

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1469 Session of  
2017

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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 28, 2017

## AN ACT

Amending the act of November 10, 1999 (P.L.491, No.45), entitled "An act establishing a uniform construction code; imposing powers and duties on municipalities and the Department of Labor and Industry; providing for enforcement; imposing penalties; and making repeals," in adoption and enforcement by municipalities, further providing for administration and enforcement; AND, IN TRAINING AND CERTIFICATION OF INSPECTORS, FURTHER PROVIDING FOR TRAINING OF INSPECTORS.

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

- 1 Section 501(b)(1), (2) and (3) of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, are amended 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 code official may utilize third-party agencies to supplement the municipal code enforcement program's plan review and inspection services or may utilize third-party agencies to perform plan review and inspection services in categories which its program does not possess the necessary personnel to administer.

- (2) By the retention of one or more [construction code officials or] third-party agencies to act on behalf of the municipality for administration and enforcement of this act[.], except that the provisions of subsection (b.1) shall apply if the municipality contracts with only one third-party agency for administration and enforcement.
  - (3) Two or more municipalities may provide for the joint administration and enforcement of this act through an intermunicipal agreement under 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation)[.], except that the provisions of subsection (b.1) shall apply if the agreement provides for only one third-party agency for administration and enforcement.
- (B.1) Exclusive administration and enforcement.--The following apply:
- (1) If a municipality contracts with one third-party agency for administration and enforcement of this act, an applicant may utilize the services of another third-party agency if the alternative third-party agency agrees to remit a surcharge for its services to the municipality. The surcharge shall be a percentage of the total amount of fees charged by the alternative third-party agency. The percentage shall be established by the municipality by ordinance as a percentage not to exceed 10%. If the municipality fails to establish a surcharge as specified under this paragraph, the surcharge shall be 1% of the total fees charged by the alternative third-party agency for the alternative third-party agency's services on a project.
  - (2) In accordance with the municipality's overall permitting process for a project, the municipality shall notify the applicant that the applicant may utilize the services of an alternative third-party agency of the applicant's choice for the construction requirements of the application covered by this act, including all plan review and inspection services. The applicant shall be notified of the information required under subsection (b.2).
  - (3) The applicant shall notify the municipality and its contracted third-party agency of its intent to utilize an alternative third-party agency for the construction requirements required by this act for a project. The applicant shall provide, in its notification, the name of the alternative third-party agency that will be utilized and appropriate contact information.
  - (4) Before performing services on a project, the alternative third-party agency being utilized by the applicant shall notify the municipality and its contracted third-party agency that it is performing services required by this act on the project for the applicant. On the date of issuance of the permit required by this act, the alternative third-party agency shall provide the municipality and its exclusive third-party agency with a copy of the permit issued for the project and the approved plans of record for the project.
  - (5) The applicant shall utilize the services of the alternative third-party agency for all requirements of this act associated with a project.
  - (6) On the date of issuance of the final inspection report for a project, the alternative third-party agency shall forward the following to the municipality and the municipality's third-party agency:

- (I) The final inspection report that was issued for the project.
  - (II) A summary of total fees charged to the applicant.
  - (III) Payment of the surcharge assessed under paragraph (1).
  - (IV) The fee required under section 703(a).
  - (V) Any additional documentation associated with the project that is requested by the municipality.
- (7) The municipality or its contracted third-party agency, whichever is applicable, shall accept the final inspection report with respect to the requirements of this act. The contracted third-party agency shall be immune from any civil liability associated with contents of the final inspection report.
  - (8) The municipality or its contracted third-party agency may withhold issuance of the certificate of occupancy for a project if the alternative third-party agency fails to comply with paragraph (6).
  - (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 or discrimination based on personal bias against the applicant.
    - (iii) The department certifies third-party agencies and investigates complaints about service, including complaints due to violations of this act, incompetence or gross negligence, fraud, deceit or acts of moral turpitude.

- (iv) The department has a publicly accessible Internet website which includes the form for filing a complaint about service under subparagraph (iii).
- (v) Maintaining a record of complaints submitted under paragraph (1)(ii).

**2 Section 701 of the act is amended by adding a subsection to read:**

Section 701. Training of inspectors.

(H.1) Code administrator complaints. The following apply:

- (1) The department shall accept and review a complaint submitted by a building permit applicant about a code administrator and the secretary shall have the discretion to enforce remedial actions if necessary, including actions to decertify the code administrator or revoke the code administrator's certification for a period of time as determined by the secretary. The department shall review a complaint about a code administrator regarding any of the following allegations:
  - (i) Incompetence, negligence or unethical conduct.
  - (ii) Failure to abide by a deadline specified under this act for a code enforcement action which results in an undue delay in the progress of a project.
  - (iii) Duplicative, undisclosed or exorbitant fees assessed as a result of a code enforcement action.
  - (iv) An interpretation of the Uniform Construction Code which demonstrates professional incompetence or differs from standard practice, including the establishment of a different requirement after plan approval.
  - (v) A violation of 34 Pa. Code § 401.14 (relating to decertification or refusal to certify).
- (2) After reviewing a complaint as specified under paragraph (1), the department shall have the following duties:
  - (i) Notifying the municipality where the code administrator subject to the complaint is being utilized as to the existence of the complaint and recommending remedial actions that the department determines to be necessary to correct deficiencies.
  - (ii) (ii) Notifying the code administrator who is the subject of the complaint.
  - (iii) (iii) Investigating the complaint.
- (3) The secretary may issue an order to a municipality to allow a building permit holder who submitted a complaint under this subsection to utilize another third-party agency of the building permit holder's choice for any remaining code enforcement actions necessary to utilize a project. The order may also include a provision to allow the building permit holder to permanently utilize a third-party agency of the permit holder's choice for future projects in the 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.

**3 The department may issue regulations to establish or clarify procedures necessary to effectuate the intent of this act.**

**4 This act shall take effect in 60 days.**