

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 349 Session of 2019

INTRODUCED BY HEFFLEY, GREINER, RYAN, MOUL, MILLARD, MACKENZIE, KNOWLES, EMRICK, HILL-EVANS, LAWRENCE, MALONEY, COX, TURZAI AND MASSER, FEBRUARY 1, 2019

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 25, 2019

AN ACT

1 Amending the act of November 10, 1999 (P.L.491, No.45), entitled
2 "An act establishing a uniform construction code; imposing
3 powers and duties on municipalities and the Department of
4 Labor and Industry; providing for enforcement; imposing
5 penalties; and making repeals," in adoption and enforcement
6 by municipalities, further providing for administration and
7 enforcement.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 501(b)(1), (2) and (3) and (c)(1) of the
11 act of November 10, 1999 (P.L.491, No.45), known as the
12 Pennsylvania Construction Code Act, amended October 25, 2017
13 (P.L.356, No.36), are amended, subsection (b) is amended by
14 adding a paragraph and the section is amended by adding
15 subsections to read:

16 Section 501. Administration and enforcement.

17 * * *

18 (b) Municipal administration and enforcement.--This act may
19 be administered and enforced by municipalities in any of the

1 following ways:

2 (1) By the designation of an employee to serve as the
3 municipal code official to act on behalf of the municipality
4 for administration and enforcement of this act. A municipal
5 code official may utilize third-party agencies to supplement
6 the municipal code enforcement program's plan review and
7 inspection services or may utilize third-party agencies to
8 perform plan review and inspection services in categories
9 which its program does not possess the necessary personnel to
10 administer.

11 (2) By the retention of one or more construction code
12 officials or third-party agencies to act on behalf of the
13 municipality for administration and enforcement of this act.
14 This paragraph shall expire June 30, 2019 JANUARY 1, 2020. <--

15 (2.1) On and after July 1, 2019 JANUARY 1, 2020, by the <--
16 retention of two or more third-party agencies to act on
17 behalf of the municipality for administration and enforcement
18 of this act.

19 (3) Two or more municipalities may provide for the joint
20 administration and enforcement of this act through an
21 intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A
22 (relating to intergovernmental cooperation). Any <--
23 intermunicipal agreement that provides for exclusive
24 enforcement by a third party agency shall be in writing and
25 conform to paragraph (2.1) on and after July 1, 2019. THE <--
26 FOLLOWING APPLY:

27 (I) INTERMUNICIPAL AGREEMENTS THAT PROVIDE FOR THE
28 JOINT ADMINISTRATION AND ENFORCEMENT OF THIS ACT BY
29 UTILIZING THIRD-PARTY AGENCIES SHALL BE IN WRITING AND
30 CONFORM TO PARAGRAPH (2.1) ON AND AFTER JANUARY 1, 2020.

1 (II) PROFESSIONAL SERVICE CONTRACTS ENTERED INTO
2 WITH THIRD-PARTY AGENCIES ON OR AFTER THE EFFECTIVE DATE
3 OF THIS SUBPARAGRAPH FOR THE PURPOSE SPECIFIED UNDER
4 SUBPARAGRAPH (I) MAY NOT EXCEED THREE YEARS.

5 (III) THE PROVISIONS OF SUBSECTIONS (B.1), (B.2) AND
6 (B.3) SHALL APPLY TO INTERMUNICIPAL AGREEMENTS THAT
7 PROVIDE FOR THE JOINT ADMINISTRATION AND ENFORCEMENT OF
8 THIS ACT BY UTILIZING THIRD-PARTY AGENCIES.

9 * * *

10 (b.1) Administration and enforcement by third-party
11 agencies.--A municipality opting to administer and enforce this
12 act by retaining two or more third-party agencies under
13 subsection (b) (2.1) shall be subject to the following
14 requirements:

15 (1) The services of the third-party agencies shall be
16 furnished and performed under written professional services
17 contracts with the municipality.

18 (2) In entering into professional services contracts
19 under this subsection, the governing body of the municipality
20 shall take into consideration all of the following:

21 (i) The qualifications of the third-party agency.

22 (ii) The fee schedule.

23 (iii) The availability of services.

24 (iv) The input of affected stakeholders.

25 (3) Third-party agencies contracting with the
26 municipality under this subsection may not be affiliated with
27 one another.

28 ~~(4) One of the third party agencies contracting with the~~<--
29 ~~municipality under this subsection shall be designated as the~~
30 ~~enforcement agent for the municipality for general code~~

1 enforcement actions.

2 ~~(5) A professional services contract between a~~
3 ~~municipality and a third party agency in effect before the~~
4 ~~effective date of this subsection shall remain in effect and~~
5 ~~the provisions of subsection (b) (2.1) shall take effect upon~~
6 ~~the expiration of the original terms of the professional~~
7 ~~services contract. The terms of a professional service~~
8 ~~contract between a municipality and a third party agency in~~
9 ~~effect on the effective date of this subsection may not be~~
10 ~~binding on a successor governing body of the municipality.~~

11 (4) A PROFESSIONAL SERVICES CONTRACT BETWEEN A <--
12 MUNICIPALITY AND A THIRD-PARTY AGENCY IN EFFECT ON THE
13 EFFECTIVE DATE OF THIS SUBSECTION MAY REMAIN IN EFFECT FOR
14 THE PURPOSE OF SATISFYING THE REQUIREMENT THAT THE
15 MUNICIPALITY RETAIN TWO OR MORE THIRD-PARTY AGENCIES UNDER
16 SUBSECTION (B) (2.1).

17 ~~(6) (5) A professional services contract entered into~~ <--
18 ~~between a municipality and a third-party agency on or after~~
19 ~~the effective date of this subsection may not exceed three~~
20 ~~years.~~

21 ~~(7) (6) The permit applicant from the municipality shall~~ <--
22 ~~choose from the third-party agencies approved and contracted~~
23 ~~by the municipality. THE PERMIT APPLICANT MAY ONLY UTILIZE~~ <--
24 ~~THE SERVICES OF THE PERMIT APPLICANT'S SELECTED THIRD-PARTY~~
25 ~~AGENCY FOR THE SERVICES REQUIRED UNDER THIS ACT AND~~
26 ~~ASSOCIATED WITH THE PERMIT APPLICANT'S PROJECT.~~

27 (b.2) Waiver.--If a municipality opts to administer and
28 enforce this act under subsection (b) (2.1) but cannot obtain an
29 offer from a qualified third-party agency to fulfill the need to <--
30 have at least two third-party agencies, the municipality may be

1 relieved from the requirement of retaining two third-party
2 agencies by completing a certification form, subject to the
3 following:

4 (1) The municipality must complete the certification
5 form before the contract with the selected third-party agency
6 is executed and must maintain the form throughout the life of
7 the contract with the third-party agency.

8 (2) The certification form must be completed annually.

9 (3) A copy of the certification form must be filed with
10 the department. The department shall maintain a list of
11 municipalities that have filed a certification form on the
12 department's publicly accessible Internet website.

13 (4) The department shall furnish the certification form
14 which must:

15 (i) Require the municipality to disclose the methods
16 and dates of the public solicitation. For purposes of
17 meeting this requirement, the municipality shall
18 advertise requests for proposals and announce the
19 solicitation at a public meeting.

20 (ii) Require the municipality to disclose the number
21 of qualified bids received to the public solicitation.

22 (iii) Contain a statement that the information
23 provided by the municipality is in compliance with 18
24 Pa.C.S. § 4904 (relating to unsworn falsification to
25 authorities).

26 (iv) Contain a statement that the department does
27 not have the discretion to deny waiver requests.

28 (b.3) Duties of municipalities.--If a municipality contracts
29 with third-party agencies for the administration and enforcement
30 of this act, the municipality shall:

1 (1) Ensure that the form utilized for a permit
2 application notifies an applicant of all of the following:

3 (i) The third-party agency is acting on behalf of
4 the municipality.

5 (ii) An applicant may inform the governing body of
6 complaints about the third-party agencies' services,
7 including reports of incompetence or gross negligence, a
8 failure to abide by a time period specified under this
9 act, unprofessional behavior or discrimination based on
10 personal bias against the applicant.

11 (iii) The department certifies third-party agencies
12 and investigates complaints due to violations of this
13 act, incompetence or gross negligence, fraud, deceit or
14 acts of moral turpitude.

15 (iv) The department has a publicly accessible
16 Internet website that includes the form for filing a
17 complaint under subparagraph (iii).

18 (2) Maintain a record of complaints submitted under
19 paragraph (1)(ii).

20 (c) Board of appeals.--

21 (1) A municipality which has adopted an ordinance for
22 the administration and enforcement of this act or
23 municipalities which are parties to an agreement for the
24 joint administration and enforcement of this act shall
25 establish or designate a board of appeals as provided by
26 regulations promulgated by the department to hear appeals
27 from decisions of the code administrator[.] subject to the
28 following:

29 (i) Members of the municipality's governing body may
30 not serve as members of the board of appeals.

1 (ii) A municipality may establish a board of appeals
2 or may establish or designate a joint board of appeals in
3 accordance with 53 Pa.C.S. Ch. 23 Subch. A (relating to
4 intergovernmental cooperation).

5 (iii) A city of the first class may designate an
6 existing departmental board that has jurisdiction over
7 building standard appeals to act as the board of appeals
8 of the city of the first class and advise the appropriate
9 department that oversees building standards as to whether
10 an appeal should be granted, modified or rejected. The
11 department shall render final decision on requests for
12 appeal.

13 * * *

14 Section 2. The department may issue regulations to establish
15 or clarify procedures necessary to effectuate the intent of this
16 act.

17 Section 3. ~~The amendment of section 501(b)(3) of the act~~ <--
18 ~~shall apply to intermunicipal agreements entered into on and~~
19 ~~after the effective date of this section.~~ THE PROVISIONS OF THIS <--
20 ACT ARE SEVERABLE. IF ANY PROVISION OF THIS ACT OR ITS
21 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
22 INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
23 THIS ACT WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION
24 OR APPLICATION.

25 Section 4. This act shall take effect immediately.