

No. 1990-203

AN ACT

HB 444

Amending the act of May 2, 1945 (P.L.382, No.164), entitled "An act providing for the incorporation as bodies corporate and politic of 'Authorities' for municipalities, counties and townships; prescribing the rights, powers and duties of such Authorities heretofore or hereafter incorporated; authorizing such Authorities to acquire, construct, improve, maintain and operate projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds, and prescribing the rights of the holders thereof; conferring the right of eminent domain on such Authorities; authorizing such Authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and conferring exclusive jurisdiction on certain courts over rates," further providing for powers.

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

Section 1. Clause (t) of subsection B of section 4 of the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, amended May 15, 1963 (P.L.33, No.30), is amended and the subsection is amended by adding clauses to read:

Section 4. Purposes and Powers; General.—* * *

B. Every Authority is hereby granted, and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

* * *

[(t) To charge a tapping fee whenever the owner of any property connects such property with a sewer system or water main constructed by the Authority which fee shall be in addition to any charges assessed and collected against such property in the construction of such sewer or water main by the Authority or any rental charges assessed by the Authority. Whenever a sewer system or water main or any part or extension thereof owned by an Authority has been constructed by the Authority at the expense of a private person or corporation or has been constructed by a private person or corporation under the supervision of the Authority at the expense of the private person or corporation, the Authority shall have the right to charge a tapping fee and refund said tapping fee or any part thereof to the person or corporation who has paid for the construction of said sewer system or water main or any part or extension thereof. The total of said refunds shall never exceed the cost of said system or main or any part or extension thereof to the person or corporation paying for construction thereof. In any case where the property connected or to be connected with the sewer system of the Authority is not equipped with a water meter, the Authority may install such a meter at its own cost and expense: Provided, however, That if the property is supplied with water from the facilities of a public water supply agency, the authority

shall not install such meter without the consent and approval of the public water supply agency.]

(t) To charge certain enumerated fees to property owners who desire to or are required to connect to the Authority's sewer or water system. Such fees shall be based upon the duly adopted fee schedule at the time of payment and shall be payable at the time of application for connection or at such other time as the property owner and the authority agree or in the case of projects to serve existing development, such fees shall be payable at a time to be determined by the Authority. An Authority shall have the right to require that no capacity shall be guaranteed for a property owner or owners until such time as the tapping fees enumerated herein have, at the option of the Authority, been paid or secured by other financial security. The fees shall be in addition to any charges assessed against the property in the construction of a sewer or water main by the Authority in accordance with clauses (r) and (s) as well as any other user charges imposed by the Authority pursuant to clause (h) and shall not include costs included in the calculation of such fees.

(1) The fees may include some or all of the following fee components, which shall be separately set forth in the appropriate resolution of the Authority establishing such fees:

(i) Connection fee. A fee which shall not exceed an amount based upon the actual cost of the connection of the property extending from the Authority's main to the property line or curb stop of the property so connected. The Authority may also base such fee upon an average cost for previously installed connections of similar type and size. In lieu of the payment of the fees, an Authority may require the construction and dedication of those facilities by the property owner or owners requesting such connection.

(ii) Customer facilities fee. A fee which shall not exceed an amount based upon the actual cost of facilities serving the connected property from the property line or curb stop to the proposed dwelling or building to be served. The fee shall be chargeable only in the event that the Authority and not the property owner or owners installs the customer facilities. In lieu of the payment of the customer facilities fee, an Authority may require the construction of those facilities by the property owner or owners requesting customer facilities. In the case of water service, the fee may include the cost of a water meter and installation if the Authority provides or installs the same. In any case where the property connected or to be connected with the sewer system of the Authority is not equipped with a water meter, the Authority may install such a meter at its own cost and expense; provided, however, that if the property is supplied with water from the facilities of a public water supply agency, the Authority shall not install such meter without the consent and approval of the public water supply agency.

(iii) Tapping fee. A fee which shall not exceed an amount based upon some or all of the following fee components, which shall be separately set forth in the appropriate resolution of the Authority establishing the fee. In lieu of the payment of the fee, an Authority may require the construction and dedication of only such capacity, distribution-collection or special purpose facilities necessary to supply service to the property owner or owners.

