

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1719 Session of 2011

INTRODUCED BY CREIGHTON, CALTAGIRONE, CLYMER, DAVIS, GEIST, GIBBONS, GINGRICH, GROVE, 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 Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, in municipal authorities, further
3 providing for purposes and powers.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 5607(d)(23) and (30) of Title 53 of the
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 5607. Purposes and powers.

9 * * *

10 (d) Powers.--Every authority may exercise all powers
11 necessary or convenient for the carrying out of the purposes set
12 forth in this section, including, but without limiting the
13 generality of the foregoing, the following rights and powers:

14 * * *

15 (23) To require the posting of financial security to
16 insure the completion in accordance with the approved plat
17 and with the rules and regulations of the authority of any

1 water mains or sanitary sewer lines, or both, and related
2 apparatus and facilities required to be installed by or on
3 behalf of a developer under an approved land development or
4 subdivision plat as these terms are defined under the act of
5 July 31, 1968 (P.L.805, No.247), known as the Pennsylvania
6 Municipalities Planning Code. If financial security is
7 required by the authority and without limitation as to other
8 types of financial security which the authority may approve,
9 which approval shall not be unreasonably withheld, federally
10 chartered or Commonwealth-chartered lending institution
11 irrevocable letters of credit and restrictive or escrow
12 accounts in these lending institutions shall be deemed
13 acceptable financial security. Financial security shall be
14 posted with a bonding company or federally chartered or
15 Commonwealth-chartered lending institution chosen by the
16 party posting the financial security if the bonding company
17 or lending institution is authorized to conduct business
18 within this Commonwealth. The bond or other security shall
19 provide for and secure to the authority the completion of
20 required improvements within one year from the date of
21 posting of the security. The amount of financial security
22 shall be equal to 110% of the cost of the required
23 improvements for which financial security is to be posted.
24 The cost of required improvements shall be established by
25 submitting to the authority a bona fide bid from a contractor
26 chosen by the party posting the financial security. In the
27 absence of a bona fide bid, the cost shall be established by
28 an estimate prepared by the authority's engineer. If the
29 party posting the financial security requires more than one
30 year from the date of posting the financial security to

1 complete the required improvements, the amount of financial
2 security may be increased by an additional 10% for each one-
3 year period beyond the first anniversary date from the
4 initial posting date or to 110% of the cost of completing the
5 required improvements as reestablished on or about the
6 expiration of the preceding one-year period by using the
7 above bidding procedure. As the work of installing the
8 required improvements proceeds, the party posting the
9 financial security may request the authority to release or
10 authorize the release of, from time to time, portions of the
11 financial security necessary to pay the contractor performing
12 the work. Release requests shall be in writing addressed to
13 the authority, and the authority shall have 45 days after
14 receiving a request to ascertain from the authority engineer,
15 certified in writing, that the portion of the work has been
16 completed in accordance with the approved plat. Upon
17 receiving written certification, the authority shall
18 authorize release by the bonding company or lending
19 institution of an amount estimated by the authority engineer
20 to fairly represent the value of the improvements completed.
21 If the authority fails to act within the 45-day period, it
22 shall be deemed to have approved the requested release of
23 funds. †The authority may, prior to final release at the time ←
24 of completion and certification by its engineer, [require ←
25 retention of] RETAIN 10% of the [estimated cost of] ORIGINAL ←
26 AMOUNT OF THE POSTED FINANCIAL SECURITY FOR THE
27 improvements.‡ If the authority accepts dedication of all or ←
28 some of the required improvements following completion, it
29 may require the posting of financial security to secure
30 structural integrity of the dedicated improvements as well as

1 the functioning of the improvements in accordance with the
2 design and specifications as depicted on the final plat and
3 the authority's rules and regulations. This financial
4 security shall expire not later than 18 months from the date
5 of acceptance of dedication and shall be of the same type as
6 set forth in this paragraph with regard to that which is
7 required for installation of the improvements, except that it
8 shall not exceed 15% of the actual cost of installation of
9 the improvements. Any inconsistent ordinance, resolution or
10 statute is null and void.

11 * * *

12 (30) Where a sewer or water system of an authority is to
13 be extended at the expense of the owner of properties or
14 where the authority otherwise would construct customer
15 facilities referred to in paragraph (24), other than water
16 meter installation, a property owner shall have the right to
17 construct the extension or install the customer facilities
18 himself or through a subcontractor approved by the authority,
19 which approval shall not be unreasonably withheld. The
20 authority shall have the right, at its option, to perform the
21 construction itself only if the authority provides the
22 extension or customer facilities at a lower cost and within
23 the same timetable specified or proposed by the property
24 owner or his approved subcontractor. Construction by the
25 property owner shall be in accordance with an agreement for
26 the extension of the authority's system and plans and
27 specifications approved by the authority and shall be
28 undertaken only pursuant to the existing regulations,
29 requirements, rules and standards of the authority applicable
30 to such construction. Construction shall be subject to

