

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1718 Session of  
2011

INTRODUCED BY CREIGHTON, CALTAGIRONE, CLYMER, DAVIS, GEIST,  
GIBBONS, GINGRICH, HELM, KNOWLES, MILLER, MOUL, MUSTIO,  
DAVIDSON AND MALONEY, JUNE 23, 2011

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 19, 2012

## 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] 100 days after the date of transmittal of the bill to ←  
20 the 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] 100 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] RETAIN\_10% ←  
11 of the [estimated cost of] ORIGINAL AMOUNT OF THE POSTED ←  
12 FINANCIAL SECURITY FOR the aforesaid improvements.† ←

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

25 \* \* \*

26 ~~Section 3. Section 510 (a) and (g) of the act, reenacted and ←~~  
27 ~~amended December 21, 1988 (P.L.1329, No.170) and amended~~  
28 ~~November 30, 2004 (P.L.1613, No.206), are amended to read:~~

29 ~~Section 510. Release from Improvement Bond. (a) When the~~  
30 ~~developer has completed all of the necessary and appropriate~~

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

25 \* \* \*

26 SECTION 3. SECTION 510(G) OF THE ACT, AMENDED NOVEMBER 30,  
27 2004 (P.L.1613, NO.206), IS AMENDED TO READ:

28 SECTION 510. RELEASE FROM IMPROVEMENT BOND.--\* \* \*

29 (g) The municipality may prescribe that the applicant shall  
30 reimburse the municipality for the reasonable and necessary



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

18 (1) The governing body shall submit to the applicant an  
19 itemized bill showing the work performed in connection with  
20 the inspection of improvements performed, identifying the  
21 person performing the services and the time and date spent  
22 for each task. In the event the applicant disputes the amount  
23 of any such expense in connection with the inspection of  
24 improvements, the applicant shall, no later than [30] ~~180~~ 100 ←  
25 days after the date of transmittal of a bill for inspection  
26 services, notify the municipality and the municipality's  
27 professional consultant that such inspection expenses are  
28 disputed as unreasonable or unnecessary and shall explain the  
29 basis of their objections to the fees charged, in which case  
30 the municipality shall not delay or disapprove a request for

1 release of financial security, a subdivision or land  
2 development application or any approval or permit related to  
3 development due to the applicant's dispute of inspection  
4 expenses. Failure of the applicant to dispute a bill within  
5 [30] ~~180~~ 100 days shall be a waiver of the applicant's right ←  
6 to arbitration of that bill under this section.

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

15 (2) If the professional consultant and the applicant  
16 cannot agree on the amount of expenses which are reasonable  
17 and necessary, then the applicant shall have the right,  
18 within [45] ~~180~~ 100 days of the transmittal of the final bill ←  
19 or supplement to the final bill to the applicant, to request  
20 the appointment of another professional consultant to serve  
21 as an arbitrator. The applicant and professional consultant  
22 whose fees are being challenged shall, by mutual agreement,  
23 appoint another professional consultant to review any bills  
24 the applicant has disputed and which remain unresolved and  
25 make a determination as to the amount thereof which is  
26 reasonable and necessary. The arbitrator shall be of the same  
27 profession as the professional consultant whose fees are  
28 being challenged.

29 (3) The arbitrator so appointed shall hear such evidence  
30 and review such documentation as the arbitrator in his or her



1 sole opinion deems necessary and shall render a decision no  
2 later than 50 days after the date of appointment. Based on  
3 the decision of the arbitrator, the applicant or the  
4 professional consultant whose fees were challenged shall be  
5 required to pay any amounts necessary to implement the  
6 decision within 60 days. In the event the municipality has  
7 paid the professional consultant an amount in excess of the  
8 amount determined to be reasonable and necessary, the  
9 professional consultant shall within 60 days reimburse the  
10 excess payment.

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

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



of the dispute shall be parties to the proceeding.]

APPLICANT-DISPUTED FEE IS SUSTAINED BY THE ARBITRATOR. IF THE  
AMOUNT OF PAYMENT REQUIRED IN THE DECISION IS LESS THAN THE  
ORIGINAL BILL BY \$2,500 OR MORE, THE PARTY CHARGING THE  
DISPUTED FEE SHALL PAY THE FEE OF THE ARBITRATOR. IF THE  
AMOUNT OF THE PAYMENT REQUIRED IN THE DECISION IS LESS THAN  
THE ORIGINAL BILL BY \$2,499 OR LESS, THE PARTY CHARGING THE  
DISPUTED FEE AND THE APPLICANT SHALL EACH PAY ONE-HALF OF THE  
FEE OF THE ARBITRATOR.

(6) IN THE EVENT THAT THE DISPUTED FEES HAVE BEEN PAID  
AND THE ARBITRATOR FINDS THAT THE DISPUTED FEES ARE  
UNREASONABLE OR EXCESSIVE BY MORE THAN \$10,000, THE  
ARBITRATOR SHALL:

(I) AWARD THE AMOUNT OF THE FEES FOUND TO BE  
UNREASONABLE OR EXCESSIVE TO THE PARTY THAT PAID THE  
DISPUTED FEE; AND

(II) IMPOSE A SURCHARGE OF 4% OF THE AMOUNT FOUND AS  
UNREASONABLE OR EXCESSIVE TO BE PAID TO THE PARTY THAT  
PAID THE DISPUTED FEE.

(7) A MUNICIPALITY OR AN APPLICANT SHALL HAVE 100 DAYS  
AFTER PAYING A FEE TO DISPUTE ANY FEE CHARGED AS BEING  
UNREASONABLE OR EXCESSIVE.

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