

2003 Act 57

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none rule county shall have powers for the inspection and repair of sewer facilities comparable to the powers of health officials under section 3007 of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code.
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(24) To charge enumerated fees to property owners who desire to or are required to connect to the authority's sewer or water system. Fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment and shall be payable at the time of application for connection or at a time to which the property owner and the authority agree. In the case of projects to serve existing development, fees shall be payable at a time to be determined by the authority. An authority may require that no capacity be guaranteed for a property owner until the tapping fees have 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 under paragraphs (21) and (22) as well as any other user charges imposed by the authority under paragraph (9) [but], except that no reservation of capacity fee or other similar charge shall be imposed or collected from a property owner who has applied for service unless the charge is based on debt and fixed operating expenses. A reservation of capacity fee or other similar charge may not exceed 60% of the average sanitary sewer bill for a residential customer in the same sewer service area for the same billing period. Any authority opting to collect a reservation of capacity fee or other similar charge may not collect the tapping fee until the time as the building permit fee is due. Tapping fees shall not include costs included in the calculation of [such] any other fees[.], assessments, rates or other charges imposed under this act.

(i) The fees may include any of the following [fee components] if they are separately set forth in a resolution adopted by the authority [to establish these fees]:

(A) Connection fee. [It may] A connection fee 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 connected. The authority may also base the connection fee upon an average cost for previously installed connections of similar type and size. Such average cost may be trended to current cost using published cost indexes. In lieu of payment of the [fees] fee, an authority may require the construction [and dedication] of those facilities by the property owner who requested the connection.

(B) Customer facilities fee. [It may] A customer

facilities fee 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 if the authority installs the customer facilities. In lieu of payment of the customer facilities fee, an authority may require the construction of those facilities by the property owner who requests 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 water meter. If 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 a meter at its own cost and expense. If the property is supplied with water from the facilities of a public water supply agency, the authority shall not install a meter without the consent and approval of the public water supply agency.

(C) Tapping fee. [It may] **A tapping fee shall** not exceed an amount based upon some or all of the following [fee components if they are] **parts which shall be** separately set forth in the resolution adopted by the authority to establish these fees. In lieu of payment of this 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.

(I) Capacity part. The [fee may] **capacity part shall** not exceed an amount that is based upon the cost of capacity-related 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. [Facilities] **Except as specifically provided in this paragraph, such facilities** may include **only** those that provide existing service [or will provide future service]. The cost of [existing] **capacity-related** facilities, excluding facilities contributed to the authority by any person, government or agency, **or portions of facilities paid for with contributions or grants other than tapping fees,** 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] **debt** financing such facilities. [In the case of existing facilities, outstanding] To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of current replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost[, but debt may not be subtracted which is attributable] except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. [Under all cost approaches, the cost of capacity-related facilities shall be reduced by the amount of grants or capital contributions which have financed them. The capacity part of the tapping fee per unit of capacity required by the new customer may not exceed the cost of the facilities divided by the design capacity.] The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The capacity part of the tapping fee per unit of design capacity of said facilities required by the new customer shall not exceed the total cost of the facilities as described herein divided by the system design capacity of all such facilities. Where the cost of facilities to be constructed or acquired in the future are included in the calculation of the capacity part as permitted herein, the total cost of the facilities shall be divided by the system design capacity plus the additional capacity to be provided by the facilities to be constructed or

acquired in the future. An authority may allocate its capacity-related facilities to different sections or districts of its system and may impose additional capacity-related tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers. [In the case of] The cost of facilities to be constructed or acquired[, the] in the future that will increase the system design capacity may be included in the calculation of the capacity part, subject to the provisions of clause (VI). The cost of such facilities shall not exceed their reasonable estimated cost set forth in a duly adopted annual budget or a five-year capital improvement plan[, and the authority in furtherance of the facilities must take any action as follows:]. The authority shall have taken at least two of the following actions toward construction of the facilities:

- (a) [obtain] obtained financing for the facilities;
- (b) [enter] 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 the facilities;
- (c) [obtain] obtained a permit for the facilities;
- (d) [spend substantial sums or resources in furtherance of the facilities;] obtained title to or condemned additional real estate upon which the facilities will be constructed;
- (e) [enter] entered into a contract obligating the authority to purchase or acquire facilities owned by another;
- (f) [prepare] prepared an engineering feasibility study specifically related to the facilities, which study recommends the construction of the facilities within a five-year period; [or]
- (g) [enter] entered into a contract for the design or construction of the facilities[.] or adopted a budget which includes the use of in-house resources for the design or construction of the facilities.

