

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1469 Session of 2017

INTRODUCED BY HEFFLEY, MCGINNIS, MILLARD, MALONEY, PHILLIPS-HILL, COX, WHEELAND, ZIMMERMAN, MICCARELLI AND JOZWIAK, MAY 31, 2017

SENATOR WARD, LABOR AND INDUSTRY, IN SENATE, AS AMENDED, JUNE 21, 2018

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; and, in training and certification of
8 inspectors, further providing for training of inspectors. <--

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

11 Section 1. Section 501(b) (1), (2) and (3) of the act of <--
12 November 10, 1999 (P.L.491, No.45), known as the Pennsylvania-
13 Construction Code Act, are amended and the section is amended by-
14 adding subsections to read:

15 Section 501. Administration and enforcement.

16 * * *

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

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

10 ~~(2) By the retention of one or more [construction code~~
11 ~~officials or] third party agencies to act on behalf of the~~
12 ~~municipality for administration and enforcement of this~~
13 ~~act[.], except that the provisions of subsection (b.1) shall~~
14 ~~apply if the municipality contracts with only one third party~~
15 ~~agency for administration and enforcement.~~

16 ~~(3) Two or more municipalities may provide for the joint~~
17 ~~administration and enforcement of this act through an~~
18 ~~intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A~~
19 ~~(relating to intergovernmental cooperation)[.], except that~~
20 ~~the provisions of subsection (b.1) shall apply if the~~
21 ~~agreement provides for only one third party agency for~~
22 ~~administration and enforcement.~~

23 ~~* * *~~

24 ~~(b.1) Exclusive administration and enforcement. The~~
25 ~~following apply:~~

26 ~~(1) If a municipality contracts with one third party~~
27 ~~agency for administration and enforcement of this act, an~~
28 ~~applicant may utilize the services of another third party~~
29 ~~agency if the alternative third party agency agrees to remit~~
30 ~~a surcharge for its services to the municipality. The~~

1 ~~surcharge shall be a percentage of the total amount of fees~~
2 ~~charged by the alternative third party agency. The percentage~~
3 ~~shall be established by the municipality by ordinance as a~~
4 ~~percentage not to exceed 10%. If the municipality fails to~~
5 ~~establish a surcharge as specified under this paragraph, the~~
6 ~~surcharge shall be 1% of the total fees charged by the~~
7 ~~alternative third party agency for the alternative third~~
8 ~~party agency's services on a project.~~

9 ~~(2) In accordance with the municipality's~~
10 ~~overall permitting process for a project, the municipality~~
11 ~~shall notify the applicant that the applicant may utilize the~~
12 ~~services of an alternative third party agency of the~~
13 ~~applicant's choice for the construction requirements of the~~
14 ~~application covered by this act, including all plan review~~
15 ~~and inspection services. The applicant shall be notified of~~
16 ~~the information required under subsection (b.2).~~

17 ~~(3) The applicant shall notify the municipality and its~~
18 ~~contracted third party agency of its intent to utilize an~~
19 ~~alternative third party agency for the construction~~
20 ~~requirements required by this act for a project. The~~
21 ~~applicant shall provide, in its notification, the name of the~~
22 ~~alternative third party agency that will be utilized and~~
23 ~~appropriate contact information.~~

24 ~~(4) Before performing services on a project, the~~
25 ~~alternative third party agency being utilized by the~~
26 ~~applicant shall notify the municipality and its contracted~~
27 ~~third party agency that it is performing services required by~~
28 ~~this act on the project for the applicant. On the date of~~
29 ~~issuance of the permit required by this act, the alternative~~
30 ~~third party agency shall provide the municipality and its~~

1 ~~exclusive third party agency with a copy of the permit issued~~
2 ~~for the project and the approved plans of record for the~~
3 ~~project.~~

4 ~~(5) The applicant shall utilize the services of the~~
5 ~~alternative third party agency for all requirements of this~~
6 ~~act associated with a project.~~

7 ~~(6) On the date of issuance of the final inspection~~
8 ~~report for a project, the alternative third party agency~~
9 ~~shall forward the following to the municipality and the~~
10 ~~municipality's third party agency:~~

11 ~~(i) The final inspection report that was issued for~~
12 ~~the project.~~

13 ~~(ii) A summary of total fees charged to the~~
14 ~~applicant.~~

15 ~~(iii) Payment of the surcharge assessed under~~
16 ~~paragraph (1).~~

17 ~~(iv) The fee required under section 703(a).~~

18 ~~(v) Any additional documentation associated with the~~
19 ~~project that is requested by the municipality.~~

