

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 21, 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. Such review fees shall be
23 based upon a schedule established by ordinance or resolution.
24 Such review fees shall be reasonable and in accordance with the
25 ordinary and customary charges for similar service in the
26 community, but in no event shall the fees exceed the rate or
27 cost charged by the professional consultant for comparable
28 services to the municipality for services which are not
29 reimbursed or otherwise imposed on applicants. Fees charged to
30 the municipality relating to any appeal of a decision on an

1 application shall not be considered review fees and may not be
2 charged to an applicant.

3 (i) The governing body shall submit to the applicant an
4 itemized bill showing work performed, identifying the person
5 performing the services and the time and date spent for each
6 task. Nothing in this subparagraph shall prohibit interim
7 itemized billing or municipal escrow or other security
8 requirements. In the event the applicant disputes the amount
9 of any such review fees, the applicant shall, no later than
10 [45] 100 days after the date of transmittal of the bill to
11 the applicant, notify the municipality and the municipality's
12 professional consultant that such fees are disputed and shall
13 explain the basis of their objections to the fees charged, in
14 which case the municipality shall not delay or disapprove a
15 subdivision or land development application due to the
16 applicant's dispute over fees. Failure of the applicant to
17 dispute a bill within [45] 100 days shall be a waiver of the
18 applicant's right to arbitration of that bill under section
19 510(g).

20 (ii) In the event that the municipality's professional
21 consultant and the applicant cannot agree on the amount of
22 review fees which are reasonable and necessary, then the
23 applicant and the municipality shall follow the procedure for
24 dispute resolution set forth in section 510(g), provided that
25 the arbitrator resolving such dispute shall be of the same
26 profession or discipline as the professional consultant whose
27 fees are being disputed.

28 (iii) Subsequent to a decision on an application, the
29 governing body shall submit to the applicant an itemized bill
30 for review fees, specifically designated as a final bill. The

1 final bill shall include all review fees incurred at least
2 through the date of the decision on the application. If for
3 any reason additional review is required subsequent to the
4 decision, including inspections and other work to satisfy the
5 conditions of the approval, the review fees shall be charged
6 to the applicant as a supplement to the final bill.

7 * * *

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

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

13 (j) As the work of installing the required improvements
14 proceeds, the party posting the financial security may request
15 the governing body to release or authorize the release, from
16 time to time, such portions of the financial security necessary
17 for payment to the contractor or contractors performing the
18 work. Any such requests shall be in writing addressed to the
19 governing body, and the governing body shall have 45 days from
20 receipt of such request within which to allow the municipal
21 engineer to certify, in writing, to the governing body that such
22 portion of the work upon the improvements has been completed in
23 accordance with the approved plat. Upon such certification the
24 governing body shall authorize release by the bonding company or
25 lending institution of an amount as estimated by the municipal
26 engineer fairly representing the value of the improvements
27 completed or, if the governing body fails to act within said 45-
28 day period, the governing body shall be deemed to have approved
29 the release of funds as requested. The governing body may, prior
30 to final release at the time of completion and certification by

1 its engineer, [require retention of] retain 10% of the
2 [estimated cost of] original amount of the posted financial
3 security for the aforesaid improvements.

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

16 * * *

17 Section 3. Section 510(g) of the act, amended November 30,
18 2004 (P.L.1613, No.206), is amended to read:

19 Section 510. Release from Improvement Bond.--* * *

20 (g) The municipality may prescribe that the applicant shall
21 reimburse the municipality for the reasonable and necessary
22 expense incurred in connection with the inspection of
23 improvements. The applicant shall not be required to reimburse
24 the governing body for any inspection which is duplicative of
25 inspections conducted by other governmental agencies or public
26 utilities. The burden of proving that any inspection is
27 duplicative shall be upon the objecting applicant. Such
28 reimbursement shall be based upon a schedule established by
29 ordinance or resolution. Such expense shall be reasonable and in
30 accordance with the ordinary and customary fees charged by the

1 municipality's professional consultant for work performed for
2 similar services in the community, but in no event shall the
3 fees exceed the rate or cost charged by the professional
4 consultant to the municipality for comparable services when fees
5 are not reimbursed or otherwise imposed on applicants.

6 (1) The governing body shall submit to the applicant an
7 itemized bill showing the work performed in connection with
8 the inspection of improvements performed, identifying the
9 person performing the services and the time and date spent
10 for each task. In the event the applicant disputes the amount
11 of any such expense in connection with the inspection of
12 improvements, the applicant shall, no later than [30] 100
13 days after the date of transmittal of a bill for inspection
14 services, notify the municipality and the municipality's
15 professional consultant that such inspection expenses are
16 disputed as unreasonable or unnecessary and shall explain the
17 basis of their objections to the fees charged, in which case
18 the municipality shall not delay or disapprove a request for
19 release of financial security, a subdivision or land
20 development application or any approval or permit related to
21 development due to the applicant's dispute of inspection
22 expenses. Failure of the applicant to dispute a bill within
23 [30] 100 days shall be a waiver of the applicant's right to
24 arbitration of that bill under this section.

