

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 782 Session of 2015

INTRODUCED BY HEFFLEY, EVERETT, KNOWLES, TOOHL, EMRICK, TRUITT, ZIMMERMAN, MURT, MOUL, CARROLL AND FARINA, MARCH 13, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 26, 2016

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 PRELIMINARY PROVISIONS, <--
6 FURTHER PROVIDING FOR DEFINITIONS; AND, in adoption and
7 enforcement by municipalities, further providing for
8 administration and enforcement.

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, amended November 29, 2006 (P.L.1440,~~
14 ~~No.157), are amended and the section is amended by adding a~~
15 ~~subsection to read:~~

16 SECTION 1. THE DEFINITION OF "BOARD OF APPEALS" IN SECTION <--
17 103 OF THE ACT OF NOVEMBER 10, 1999 (P.L.491, NO.45), KNOWN AS
18 THE PENNSYLVANIA CONSTRUCTION CODE ACT, IS AMENDED TO READ:
19 SECTION 103. DEFINITIONS.

20 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL

1 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
2 CONTEXT CLEARLY INDICATES OTHERWISE:

3 * * *

4 "BOARD OF APPEALS." THE BODY CREATED BY A MUNICIPALITY OR
5 MORE THAN ONE MUNICIPALITY TO HEAR APPEALS FROM DECISIONS OF THE
6 CODE ADMINISTRATOR AS PROVIDED FOR BY [CHAPTER 1 OF THE 1999
7 BUILDING OFFICIALS AND CODE ADMINISTRATORS INTERNATIONAL, INC.,
8 NATIONAL BUILDING CODE, FOURTEENTH EDITION] THE DEPARTMENT
9 THROUGH REGULATION.

10 * * *

11 SECTION 2. SECTION 501(B)(1), (2) AND (3) AND (C) OF THE
12 ACT, AMENDED NOVEMBER 29, 2006 (P.L.1440, NO.157) AND OCTOBER
13 24, 2012 (P.L.1433, NO.179), ARE AMENDED AND THE SECTION IS
14 AMENDED BY ADDING A SUBSECTION 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:

20 (1) By the designation of an employee to serve as the
21 municipal code official to act on behalf of the municipality
22 for administration and enforcement of this act. A municipal
23 code official may utilize third-party agencies to supplement
24 the municipal code enforcement program's plan review and
25 inspection services or may utilize third-party agencies to
26 perform plan review and inspection services in categories
27 which its program does not possess the necessary personnel to
28 administer.

29 (2) By the retention of one or more [construction code
30 officials or] third-party agencies to act on behalf of the

1 municipality for administration and enforcement of this
2 act[.], except that the provisions of subsection (b.1) shall
3 apply if the municipality contracts with only one third-party
4 agency for administration and enforcement.

5 (3) Two or more municipalities may provide for the joint
6 administration and enforcement of this act through an
7 intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A
8 (relating to intergovernmental cooperation)[.], except that
9 the provisions of subsection (b.1) shall apply if the
10 agreement provides for only one third-party agency for
11 administration and enforcement.

12 * * *

13 (b.1) Exclusive administration and enforcement.--The
14 following apply:

15 (1) If a municipality contracts with one third-party
16 agency for administration and enforcement of this act, an
17 applicant may utilize the services of another third-party
18 agency if the alternative third-party agency agrees to remit
19 a surcharge for its services to the municipality. The
20 surcharge shall be a percentage of the total amount of fees
21 charged by the alternative third-party agency. The percentage
22 shall be established by the municipality by ordinance as a
23 percentage not to exceed ten percent. If the municipality
24 fails to establish a surcharge as specified under this
25 paragraph, the surcharge shall be one percent of the total
26 fees charged by the alternative third-party agency for the
27 alternative third-party agency's services on a project.

28 (2) In accordance with the municipality's
29 overall permitting process for a project, the municipality
30 shall notify the applicant that the applicant may utilize the

1 services of an alternative third-party agency of the
2 applicant's choice for the construction requirements of the
3 application covered by this act, including all plan review
4 and inspection services.

5 (3) The applicant shall notify the municipality and its
6 contracted third-party agency of its intent to utilize an
7 alternative third-party agency for the construction
8 requirements required by this act for a project. The
9 applicant shall provide, in its notification, the name of the
10 alternative third-party agency that will be utilized and
11 appropriate contact information.

12 (4) Before performing services on a project, the
13 alternative third-party agency being utilized by the
14 applicant shall notify the municipality and its contracted
15 third-party agency that it is performing services required by
16 this act on the project for the applicant. On the date of
17 issuance of the permit required by this act, the alternative
18 third-party agency shall provide the municipality and its
19 exclusive third-party agency with a copy of the permit issued
20 for the project and the approved plans of record for the
21 project.

22 (5) The applicant shall utilize the services of the
23 alternative third-party agency for all requirements of this
24 act associated with a project.

25 (6) On the date of issuance of the final inspection
26 report for a project, the alternative third-party agency
27 shall forward the following to the municipality and the
28 municipality's third-party agency:

29 (i) The final inspection report that was issued for
30 the project.

1 (ii) A summary of total fees charged to the
2 applicant.

3 (iii) Payment of the surcharge assessed under
4 paragraph (1).

