

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1718 Session of 2011

INTRODUCED BY CREIGHTON, BROOKS, CALTAGIRONE, CARROLL, CLYMER, DAVIS, GEIST, GIBBONS, GINGRICH, GROVE, HELM, KNOWLES, MILLER, MOUL AND MUSTIO, JUNE 23, 2011

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JUNE 23, 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," in subdivision and land development, further
 21 providing for contents of subdivision and land development
 22 ordinance, for completion of improvements or guarantee
 23 thereof prerequisite to final plat approval, and for release
 24 from improvement bond.

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

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

1 Planning Code, amended November 30, 2004 (P.L.1613, No.206), is
2 amended to read:

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

6 (1) Provisions for the submittal and processing of plats,
7 including the charging of review fees, and specifications for
8 such plats, including certification as to the accuracy of plats
9 and provisions for preliminary and final approval and for
10 processing of final approval by stages or sections of
11 development. Such plats and surveys shall be prepared in
12 accordance with the act of May 23, 1945 (P.L.913, No.367), known
13 as the "Engineer, Land Surveyor and Geologist Registration Law,"
14 except that this requirement shall not preclude the preparation
15 of a plat in accordance with the act of January 24, 1966 (1965
16 P.L.1527, No.535), known as the "Landscape Architects'
17 Registration Law," when it is appropriate to prepare the plat
18 using professional services as set forth in the definition of
19 the "practice of landscape architecture" under section 2 of that
20 act. Review fees may include reasonable and necessary charges by
21 the municipality's professional consultants for review and
22 report thereon to the municipality. The municipality shall
23 designate by resolution or ordinance a minimum of three approved
24 professional consultants from different firms in each discipline
25 who are readily available to provide services in the
26 municipality and the applicant may select a professional
27 consultant from among the approved consultants and such
28 professional consultant shall be the municipality's professional
29 consultant for that particular application. If the applicant
30 selects a professional consultant, only review fees by the

1 selected consultant may be charged to the applicant. Such review
2 fees shall be based upon a schedule established by ordinance or
3 resolution. Such review fees shall be reasonable and in
4 accordance with the ordinary and customary charges for similar
5 service in the community, but in no event shall the fees exceed
6 the rate or cost charged by the professional consultant for
7 comparable services to the municipality for services which are
8 not reimbursed or otherwise imposed on applicants. Fees charged
9 to the municipality relating to any appeal of a decision on an
10 application shall not be considered review fees and may not be
11 charged to an applicant.

12 (i) The governing body shall submit to the applicant an
13 itemized bill showing work performed, identifying the person
14 performing the services and the time and date spent for each
15 task. Nothing in this subparagraph shall prohibit interim
16 itemized billing or municipal escrow or other security
17 requirements. In the event the applicant disputes the amount
18 of any such review fees, the applicant shall, no later than
19 45 days after the date of transmittal of the bill to the
20 applicant, notify the municipality and the municipality's
21 professional consultant that such fees are disputed and shall
22 explain the basis of their objections to the fees charged, in
23 which case the municipality shall not delay or disapprove a
24 subdivision or land development application due to the
25 applicant's dispute over fees. Failure of the applicant to
26 dispute a bill within 45 days shall be a waiver of the
27 applicant's right to arbitration of that bill under section
28 510(g).

29 (ii) In the event that the municipality's professional
30 consultant and the applicant cannot agree on the amount of

1 review fees which are reasonable and necessary, then the
2 applicant and the municipality shall follow the procedure for
3 dispute resolution set forth in section 510(g), provided that
4 the arbitrator resolving such dispute shall be of the same
5 profession or discipline as the professional consultant whose
6 fees are being disputed.

7 (iii) Subsequent to a decision on an application, the
8 governing body shall submit to the applicant an itemized bill
9 for review fees, specifically designated as a final bill. The
10 final bill shall include all review fees incurred at least
11 through the date of the decision on the application. If for
12 any reason additional review is required subsequent to the
13 decision, including inspections and other work to satisfy the
14 conditions of the approval, the review fees shall be charged
15 to the applicant as a supplement to the final bill.