(A) Capacity part. *A fee for capacity-related facilities which may not exceed an amount that is based upon the cost of such facilities, including, but not limited to, source of supply, treatment, pumping, transmission, trunk, interceptor and outfall mains, storage, sludge treatment or disposal, interconnection or other general system facilities. Such facilities may include those that provide existing service and/or those that will provide future service. The cost of existing facilities, which shall not include facilities contributed to the Authority by any person, government or agency, shall be based upon their replacement cost or upon historical cost trended to current cost using published cost indexes, or upon the historical cost plus interest and other financing fees paid on bonds financing such facilities. In the case of existing facilities, outstanding debt related to the facilities shall be subtracted from the cost, provided however, no debt shall be subtracted which is attributable to facilities exclusively serving new customers. In the case of facilities to be constructed or acquired, the cost of such facilities shall not exceed their reasonable estimated cost provided that any such facilities must be included in a duly adopted annual budget or a five-year capital improvement plan and the Authority has taken action in furtherance of said facilities such as the following:*

- (I) obtained financing for the facilities;*
- (II) entered into a contract obligating the Authority to construct or pay for the cost of construction of the facilities or its portion thereof in the event that multiple parties are constructing said facilities;*
- (III) has obtained a permit for the facilities;*
- (IV) has spent substantial sums or resources in furtherance of the facilities;*
- (V) has entered into a contract obligating the Authority to purchase or acquire facilities owned by another;*
- (VI) has prepared an engineering feasibility study specifically related to the facilities, which study recommends the construction of the facilities within a five-year period;*
- (VII) has entered into a contract for the design of the facilities.*

Under all cost approaches, the cost of said facilities shall be reduced by the amount of any grants or capital contributions which have financed such facilities. The capacity part of the tapping fee per unit of capacity required by the new customer shall not exceed the cost of the facilities as described herein divided by the design capacity of the facilities. Nothing contained herein shall prevent an Authority from allocation of its capacity-related facilities to different sections or districts of its system, nor shall an Authority be prohibited from imposing additional capacity-related tapping fees on specific groups of existing customers such as commercial and industrial customers, in conjunction with additional capacity requirements of such customers.

(B) Distribution or collection part. *A fee which may not exceed an amount based upon the cost of distribution or collection facilities required to provide service, such as mains, hydrants and pumping stations. Such facilities may include those that provide existing service and/or those that will provide future service. The cost of existing facilities, which shall not*

include facilities contributed to the Authority by any person, government or agency, shall be based upon their replacement cost or upon historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on bonds financing such facilities. In the case of existing facilities, outstanding debt related to the facilities shall be subtracted from the cost, provided however, no debt shall be subtracted which is attributable to facilities exclusively serving new customers. In the case of facilities to be constructed or acquired, the cost of such facilities shall not exceed their reasonable estimated cost. Under all cost approaches, the cost of said facilities shall be reduced by the amount of any grants or capital contributions which have financed such facilities. The distribution or collection part of the tapping fee per unit of capacity required by the new customer shall not exceed the cost of the facilities as described herein divided by the design capacity of the facilities. Nothing contained herein shall prevent an Authority from allocation of its distribution or collection-related facilities to different sections or districts of its system, nor shall an Authority be prohibited from imposing additional distribution or collection-related tapping fees on specific groups of existing customers such as commercial and industrial customers, in conjunction with additional capacity requirements of such customers.

(C) Special purpose part. Fees for special purpose facilities applicable only to a particular group of customers, or serving a particular purpose and/or serving a specific area, based upon the cost of such facilities, including, but not limited to, booster pump stations, fire service facilities and industrial wastewater treatment facilities. Such facilities may include those that provide existing service and/or those that will provide future service. The cost of existing facilities, which shall not include facilities contributed to the Authority by any person, government or agency, shall be based upon their replacement cost or upon historical cost trended to current cost using published cost indexes or upon the historical cost plus interest and other financing fees paid on bonds financing such facilities. In the case of existing facilities, outstanding debt related to the facilities shall be subtracted from the cost, provided however, that no debt shall be subtracted which is attributable to facilities exclusively serving new customers. In the case of facilities to be constructed or acquired, the cost of such facilities shall not exceed their reasonable estimated cost. Under all cost approaches, the cost of said facilities shall be reduced by the amount of any grants or capital contributions which have financed such facilities. The special purpose part of the tapping fee per unit of capacity required by the new customer shall not exceed the cost of the facilities as described herein divided by the design capacity of the facilities. Nothing contained herein shall prevent an Authority from allocation of its special purpose-related facilities to different sections or districts of its system, nor shall an Authority be prohibited from imposing additional special purpose-related tapping fees on specific groups of existing customers such as commercial and industrial customers, in conjunction with additional capacity requirements of such customers.