(TT) Distribution or collection part. The

(II) Distribution or collection part. The [fee] **distribution or collection part** 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. Facilities may **only** include those that provide existing service [or those that will provide future service]. The cost of [existing] **distribution or collections** facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, 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] debt financing such facilities. To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. [In the case of existing facilities, outstanding] Outstanding debt related to the facilities shall be subtracted from the cost[, but debt may not be subtracted which is attributable] except when calculating the initial tapping fee imposed for connection to facilities exclusively serving new customers. [In the case of facilities to be constructed or acquired, the cost shall not exceed their reasonable estimated cost. Under all cost approaches, the cost of distribution or collection facilities shall be reduced by the amount of grants or capital contributions which have financed them.] The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt

related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The distribution or collection part of the tapping fee per unit of design capacity of said facilities required by the new customer [may] shall not exceed the cost of the facilities divided by the design capacity. An authority may allocate its distribution-related or collection-related facilities to different sections or districts of its system and may impose additional distribution-related or collection-related tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers.

(III) Special purpose part. [Fees] A part for special purpose facilities shall be applicable only to a particular group of customers or for serving a particular purpose or a specific area based upon the cost of the facilities, including, but not limited to, booster pump stations, fire service facilities, **water or sewer mains, pumping stations** and industrial wastewater treatment facilities. [Facilities] Such facilities may include only those that provide existing service [or those that will provide future service]. The cost of [existing] special purpose facilities, excluding facilities contributed to the authority by any person, government or agency, or portions of facilities paid for with contributions or grants other than tapping fees, 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] debt financing such facilities. [In the case of existing facilities, outstanding] To the extent that historical cost is not ascertainable, tapping fees may be based upon an engineer's reasonable written estimate of current replacement cost. Such written estimate shall be based upon and include an itemized listing of those components of the actual facilities for which historical cost is not ascertainable. Outstanding debt related to the facilities shall be subtracted from the cost[, but debt may not be subtracted which is attributable] except when calculating the initial tapping fee imposed for

connection to facilities exclusively serving new customers. [In the case of facilities to be constructed or acquired, the cost shall not exceed their reasonable estimated cost. Under all cost approaches, the cost of special purpose facilities shall be reduced by the amount of grants or capital contributions which have financed such facilities.] The outstanding debt shall be subtracted for all subsequent revisions of the initial tapping fee where the historical cost has been updated to reflect current cost except as specifically provided in this section. For tapping fees or components related to facilities initially serving exclusively new customers, an authority may, no more frequently than annually and without updating the historical cost of or subtracting the outstanding debt related to such facilities, increase such tapping fee by an amount calculated by multiplying the tapping fee by the weighted average interest rate on the debt related to such facilities applicable for the period since the fee was initially established or the last increase of the tapping fee for such facilities. The special purpose part of the tapping fee per unit of design capacity of such special purpose facilities required by the new customer [may] shall not exceed the cost of the facilities as described herein divided by the design capacity of the facilities. Where an authority constructs special purpose facilities at its own expense, the design capacity for the facilities may be expressed in terms of the number of equivalent dwelling units to be served by the facilities. In no event shall an authority continue to collect any tapping fee which includes a special purpose part after special purpose part fees have been imposed on the total number of design capacity units used in the original calculation of the special purpose part. An authority may allocate its special purpose facilities to different sections or districts of its system and may impose additional special purpose tapping fees on specific groups of existing customers such as commercial and industrial customers in conjunction with additional capacity requirements of those customers.

(IV) Reimbursement [component. An amount necessary to recapture the allocable portion of facilities in order to reimburse the property

owner or owners] part. The reimbursement part shall only be applicable to the users of certain specific facilities when a fee required to be collected from such users will be reimbursed to the person at whose expense the facilities were constructed as set forth in [paragraphs (31) and (32).] a written agreement between the authority and such person at whose expense such facilities were constructed.

(V) Calculation of tapping fee [components].

(a) In arriving at the cost to be included in the tapping fee [components], the same cost [may] shall not be included in more than one part of the tapping fee.

(b) No tapping fee may be based upon or include the cost of expanding, replacing, updating or upgrading facilities serving only 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.

(c) The cost used in calculating tapping fees shall not include maintenance and operation expenses.