5 (iv) The fee required under section 703(a).

6 (v) Any additional documentation associated with the
7 project that is requested by the municipality.

8 (7) The municipality or its contracted third-party
9 agency, whichever is applicable, shall accept the final
10 inspection report with respect to the requirements of this
11 act. The contracted third-party agency shall be immune from
12 any civil liability associated with contents of the final
13 inspection report.

14 (8) The municipality or its contracted third-party
15 agency may withhold issuance of the certificate of occupancy
16 for a project if the alternative third-party agency fails to
17 comply with paragraph (6).

18 (9) The municipality may notify the department of a
19 possible violation of this act if an alternative third-party
20 agency fails to comply with paragraph (6). Upon receiving
21 notice by the municipality, the department shall conduct an
22 investigation. The department may consider an intentional
23 failure to comply with paragraph (6) as just cause for
24 decertification of the alternative third-party agency under
25 section 701(h).

26 (10) A professional services contract between a
27 municipality and a third-party agency for the
28 exclusive administration and enforcement of this act in
29 effect before the effective date of this subsection shall
30 remain in effect and the provisions of this subsection shall

1 apply upon the expiration of the original terms of the
2 professional services contract.

3 (C) BOARD OF APPEALS.-- <--

4 (1) A MUNICIPALITY WHICH HAS ADOPTED AN ORDINANCE FOR
5 THE ADMINISTRATION AND ENFORCEMENT OF THIS ACT OR
6 MUNICIPALITIES WHICH ARE PARTIES TO AN AGREEMENT FOR THE
7 JOINT ADMINISTRATION AND ENFORCEMENT OF THIS ACT SHALL
8 ESTABLISH OR DESIGNATE A BOARD OF APPEALS AS PROVIDED BY
9 [CHAPTER 1 OF THE 1999 BOCA NATIONAL BUILDING CODE,
10 FOURTEENTH EDITION,] THE DEPARTMENT THROUGH REGULATION TO
11 HEAR APPEALS FROM DECISIONS OF THE CODE ADMINISTRATOR.
12 MEMBERS OF THE MUNICIPALITY'S GOVERNING BODY MAY NOT SERVE AS
13 MEMBERS OF THE BOARD OF APPEALS. A MUNICIPALITY MAY ESTABLISH
14 A BOARD OF APPEALS OR MAY ESTABLISH OR DESIGNATE A JOINT
15 BOARD OF APPEALS IN ACCORDANCE WITH 53 PA.C.S. CH. 23 SUBCH.
16 A (RELATING TO INTERGOVERNMENTAL COOPERATION).

17 (2) AN APPLICATION FOR APPEAL SHALL BE BASED ON A CLAIM
18 THAT THE TRUE INTENT OF THIS ACT OR REGULATIONS LEGALLY
19 ADOPTED UNDER THIS ACT HAVE BEEN INCORRECTLY INTERPRETED, THE
20 PROVISIONS OF THIS ACT DO NOT FULLY APPLY OR AN EQUIVALENT
21 FORM OF CONSTRUCTION IS TO BE USED.

22 (3) WHEN A MUNICIPALITY CANNOT FIND PERSONS TO SERVE ON
23 A BOARD OF APPEALS WHO MEET THE MINIMUM QUALIFICATIONS [OF
24 CHAPTER 1 OF THE BOCA NATIONAL BUILDING CODE] ESTABLISHED BY
25 THE DEPARTMENT, THE MUNICIPALITY MAY FILL A POSITION ON THE
26 BOARD WITH A QUALIFIED PERSON WHO RESIDES OUTSIDE OF THE
27 MUNICIPALITY.

28 (4) THE FEE FOR AN APPEAL TO THE BOARD OF APPEALS FOR A
29 MUNICIPALITY THAT IS ADMINISTERING AND ENFORCING THIS ACT
30 SHALL NOT EXCEED ACTUAL COSTS OF THE PUBLIC NOTICE OF THE

1 HEARING, APPEARANCE FEE FOR THE COURT REPORTER AND
2 ADMINISTRATIVE FEES AS NECESSARY.

3 (5) IN THE CASE OF AN APPEAL OR REQUEST FOR VARIANCE OR
4 EXTENSION OF TIME INVOLVING THE CONSTRUCTION OF A ONE-FAMILY
5 OR TWO-FAMILY RESIDENTIAL BUILDING, THE BOARD OF APPEALS
6 SHALL CONVENE A HEARING WITHIN 30 DAYS OF THE APPEAL. THE
7 BOARD OF APPEALS SHALL RENDER A WRITTEN DECISION TO THE
8 PARTIES WITHIN FIVE BUSINESS DAYS, OR WITHIN TEN BUSINESS
9 DAYS IN CITIES OF THE FIRST CLASS, OF THE LAST HEARING. IF
10 THE BOARD OF APPEALS FAILS TO ACT WITHIN THE TIME PERIOD
11 UNDER THIS PARAGRAPH, THE APPEAL SHALL BE DEEMED GRANTED.

12 * * *

13 Section ~~2~~ 3. The department may issue regulations to
14 establish or clarify procedures necessary to effectuate the
15 intent of this act.

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16 Section ~~3~~ 4. This act shall take effect in 60 days.

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