

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 21, 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 improvements.  
27 If the authority accepts dedication of all or some of the  
28 required improvements following completion, it may require  
29 the posting of financial security to secure structural  
30 integrity of the dedicated improvements as well as the

1 functioning of the improvements in accordance with the design  
2 and specifications as depicted on the final plat and the  
3 authority's rules and regulations. This financial security  
4 shall expire not later than 18 months from the date of  
5 acceptance of dedication and shall be of the same type as set  
6 forth in this paragraph with regard to that which is required  
7 for installation of the improvements, except that it shall  
8 not exceed 15% of the actual cost of installation of the  
9 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. The fees  
19 shall not exceed the rate or cost charged by the independent  
20 firm to the authority when fees are not reimbursed or  
21 otherwise imposed on applicants. Upon completion of  
22 construction, the property owner shall dedicate and the  
23 authority shall accept the extension of the authority's  
24 system if dedication of facilities and the installation  
25 complies with the plans, specifications, regulations of the  
26 authority and the agreement. An authority may provide in its  
27 regulations those facilities which, having been constructed  
28 at the expense of the owner of properties, the authority will  
29 require to be dedicated and which facility or facilities the  
30 authority will accept as a part of its system.

1 (i) In the event the property owner disputes the  
2 amount of any billing in connection with the review of  
3 plans, construction inspections, administrative, legal  
4 and engineering services, the property owner shall,  
5 within [20 working] 60 days of the date of billing,  
6 notify the authority that the billing is disputed as  
7 excessive, unreasonable or unnecessary, in which case the  
8 authority shall not delay or disapprove any application  
9 or any approval or permit related to the extension or  
10 facilities due to the property owner's dispute over the  
11 disputed billings unless the property owner has failed to  
12 make payment in accordance with the decision rendered  
13 under clause (iii) within [30] 60 days after the mailing  
14 date of such decision.

15 (ii) If, within [30] 60 days from the date of  
16 billing, the authority and the property owner cannot  
17 agree on the amount of billings which are reasonable and  
18 necessary, the property owner [and authority] shall have  
19 the right to request the appointment of another  
20 professional consultant to serve as arbitrator. The  
21 property owner and the authority whose fees are being  
22 challenged shall, by mutual agreement, appoint a  
23 professional of the same profession or discipline  
24 licensed in Pennsylvania to review the billings and make  
25 a determination as to the amount of billings which is  
26 reasonable and necessary.

27 (iii) The professional appointed as arbitrator under  
28 clause (ii) shall hear evidence and review the  
29 documentation as the professional in his or her sole  
30 opinion deems necessary and shall render a decision

1 within [60] 50 days of the [billing] date of appointment.

2 [The property owner shall be required to pay the entire

3 amount determined in the decision immediately.] Based

4 upon the decision of the arbitrator, the property owner

5 or authority shall be required to pay any amounts

6 necessary to implement the decision within 60 days. In

7 the event the property owner has paid the authority or

8 retained professional consultant an amount in excess of

9 the amount determined to be reasonable and necessary, the

10 authority or retained professional consultant shall

11 within 60 days reimburse the excess payment.

12 (iv) In the event that the authority and property  
13 owner cannot agree upon the professional to be appointed

14 within [30] 20 days of the [billing date] request for

15 appointment of an arbitrator, the president judge of the

16 court of common pleas of the judicial district in which

17 the municipality is located, or if at the time there is

18 no president judge, the senior active judge then sitting

19 upon application of either party shall appoint a

20 professional, who shall be neither the authority engineer

21 nor any professional who has been retained by or

22 performed services for the authority or the property

23 owner within the preceding five years.

24 ~~(v) The fee of the [appointed professional for~~

25 ~~determining the reasonable and necessary expenses]~~

26 ~~arbitrator shall be paid by the [applicant] property~~

27 ~~owner if the [amount of payment required in the decision~~

28 ~~is equal to or greater than the original bill] disputed~~

29 ~~fee is sustained by the arbitrator. If the amount of~~

30 ~~payment required in the decision is less than the~~



1 ~~original bill by \$2,500 or more, the [authority] party~~  
2 ~~charging the disputed fee shall pay the fee of the~~  
3 ~~[professional] arbitrator. If the amount of the payment~~  
4 ~~required in the decision is less than the original bill~~  
5 ~~by \$2,499 or less, the authority and the property owner~~  
6 ~~shall each pay one half of the fee of the [appointed~~  
7 ~~professional] arbitrator.~~

8 (V) [THE FEE OF THE APPOINTED PROFESSIONAL FOR  
9 DETERMINING THE REASONABLE AND NECESSARY EXPENSES SHALL  
10 BE PAID BY THE APPLICANT IF THE AMOUNT OF PAYMENT  
11 REQUIRED IN THE DECISION IS EQUAL TO OR GREATER THAN THE  
12 ORIGINAL BILL. IF THE AMOUNT OF PAYMENT REQUIRED IN THE  
13 DECISION IS LESS THAN THE ORIGINAL BILL BY \$2,500 OR  
14 MORE, THE AUTHORITY SHALL PAY THE FEE OF THE  
15 PROFESSIONAL. IF THE AMOUNT OF THE PAYMENT REQUIRED IN  
16 THE DECISION IS LESS THAN THE ORIGINAL BILL BY \$2,499 OR  
17 LESS, THE AUTHORITY AND THE PROPERTY OWNER SHALL EACH PAY  
18 ONE-HALF OF THE FEE OF THE APPOINTED PROFESSIONAL.] THE  
19 FEE OF THE ARBITRATOR SHALL BE PAID BY THE PROPERTY OWNER  
20 IF THE DISPUTED FEE IS UPHELD BY THE ARBITRATOR. THE FEE  
21 OF THE ARBITRATOR SHALL BE PAID BY THE AUTHORITY IF THE  
22 DISPUTED FEE IS \$2,500 OR GREATER THAN THE PAYMENT  
23 DECIDED BY THE ARBITRATOR. THE FEE OF THE ARBITRATOR  
24 SHALL BE PAID IN AN EQUAL AMOUNT BY THE PROPERTY OWNER  
25 AND THE AUTHORITY IF THE DISPUTED FEE IS LESS THAN \$2,500  
26 OF THE PAYMENT DECIDED BY THE ARBITRATOR.

27 (vi) In the event that the disputed fees have been  
28 paid and the arbitrator finds that the disputed fees are  
29 unreasonable or excessive by more than \$10,000, the  
30 arbitrator shall:



1           (A) award the amount of the fees found to be  
2           unreasonable or excessive to the party that paid the  
3           disputed fee; and

4           (B) impose a surcharge of 4% of the amount found  
5           as unreasonable or excessive to be paid to the party  
6           that paid the disputed fee.

7           (vii) An authority or property owner shall have 100  
8           days after paying a fee to dispute any fee charged as  
9           being unreasonable or excessive.

10           \* \* \*

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