(d) As used in this subclause, "maintenance and operation expenses" are those expenditures made during the useful life of a sewer or water system for labor, materials, utilities, equipment accessories, 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. Costs or expenses to reduce or eliminate groundwater infiltration or inflow may not be included in the cost of facilities used to calculate tapping fees unless these costs or expenses result in an increase in system design capacity.

(e) Except as otherwise provided for the calculation of a special purpose part, the design capacity required by a new residential customer used in calculating sewer or water tapping fees shall not exceed an amount established by multiplying 65 gallons per capita per day for water capacity, 90 gallons per capita per day for sewer capacity times the average number of persons per household as established by the most recent census data provided by the United States Census Bureau.

If an authority service area is entirely within a municipal boundary for which there is corresponding census data specifying the average number of persons per household, issued by the United States Census Bureau, the average shall be used. If an authority service area is not entirely within a municipal boundary but is entirely within a county or other geographic area within Pennsylvania for which the United States Census Bureau has provided the average number of persons per household, then that average for the county or geographic area shall be used. If an authority service area is not entirely within a municipal, county or other geographic area within Pennsylvania for which the United States Census Bureau has calculated an average number of persons per household, then the Pennsylvania average number of persons per household shall be used as published by the United States Census Bureau. Alternatively, the design capacity required for a new residential customer shall be determined by a study but shall not exceed:

(i) for water capacity, the average residential water consumption per residential customer, or, for sewage capacity, the average residential water consumption per residential customer plus ten percent. The average residential water consumption shall be determined by dividing the total water consumption for all metered residential customers in the authority's service area over at least a 12-consecutive-month period within the most recent five years by the average number of customers during the period; or

(ii) for sewer capacity, the average sewage flow per residential customer determined by a measured sewage flow study. Such study shall be completed in accordance with sound engineering practices within the most recent five years for the lesser of three or all residential subdivisions of more than ten lots which have collection systems in good repair and which connected to the authority's facilities within the most recent five years. The study shall

recent five years. The study shall calculate the average sewage flow per residential customer in such developments by measuring actual sewage flows over at least 12 consecutive months at the points where such developments connected to the authority's sewer main.

(iii) All data and other information considered or obtained by an authority in connection with determining capacity under this subsection shall be made available to the public upon request.

(iv) If any person required to pay a tapping fee submits to the authority an opinion from a professional engineer that challenges the validity of the results of the calculation of design capacity required to serve new residential customers prepared under subparagraph (i) or (ii), the authority shall within 30 days obtain a written certification from another professional engineer, who is not an employee of the authority, verifying that the results and the calculations, methodology and measurement were performed in accordance with this title and generally accepted engineering practices. If an authority does not obtain a certification required under this subsection within 30 days of receiving such challenge, the authority may not impose or collect tapping fees based on any such challenged calculations or study until such engineering certification is obtained.

(f) An authority may use lower design capacity requirements and impose lower tapping fees for multifamily residential dwellings than imposed on other types of residential customers.

(VI) Separate accounting for future facility costs. Any portion of tapping fees collected which, based on facilities to be constructed or acquired in the future in accordance with this section, shall be separately accounted for and shall be expended only for that particular facility or a substitute facility accomplishing the same purpose which is commenced within the same period. Such accounting shall include, but not be limited to, the total fees collected as a

result of including facilities to be constructed in the future, the source of the fees collected and the amount of fees expended on specific facilities. The proportionate share of tapping fees based upon facilities to be constructed or acquired in the future under this section shall be refunded to the payor of such fees within 90 days of the occurrence of the following:

(a) the authority abandons its plan or a part thereof to construct or acquire a facility or facilities which are the basis for such fee; or

(b) the facilities have not been placed into service within seven years, or, for an authority which provides service to five or more municipalities, the facilities have not been placed into service within 15 years, after adoption of a resolution which imposes tapping fees which are based upon facilities to be constructed or acquired in the future. Any refund of fees held for 15 years shall include interest for the period the money was held.

(VII) Definitions. As used in this clause, the following words and phrases shall have the meanings given to them in this subclause:

"BOD5." The five-day biochemical-oxygen demand.