20 ~~(7) The municipality or its contracted third party~~
21 ~~agency, whichever is applicable, shall accept the final~~
22 ~~inspection report with respect to the requirements of this~~
23 ~~act. The contracted third party agency shall be immune from~~
24 ~~any civil liability associated with contents of the final~~
25 ~~inspection report.~~

26 ~~(8) The municipality or its contracted third party~~
27 ~~agency may withhold issuance of the certificate of occupancy~~
28 ~~for a project if the alternative third party agency fails to~~
29 ~~comply with paragraph (6).~~

30 ~~(9) The municipality may notify the department of a~~

~~possible violation of this act if an alternative third party agency fails to comply with paragraph (6). Upon receiving notice by the municipality, the department shall conduct an investigation. The department may consider an intentional failure to comply with paragraph (6) as just cause for decertification of the alternative third party agency under section 701(h).~~

~~(10) A professional services contract between a municipality and a third party agency for the exclusive administration and enforcement of this act in effect before the effective date of this subsection shall remain in effect and the provisions of this subsection shall apply upon the expiration of the original terms of the professional services contract.~~

~~(b.2) Administration and enforcement by third party agencies. If a municipality contracts with one or more third party agencies for the administration and enforcement of this act, the municipality shall have the following duties:~~

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

~~(i) The authority of a third party agency exists as a result of a contract approved by the governing body of the municipality, or as a result of intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A entered into by the municipality.~~

~~(ii) An applicant may inform the governing body of the municipality of complaints about a third party agency's services, including reports of incompetence or gross negligence, a failure to abide by a time period specified under this act, rude or unprofessional behavior~~

1 ~~or discrimination based on personal bias against the~~
2 ~~applicant.~~

3 ~~(iii) The department certifies third party agencies~~
4 ~~and investigates complaints about service, including~~
5 ~~complaints due to violations of this act, incompetence or~~
6 ~~gross negligence, fraud, deceit or acts of moral~~
7 ~~turpitude.~~

8 ~~(iv) The department has a publicly accessible~~
9 ~~Internet website which includes the form for filing a~~
10 ~~complaint about service under subparagraph (iii).~~

11 ~~(2) Maintaining a record of complaints submitted under~~
12 ~~paragraph (1)(ii).~~

13 * * *

14 Section 2. Section 701 of the act is amended by adding a
15 subsection to read:

16 Section 701. Training of inspectors.

17 * * *

18 ~~(h.1) Code administrator complaints. The following apply:~~

19 ~~(1) The department shall accept and review a complaint~~
20 ~~submitted by a building permit applicant about a code~~
21 ~~administrator and the secretary shall have the discretion to~~
22 ~~enforce remedial actions if necessary, including actions to~~
23 ~~decertify the code administrator or revoke the code~~
24 ~~administrator's certification for a period of time as~~
25 ~~determined by the secretary. The department shall review a~~
26 ~~complaint about a code administrator regarding any of the~~
27 ~~following allegations:~~

28 ~~(i) Incompetence, negligence or unethical conduct.~~

29 ~~(ii) Failure to abide by a deadline specified under~~
30 ~~this act for a code enforcement action which results in~~

1 ~~an unduly delay in the progress of a project.~~

2 ~~(iii) Duplicative, undisclosed or exorbitant fees~~
3 ~~assessed as a result of a code enforcement action.~~

4 ~~(iv) An interpretation of the Uniform Construction~~
5 ~~Code which demonstrates professional incompetence or~~
6 ~~differs from standard practice, including the~~
7 ~~establishment of a different requirement after plan~~
8 ~~approval.~~

9 ~~(v) A violation of 34 Pa. Code § 401.14 (relating to~~
10 ~~decertification or refusal to certify).~~

11 ~~(2) After reviewing a complaint as specified under~~
12 ~~paragraph (1), the department shall have the following~~
13 ~~duties:~~

14 ~~(i) Notifying the municipality where the code~~
15 ~~administrator subject to the complaint is being utilized~~
16 ~~as to the existence of the complaint and recommending~~
17 ~~remedial actions that the department determines to be~~
18 ~~necessary to correct deficiencies.~~

19 ~~(ii) Notifying the code administrator who is the~~
20 ~~subject of the complaint.~~

21 ~~(iii) Investigating the complaint.~~

22 ~~(3) The secretary may issue an order to a municipality~~
23 ~~to allow a building permit holder who submitted a complaint~~
24 ~~under this subsection to utilize another third party agency~~
25 ~~of the building permit holder's choice for any remaining code~~
26 ~~enforcement actions necessary to utilize a project. The order~~
27 ~~may also include a provision to allow the building permit~~
28 ~~holder to permanently utilize a third party agency of the~~
29 ~~permit holder's choice for future projects in the~~
30 ~~municipality if the secretary deems that it is possible that~~

