

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2523

Session of
1994

INTRODUCED BY GEORGE, SURRA, MIHALICH, VEON, MELIO, FREEMAN,
BLAUM, CESSAR, BUXTON, VAN HORNE, OLASZ, COY, STERN,
FAIRCHILD, MUNDY, STABACK, SATHER, PISTELLA, CLARK, McCALL,
CAPPABIANCA, LAUGHLIN, MERRY, GORDNER, LAUB, THOMAS, KING,
WILLIAMS, PETRARCA, ROONEY, HANNA AND CURRY, FEBRUARY 2, 1994

AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 4, 1994

AN ACT

1 Amending the act of July 13, 1988 (P.L.530, No.94), entitled "An
2 act establishing the Environmental Hearing Board as an
3 independent, quasi-judicial agency; providing for the
4 membership and staff, the powers and duties, the seats and
5 the existing members of the board; transferring certain
6 funds; and making repeals," providing for the Office of
7 Citizen Advocate for the Environment; and making an
8 appropriation.

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

11 Section 1. The title of the act of July 13, 1988 (P.L.530,
12 No.94), known as the Environmental Hearing Board Act, is amended
13 to read:

AN ACT

15 Establishing the Environmental Hearing Board as an independent,
16 quasi-judicial agency; providing for the membership and
17 staff, the powers and duties, the seats and the existing
18 members of the board; providing for the Office of Citizen
19 Advocate for the Environment; transferring certain funds; and

1 making repeals.

2 Section 2. Section 2 of the act is amended by adding
3 definitions to read:

4 Section 2. Definitions.

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

8 "Advocate." The Citizen Advocate for the Environment.

9 * * *

10 "Citizen." A resident of this Commonwealth who is 18 years
11 of age or older.

12 * * *

13 "ENVIRONMENTAL LAWS." INCLUDES THE FOLLOWING:

<—

14 (1) ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS
15 THE CLEAN STREAMS LAW.

16 (2) ACT OF MAY 31, 1945 (P.L.1198, NO.418), KNOWN AS THE
17 SURFACE MINING CONSERVATION AND RECLAMATION ACT.

18 (3) ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787),
19 KNOWN AS THE AIR POLLUTION CONTROL ACT.

20 (4) ACT OF JANUARY 24, 1966 (1965 P.L.1535, NO.537),
21 KNOWN AS THE PENNSYLVANIA SEWAGE FACILITIES ACT.

22 (5) ACT OF NOVEMBER 26, 1978 (P.L.1300, NO.314), KNOWN
23 AS THE UNDERGROUND STORAGE ACT.

24 (6) ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN
25 AS THE DAM SAFETY AND ENCROACHMENTS ACT.

26 (7) ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE
27 SOLID WASTE MANAGEMENT ACT.

28 (8) ACT OF OCTOBER 18, 1988 (P.L.756, NO.108), KNOWN AS
29 THE HAZARDOUS SITES CLEANUP ACT.

30 (9) ANY OTHER STATUTE ADMINISTERED BY THE DEPARTMENT OF

1 ENVIRONMENTAL RESOURCES OR ANY SUCCESSOR TO THE DEPARTMENT.

2 "Office." The Office of Citizen Advocate for the
3 Environment.

4 * * *

5 Section 3. The act is amended by adding sections to read:

6 Section 6.1. Office of Citizen Advocate for the Environment.

7 (a) Office established.--There is hereby established within
8 the board the Office of Citizen Advocate for the Environment TO <—
9 PROVIDE INFORMATION ON THE ISSUANCE OF PERMITS, ENFORCEMENT
10 ACTIONS BY THE DEPARTMENT, POLICY STATEMENTS, RULES AND
11 REGULATIONS AND COURT ORDERS AND to represent the interests of
12 citizens and municipalities before the department. <—

13 (b) Appointment.--The Governor shall appoint a Citizen
14 Advocate for the Environment, which appointment shall be subject
15 to the approval of a majority of the members elected to the
16 Senate. The advocate shall serve until a successor is appointed
17 and qualified.

18 (c) Qualifications.--The advocate shall be a person who, by
19 reason of training, experience and attainment, is qualified to
20 represent the interests of citizens and municipalities. The
21 advocate shall be an attorney in good standing before the Bar of
22 the Supreme Court of Pennsylvania. Compensation shall be set by
23 the Executive Board.

