
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1525

Session of
1985

INTRODUCED BY KUKOVICH, COHEN, HALUSKA, COWELL, ANGSTADT,
BELFANTI, MRKONIC, MICHLOVIC, GALLAGHER, PRESTON, FREEMAN,
BATTISTO, HARPER, TIGUE, BLAUM, MORRIS, KOSINSKI, FATTAH,
BELARDI, MAIALE, HOWLETT, PISTELLA, CAPPABIANCA, PERZEL,
STABACK, RICHARDSON, FOX AND CARN, JUNE 27, 1985

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 27, 1985

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, further providing for the terms of
3 office and appointment of public utility commissioners; and
4 providing for retention election of appointed commissioners.

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

7 Section 1. Section 301(a) of Title 66 of the Pennsylvania
8 Consolidated Statutes is amended and the section is amended by
9 adding subsections to read:

10 § 301. Establishment, members, qualifications and chairman.

11 (a) Appointment and terms of members.--The Pennsylvania
12 Public Utility Commission, established by the act of March 31,
13 1937 (P.L.160, No.43), as an independent administrative
14 commission, is hereby continued as such and shall consist of
15 five members who shall be appointed by the Governor, by and with
16 the advice and consent of two-thirds of all the members of the
17 Senate, for a term of [ten] four years. No commissioner upon the

1 expiration of his term shall continue to hold office until his
2 successor shall be duly appointed or shall be qualified.

3 * * *

4 (h) Existing terms commuted.--Effective December 31, 1985,
5 or as soon thereafter as a successor is confirmed but in no
6 event after March 31, 1986, the existing terms of office of
7 commissioner are commuted.

8 (i) Two terms.--Effective January 1, 1986, two terms of
9 office of Public Utility Commissioner are constituted for terms
10 which expire March 31, 1987.

11 (j) Three terms.--Effective January 1, 1986, three terms of
12 office of Public Utility Commissioner are constituted for terms
13 which expire March 31, 1989.

14 (k) Terms to be four years.--Four-year terms shall
15 immediately commence upon the expiration of the terms specified
16 in subsections (i) and (j), and thereafter.

17 (l) Appointments after January 1, 1986.--Appointments to the
18 commission, for terms of office beginning on and after January
19 1, 1986, shall be by the Governor, by and with the advice and
20 consent of two-thirds of all members of the Senate.

21 Section 2. Title 66 is amended by adding sections to read:
22 § 301.1. Retention.

23 (a) Commissioners to elect.--In the course of a Statewide
24 election in the year preceding the expiration of a term of
25 public utility commissioner, each commissioner must elect, or
26 not, to stand for retention to a succeeding term of office. If
27 retained, the commissioner will continue in office for the
28 subsequent term. If rejected, the commissioner will vacate the
29 term of public utility commissioner effective March 31 in the
30 year scheduled.

1 (b) Nonretention.--In the event a commissioner is not
2 retained, either by election not to stand for retention or by
3 rejection, the Governor shall nominate a successor to the
4 position no later than February 1 of the year in which the
5 vacancy is scheduled to occur.

6 (c) Election Code to control.--The retention election shall
7 be governed by the act of June 3, 1937 (P.L.1333, No.320), known
8 as the Pennsylvania Election Code.

9 § 301.2. Utility commissioner retention committee.

10 (a) Committee to be established.--The General Assembly shall
11 establish a utility commissioner retention committee composed of
12 the majority leaders of the Senate and House of Representatives
13 and the minority leaders of the Senate and House of
14 Representatives. Members of the committee shall be reimbursed
15 for personal expenses incurred conducting the committee's
16 duties. Those duties shall be to verify the commissioners'
17 eligibility for public funds and expenditure of those funds.

18 (b) Contributions.--Every State income tax form and every
19 utility bill shall contain a provision permitting persons to
20 contribute \$1 for the campaign costs of commissioners seeking
21 retention. Revenues accrued in this manner shall be placed into
22 a special fund in the State Treasury to be administered by the
23 Department of Revenue.

24 (c) Information to be supplied.--Any commissioner seeking
25 money from the special fund shall submit such information
26 concerning his campaign and election expenditures as the
27 committee shall require. The amount disbursed from the special
28 fund to any one commissioner shall not exceed \$25,000.

