

No. 2006-157

AN ACT

HB 881

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," further defining "agricultural building"; further providing for administration and enforcement, for applications and inspections, for changes in Uniform Construction Code, for appeals, for education and training programs and for exemptions.

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

Section 1. The definition of "agricultural building" in section 103 of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, amended July 15, 2004 (P.L.748, No.92), is amended to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Agricultural building." A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals **[and]**, a milk house *and a structure used to grow mushrooms*. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public.

* * *

Section 2. Section 501(a), (a.1) and (c) of the act, amended or added February 19, 2004 (P.L.141, No.13) and July 15, 2004 (P.L.748, No.92), are amended, the section is amended by adding a subsection and subsection (b) is carried without amendment to read:

Section 501. Administration and enforcement.

(a) Adoption of ordinance.—

(1) In order to administer and enforce the provisions of this act, municipalities shall enact an ordinance concurrently adopting the current Uniform Construction Code as their municipal building code and the current International Fuel Gas Code *for the purposes described in section 102*. Municipalities may adopt the Uniform Construction Code and incorporated codes and the International Fuel Gas Code by reference.

(2) Municipalities shall have 90 days after the promulgation of regulations under section 301 [or 304] to adopt such an ordinance. Municipalities shall notify the department of the adoption of such an ordinance within 30 days. A municipality may adopt such an ordinance at any time thereafter, upon giving the department 180 days' notice of its intention to adopt such ordinance.

(a.1) Counties of the second class.—Notwithstanding the provisions of subsection (a), a municipality located within a county of the second class shall not administer and enforce plumbing code provisions of an ordinance adopting the Uniform Construction Code and incorporated codes for the purposes of section [302(a)] 102. A county of the second class that has adopted a plumbing code and accompanying rules and regulations pursuant to the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law, shall retain the authority to promulgate and enforce such plumbing code and to make such changes as it deems necessary, provided that such changes meet the minimum requirements as defined in the Uniform Construction Code.

(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.

(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.

(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).

(4) By entering into a contract with the proper authorities of another municipality for the administration and enforcement of this act. When such a contract has been entered into, the municipal code official shall have all the powers and authority conferred by law in the municipality which has contracted to secure such services.

(5) By entering into an agreement with the department for plan reviews, inspections and enforcement of structures other than one-family or two-family dwelling units and utility and miscellaneous use structures.

(c) Board of appeals.—

(1) A municipality which has adopted an ordinance for the administration and enforcement of this act or municipalities which are parties to an agreement for the joint administration and enforcement of this act shall establish a board of appeals as provided by Chapter 1 of the 1999 BOCA National Building Code, Fourteenth Edition, to hear appeals from decisions of the code administrator. Members of the municipality's governing body may not serve as members of the board of appeals.

(2) An application for appeal shall be based on a claim that the true intent of this act or regulations legally adopted under this act have been incorrectly interpreted, the provisions of this act do not fully apply or an equivalent form of construction is to be used.

(3) When a municipality cannot find persons to serve on a board of appeals who meet the minimum qualifications of Chapter 1 of the BOCA National Building Code, the municipality may fill a position on the board with a qualified person who resides outside of the municipality.

(4) The fee for an appeal to the Board of Appeals for a municipality that is administering and enforcing this act shall not exceed actual costs of the public notice of the hearing, appearance fee for the court reporter and administrative fees as necessary.

(5) In the case of an appeal or request for variance or extension of time involving the construction of a one-family or two-family residential building, the board of appeals shall convene a hearing within 30 days of the appeal. The Board of Appeals shall render a written decision to the parties within five business days, or within ten business days in cities of the first class, of the last hearing. If the board of appeals fails to act within the time period under this paragraph, the appeal shall be deemed granted.

* * *

(h) Interpretation of Uniform Construction Code.—In interpreting a provision of a code adopted by regulation of the department as part of the Uniform Construction Code, a construction code official, a board of appeal and a court shall consider and may rely upon relevant written interpretations of the ICC or any organization whose referenced standard is relevant and listed in the Uniform Construction Code, or the regulations promulgated under this act or any municipal construction code ordinance.

Section 3. Section 502 of the act is amended to read:

Section 502. Consideration of applications and inspections.

