

**GENERAL LOCAL GOVERNMENT CODE (53 PA.C.S.) - PURPOSES AND POWERS
OF MUNICIPAL AUTHORITIES**

Act of Oct. 24, 2012, P.L. 1263, No. 155

Cl. 53

Session of 2012

No. 2012-155

HB 1719

AN ACT

Amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, in municipal authorities, further providing for purposes and powers.

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

Section 1. Section 5607(d)(23) and (30) of Title 53 of the Pennsylvania Consolidated Statutes are amended to read:
§ 5607. Purposes and powers.

* * *

(d) Powers.--Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers:

* * *

(23) To require the posting of financial security to insure the completion in accordance with the approved plat and with the rules and regulations of the authority of any water mains or sanitary sewer lines, or both, and related apparatus and facilities required to be installed by or on behalf of a developer under an approved land development or subdivision plat as these terms are defined under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code. If financial security is required by the authority and without limitation as to other types of financial security which the authority may approve, which approval shall not be unreasonably withheld, federally chartered or Commonwealth-chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in these lending institutions shall be deemed acceptable financial security. Financial security shall be posted with a bonding company or federally chartered or Commonwealth-chartered lending institution chosen by the party posting the financial security if the bonding company or lending institution is authorized to conduct business within this Commonwealth. The bond or other security shall provide for and secure to the authority the completion of required improvements within one year from the date of posting of the security. The amount of financial security shall be equal to 110% of the cost of the required improvements for which financial security is to be posted. The cost of required improvements shall be established by submitting to the authority a bona fide bid from a contractor chosen by the party posting the financial security. In the absence of a bona fide bid, the cost shall be established by an estimate prepared by the authority's engineer. If the party posting the financial security requires more than one year from the date of posting the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each

one-year period beyond the first anniversary date from the initial posting date or to 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure. As the work of installing the required improvements proceeds, the party posting the financial security may request the authority to release or authorize the release of, from time to time, portions of the financial security necessary to pay the contractor performing the work. Release requests shall be in writing addressed to the authority, and the authority shall have 45 days after receiving a request to ascertain from the authority engineer, certified in writing, that the portion of the work has been completed in accordance with the approved plat. Upon receiving written certification, the authority shall authorize release by the bonding company or lending institution of an amount estimated by the authority engineer to fairly represent the value of the improvements completed. If the authority fails to act within the 45-day period, it shall be deemed to have approved the requested release of funds. The authority may, prior to final release at the time of completion and certification by its engineer, [require retention of] **retain** 10% of the [estimated cost of] **original amount of the posted financial security for the** improvements. If the authority accepts dedication of all or some of the required improvements following completion, it may require the posting of financial security to secure structural integrity of the **dedicated** improvements as well as the functioning of the improvements in accordance with the design and specifications as depicted on the final plat and the authority's rules and regulations. This financial security shall expire not later than 18 months from the date of acceptance of dedication and shall be of the same type as set forth in this paragraph with regard to that which is required for installation of the improvements, except that it shall not exceed 15% of the actual cost of installation of the improvements. Any inconsistent ordinance, resolution or statute is null and void.

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(30) Where a sewer or water system of an authority is to be extended at the expense of the owner of properties or where the authority otherwise would construct customer facilities referred to in paragraph (24), other than water meter installation, a property owner shall have the right to construct the extension or install the customer facilities himself or through a subcontractor approved by the authority, which approval shall not be unreasonably withheld. The authority shall have the right, at its option, to perform the construction itself only if the authority provides the extension or customer facilities at a lower cost and within the same timetable specified or proposed by the property owner or his approved subcontractor. Construction by the property owner shall be in accordance with an agreement for the extension of the authority's system and plans and specifications approved by the authority and shall be undertaken only pursuant to the existing regulations, requirements, rules and standards of the authority applicable to such construction. Construction shall be subject to inspection by an inspector authorized to approve similar construction and employed by the authority during construction. When a main is to be extended at the expense of the owner of properties, the property owner may be

required to deposit with the authority, in advance of construction, the authority's estimated reasonable and necessary cost of reviewing plans, construction inspections, administrative, legal and engineering services. The authority may require that construction shall not commence until the property owner has posted appropriate financial security in accordance with paragraph (23). The authority may require the property owner to reimburse it for reasonable and necessary expenses it incurred as a result of the extension. If an independent firm is employed for engineering review of the plans and the inspection of improvements, reimbursement for its services shall be reasonable and in accordance with the ordinary and customary fees charged by the independent firm for work performed for similar services in the community. The fees shall not exceed the rate or cost charged by the independent firm to the authority when fees are not reimbursed or otherwise imposed on applicants. Upon completion of construction, the property owner shall dedicate and the authority shall accept the extension of the authority's system if dedication of facilities and the installation complies with the plans, specifications, regulations of the authority and the agreement. An authority may provide in its regulations those facilities which, having been constructed at the expense of the owner of properties, the authority will require to be dedicated and which facility or facilities the authority will accept as a part of its system.

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

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

(iii) The professional appointed **as arbitrator** under clause (ii) shall hear evidence and review the documentation as the professional in his or her sole opinion deems necessary and shall render a decision within [60] **50** days of the [billing] date **of appointment**. [The property owner shall be required to pay the entire amount determined in the decision immediately.] **Based upon the decision of the arbitrator, the property owner or authority shall be required to pay any amounts**

necessary to implement the decision within 60 days. In the event the property owner has paid the authority or retained professional consultant an amount in excess of the amount determined to be reasonable and necessary, the authority or retained professional consultant shall within 60 days reimburse the excess payment.

(iv) In the event that the authority and property owner cannot agree upon the professional to be appointed within [30] **20** days of the [billing date] **request for appointment of an arbitrator**, the president judge of the court of common pleas of the judicial district in which the municipality is located, or if at the time there is no president judge, the senior active judge then sitting upon application of either party shall appoint a professional, who shall be neither the authority engineer nor any professional who has been retained by or performed services for the authority or the property owner within the preceding five years.

(v) [The fee of the appointed professional for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by \$2,500 or more, the authority shall pay the fee of the professional. If the amount of the payment required in the decision is less than the original bill by \$2,499 or less, the authority and the property owner shall each pay one-half of the fee of the appointed professional.] **The fee of the arbitrator shall be paid by the property owner if the disputed fee is upheld by the arbitrator. The fee of the arbitrator shall be paid by the authority if the disputed fee is \$2,500 or greater than the payment decided by the arbitrator. The fee of the arbitrator shall be paid in an equal amount by the property owner and the authority if the disputed fee is less than \$2,500 of the payment decided by the arbitrator.**

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

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

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

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

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

APPROVED--The 24th day of October, A.D. 2012.

TOM CORBETT