

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2259 Session of
1988

INTRODUCED BY GEORGE, FEE, FREEMAN, WOZNIAK, HAYDEN, SALOOM,
LUCYK, JAROLIN, DOMBROWSKI AND ARGALL, MARCH 21, 1988

REFERRED TO COMMITTEE ON CONSERVATION, MARCH 21, 1988

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," establishing the Office of
21 Environmental Advocate.

22 The General Assembly hereby finds that:

23 (1) Adequate law enforcement under the police power statutes
24 of this Commonwealth has been grossly deficient.

25 (2) Effective enforcement of such statutes is absolutely
26 material for the protection of the public health, safety and
27 welfare and for the protection of the environment of this

Commonwealth and of the rights of all Pennsylvanians pursuant to section 27 of Article I of the Constitution of Pennsylvania.

(3) Deficient and ineffective enforcement of such statutes has created numerous immediate threats to the public health, safety and welfare and a state of public health emergency in this Commonwealth.

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

Section 1. The act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is amended by adding an article to read:

ARTICLE XIX-B

OFFICE OF ENVIRONMENTAL ADVOCATE

Section 1901-B. Definitions.--As used in this article,

(a) "Department" means the Department of Environmental Resources of the Commonwealth.

(b) "Environmental Advocate" means that person appointed by the Governor, under this article, to direct the Office of Environmental Advocate.

(c) "Secretary" means the Secretary of Environmental Resources of the Commonwealth.

Section 1902-B. Office of Environmental Advocate Established.--(a) There is hereby established the Office of Environmental Advocate. Its purpose shall be to represent the public interest in any proceeding, in order to protect the public natural resources, the waters of this Commonwealth, the people's right to clean air and pure water, the preservation of the natural, scenic, historic and aesthetic values of the environment, and to fulfill the mandates of section 27 of Article I of the Constitution of Pennsylvania. The Office of

Environmental Advocate shall be an autonomous and independent office and shall not be subject to the jurisdiction or supervision of any other person or office.

(b) The secretary shall make available to the Office of Environmental Advocate such technical, clerical, computer and support services as shall be necessary for the fulfillment of this article. The secretary and the Environmental Advocate shall set such mutually agreeable procedures for the provision of these services as shall be necessary for the fulfillment of this article. The Environmental Advocate shall have the power to draw upon the special services of all administrative agencies of the Commonwealth and of the State System of Higher Education and the State-owned and State-related universities.

(c) The Environmental Advocate shall be appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate, and shall serve a fixed term of five years. The Environmental Advocate shall not be removed from office during the term of office except by resignation or by reason of his conviction of misbehavior in office or of any infamous crime.

(d) The Environmental Advocate shall be a person who by reason of training, experience, education and attainment is qualified to represent the public interest in the protection of the environment of this Commonwealth. His compensation shall be set by the Executive Board and shall not be diminished during his term of office.

(e) An individual who serves as Environmental Advocate shall not, while serving in such position, engage in any business, vocation or other employment, or have other interests, inconsistent with his official responsibilities, except that the

Environmental Advocate may speak, write or lecture if any reimbursed expenses, honorariums, royalties or other moneys received in connection with these activities are disclosed. For a period of two years after his appointment is served or terminated, the Environmental Advocate shall not seek or accept employment or render beneficial service for compensation with any private person or private corporation which holds, seeks, or has held permits from the department.

(f) An individual who serves as Environmental Advocate shall not seek election or accept appointment to any Federal, State or county public or judicial office during his tenure as Environmental Advocate and for a period of two years after his appointment is served or terminated.

Section 1903-B. Deputies and Assistants.--(a) The Environmental Advocate shall appoint two or more deputies, and such assistants as the Environmental Advocate deems appropriate, and may contract for such additional technical, legal or other services as are necessary for the performance of the function of the office. The deputies shall serve at the pleasure of the Environmental Advocate and shall receive compensation set by the Executive Board. Other staff and assistants in the Office of Environmental Advocate shall be hired by the Environmental Advocate and shall be subject to act of August 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."

(b) The Office of Environmental Advocate shall have two or more deputies and such competent technical and legal staff as is necessary to perform the inspection and oversight functions essential to the fulfillment of this article, including the oversight of:

(1) Public complaint resolution services.