24 (d) General restrictions.--The advocate shall not engage in
25 any business, vocation or other employment, or have other
26 interests inconsistent with his official responsibilities, nor
27 shall he seek or accept employment with nor render beneficial
28 services for compensation for any "person" or "corporation," as
29 defined in 66 Pa.C.S. § 102 (relating to definitions), subject
30 to the authority of the Pennsylvania Public Utility Commission,

during the tenure of his appointment and for a period of one year after the appointment is served or terminated.

(e) Political office restrictions.--The advocate shall not seek election nor accept appointment to any public office during his tenure as advocate and for a period of one year afterward.

(f) Chairperson of Environmental Hearing Board restrictions.--The Chairperson of the Environmental Hearing Board shall have administrative responsibilities for the office, but shall not be responsible, in any manner, for the policies, procedures or other substantive matters developed by the office in carrying out its duties under this act to represent citizens and municipalities.

Section 6.2. Assistant advocates; employees.

The advocate, with the approval of the Chairperson of the Environmental Hearing Board, shall appoint attorneys as assistant advocates, and additional clerical, technical and professional staff as may be appropriate, and may contract for additional services as shall be necessary for the performance of his function. The compensation of assistant advocates and clerical, technical and professional staff shall be set by the Executive Board. No assistant advocate or other staff employee shall, while serving in the position, engage in any business, vocation or other employment, or have other interests inconsistent with his official responsibilities.

Section 6.3. Powers and duties of advocate.

(a) Representing interests of citizens ~~or municipalities~~.-- <—
In addition to any other authority conferred by this act, the advocate is authorized, and it shall be his duty in carrying out his responsibilities under this act, to represent the interests of citizens as a party ~~or municipalities~~, or otherwise to <—

1 participate for the purpose of representing the interests of
2 citizens ~~or municipalities~~, in any matter before the board or <—
3 department or before any court or agency. The advocate may
4 initiate proceedings as in his judgment may be necessary in
5 connection with any matter involving regulation by the
6 department or the corresponding regulatory agency of the Federal
7 Government, whether on appeal or otherwise.

8 (B) REPRESENTING INTERESTS OF MUNICIPALITIES.--THE ADVOCATE <—
9 IS AUTHORIZED TO PROVIDE LEGAL ASSISTANCE TO MUNICIPALITIES IN
10 ACTIONS WHICH CHALLENGE ANY ORDINANCE OR REGULATION ADOPTED IN
11 COMPLIANCE WITH STATE LAW. FOR PURPOSES OF PROVIDING LEGAL
12 ASSISTANCE, THE ADVOCATE IS AUTHORIZED TO:

13 (1) DEVELOP RULES AND REGULATIONS FOR MUNICIPALITIES TO
14 APPLY FOR LEGAL ASSISTANCE.

15 (2) DEVELOP RELEVANT CRITERIA FOR THE EVALUATION OF
16 APPLICATIONS FOR MUNICIPAL LEGAL ASSISTANCE.

17 (3) ACCEPT, EXAMINE, DENY OR APPROVE APPLICATIONS FROM
18 MUNICIPALITIES FOR LEGAL ASSISTANCE.

19 (4) ENTER INTO FORMAL AGREEMENTS WITH MUNICIPALITIES TO
20 PROVIDE LEGAL ASSISTANCE PERTAINING TO THE DEFENSE OF
21 ORDINANCES OR REGULATIONS ADOPTED IN COMPLIANCE WITH STATE
22 LAWS.

23 ~~(b)~~ (C) Monitoring and participating in proceedings.--The <—
24 advocate may monitor all cases before corresponding regulatory
25 agencies of the Federal Government, such as the Environmental
26 Protection Agency, which may impact upon the interests of
27 citizens ~~or municipalities~~ and may formally participate in those <—
28 proceedings which in his judgment warrant participation.