(a) Applications for [construction] permits ***and inspections.***—

(1) Every application for a construction permit for one-family and two-family dwelling units and utility and miscellaneous use structures shall be granted or denied, in whole or in part, within 15 business days of the filing date[.] ***or, if the drawings have been prepared by design professionals who are licensed or registered under the laws and regulations of this Commonwealth and the application contains a certification by the licensed or registered design professional that the plans meet the applicable standards of the Uniform Construction Code and ordinance as appropriate, within five business days of the filing date. Every application for a certificate of occupancy for one-family and two-family dwelling units and miscellaneous use structures shall be granted or denied, in whole or in part, within five business days, or within ten business days in cities of the first class, after receipt of a final inspection report indicates compliance with the Uniform Construction***

Code and ordinance as appropriate. All other construction permits shall be granted or denied, in whole or in part, within 30 business days of the filing date. Municipalities may establish different time limits to consider applications for construction permits in historic districts. ***A code administrator shall review a construction plan of a building permit application upon submission and shall issue a notice of construction plan approval on a building permit application within the periods set forth in this section if the construction plans comply with the Construction Code Act and any other applicable municipal construction code ordinance. The municipality shall also provide a list of all other required permits necessary prior to issuance of the building permit. The municipality will not be liable for the completeness of any list. When a construction plan has been approved, a code administrator shall issue a building permit immediately upon receipt of all other required permits or approvals related to the construction. All revisions or changes to construction plans so approved under this subsection shall necessitate an additional plan review prior to the issuing of the building permit.***

(2) If an application is denied in whole or in part, the code administrator shall set forth the reasons in writing[.], ***identifying the elements of the application which are not in compliance with the relevant provisions of the Uniform Construction Code and ordinance as appropriate and providing a citation to the relevant provisions of the Uniform Construction Code and ordinance as appropriate.***

(3) If the code administrator fails to act on an application for a construction permit for one-family and two-family dwelling units and utility and miscellaneous use structures within the time prescribed, the application shall be deemed approved. The time limits established in this section for permit applications other than one-family and two-family dwellings may be extended upon agreement in writing between the applicant and the municipality for a specific number of additional days.

(a.1) Exceptions.—A permit is not required for the installation, alteration or repair of generation, transmission, distribution, metering or other related equipment under the ownership or control of public service agencies.

(b) Highway occupancy permit.—

(1) No building permit shall be issued for any property which will require access to a highway under the jurisdiction of the Department of Transportation unless the permit contains a notice that a highway occupancy permit is required pursuant to section 420 of the act of June 1, 1945 (P.L.1242, No.428), known as the State Highway Law, before driveway access to a State highway is permitted.

(2) The Department of Transportation shall, within 60 days of the date of receipt of an application for a highway occupancy permit:

- (i) approve the permit;
- (ii) deny the permit;

(iii) return the application for additional information or correction to conform with regulations of the Department of Transportation; or

(iv) determine that no permit is required, in which case the Department of Transportation shall notify the municipality and applicant in writing.

(3) (i) If the Department of Transportation fails to take any action within the 60-day period, the permit shall be deemed to be issued. The permit shall be marked to indicate that access to the State highway shall be only as authorized by a highway occupancy permit.

(ii) Notwithstanding the provisions of subparagraph (i), if the highway occupancy permit requires a determination by the United States Department of Transportation, the Pennsylvania Department of Transportation shall have 60 days from the receipt of the determination to take action on the permit or the permit shall be deemed to be issued.

(4) (i) Neither the Department of Transportation nor any municipality to which permit-issuing authority has been delegated under section 420 of the State Highway Law shall be liable in damages for any injury to persons or property arising out of the issuance or denial of a driveway permit or for failure to regulate any driveway.

(ii) The municipality from which the building permit approval has been requested shall not be held liable for damages to persons or property arising out of the issuance or denial of a driveway permit by the Department of Transportation.

(c) Financial interest prohibited.—A code administrator shall not review or approve any plans for or construction of any building or structure in which the code administrator has any financial interest.

Section 4. Section 503(c), (f) and (j) of the act, amended July 15, 2004 (P.L.748, No.92), are amended to read:

Section 503. Changes in Uniform Construction Code.

* * *

(c) Modification of minimum requirement.—Subject to the provisions of this act, the municipal governing body may propose and enact an ordinance to equal or exceed the minimum requirements of the Uniform Construction Code under the law governing the adoption of ordinances in that jurisdiction.

An ordinance under this subsection shall not be effective nor enforceable unless subsections (d), (e), (f), (g), (h) and (i) have been satisfied.

Municipalities may enact ordinances pursuant to this section which adopt additional code requirements for alterations or repairs to residential buildings. Municipalities may enact ordinances pursuant to this section which adopt stricter code requirements than required by this act for the regulation of utility and miscellaneous use structures.