~~the building permit holder will be retaliated against for filing a complaint to the department by a code administrator.~~

~~(4) If a building permit applicant makes a complaint to the department concerning a third party agency or code administrator, the department may not disclose the identity of the building permit holder's complaint without the building permit holder's consent unless disclosure is unavoidable as a result of an investigation of a code administrator under this subsection.~~

~~(5) A code administrator may not discriminate, threaten, coerce or otherwise retaliate against a building permit applicant who files a complaint under this subsection. A person who alleges a violation of this paragraph may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages within 180 days of occurrence of the alleged violation.~~

~~* * *~~

SECTION 1. SECTION 501(B)(1), (2) AND (3) AND (C)(1) OF THE <--
ACT OF NOVEMBER 10, 1999 (P.L.491, NO.45), KNOWN AS THE
PENNSYLVANIA CONSTRUCTION CODE ACT, ARE AMENDED, SUBSECTION (B)
IS AMENDED BY ADDING A PARAGRAPH AND THE SECTION IS AMENDED BY
ADDING SUBSECTIONS TO READ:

SECTION 501. ADMINISTRATION AND ENFORCEMENT.

* * *

(B) MUNICIPAL ADMINISTRATION AND ENFORCEMENT.--THIS ACT MAY
BE ADMINISTERED AND ENFORCED BY MUNICIPALITIES IN ANY OF THE
FOLLOWING WAYS:

(1) BY THE DESIGNATION OF AN EMPLOYEE TO SERVE AS THE
MUNICIPAL CODE OFFICIAL TO ACT ON BEHALF OF THE MUNICIPALITY
FOR ADMINISTRATION AND ENFORCEMENT OF THIS ACT. A MUNICIPAL

1 CODE OFFICIAL MAY UTILIZE THIRD-PARTY AGENCIES TO SUPPLEMENT
2 THE MUNICIPAL CODE ENFORCEMENT PROGRAM'S PLAN REVIEW AND
3 INSPECTION SERVICES OR MAY UTILIZE THIRD-PARTY AGENCIES TO
4 PERFORM PLAN REVIEW AND INSPECTION SERVICES IN CATEGORIES
5 WHICH ITS PROGRAM DOES NOT POSSESS THE NECESSARY PERSONNEL TO
6 ADMINISTER.

7 (2) BY THE RETENTION OF ONE OR MORE CONSTRUCTION CODE
8 OFFICIALS OR THIRD-PARTY AGENCIES TO ACT ON BEHALF OF THE
9 MUNICIPALITY FOR ADMINISTRATION AND ENFORCEMENT OF THIS ACT.
10 THIS PARAGRAPH SHALL EXPIRE JUNE 30, 2019.

11 (2.1) ON AND AFTER JULY 1, 2019, BY THE RETENTION OF TWO
12 OR MORE THIRD-PARTY AGENCIES TO ACT ON BEHALF OF THE
13 MUNICIPALITY FOR ADMINISTRATION AND ENFORCEMENT OF THIS ACT.

14 (3) TWO OR MORE MUNICIPALITIES MAY PROVIDE FOR THE JOINT
15 ADMINISTRATION AND ENFORCEMENT OF THIS ACT THROUGH AN
16 INTERMUNICIPAL AGREEMENT UNDER 53 PA.C.S. CH. 23 SUBCH. A
17 (RELATING TO INTERGOVERNMENTAL COOPERATION). ANY
18 INTERMUNICIPAL AGREEMENT THAT PROVIDES FOR EXCLUSIVE
19 ENFORCEMENT BY A THIRD-PARTY AGENCY SHALL BE IN WRITING AND
20 CONFORM TO PARAGRAPH (2.1) ON AND AFTER JULY 1, 2019.

21 * * *

22 (B.1) ADMINISTRATION AND ENFORCEMENT BY THIRD-PARTY
23 AGENCIES.--A MUNICIPALITY OPTING TO ADMINISTER AND ENFORCE THIS
24 ACT BY RETAINING TWO OR MORE THIRD-PARTY AGENCIES UNDER
25 SUBSECTION (B) (2.1) SHALL BE SUBJECT TO THE FOLLOWING
26 REQUIREMENTS:

27 (1) THE SERVICES OF THE THIRD-PARTY AGENCIES SHALL BE
28 FURNISHED AND PERFORMED UNDER WRITTEN PROFESSIONAL SERVICES
29 CONTRACTS WITH THE MUNICIPALITY.