1 (2) Administrative oversight, including oversight of water
2 quality, air quality, waste management, soil conservation,
3 nuclear inspection and regulatory review.

4 (c) A deputy Environmental Advocate or other staff employe
5 shall not, while serving in such position, engage in any
6 business, vocation or other employment, or have other
7 substantial interests, inconsistent with the employe's official
8 responsibilities.

9 Section 1904-B. Powers and Duties of the Environmental
10 Advocate.--(a) The Environmental Advocate shall have the power
11 and the duty to advocate and uphold the public trust in the
12 protection, preservation and restoration of the environment of
13 this Commonwealth, pursuant to section 27 of Article I of the
14 Constitution of Pennsylvania and the laws of the Commonwealth
15 pertaining to environmental protection.

16 (b) The Environmental Advocate is empowered to represent the
17 public interest in the protection of the environment of this
18 Commonwealth, as encompassed by section 27 of Article I of the
19 Constitution of Pennsylvania and by the laws of the Commonwealth
20 pertaining to environmental protection, in matters brought by
21 any county, municipality, municipal authority, or municipal
22 Environmental Advisory Council established pursuant to act of
23 December 21, 1973 (P.L.425, No.148), referred to as the
24 "Municipal Environmental Advisory Council Law," before any
25 agency or court of the Commonwealth, or any Federal agency or
26 court, pursuant to the limitations of this article.

27 (c) The Environmental Advocate shall provide such technical
28 or legal assistance pertaining to environmental protection to
29 any county or local municipality of the commonwealth as is
30 requested by the solicitor of the county or municipality and is

1 deemed to be within the powers and duties of the Office of
2 Environmental Advocate within the sole judgment of the
3 Environmental Advocate. This shall include such site
4 inspections, physical or analytical investigations, public
5 education, mediation or or legal counseling as the Environmental
6 Advocate deems to be necessary and appropriate to protect the
7 public interest.

8 (d) The Environmental Advocate shall assist the solicitor of
9 a county or municipality of the Commonwealth, at the formal
10 request of the county or municipal solicitor, in any
11 environmental matter brought before any agency or court of the
12 Commonwealth or before any Federal agency or court. The
13 Environmental Advocate shall represent the public interest in
14 the protection of the environment, pursuant to the limitations
15 of this article. Technical or legal opinions expressed by the
16 Environmental Advocate shall be determined by the sole judgment
17 of the Environmental Advocate upon review of the facts and law
18 relevant to the situation.

19 (e) The Environmental Advocate shall provide, to any
20 municipal Environmental Advisory Council established pursuant to
21 the "Municipal Environmental Advisory Council Law," such
22 technical or legal assistance pertaining to environmental
23 protection as is requested by the chairman of the Environmental
24 Advisory Council as is deemed to be within the powers and duties
25 of the Office of Environmental Advocate within his sole
26 judgment. This shall include such site inspections, physical or
27 analytical investigations, public education, mediation or legal
28 counseling as the Environmental Advocate deems to be necessary
29 and appropriate to protect the public interest.

30 (f) The Environmental Advocate shall assist the county or

1 municipal solicitor or other authorized counsel, at the formal
2 request of the chairman of the municipal Environmental Advisory
3 Council, in any environmental matter brought before any agency
4 or court of the Commonwealth or before any Federal agency or
5 court. The Environmental Advocate shall represent the public
6 interest in the protection of the environment, pursuant to the
7 limitations of this article. Technical or legal opinions
8 expressed by the Environmental Advocate shall be determined
9 solely by his judgment upon review of the facts and law relevant
10 to the situation.

11 (g) The Environmental Advocate may provide such technical or
12 legal assistance to any local municipal authority of the
13 Commonwealth as is duly requested and as is deemed to be within
14 the powers and duties of the Office of Environmental Advocate,
15 and as is determined to be appropriate and feasible within the
16 sole discretion of the Environmental Advocate.