16 * * *

17 Section 2. Section 509(j) and (k) of the act, reenacted and
18 amended December 21, 1988 (P.L.1329, No.170), are amended to
19 read:

20 Section 509. Completion of Improvements or Guarantee Thereof
21 Prerequisite to Final Plat Approval.--* * *

22 (j) As the work of installing the required improvements
23 proceeds, the party posting the financial security may request
24 the governing body to release or authorize the release, from
25 time to time, such portions of the financial security necessary
26 for payment to the contractor or contractors performing the
27 work. Any such requests shall be in writing addressed to the
28 governing body, and the governing body shall have 45 days from
29 receipt of such request within which to allow the municipal
30 engineer to certify, in writing, to the governing body that such

1 portion of the work upon the improvements has been completed in
2 accordance with the approved plat. Upon such certification the
3 governing body shall authorize release by the bonding company or
4 lending institution of an amount as estimated by the municipal
5 engineer fairly representing the value of the improvements
6 completed or, if the governing body fails to act within said 45-
7 day period, the governing body shall be deemed to have approved
8 the release of funds as requested. [The governing body may,
9 prior to final release at the time of completion and
10 certification by its engineer, require retention of 10% of the
11 estimated cost of the aforesaid improvements.]

12 (k) Where the governing body accepts dedication of all or
13 some of the required improvements following completion, the
14 governing body may require the posting of financial security to
15 secure structural integrity of said dedicated improvements as
16 well as the functioning of said dedicated improvements in
17 accordance with the design and specifications as depicted on the
18 final plat for a term not to exceed 18 months from the date of
19 acceptance of dedication. Said financial security shall be of
20 the same type as otherwise required in this section with regard
21 to installation of such improvements, and the amount of the
22 financial security shall not exceed 15% of the actual cost of
23 installation of said dedicated improvements.

24 * * *

25 Section 3. Section 510 (a) and (g) of the act, reenacted and
26 amended December 21, 1988 (P.L.1329, No.179) and amended
27 November 30, 2004 (P.L.1613, No.206), are amended to read:

28 Section 510. Release from Improvement Bond.--(a) When the
29 developer has completed all of the necessary and appropriate
30 improvements, the developer shall notify the municipal governing

1 body, in writing, by certified or registered mail, of the
2 completion of the aforesaid improvements and shall send a copy
3 thereof to the municipal engineer. The municipality shall
4 designate by resolution or ordinance a minimum of three approved
5 engineers from different firms who are readily available to
6 provide services in the municipality and the developer may
7 select an engineer from this list to perform the inspection of
8 the improvements on behalf of the municipality. The municipal
9 governing body shall, within ten days after receipt of such
10 notice, direct and authorize the [municipal] engineer selected
11 by the developer to inspect all of the aforesaid improvements.
12 The [municipal] selected engineer shall, thereupon, file a
13 report, in writing, with the municipal governing body, and shall
14 promptly mail a copy of the same to the developer by certified
15 or registered mail. The report shall be made and mailed within
16 30 days after receipt by the [municipal] selected engineer of
17 the aforesaid authorization from the governing body; said report
18 shall be detailed and shall indicate approval or rejection of
19 said improvements, either in whole or in part, and if said
20 improvements, or any portion thereof, shall not be approved or
21 shall be rejected by the [municipal] selected engineer, said
22 report shall contain a statement of reasons for such nonapproval
23 or rejection.

