days.