17 (h) The Environmental Advocate shall refer any evidence of
18 criminal offenses to the Attorney General and to the district
19 attorney of the affected county in whose jurisdictions
20 prosecution of such cases lies. The Environmental Advocate shall
21 provide such technical or legal assistance to the Attorney
22 General and to any district attorney as is requested for the
23 prosecution of any criminal matter pertaining to violations of
24 environmental protection laws, or to criminal contamination of
25 the environment.

26 (i) The Environmental Advocate is empowered, and shall have
27 standing, to bring an appeal on any matter within the
28 jurisdiction of the Environmental Hearing Board or to intervene
29 in any matter before the Environmental Hearing Board, subject
30 only to the rules of that board. The Environmental Advocate

1 shall provide timely written notice to the secretary and to the
2 Governor prior to commencing an appeal or moving to intervene in
3 any matter before the Environmental Hearing Board. Such notice
4 shall state the reasons for the action of the Environmental
5 Advocate, the legal theories to be advocated and the nature of
6 the public interest the Environmental Advocate seeks to protect.

7 (j) (1) The Environmental Advocate shall promptly inform
8 the secretary, or the designee of the secretary, when, in the
9 opinion of the Environmental Advocate, the department has acted
10 in a manner inconsistent with the public interest or has failed
11 to take an action which would protect the public interest or
12 otherwise enforce the environmental laws of the Commonwealth.
13 The Environmental Advocate shall suggest appropriate actions to
14 the secretary.

15 (2) If the secretary fails to either respond or to take an
16 appropriate responsive action, in the opinion of the
17 Environmental Advocate, within thirty (30) days, the
18 Environmental Advocate may send a formal request for action to
19 the secretary, and a copy of the request shall be sent to the
20 Governor.

21 (k) No provision of this article shall be construed as
22 estopping the Commonwealth, and the department in particular,
23 from the affirmative exercise of any or all of its powers and
24 duties as provided by law. Nothing in this article shall be
25 construed as estopping the Commonwealth, or any district
26 attorney or solicitor of a municipality, from proceeding in
27 courts of law or equity to abate nuisances or pollution
28 forbidden under existing law. It is hereby declared to be the
29 purpose of this article to provide additional and cumulative
30 remedies to protect the environment of the Commonwealth, and

1 nothing contained in this article shall in any way abridge or
2 alter rights of action or remedies now or hereafter existing in
3 equity, or under the common law or statutory law, criminal or
4 civil.

5 Section 1905-B. Public Complaint Resolution Services.--(a)
6 The Office of Environmental Advocate shall maintain an office
7 open to the public during normal business hours, and such
8 additional regional offices as may be necessary. The Office
9 shall maintain a toll-free telephone service to receive
10 complaints and petitions from persons within Pennsylvania during
11 normal business hours and during such additional hours for the
12 convenience of the public as shall be determined by the
13 Environmental Advocate, but not less than ten (10) hours per
14 week beyond normal business hours.

15 (b) Complaints and petitions for assistance received from
16 counties, municipalities or municipal Environmental Advisory
17 Councils shall receive first priority when the Office of
18 Environmental Advocate assesses its resources and capabilities
19 to respond. The Office of Environmental Advocate shall propose
20 regulations for handling municipal complaints within one year of
21 the effective date of this article.

22 (c) Interim guidelines for handling public complaints and
23 petitions shall be developed by the Office of Environmental
24 Advocate for use within the first two years after the effective
25 date of this act, or until regulations have been promulgated.
26 Within one year after the effective date of this article, the
27 Office of Environmental Advocate shall propose such regulations
28 for the handling of public and municipal complaints and
29 petitions as shall be submitted for promulgation by the
30 Environmental Quality Board. The Environmental Quality Board

1 shall hold such public hearings on the matter as deemed
2 appropriate by that board.

3 (d) The Office of Environmental Advocate shall establish
4 interim guidelines for the initial screening and handling of all
5 public and municipal complaints received during the first two
6 years after the effective date of this act, or until regulations
7 are promulgated by the Environmental Quality Board. Initial
8 screening guidelines shall consider, at a minimum:

9 (1) Whether the complaint pertains to contamination or
10 degradation of the environment within the public trust, as
11 opposed to private harm.

12 (2) Whether the laws of the Commonwealth prohibit the
13 apparent cause of the alleged contamination or degradation, and
14 whether the laws of the Commonwealth appear to have been
15 violated.