(D) Reimbursement component. *An amount necessary to recapture the allocable portion of facilities in order to reimburse the property owner or owners at whose expense such facilities were constructed, as set forth in clauses (z.1) and (z.2) hereof.*

(E) Calculation of tapping fee components. **(I)** *In arriving at the cost to be included in the tapping fee components, the same cost shall not be included in more than one part of the tapping fee.*

(II) *No tapping fee may be based upon or include the cost of expanding, replacing, updating or upgrading facilities serving existing customers in order to meet stricter efficiency, environmental, regulatory or safety standards or to provide better service to, or meet the needs of, existing customers.*

(III) *The cost used in calculating tapping fees shall not include maintenance and operation expenses. As used in this clause, "maintenance and operation expenses" are those expenditures made during the useful life of a sewer or water system for labor, materials, utilities, equipment accessories or appurtenances and other items which are necessary to manage and maintain the system capacity and performance and to provide the service for which the system was constructed.*

(2) *Every Authority charging a tapping, customer facilities or connection fee shall do so at a public meeting of the Authority. The Authority shall have available for public inspection a detailed itemization of all calculations clearly showing the manner in which the fees were determined. A revised tapping, customer facilities or connection fee may be imposed upon those who subsequently connect to the system.*

(3) *No Authority shall have the power to impose any connection fee, customer facilities fee, tapping fee or any similar fee except as provided specifically in this section.*

* * *

(z) *Where a sewer or water system of an Authority is to be extended at the expense of the owner or owners of properties or where the Authority otherwise would construct the customer facilities referred to in clause (t)(1)(ii) (other than water-meter installation), the property owner or owners shall have the right to construct the extension or install the customer facilities himself or themselves or through a subcontractor approved by the Authority, which approval shall not be unreasonably withheld: Provided That 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 owners or his or their approved subcontractor. Construction by the property owner or owners 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 and shall be further subject to inspection by an inspector authorized to approve such construction and employed by the Authority during construction. When a main is to be extended at the expense*

of the owner or owners of properties, the property owner or owners 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 clause (s.1). The Authority may prescribe that the property owner or owners shall reimburse the Authority for reasonable and necessary expenses 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 such 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, but in no event shall the fees 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 or owners shall dedicate and the Authority shall accept the extension of the Authority's system, provided dedication of facilities and the installation complies with the plans, specification, 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 or owners of properties, the Authority will accept as a part of its system.

(z.1) Where a property owner constructs or causes to be constructed at his expense any extension of a sewer or water system of an Authority, the Authority shall provide for the reimbursement to the property owner when the owner of another property not in the development for which the extension was constructed connects a service line directly to the extension within ten years of the date of the dedication of such extension to the Authority in accordance with the following provisions:

(1) Such reimbursement shall be equal to the distribution or collection part of each tapping fee collected as a result of subsequent connections. An Authority shall be entitled to deduct from each reimbursement payment an amount equal to five per centum which shall be deemed to represent the appropriate charge for administrative expenses and services rendered in calculating, collecting, monitoring and disbursing the reimbursement payments to the property owner entitled thereto.

(2) Reimbursement shall be limited to those lines which have not previously been paid for by the Authority.

(3) The Authority shall, in the preparation of the necessary reimbursement agreement with the property owner or owners for whose benefit reimbursement will be provided, attach as an exhibit an itemized listing of all sewer and water facilities for which reimbursement shall be provided.

(4) The total reimbursement to which a property owner or owners shall be entitled shall not exceed the cost of all labor and material, engineering design charges, the cost of performance and maintenance bonds, Authority review and inspection charges, as well as flushing and televising charges and any and all charges involved in the acceptance and dedication of such facili-

ties by the Authority, less the amount which would be chargeable to such property owner based upon the Authority's collection and distribution tapping fees which would be applicable to all lands of the property owner served directly or indirectly through such extensions if the property owner did not fund the extension.

(5) An Authority shall be required to notify by certified mail, to their last known address, the property owner or owners for whose benefit such reimbursement shall apply within thirty days of the Authority's receipt of any such reimbursement payment. In the event that the property owner or owners have not claimed a reimbursement payment within one hundred twenty days of the mailing of the notice, the payment shall revert to and become the sole property of the Authority with no further obligation on the part of the Authority to refund the payment to the property owner or owners.

(z.2) Whenever a sewer system or water system or any part or extension thereof owned by an Authority has been constructed by the Authority at the expense of a private person or corporation or has been constructed by a private person or corporation under the supervision of the Authority at the expense of the private person or corporation, the Authority shall have the right to charge a tapping fee and refund said tapping fee or any part thereof to the person or corporation who has paid for the construction of said sewer or water system or any part or extension thereof.

Section 2. Notwithstanding section 4 of this act, this act shall apply immediately to any connection, customer facilities, tapping or similar fees which are increased or initially imposed subsequent to the date of final enactment.

Section 3. This act shall not affect any existing agreement which relates to the subject matter of this act. The provisions of section 4 B (z.1) of the act shall be applicable to any agreement for extension of a sewer or water system of an Authority entered into after the effective date of this act.

Section 4. This act shall take effect in 180 days.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY