

No. 1996-102

AN ACT

SB 1600

Amending the act of May 12, 1911 (P.L.295, No.187), entitled "A supplement to an act, entitled 'An act for the government of cities of the second class,' approved the seventh day of March, Anno Domini one thousand nine hundred and one; providing for the levy, collection, and disbursement of taxes and water-rents, or rates, and conferring certain powers and duties in reference thereto upon the city treasurer, the board of water assessors, and the collector of delinquent taxes; and repealing certain acts relating to matters herein provided for," further providing for a restriction on taxing power; providing for land use appeals; further providing for removal of archaic laws; and making repeals.

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

Section 1. Section 2 of the act of May 12, 1911 (P.L.295, No.187), entitled "A supplement to an act, entitled 'An act for the government of cities of the second class,' approved the seventh day of March, Anno Domini one thousand nine hundred and one; providing for the levy, collection, and disbursement of taxes and water-rents, or rates, and conferring certain powers and duties in reference thereto upon the city treasurer, the board of water assessors, and the collector of delinquent taxes; and repealing certain acts relating to matters herein provided for," is amended to read:

Section 2. (a) The councils of said cities of the second class shall be, and they are hereby, authorized, empowered, and directed to fix the amounts of money which will be required to defray all the various expenses necessary for conducting the various departments, and also to fix the amounts of money necessary for the payment of the interest and principal upon the indebtedness of said cities, and the separate indebtedness of any portion or division thereof, and for all other municipal purposes; and said councils are hereby authorized, empowered, and directed, annually, to cause a tax sufficient for all of said purposes to be levied and collected out of the estate, real and personal, subject to taxation within said cities.

(b) *A city of the second class shall have no power to impose, levy or collect a business privilege tax, mercantile license tax or any tax on or measured by gross receipts of any regulated financial services institution. A regulated financial services institution is:*

(1) *an entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972"; or*

(2) *an entity that is affiliated with a broker/dealer described in clause (1) to the extent that the entity provides investment fund-related*

management or administrative services. Administrative services include fund administration and compliance services; transfer agency services; shareholder services; custodial services; clearing services; fund, portfolio and participant accounting services; and computer processing, programming, systems development and maintenance and other systems-related and consulting services. Management services include fund asset management and investment advisory services. Investment funds include investment companies registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.); individually managed investment portfolios; and assets maintained under employe welfare or benefit plans, whether or not such plans are qualified under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). An entity is affiliated with a broker/dealer if the entity is, directly or indirectly, in control of, controlled by or under common control with the broker/dealer. Control shall mean ownership greater than fifty per centum.

Section 2. The act is amended by adding a section to read:

Section 9. (a) The procedure set forth in this section shall, notwithstanding any other provision of law, constitute the exclusive mode for securing review of any land use decision rendered pursuant to this act, the act of March 31, 1927 (P.L.98, No.69), referred to as the Second Class City Zoning Law, or a local ordinance.

(b) All appeals from all land use decisions rendered pursuant to this act, the Second Class City Zoning Law or a local ordinance shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within thirty days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order).

(c) Land use appeals shall be entered as of course by the prothonotary or clerk upon the filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(d) Upon filing of a land use appeal, the prothonotary or clerk shall forthwith as of course send to the governing body, board or agency whose decision or action has been appealed, by registered mail, the copy of the land use appeal notice, together with a writ of certiorari commanding said governing body, board or agency, within twenty days after receipt thereof, to certify to the court its entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency at the time it received the writ of certiorari.

(e) If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the land use appeal is filed, shall serve a true copy of the land use appeal notice by mailing said notice to the landowner or his attorney at his last known address. For identification of such landowner,

the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

(f) Except in the event of an appeal by the municipality, the filing of an appeal in court under this article shall not stay the action appealed from, but the appellant may petition the court having jurisdiction of land use appeals for a stay. If the appellant is a person who is seeking to prevent a use or development of the land of another, whether or not a stay is sought by him, the landowner whose use or development is in question may, except in the event of an appeal by the municipality, petition the court to order the appellant to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowner to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The municipality shall not be required to post a bond. The right to petition the court to order the appellant to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The amount of the bond shall be no more than two thousand dollars. An order denying a petition for bond shall be interlocutory. An order directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the court dismissing a land use appeal for refusal to post a bond, such responding party, upon motion of petitioner and after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

(g) Within the thirty days first following notice to the city solicitor of the filing of a land use appeal, if the appeal is from a board or agency of a municipality, the municipality and any owner or tenant of property directly involved in the action appealed from may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same, upon each appellant or each appellant's counsel of record. All other intervention shall be governed by the Pennsylvania Rules of Civil Procedure.

Section 3. The city legal department shall review all laws relating to cities of the second class. The city shall report the findings of its review within six months of the effective date of this section to the Local Government Commission and the chairman and minority chairman of the Urban Affairs Committee of the House of Representatives, who shall draft and introduce legislation to be enacted removing any outdated or irrelevant portions.

Section 4. (a) The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, is repealed insofar as it is inconsistent with this act.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect on January 1, 1997.

APPROVED—The 11th day of July, A.D. 1996.

THOMAS J. RIDGE