29 (d) Contributions limited.--No candidate for retention as a
30 public utility commissioner shall accept contributions, gifts,

loans or in kind services from any individual, employee or representative of a utility, or public political action committee of a public utility. No candidate for retention as a public utility commissioner shall accept donations of more than \$100 from any person or political action committee. No candidate for retention as a public utility commissioner shall spend more than \$50,000 for the retention election campaign. The proven violation of these prohibitions shall be an impeachable offense.

(e) Remaining funds.--Moneys remaining in the special fund at the close of election shall be reserved for subsequent retention elections and shall be placed in an interest-bearing account.

§ 301.3. Director of Regulatory Affairs.

(a) Office constituted.--Effective January 1, 1986, the Office of Director of Regulatory Affairs is constituted.

(b) Appointment and removal.--The Director of Regulatory Affairs shall be appointed by a majority of the commissioners with the consent of a majority of the Senate for a term to run with the term of commissioners established in section 301 (relating to establishment, members, qualifications and chairman). The director may be removed by a majority of the commissioners without Senate action.

(c) General duties.--The director shall perform all duties necessary and proper in the representation of the public interest in all matters before the commission, however initiated.

(d) Budget proposal.--The director shall prepare and submit a budget proposal to the Governor and the chairmen and minority chairmen of the Senate and House Appropriations Committees in such form as they may, from time to time, prescribe, and shall

1 submit the same proposal to the commissioners for consideration
2 and inclusion in the executive budget request of the commission.

3 (e) Appointment of employees and consultants.--The director,
4 with the advice and consent of a majority of the commissioners,
5 may appoint employees and consultants as may be appropriate for
6 the proper representation of the public interest before the
7 commission. The executive director shall make all other
8 decisions regarding employment by the office of executive
9 director, not inconsistent with the act of August 5, 1941
10 (P.L.752, No.286), known as the Civil Service Act, or the
11 appropriate collective bargaining agreement, whichever is
12 applicable. This subsection shall affect any person employed on
13 the effective date of this section.

14 (f) Prosecutorial staff.--The director and all staff and
15 consultants of the director are designated as prosecutorial
16 staff in all matters before the commission and shall refrain
17 from all ex parte communications with the commissioners or any
18 other staff in an advisory or adjudicatory function.

19 (g) Orders of commission to prevail.--The director may not
20 appeal or defend an order of the commission.

21 (h) Offices, divisions and bureaus within office of
22 director.--The following offices, divisions and bureaus
23 constitute the Office of Director of Regulatory Affairs as well
24 as such other offices as from time to time are deemed necessary
25 or appropriate for the office:

26 (1) Bureau of Consumer Services.

27 (2) Bureau of Audits.

28 (3) Bureau of Conservation, Economics and Energy
29 Planning.

30 (4) Bureau of Rates, excluding the tariff section.

1 (5) The Law Bureau, excluding the Office of Counsel and
2 Administration.

3 (6) Bureau of Safety and Compliance.

4 Section 3. Sections 306, 308, 505, 506, 1302 and 1309 of
5 Title 66 are amended to read:

6 § 306. Counsel.

7 The office of chief counsel to the Pennsylvania Public
8 Utility Commission is hereby created. The chief counsel shall be
9 appointed by the commission and hold office at its pleasure. The
10 commission may also from time to time appoint such assistant
11 counsel to the commission as may be required for the proper
12 conduct of its work. Assistant counsel may be removed by the
13 commission only for good cause. The compensation of the counsel
14 shall be fixed by the commission. [In accordance with the
15 multifunction legal staff established in this part, such] Such
16 counsel shall [attend the hearings before the commission or a
17 commissioner, or a special agent or administrative law judge,
18 and conduct the examination of witnesses] assist in the
19 preparation of commission orders and shall represent the
20 commission upon appeals and other hearings in the courts of
21 common pleas and in the Commonwealth and Supreme Courts, or
22 other courts of this Commonwealth, or in any Federal court or
23 agency and in actions instituted to recover penalties and to
24 enforce regulations and orders of the commission. Such counsel
25 shall conduct all mandamus, injunction and quo warranto
26 proceedings at law or in equity, instituted for the enforcement
27 of the regulations and orders of the commission, and shall
28 perform such other professional duties as may be required by the
29 commission.