30 (2) IN ENTERING INTO PROFESSIONAL SERVICES CONTRACTS

1 UNDER THIS SUBSECTION, THE GOVERNING BODY OF THE MUNICIPALITY
2 SHALL TAKE INTO CONSIDERATION ALL OF THE FOLLOWING:

3 (I) THE QUALIFICATIONS OF THE THIRD-PARTY AGENCY.

4 (II) THE FEE SCHEDULE.

5 (III) THE AVAILABILITY OF SERVICES.

6 (IV) THE INPUT OF AFFECTED STAKEHOLDERS.

7 (3) THIRD-PARTY AGENCIES CONTRACTING WITH THE
8 MUNICIPALITY UNDER THIS SUBSECTION MAY NOT BE AFFILIATED WITH
9 ONE ANOTHER.

10 (4) ONE OF THE THIRD-PARTY AGENCIES CONTRACTING WITH THE
11 MUNICIPALITY UNDER THIS SUBSECTION SHALL BE DESIGNATED AS THE
12 ENFORCEMENT AGENT FOR THE MUNICIPALITY FOR GENERAL CODE
13 ENFORCEMENT ACTIONS.

14 (5) A PROFESSIONAL SERVICES CONTRACT BETWEEN A
15 MUNICIPALITY AND A THIRD-PARTY AGENCY IN EFFECT BEFORE THE
16 EFFECTIVE DATE OF THIS SUBSECTION SHALL REMAIN IN EFFECT AND
17 THE PROVISIONS OF SUBSECTION (B) (2.1) SHALL TAKE EFFECT UPON
18 THE EXPIRATION OF THE ORIGINAL TERMS OF THE PROFESSIONAL
19 SERVICES CONTRACT.

20 (6) A PROFESSIONAL SERVICES CONTRACT ENTERED INTO
21 BETWEEN A MUNICIPALITY AND A THIRD-PARTY AGENCY ON OR AFTER
22 THE EFFECTIVE DATE OF THIS SUBSECTION MAY NOT EXCEED THREE
23 YEARS.

24 (B.2) WAIVER.--IF A MUNICIPALITY OPTS TO ADMINISTER AND
25 ENFORCE THIS ACT UNDER SUBSECTION (B) (2.1) BUT CANNOT OBTAIN AN
26 OFFER FROM A QUALIFIED THIRD-PARTY AGENCY TO FULFILL THE NEED TO
27 HAVE AT LEAST TWO THIRD-PARTY AGENCIES, THE MUNICIPALITY MAY BE
28 RELIEVED FROM THE REQUIREMENT OF RETAINING TWO THIRD-PARTY
29 AGENCIES BY COMPLETING A CERTIFICATION FORM, SUBJECT TO THE
30 FOLLOWING:

1 (1) THE MUNICIPALITY MUST COMPLETE THE CERTIFICATION
2 FORM BEFORE THE CONTRACT WITH THE SELECTED THIRD-PARTY AGENCY
3 IS EXECUTED AND MUST MAINTAIN THE FORM THROUGHOUT THE LIFE OF
4 THE CONTRACT WITH THE THIRD-PARTY AGENCY.

5 (2) THE CERTIFICATION FORM MUST BE COMPLETED ANNUALLY.

6 (3) A COPY OF THE CERTIFICATION FORM MUST BE FILED WITH
7 THE DEPARTMENT. THE DEPARTMENT SHALL MAINTAIN A LIST OF
8 MUNICIPALITIES THAT HAVE FILED A CERTIFICATION FORM ON THE
9 DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE.

10 (4) THE DEPARTMENT SHALL FURNISH THE CERTIFICATION FORM
11 WHICH MUST:

12 (I) REQUIRE THE MUNICIPALITY TO DISCLOSE THE METHODS
13 AND DATES OF THE PUBLIC SOLICITATION. FOR PURPOSES OF
14 MEETING THIS REQUIREMENT, THE MUNICIPALITY SHALL
15 ADVERTISE REQUESTS FOR PROPOSALS AND ANNOUNCE THE
16 SOLICITATION AT A PUBLIC MEETING.

17 (II) REQUIRE THE MUNICIPALITY TO DISCLOSE THE NUMBER
18 OF QUALIFIED BIDS RECEIVED TO THE PUBLIC SOLICITATION.

19 (III) CONTAIN A STATEMENT THAT THE INFORMATION
20 PROVIDED BY THE MUNICIPALITY IS IN COMPLIANCE WITH 18
21 PA.C.S. § 4904 (RELATING TO UNSWORN FALSIFICATION TO
22 AUTHORITIES).