24 * * *

25 (g) The municipality may prescribe that the applicant shall
26 reimburse the municipality for the reasonable and necessary
27 expense incurred in connection with the inspection of
28 improvements. If the developer selects an engineer pursuant to
29 subsection (a), the applicant may be required to reimburse the
30 governing body only for inspection fees of the selected

1 engineer. The applicant shall not be required to reimburse the
2 governing body for any inspection which is duplicative of
3 inspections conducted by other governmental agencies or public
4 utilities. The burden of proving that any inspection is
5 duplicative shall be upon the objecting applicant. Such
6 reimbursement shall be based upon a schedule established by
7 ordinance or resolution. Such expense shall be reasonable and in
8 accordance with the ordinary and customary fees charged by the
9 municipality's professional consultant for work performed for
10 similar services in the community, but in no event shall the
11 fees exceed the rate or cost charged by the professional
12 consultant to the municipality for comparable services when fees
13 are not reimbursed or otherwise imposed on applicants.

14 (1) The governing body shall submit to the applicant an
15 itemized bill showing the work performed in connection with
16 the inspection of improvements performed, identifying the
17 person performing the services and the time and date spent
18 for each task. In the event the applicant disputes the amount
19 of any such expense in connection with the inspection of
20 improvements, the applicant shall, no later than [30] 180
21 days after the date of transmittal of a bill for inspection
22 services, notify the municipality and the municipality's
23 professional consultant that such inspection expenses are
24 disputed as unreasonable or unnecessary and shall explain the
25 basis of their objections to the fees charged, in which case
26 the municipality shall not delay or disapprove a request for
27 release of financial security, a subdivision or land
28 development application or any approval or permit related to
29 development due to the applicant's dispute of inspection
30 expenses. Failure of the applicant to dispute a bill within

1 [30] 180 days shall be a waiver of the applicant's right to
2 arbitration of that bill under this section.

3 (1.1) Subsequent to the final release of financial
4 security for completion of improvements for a subdivision or
5 land development or any phase thereof, the professional
6 consultant shall submit to the governing body a bill for
7 inspection services, specifically designated as a final bill,
8 which the governing body shall submit to the applicant. The
9 final bill shall include inspection fees incurred through the
10 release of financial security.

11 (2) If the professional consultant and the applicant
12 cannot agree on the amount of expenses which are reasonable
13 and necessary, then the applicant shall have the right,
14 within [45] 180 days of the transmittal of the final bill or
15 supplement to the final bill to the applicant, to request the
16 appointment of another professional consultant to serve as an
17 arbitrator. The applicant and professional consultant whose
18 fees are being challenged shall, by mutual agreement, appoint
19 another professional consultant to review 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 arbitrator so appointed shall hear such evidence
26 and review such documentation as the arbitrator in his or her
27 sole opinion deems necessary and shall render a decision no
28 later than 50 days after the date of appointment. Based on
29 the decision of the arbitrator, the applicant or the
30 professional consultant whose fees were challenged shall be

1 required to pay any amounts necessary to implement the
2 decision within 60 days. In the event the municipality has
3 paid the professional consultant an amount in excess of the
4 amount determined to be reasonable and necessary, the
5 professional consultant shall within 60 days reimburse the
6 excess payment.

7 (4) In the event that the municipality's professional
8 consultant and applicant cannot agree upon the arbitrator to
9 be appointed within 20 days of the request for appointment of
10 an arbitrator, then, upon application of either party, the
11 President Judge of the Court of Common Pleas of the judicial
12 district in which the municipality is located (or if at the
13 time there be no President Judge, then the senior active
14 judge then sitting) shall appoint such arbitrator, who, in
15 that case, shall be neither the municipality's professional
16 consultant nor any professional consultant who has been
17 retained by, or performed services for, the municipality or
18 the applicant within the preceding five years.

19 (5) The fee of the arbitrator shall be paid by the
20 applicant if the review fee charged is sustained by the
21 arbitrator; otherwise, it shall be divided equally between
22 the parties. If the disputed fees are found to be excessive
23 by more than \$5,000, the arbitrator shall have the discretion
24 to assess the arbitration fee in whole or in part against
25 either the applicant or the professional consultant. The
26 governing body and the consultant whose fees are the subject
27 of the dispute shall be parties to the proceeding.

28 Section 4. This act shall take effect in 60 days.