30 § 308. Bureaus.

(a) Enumeration.--There shall be established within the commission the following bureaus and functions:

(1) [Law Bureau] Office of Special Assistants.

(2) Bureau of Conservation, Economics and Energy Planning.

(3) Bureau of Consumer Services.

(b) [Law Bureau.--The Law Bureau shall be a multifunction legal staff, consisting of a prosecutory function and an advisory function. Prosecutory counsel shall be responsible for and shall assist in the development of, challenge of, and representation on the record of all matters in the public's interest. Advisory counsel shall advise the commission on any and all matters. The counsel shall appear on behalf of the commission in all courts of record and before district magistrates. No counsel shall in the same case or a factually related case perform duties in the prosecutory and advisory functions, if such performance would represent a conflict of interest.] Office of Special Assistants.--The Office of Special Assistants shall advise the commission on all matters in the jurisdiction of the commission.

(c) Bureau of Conservation, Economics and Energy Planning.--The Bureau of Conservation, Economics and Energy Planning shall conduct studies and research all matters within the commission's jurisdiction and advise the commission of the results thereof in order to enable the commission to provide prospective regulation in the best interest of all parties concerned. Such studies and research shall include long range forecasting of energy needs and development; research into the use of new, efficient and economic methods of energy production; the review of the efficiency of the present generating systems operated within

1 this Commonwealth; and the development of an effective program
2 of energy conservation. The commission shall require all
3 electric and gas public utilities subject to its jurisdiction to
4 file with it an annual conservation report which shows the plans
5 and progress achieved on programs of energy conservation. The
6 commission shall, by rule, prescribe guidelines for the form and
7 manner of such annual conservation report which report shall
8 describe the current and proposed programs of each such utility
9 designed to educate and encourage its customers in the optimum,
10 effective and efficient use by them of electric and gas energy.
11 The report shall include an accounting of the monetary and
12 personnel resources actually or proposed to be expended or
13 devoted to and the actual or anticipated results of such
14 programs. The bureau shall review all proposals for electric and
15 gas public utility plant expansion and shall submit for
16 consideration of the commission its findings on what impact, if
17 any, the electric and gas public utility plant expansion will
18 have on rates charged by the public utility.

19 (d) Bureau of Consumer Services.--The Bureau of Consumer
20 Services shall investigate and [have prepared replies to] issue
21 decisions on all informal consumer complaints and shall advise
22 the commission as to the need for formal commission action on
23 any matters brought to its attention by the complaints. Any
24 party may appeal a decision issued by the Bureau of Consumer
25 Services and seek review by the commission. The bureau shall on
26 behalf of the commission keep records of all complaints
27 received, the matter complained of, the utility involved, and
28 the disposition thereof and shall at least annually report to
29 the commission on such matters. The commission may take official
30 notice of all complaints and the nature thereof in any

1 proceeding before the commission in which the utility is a
2 party. The commission shall adopt, publish and generally make
3 available rules by which a consumer may make [informal
4 complaints] complaints and shall advise consumers of their
5 rights and responsibilities in addition to such other
6 information as the commission deems appropriate. The bureau
7 shall also assist and advise the commission on matters of safety
8 compliance by public utilities.

9 (e) Other bureaus.--The commission shall establish such
10 bureau or bureaus to perform such duties as the commission may
11 prescribe regarding all matters respecting rates of public
12 utilities and all matters respecting common carriers and
13 contract carriers. The establishment of these bureaus shall not
14 be construed to prohibit the commission from establishing any
15 additional bureaus which the commission finds necessary to
16 protect the interests of the people of this Commonwealth. The
17 bureaus may perform such other duties not inconsistent with law
18 as the commission may direct.

19 (f) Staff testimony.--Members of the staff of the
20 [commission] Director of Regulatory Affairs shall appear and
21 present testimony in any proceeding before the commission when
22 called by the [commission or any of the parties of the
23 proceeding] director. The commission can direct the director to
24 present testimony on any matter it deems necessary in such
25 proceeding. In addition to any cross-examination by counsel [as
26 provided in section 306 (relating to counsel), any member of the
27 commission staff] for regulatory affairs, any member of the
28 staff of the director who participates in the analysis, review
29 and conclusions in any proceedings before the commission may, in
30 the discretion of [commission] counsel for regulatory affairs

1 and with the consent of the presiding officer, cross-examine any
2 witness presented by the parties to the proceeding at the public
3 hearing.