23 (IV) CONTAIN A STATEMENT THAT THE DEPARTMENT DOES
24 NOT HAVE THE DISCRETION TO DENY WAIVER REQUESTS.

25 (B.3) DUTIES OF MUNICIPALITIES.--IF A MUNICIPALITY CONTRACTS
26 WITH THIRD-PARTY AGENCIES FOR THE ADMINISTRATION AND ENFORCEMENT
27 OF THIS ACT, THE MUNICIPALITY SHALL:

28 (1) ENSURE THAT THE FORM UTILIZED FOR A PERMIT
29 APPLICATION NOTIFIES AN APPLICANT OF ALL OF THE FOLLOWING:

30 (I) THE THIRD-PARTY AGENCY IS ACTING ON BEHALF OF

1 THE MUNICIPALITY.

2 (II) AN APPLICANT MAY INFORM THE GOVERNING BODY OF
3 COMPLAINTS ABOUT THE THIRD-PARTY AGENCIES' SERVICES,
4 INCLUDING REPORTS OF INCOMPETENCE OR GROSS NEGLIGENCE, A
5 FAILURE TO ABIDE BY A TIME PERIOD SPECIFIED UNDER THIS
6 ACT, UNPROFESSIONAL BEHAVIOR OR DISCRIMINATION BASED ON
7 PERSONAL BIAS AGAINST THE APPLICANT.

8 (III) THE DEPARTMENT CERTIFIES THIRD-PARTY AGENCIES
9 AND INVESTIGATES COMPLAINTS DUE TO VIOLATIONS OF THIS
10 ACT, INCOMPETENCE OR GROSS NEGLIGENCE, FRAUD, DECEIT OR
11 ACTS OF MORAL TURPITUDE.

12 (IV) THE DEPARTMENT HAS A PUBLICLY ACCESSIBLE
13 INTERNET WEBSITE THAT INCLUDES THE FORM FOR FILING A
14 COMPLAINT UNDER SUBPARAGRAPH (III).

15 (2) MAINTAIN A RECORD OF COMPLAINTS SUBMITTED UNDER
16 PARAGRAPH (1) (II).

17 (C) BOARD OF APPEALS.--

18 (1) A MUNICIPALITY WHICH HAS ADOPTED AN ORDINANCE FOR
19 THE ADMINISTRATION AND ENFORCEMENT OF THIS ACT OR
20 MUNICIPALITIES WHICH ARE PARTIES TO AN AGREEMENT FOR THE
21 JOINT ADMINISTRATION AND ENFORCEMENT OF THIS ACT SHALL
22 ESTABLISH OR DESIGNATE A BOARD OF APPEALS AS PROVIDED BY
23 REGULATIONS PROMULGATED BY THE DEPARTMENT TO HEAR APPEALS
24 FROM DECISIONS OF THE CODE ADMINISTRATOR[.] SUBJECT TO THE
25 FOLLOWING:

26 (I) MEMBERS OF THE MUNICIPALITY'S GOVERNING BODY MAY
27 NOT SERVE AS MEMBERS OF THE BOARD OF APPEALS.

28 (II) A MUNICIPALITY MAY ESTABLISH A BOARD OF APPEALS
29 OR MAY ESTABLISH OR DESIGNATE A JOINT BOARD OF APPEALS IN
30 ACCORDANCE WITH 53 PA.C.S. CH. 23 SUBCH. A (RELATING TO

1 INTERGOVERNMENTAL COOPERATION) .

2 (III) A CITY OF THE FIRST CLASS MAY DESIGNATE AN
3 EXISTING DEPARTMENTAL BOARD THAT HAS JURISDICTION OVER
4 BUILDING STANDARD APPEALS TO ACT AS THE BOARD OF APPEALS
5 OF THE CITY OF THE FIRST CLASS AND ADVISE THE APPROPRIATE
6 DEPARTMENT THAT OVERSEES BUILDING STANDARDS AS TO WHETHER
7 AN APPEAL SHOULD BE GRANTED, MODIFIED OR REJECTED. THE
8 DEPARTMENT SHALL RENDER FINAL DECISION ON REQUESTS FOR
9 APPEAL.

10 * * *

11 Section 3 2. The department may issue regulations to <--
12 establish or clarify procedures necessary to effectuate the
13 intent of this act.

14 SECTION 3. THE AMENDMENT OF SECTION 501(B)(3) OF THE ACT <--
15 SHALL APPLY TO INTERMUNICIPAL AGREEMENTS ENTERED INTO ON AND
16 AFTER THE EFFECTIVE DATE OF THIS SECTION.

17 Section 4. This act shall take effect ~~in 60 days~~ <--
18 IMMEDIATELY. <--