16 (3) The magnitude of the alleged harm and whether the Office
17 of Environmental Advocate is reasonably able to effect a
18 resolution to the problem which will protect the public
19 interest.

20 (e) Persons having an environmental complaint may initiate a
21 petition to the Environmental Advocate for assistance. Petitions
22 for assistance must be submitted in writing and must state the
23 nature of the harm alleged to the public interest, any laws of
24 the Commonwealth which may have been violated, and actions or
25 relief the petitioner seeks. Forms developed by the Office of
26 Environmental Advocate shall be provided, upon request, for the
27 purpose of initiating a petition by the complainant. The Office
28 of Environmental Advocate shall respond to each written petition
29 within thirty (30) days from the receipt thereof, after
30 conducting an initial investigation into the nature of the

1 petition.

2 (f) For the first two years after the effective date of this
3 article, or until regulations on the handling of public
4 complaints and petitions have been promulgated, the initial
5 response to each petition shall state one of the following:

6 (1) The Office of Environmental Advocate recommends
7 mediation or consultation with the indicated agencies or
8 persons, or other indicated actions, which the Office of
9 Environmental Advocate offers to perform for the petitioner on
10 behalf of the public interest.

11 (2) The Office of Environmental Advocate recommends that the
12 petitioner take other indicated actions.

13 (3) The Office of Environmental Advocate is unable to handle
14 the petition because of inadequate resources.

15 (4) The Office of Environmental Advocate requests an
16 additional sixty (60) day period to investigate or handle the
17 petition, due to the complicated nature of the problem.

18 (5) The petition is outside of the purview of the Office of
19 Environmental Advocate, or has been found to be without
20 substantive merit, or lacks sufficient information for an
21 initial investigation.

22 (g) Petitioners for assistance who have agreed to accept the
23 mediation, consultation, litigation or other services offered by
24 the Environmental Advocate shall inform the Environmental
25 Advocate before instituting any other suits at law or equity or
26 taking any formal administrative appeals. The Environmental
27 Advocate may determine that the actions of the petitioner are
28 inconsistent with the public interest, in the sole judgment of
29 the Environmental Advocate, and may cease handling the
30 petitioner's concern at any time. However, nothing in this act

1 shall be construed to preclude the petitioner from instituting
2 any such actions as may be available at any time, nor must the
3 petitioner exhaust the administrative remedies potentially
4 available through the Office of Environmental Advocate prior to
5 commencing suit.

6 (h) The Environmental Advocate shall, in consultation with
7 the Attorney General, set up an internal procedure for receiving
8 and handling complaints from employees of the Commonwealth or of
9 any of its political subdivisions, and shall maintain
10 confidentiality from any other Federal, State or local
11 government entity, except that all evidence of criminal matters
12 or ethical violations shall be referred to the Attorney General.

13 Section 1906-B. Administrative Oversight.--(a) The Office
14 of Environmental Advocate shall systematically examine the
15 enforcement and permitting procedures of the department and
16 shall periodically report to the secretary in order to suggest
17 improvements in administrative procedures consistent with this
18 article. Such oversight shall include periodic examination of
19 the status of water quality protection, air quality protection,
20 solid waste management, soil conservation, nuclear inspection
21 and regulatory review, at a minimum, and such additional areas
22 as the Environmental Advocate considers appropriate.

23 (b) The Office of Environmental Advocate shall annually
24 submit a report to the General Assembly on the status of
25 environmental protection in the Commonwealth. This report shall
26 be made available to the public.

27 Section 2. The Office of Environmental Advocate shall
28 terminate on December 31, 1993, subject to the act of December
29 22, 1981 (P.L.508, No.142), known as the Sunset Act.

30 Section 3. (a) The amount of \$1,000,000, or as much thereof

1 as may be necessary, is hereby appropriated to the Office of
2 Environmental Advocate for the fiscal year July 1, 1987, to June
3 30, 1988.

4 (b) The amount of \$2,000,000, or as much thereof as may be
5 necessary, is hereby appropriated to the Office of Environmental
6 Advocate for the fiscal year July 1, 1988, to June 30, 1989.

7 Section 4. This act shall take effect immediately.