4 § 505. Duty to furnish information to commission; cooperation
5 in valuing property.

6 Every public utility shall furnish to the commission, or the
7 Director of Regulatory Affairs, from time to time, and as [the
8 commission] either may require, all accounts, inventories,
9 appraisals, valuations, maps, profiles, reports of engineers,
10 books, papers, records, and other documents or memoranda, or
11 copies of any and all of them, in aid of any inspection,
12 examination, inquiry, investigation, or hearing, or in aid of
13 any determination of the value of its property, or any portion
14 thereof, and shall cooperate with the commission and the
15 director in the work of the valuation of its property, or any
16 portion thereof, and shall furnish any and all other information
17 to [the commission, as the commission] either, as either may
18 require, in any inspection, examination, inquiry, investigation,
19 hearing, or determination of such value of its property, or any
20 portion thereof.

21 § 506. Inspection of facilities and records.

22 The commission and the Director of Regulatory Affairs shall
23 have full power and authority, either by or through its members,
24 or duly authorized representatives, whenever it shall deem it
25 necessary or proper in carrying out any of the provisions of, or
26 its duties under this part, to enter upon the premises,
27 buildings, machinery, system, plant, and equipment, and make any
28 inspection, valuation, physical examination, inquiry, or
29 investigation of any and all plant and equipment, facilities,
30 property, and pertinent records, books, papers, accounts, maps,

1 inventories, appraisals, valuations, memoranda, documents, or
2 effects whatsoever, of any public utility, or prepared or kept
3 for it by others, and to hold any hearing for such purposes. In
4 the performance of such duties, the commission and the director
5 may have access to, and use any books, records, or documents in
6 the possession of, any department, board, or commission of the
7 Commonwealth, or any political subdivision thereof.

8 § 1302. Tariffs; filing and inspection.

9 Under such regulations as the commission may prescribe, every
10 public utility shall file with the commission, the Director of
11 Regulatory Affairs and the Office of Consumer Advocate, within
12 such time and in such form as the commission may designate,
13 tariffs showing all rates established by it and collected or
14 enforced, or to be collected or enforced, within the
15 jurisdiction of the commission. The tariffs of any public
16 utility also subject to the jurisdiction of a Federal regulatory
17 body shall correspond, so far as practicable, to the form of
18 those prescribed by such Federal regulatory body. Every public
19 utility shall keep copies of such tariffs open to public
20 inspection under such rules and regulations as the commission
21 may prescribe. One copy of any rate filing shall be made
22 available, at a convenient location and for a reasonable length
23 of time within each of the utilities' service areas, for
24 inspection and study by customers, upon request to the utility.

25 § 1309. Rates fixed on complaint; investigation of costs of
26 production.

27 Whenever the commission, after reasonable notice and hearing,
28 upon its own motion or upon complaint, finds that the existing
29 rates of any public utility for any service are unjust,
30 unreasonable, or in anywise in violation of any provision of

1 law, the commission shall determine the just and reasonable
2 rates, including maximum or minimum rates, to be thereafter
3 observed and in force, and shall fix the same by order to be
4 served upon the public utility, and such rates shall constitute
5 the legal rates of the public utility until changed as provided
6 in this part. Whenever a public utility does not itself produce
7 or generate that which it distributes, transmits, or furnishes
8 to the public for compensation, but obtains the same from
9 another source, the [commission] Director of Regulatory Affairs
10 shall have the power and authority to investigate the cost of
11 such production or generation in any investigation of the
12 reasonableness of the rates of such public utility.

13 Section 4. The chairmen and minority chairmen of the
14 committees of the Senate and the House of Representatives which
15 deal regularly with legislation relating to public utilities
16 shall jointly review the commission each year by holding
17 hearings open to the public, by receiving and reviewing
18 information by subpoena and otherwise and by making a full
19 annual report to the General Assembly.

20 Section 5. This act shall take effect immediately.