25 (1.1) Subsequent to the final release of financial
26 security for completion of improvements for a subdivision or
27 land development or any phase thereof, the professional
28 consultant shall submit to the governing body a bill for
29 inspection services, specifically designated as a final bill,
30 which the governing body shall submit to the applicant. The

1 final bill shall include inspection fees incurred through the
2 release of financial security.

3 (2) If the professional consultant and the applicant
4 cannot agree on the amount of expenses which are reasonable
5 and necessary, then the applicant shall have the right,
6 within [45] 100 days of the transmittal of the final bill or
7 supplement to the final bill to the applicant, to request the
8 appointment of another professional consultant to serve as an
9 arbitrator. The applicant and professional consultant whose
10 fees are being challenged shall, by mutual agreement, appoint
11 another professional consultant to review any bills the
12 applicant has disputed and which remain unresolved and make a
13 determination as to the amount thereof which is reasonable
14 and necessary. The arbitrator shall be of the same profession
15 as the professional consultant whose fees are being
16 challenged.

17 (3) The arbitrator so appointed shall hear such evidence
18 and review such documentation as the arbitrator in his or her
19 sole opinion deems necessary and shall render a decision no
20 later than 50 days after the date of appointment. Based on
21 the decision of the arbitrator, the applicant or the
22 professional consultant whose fees were challenged shall be
23 required to pay any amounts necessary to implement the
24 decision within 60 days. In the event the municipality has
25 paid the professional consultant an amount in excess of the
26 amount determined to be reasonable and necessary, the
27 professional consultant shall within 60 days reimburse the
28 excess payment.

29 (4) In the event that the municipality's professional
30 consultant and applicant cannot agree upon the arbitrator to

1 be appointed within 20 days of the request for appointment of
2 an arbitrator, then, upon application of either party, the
3 President Judge of the Court of Common Pleas of the judicial
4 district in which the municipality is located (or if at the
5 time there be no President Judge, then the senior active
6 judge then sitting) shall appoint such arbitrator, who, in
7 that case, shall be neither the municipality's professional
8 consultant nor any professional consultant who has been
9 retained by, or performed services for, the municipality or
10 the applicant within the preceding five years.

11 (5) The fee of the arbitrator shall be paid by the
12 applicant if the [review fee charged is sustained by the
13 arbitrator; otherwise, it shall be divided equally between
14 the parties. If the disputed fees are found to be excessive
15 by more than \$5,000, the arbitrator shall have the discretion
16 to assess the arbitration fee in whole or in part against
17 either the applicant or the professional consultant. The
18 governing body and the consultant whose fees are the subject
19 of the dispute shall be parties to the proceeding.]

20 ~~applicant disputed fee is sustained by the arbitrator. If the~~ ←
21 ~~amount of payment required in the decision is less than the~~
22 ~~original bill by \$2,500 or more, the party charging the~~
23 ~~disputed fee shall pay the fee of the arbitrator. If the~~
24 ~~amount of the payment required in the decision is less than~~
25 ~~the original bill by \$2,499 or less, the party charging the~~
26 ~~disputed fee and the applicant shall each pay one half of the~~
27 ~~fee of the arbitrator. DISPUTED FEE IS UPHELD BY THE~~ ←
28 ARBITRATOR. THE FEE OF THE ARBITRATOR SHALL BE PAID BY THE
29 CHARGING PARTY IF THE DISPUTED FEE IS \$2,500 OR GREATER THAN
30 THE PAYMENT DECIDED BY THE ARBITRATOR. THE FEE OF THE

1 ARBITRATOR SHALL BE PAID IN AN EQUAL AMOUNT BY THE APPLICANT
2 AND THE CHARGING PARTY IF THE DISPUTED FEE IS LESS THAN
3 \$2,500 OF THE PAYMENT DECIDED BY THE ARBITRATOR.

4 (6) In the event that the disputed fees have been paid
5 and the arbitrator finds that the disputed fees are
6 unreasonable or excessive by more than \$10,000, the
7 arbitrator shall:

8 (i) award the amount of the fees found to be
9 unreasonable or excessive to the party that paid the
10 disputed fee; and

11 (ii) impose a surcharge of 4% of the amount found as
12 unreasonable or excessive to be paid to the party that
13 paid the disputed fee.

14 (7) A municipality or an applicant shall have 100 days
15 after paying a fee to dispute any fee charged as being
16 unreasonable or excessive.

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