

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 763 Session of
1997

INTRODUCED BY GEORGE, PISTELLA, DeWEESE, WALKO, READSHAW, BLAUM,
OLASZ, WAUGH, TIGUE, TRAVAGLIO, WOJNAROSKI, FAIRCHILD,
BATTISTO, STABACK, VAN HORNE, BELARDI, EVANS, VITALI, THOMAS,
STEELMAN, GORDNER, JOSEPHS, MUNDY, LEVDANSKY, ROONEY, SURRA,
MANDERINO, BOSCOLA, PETRARCA, EACHUS, TRELLO, McCALL, ITKIN,
YOUNGBLOOD, CAPPABIANCA, CAWLEY, MELIO, CURRY, LAUGHLIN,
MIHALICH AND RAMOS, MARCH 12, 1997

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 12, 1997

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

Advocate for the Environment; transferring certain funds; and making repeals.

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

Section 2. 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:

"Advocate." The Citizen Advocate for the Environment.

* * *

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

* * *

"Environmental laws." Includes the following:

(1) Act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

(2) Act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(3) Act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

(4) Act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

(5) Act of November 26, 1978 (P.L.1300, No.314), known as the Underground Storage Act.

(6) Act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.

(7) Act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(8) Act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

1 (9) Any other statute administered by the Department of
2 Environmental Resources or any successor to the department.
3 "Office." The Office of Citizen Advocate for the
4 Environment.

5 * * *

6 Section 3. The act is amended by adding sections to read:
7 Section 6.1. Office of Citizen Advocate for the Environment.

8 (a) Office established.--There is hereby established within
9 the board the Office of Citizen Advocate for the Environment to
10 provide information on the issuance of permits, enforcement
11 actions by the department, policy statements, rules and
12 regulations and court orders and to represent the interests of
13 citizens and municipalities.

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

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

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

1 to the authority of the Pennsylvania Public Utility Commission,
2 during the tenure of his appointment and for a period of one
3 year after the appointment is served or terminated.

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

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

14 Section 6.2. Assistant advocates and employees.

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

26 Section 6.3. Powers and duties of advocate.

27 (a) Representing interests of citizens.--In addition to any
28 other authority conferred by this act, the advocate is
29 authorized, and it shall be his duty in carrying out his
30 responsibilities under this act, to represent the interests of

1 citizens as a party, or otherwise to participate for the purpose
2 of representing the interests of citizens, in any matter before
3 the board or department or before any court or agency. The
4 advocate may initiate proceedings as in his judgment may be
5 necessary in connection with any matter involving regulation by
6 the department or the corresponding regulatory agency of the
7 Federal 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 (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 and may formally participate in those proceedings which
28 in his judgment warrant participation.

29 (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. The
6 advocate may refrain from intervening when, in his judgment,
7 intervention is not necessary to represent adequately the
8 interests of citizens.

9 (e) Name in which action is brought.--Any action brought by
10 the advocate before a court or any agency of this Commonwealth
11 shall be brought in the name of the advocate. The advocate may
12 name a municipality, citizen or group of citizens in whose name
13 the action may also be brought or may join citizens or
14 municipalities in bringing the action.

15 (f) Issuance of written statement.--If the advocate
16 determines, in accordance with applicable time limitations, to
17 initiate, intervene or otherwise participate in any department,
18 agency or court proceeding, he shall issue publicly a written
19 statement, a copy of which he shall file in the proceeding, in
20 addition to any required entry of his appearance, stating
21 concisely the specific interests of citizens or municipalities
22 to be protected.

23 Section 6.4. Funding.

24 (a) Appropriation.--The sum of \$1,000,000 is hereby
25 appropriated to the Environmental Hearing Board for the fiscal
26 year July 1, 1997, to June 30, 1998, for the use of, and
27 allocated to, the Office of Citizen Advocate for the Environment
28 for disbursement solely for its purposes under this act.

29 (b) Requisitions.--All requisitions upon the appropriation
30 shall be signed by the advocate or any deputies as he may

1 designate in writing to the State Treasurer, and shall be
2 presented to the State Treasurer and dealt with by him in the
3 manner prescribed by the act of April 9, 1929 (P.L.343, No.176),
4 known as The Fiscal Code.

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

16 Section 6.5. Duties of department.

17 In dealing with any proposed action which may substantially
18 affect the interests of citizens or municipalities, including,
19 but not limited to, the adoption of rules, regulations,
20 guidelines, orders, standards or final policy decisions, the
21 department shall:

22 (1) Notify the advocate when notice of the proposed
23 action is given to the public or at a time fixed by agreement
24 between the advocate and the department in a manner to assure
25 the advocate reasonable notice and adequate time to determine
26 whether to intervene in the matter.

27 (2) Consistent with its other statutory
28 responsibilities, take such action with due consideration to
29 the interests of citizens or municipalities.

30 Section 6.6. Savings provision and construction.

1 (a) No bar to other action.--This act shall not in any way
2 limit the right of any citizen or municipality to bring a
3 proceeding before either the department, an agency or a court.

4 (b) No impairment to department or board.--This act shall
5 not be construed to impair the statutory authority or
6 responsibility of the department or the board.

7 Section 6.7. Reports.

8 The advocate shall annually transmit to the Governor and to
9 the General Assembly and make available to the public an annual
10 report on the conduct of the office. Included in the report
11 shall be an accounting of the office's expenditures for the
12 calendar year, which are directly attributable, or, in the
13 office's judgment, properly allocable, to its activities. The
14 advocate shall make recommendations as may from time to time be
15 necessary or desirable to protect the interests of citizens and
16 municipalities.

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