29 ~~(e)~~ (D) Exercise of discretion.--The advocate may exercise <—
30 discretion in determining the interests which will be advocated

1 in any particular proceeding and in determining whether to
2 participate in or initiate any particular proceeding. In making
3 this determination, the advocate shall consider the public
4 interest, the resources available and the substantiality of the
5 effect of the proceeding on the interests of citizens and <—
6 municipalities. The advocate may refrain from intervening when,
7 in his judgment, intervention is not necessary to represent
8 adequately the interests of citizens. or municipalities. <—

9 ~~(d) Small business representation. In addition to any other~~ <—
10 ~~authority conferred upon him by this act, the advocate is~~
11 ~~authorized to represent interests of small business as defined~~
12 ~~under the Small Business Act (Public Law 85-536, 15 U.S.C. § 631~~
13 ~~et seq.). If the advocate declines or is unable to represent the~~
14 ~~interest, he shall notify the sponsors and shall explain the~~
15 ~~reasons for his failure to act.~~

16 (e) Name in which action is brought.--Any action brought by
17 the advocate before a court or any agency of this Commonwealth
18 shall be brought in the name of the advocate. The advocate may
19 name a municipality, citizen or group of citizens in whose name
20 the action may also be brought or may join citizens or
21 municipalities in bringing the action.

22 (f) Issuance of written statement.--If the advocate
23 determines, in accordance with applicable time limitations, to
24 initiate, intervene or otherwise participate in any department,
25 agency or court proceeding, he shall issue publicly a written
26 statement, a copy of which he shall file in the proceeding, in
27 addition to any required entry of his appearance, stating
28 concisely the specific interests of citizens or municipalities
29 to be protected.

30 Section 6.4. Funding.

1 (a) Appropriation.--The sum of \$1,000,000 is hereby
2 appropriated to the Environmental Hearing Board for the fiscal
3 year July 1, 1993, to June 30, 1994, for the use of, and
4 allocated to, the Office of Citizen Advocate for the Environment
5 for disbursement solely for its purposes under this act.

6 (b) Requisitions.--All requisitions upon the appropriation
7 shall be signed by the advocate or any deputies as he may
8 designate in writing to the State Treasurer, and shall be
9 presented to the State Treasurer and dealt with by him in the
10 manner prescribed by the act of April 9, 1929 (P.L.343, No.176),
11 known as The Fiscal Code.

12 (c) Estimate of expenditures.--Before November 1 of each
13 year, the advocate shall estimate the total expenditures for the
14 office and submit the estimate to the Governor in accordance
15 with section 610 of the act of April 9, 1929 (P.L.177, No.175),
16 known as The Administrative Code of 1929. At the same time the
17 advocate submits his estimate to the Governor, he shall also
18 submit a copy of the estimate to the General Assembly. The
19 advocate or his designated representatives shall be afforded an
20 opportunity to appear before the Governor, the Appropriations
21 Committee of the Senate and the Appropriations Committee of the
22 House of Representatives regarding the estimate.

23 Section 6.5. Duties of department.

24 In dealing with any proposed action which may substantially
25 affect the interests of citizens or municipalities, including,
26 but not limited to, the adoption of rules, regulations,
27 guidelines, orders, standards or final policy decisions, the
28 department shall:

29 (1) Notify the advocate when notice of the proposed
30 action is given to the public or at a time fixed by agreement

1 between the advocate and the department in a manner to assure
2 the advocate reasonable notice and adequate time to determine
3 whether to intervene in the matter.

4 (2) Consistent with its other statutory
5 responsibilities, take such action with due consideration to
6 the interests of citizens or municipalities.

7 Section 6.6. Savings provision; construction.

8 (a) No bar to other action.--Nothing contained in this act
9 shall in any way limit the right of any citizen or municipality
10 to bring a proceeding before either the department, an agency or
11 a court.

12 (b) No impairment to department or board.--Nothing contained
13 in this act shall be construed to impair the statutory authority
14 or responsibility of the department or the board.

15 Section 6.7. Reports.

16 The advocate shall annually transmit to the Governor and to
17 the General Assembly and make available to the public an annual
18 report on the conduct of the office. Included in the report
19 shall be an accounting of the office's expenditures for the
20 calendar year, which are directly attributable, or, in the
21 office's judgment, properly allocable, to its activities. The
22 advocate shall make recommendations as may from time to time be
23 necessary or desirable to protect the interests of citizens and
24 municipalities.

25 Section 4. This act shall take effect in 60 days.