1 inspection by an inspector authorized to approve similar
2 construction and employed by the authority during
3 construction. When a main is to be extended at the expense of
4 the owner of properties, the property owner may be required
5 to deposit with the authority, in advance of construction,
6 the authority's estimated reasonable and necessary cost of
7 reviewing plans, construction inspections, administrative,
8 legal and engineering services. The authority may require
9 that construction shall not commence until the property owner
10 has posted appropriate financial security in accordance with
11 paragraph (23). The authority may require the property owner
12 to reimburse it for reasonable and necessary expenses it
13 incurred as a result of the extension. If an independent firm
14 is employed for engineering review of the plans and the
15 inspection of improvements, reimbursement for its services
16 shall be reasonable and in accordance with the ordinary and
17 customary fees charged by the independent firm for work
18 performed for similar services in the community. ~~If the~~ ←
19 ~~authority requires the property owner to reimburse it for~~
20 ~~fees for engineering review of the plans and the inspection~~
21 ~~of the improvements, the authority shall designate by~~
22 ~~resolution a minimum of three approved engineers from~~
23 ~~different firms who are readily available to provide services~~
24 ~~in the municipality, and the property owner may select an~~
25 ~~engineer from this list who shall be the authority's engineer~~
26 ~~for reviewing the plans or inspecting the improvements for~~
27 ~~that particular project. If the property owner selects an~~
28 ~~engineer, only the review and inspection fees by the selected~~
29 ~~engineer may be charged to the property owner.~~ The fees shall
30 not exceed the rate or cost charged by the independent firm

1 to the authority when fees are not reimbursed or otherwise
2 imposed on applicants. Upon completion of construction, the
3 property owner shall dedicate and the authority shall accept
4 the extension of the authority's system if dedication of
5 facilities and the installation complies with the plans,
6 specifications, regulations of the authority and the
7 agreement. An authority may provide in its regulations those
8 facilities which, having been constructed at the expense of
9 the owner of properties, the authority will require to be
10 dedicated and which facility or facilities the authority will
11 accept as a part of its system.

12 (i) In the event the property owner disputes the
13 amount of any billing in connection with the review of
14 plans, construction inspections, administrative, legal
15 and engineering services, the property owner shall,
16 within [20 working] ~~180~~ 60 days of the date of billing, ←
17 notify the authority ~~and the authority's professional~~ ←
18 ~~consultant~~ that the billing is disputed as excessive,
19 unreasonable or unnecessary, in which case the authority
20 shall not delay or disapprove any application or any
21 approval or permit related to the extension or facilities
22 due to the property owner's dispute over the disputed
23 billings unless the property owner has failed to make
24 payment in accordance with the decision rendered under
25 clause (iii) within [30] ~~180~~ 60 days after the mailing ←
26 date of such decision.

27 (ii) If, within [30] ~~180~~ 60 days from the date of ←
28 billing, the ~~authority~~ ~~professional consultant~~ and the ←
29 property owner cannot agree on the amount of billings
30 which are reasonable and necessary, the property owner

1 [and authority] shall have the right to request the
2 appointment of another professional consultant to serve
3 as arbitrator. The property owner and the ~~professional~~ ←
4 consultant AUTHORITY whose fees are being challenged ←
5 shall, by mutual agreement, appoint a professional of the
6 same profession or discipline licensed in Pennsylvania to
7 review the billings and make a determination as to the
8 amount of billings which is reasonable and necessary.

9 (iii) The professional appointed AS ARBITRATOR under ←
10 clause (ii) shall hear evidence and review the
11 documentation as the professional in his or her sole
12 opinion deems necessary and shall render a decision
13 within [60] 50 days of the [billing] date of appointment.
14 [The property owner shall be required to pay the entire
15 amount determined in the decision immediately.] Based
16 upon the decision of the arbitrator, the property owner, ←
17 professional consultant or authority shall be required to
18 pay any amounts necessary to implement the decision
19 within 60 days. In the event the ~~authority~~ PROPERTY OWNER ←
20 has paid the AUTHORITY OR RETAINED professional ←
21 consultant an amount in excess of the amount determined
22 to be reasonable and necessary, the AUTHORITY OR RETAINED ←
23 professional consultant shall within 60 days reimburse
24 the excess payment.

25 (iv) In the event that the authority and property
26 owner cannot agree upon the professional to be appointed
27 within [30] 20 days of the [billing date] request for
28 appointment of an arbitrator, the president judge of the
29 court of common pleas of the judicial district in which
30 the municipality is located, or if at the time there is

1 no president judge, the senior active judge then sitting
2 upon application of either party shall appoint a
3 professional, who shall be neither the authority engineer
4 nor any professional who has been retained by or
5 performed services for the authority or the property
6 owner within the preceding five years.

7 (v) The fee of the [appointed professional for
8 determining the reasonable and necessary expenses]
9 arbitrator shall be paid by the [applicant] property
10 owner if the [amount of payment required in the decision
11 is equal to or greater than the original bill] disputed
12 fee is sustained by the arbitrator. If the amount of
13 payment required in the decision is less than the
14 original bill by \$2,500 or more, the [authority] party
15 charging the disputed fee shall pay the fee of the
16 [professional] arbitrator. If the amount of the payment
17 required in the decision is less than the original bill
18 by \$2,499 or less, the ~~[authority]~~ ~~party charging the~~ ←
19 ~~disputed fee~~ and the property owner shall each pay one-
20 half of the fee of the [appointed professional]
21 arbitrator.

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

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

29 (B) IMPOSE A SURCHARGE OF 4% OF THE AMOUNT FOUND
30 AS UNREASONABLE OR EXCESSIVE TO BE PAID TO THE PARTY

1 THAT PAID THE DISPUTED FEE.

2 (VII) AN AUTHORITY OR PROPERTY OWNER SHALL HAVE 100
3 DAYS AFTER PAYING A FEE TO DISPUTE ANY FEE CHARGED AS
4 BEING UNREASONABLE OR EXCESSIVE.

5 * * *

6 Section 2. This act shall take effect in 60 days.