"Design capacity." For residential customers, the permitted or rated capacity of facilities expressed in million gallons per day. For nonresidential customers, design capacity may also be expressed in pounds of BOD5 per day, pounds of suspended solids per day or any other capacity-defining parameter that is separately and specifically set forth in the permit governing the operation of the system and based upon its original design as modified by those regulatory agencies having jurisdiction over these facilities. Additionally, for separate fire service customers, the permitted or rated capacity of fire service facilities may be expressed in peak flows. The units of measurement used to express design capacity shall be the same units of measurement used to express the system design capacity. Except as otherwise provided for special purpose facilities, design capacity may not be expressed in terms of equivalent dwelling units.

"Outstanding debt." The principal amount

outstanding of any bonds, notes, loans or other form of indebtedness used to finance or refinance facilities included in the tapping fee.

"Service line." A water or sewer line that directly connects a single building or structure to a distribution or collection facility.

"System design capacity." The design capacity of the system for which the tapping fee is being calculated which represents the total design capacity of the treatment facility or water sources.

(ii) Every authority charging a tapping, customer facilities or connection fee shall do so **only pursuant to a resolution adopted** at a public meeting of the authority. The authority shall have available for public inspection a detailed itemization of all calculations, clearly showing the **maximum fees allowable for each part of the tapping fee** and the manner in which the fees were determined[.], which shall be made a part of any **resolution imposing such fees**. A [revised] tapping, customer facilities or connection fee may be **revised and imposed** upon those who subsequently connect to the system[.], **subject to the provisions and limitations of the act**.

(iii) No authority **[may] shall have the power to** impose a connection fee, customer facilities fee, tapping fee or similar fee except as provided specifically under this section.

(iv) A municipality or municipal authority with available excess sewage capacity, wishing to sell a portion of that capacity to another municipality or municipal authority, may not charge a higher cost for the capacity portion of the tapping fee as the selling entity charges to its customers for the capacity portion of the tapping fee. In turn, the municipality or municipal authority buying this excess capacity may not charge a higher cost for the capacity portion of the tapping fee to its residential customers than that charged to them by the selling entity.

(v) As used in this paragraph, the term "residential customer" shall also include those developing property for residential dwellings that require multiple tapping fee permits. This paragraph shall not be applicable to intermunicipal or interauthority agreements relative to the purchase of excess capacity by an authority or municipality in effect prior to February 20, 2001.

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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, [to allow] 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 [may] **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 [may] **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 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 days after the mailing date of such decision.

(ii) If, within 30 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, 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 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 days of the billing date. The property owner shall be required to pay the entire amount determined in the decision immediately.

(iv) In the event that the authority and property owner cannot agree upon the professional to be appointed within 30 days of the billing date, 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.

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[(32) If a sewer system or water system or any part or extension owned by an authority has been constructed at the

extension owned by an authority has been constructed at the expense of a private person or corporation, the authority may charge a tapping fee. The authority shall refund the tapping fee or any part of the fee to the person or corporation who paid for the construction of the sewer or water system or any part or extension of it.]

(33) Provisions of paragraphs (30)[,] and (31) [and (32)] shall apply to residential customers in a municipality where the sewer service is being purchased by the municipality or sewer authority from another municipality or sewer authority having excess sewage capacity.

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Section 2. Notwithstanding section 5(1) 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 effective date of this section.

Section 3. Notwithstanding section 5(1) of this act, the mandatory refund provisions of 53 Pa.C.S. § 5607(d)(24)(i)(C)(VI) applicable to tapping fees based upon facilities to be constructed or acquired in the future shall apply to tapping fees collected subsequent to the effective date of this section regardless of when the resolution adopting such tapping fees was adopted.

Section 4. The following shall apply:

(1) The provisions of 53 Pa.C.S. § 5607(d)(24)(i)(C)(I) and (V)(e) shall not apply for a period of 15 years after the effective date of this section to sewer tapping fees imposed by a joint authority having six or more municipal members which is prohibited from implementing any increase in sewer user fees pursuant to the terms of a contract executed prior to January 1, 2003.

(2) The provisions of 53 Pa.C.S. § 5607(d)(24)(i)(C)(V)(e) shall not apply for a period of five years after the date of closing of original financing when an authority, in order to support the construction of new facilities, used original financing which closed on or before July 1, 2003, which has a term of at least 15 years and in which tapping fees were relied upon to support the debt service on the financing.

Section 5. This act shall take effect as follows:

(1) The amendment of 53 Pa.C.S. § 5607(d)(24), (30), (32) and (33) shall take effect in 18 months.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 30th day of December, A. D. 2003.

EDWARD G. RENDELL