* * *

(f) Filing of proposed ***notice and*** ordinance with department.—The municipality shall ***provide notice and*** file a copy of the proposed ordinance with the department at least 30 days prior to public hearing. ***The notice shall***

contain the time and place of the public hearing and a summary of the changes proposed by the ordinance, including code sections affected by the changes. The department shall make proposed ordinances available for public inspection *and shall post the notice on its Internet website within seven business days after receipt.*

* * *

(j) Challenge of ordinance.—

(1) Aggrieved parties shall have 30 days from date of enactment of the ordinance to file a written challenge with the department **[and the municipality.] and shall serve a copy of the challenge upon the municipality.** The challenge shall state the reason or reasons for the challenge. A municipal ordinance may not take effect for a period of 35 days following its enactment. If a challenge is filed in writing with the department within 30 days, the department has five business days from the end of the 30-day filing period to notify a municipality of the challenge. There may be no enforcement of the ordinance until a ruling is issued by the secretary or 45 days after the filing date of the last challenge to the ordinance, whichever occurs first.

(2) The department shall review any ordinance which would equal or exceed the minimum requirements of the Uniform Construction Code based on the following standards:

(i) that certain clear and convincing local climatic, geologic, topographic or public health and safety circumstances or conditions justify the exception;

(ii) the exception shall be adequate for the purpose intended and shall meet a standard of performance equal to or greater than that prescribed by the Uniform Construction Code;

(iii) the exception would not diminish or threaten the health, safety and welfare of the public; and

(iv) the exception would not be inconsistent with the legislative findings and purpose described in section 102.

The department shall take into consideration, in rendering the determination, the provision, code development process history, purpose and intent of relevant provisions of the 1999 BOCA National Building Code, Fourteenth Edition, ICC International One and Two Family Dwelling Code, 1998 Edition, or their successor codes.

* * *

Section 5. Section 504 of the act is amended to read:

Section 504. Appeals.

(a) Ruling of secretary.—An appeal of the secretary's ruling may be taken to the appropriate court of common pleas within 30 days of the date of the ruling.

(b) Application for enforcement of ordinance.—Any person aggrieved by the application or enforcement of any provision of an ordinance adopted pursuant to section 503 shall have the right to challenge the validity of the

ordinance in the appropriate court of common pleas. In order to be aggrieved, a person must have a direct, immediate and substantial interest in the application or enforcement of the ordinance. *The appropriate court of common pleas shall determine the validity of the ordinance.*

Section 6. Section 703 of the act, added February 19, 2004 (P.L.141, No.13), is amended to read:

Section 703. Education and training **[program] programs.**

(a) Fee.—Municipalities administering and enforcing this act under section 501(a) and third-party agencies providing services under section 501(e) shall assess a fee of **[\$2] \$4** on each construction or building permit issued under the authority of this act. The fee shall be in addition to any other fee imposed for the permit.

(b) **[Municipal Code Official Training Account] Training accounts.**—There is hereby established within the State Treasury **[a] two** restricted **[account] accounts** which shall be known as the Municipal Code Official Training Account *and the Construction Contractor Training Account.*

(c) Deposit.—Moneys collected as authorized under subsection (a) shall be transmitted quarterly to the State Treasury and shall be *equally divided and* deposited in the **[account] accounts established in subsection (b).** Moneys so deposited are hereby *equally* appropriated on approval of the Governor to the Department of Community and Economic Development for the purpose of education and training programs provided by the Pennsylvania Construction Codes Academy for municipal code officials and individuals employed by third-party agencies under contract to a municipality *and to [.] a Pennsylvania-based housing research center located at a land grant university for the construction industry. To assure the programs meet the needs of the construction industry, the education, training and other activities provided by such a housing research center shall be approved by its industry advisory committee.*

Section 7. Section 901(b)(1) of the act, amended July 7, 2006 (P.L.1052, No.108), is amended to read:

Section 901. Exemptions.

(b) Religious beliefs.—

(1) An applicant for a construction permit for a dwelling unit or one-room schoolhouse utilized by a member or members of a recognized religious sect may file an application with a code administrator to be exempted from the Uniform Construction Code, as provided in this subsection, which conflicts with the applicant's religious beliefs. The application shall state the manner in which the provision conflicts with the applicant's religious beliefs and shall include an affidavit by the applicant stating that:

(i) the applicant is a member of a recognized religious sect;

(ii) the religious sect has established tenets or teachings which conflict with:

(A) an electrical provision of the Uniform Construction Code;

(B) a lumber or wood provision, not relating to pressure treatment, of the Uniform Construction Code[.]; *or*

(C) a plumbing provision of the Uniform Construction Code.

(iii) the applicant adheres to the established tenets or teachings of the sect;

(iv) in the case of a dwelling unit, the dwelling unit will be used solely as a residence for the applicant and the applicant's household; and

(v) in the case of a one-room schoolhouse, the one-room schoolhouse will be used solely by members of the religious sect.

* * *

Section 8.. This act shall take effect January 1, 2007.

APPROVED—The 29th day of November, A.D. 2006.

EDWARD G. RENDELL