

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

REFERRED TO COMMITTEE ON CONSERVATION, FEBRUARY 2, 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:

14 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 "Office." The Office of Citizen Advocate for the
14 Environment.

15 * * *

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

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

18 (a) Office established.--There is hereby established within
19 the board the Office of Citizen Advocate for the Environment to
20 represent the interests of citizens and municipalities before
21 the department.

22 (b) Appointment.--The Governor shall appoint a Citizen
23 Advocate for the Environment, which appointment shall be subject
24 to the approval of a majority of the members elected to the
25 Senate. The advocate shall serve until a successor is appointed
26 and qualified.

27 (c) Qualifications.--The advocate shall be a person who, by
28 reason of training, experience and attainment, is qualified to
29 represent the interests of citizens and municipalities. The
30 advocate shall be an attorney in good standing before the Bar of

1 the Supreme Court of Pennsylvania. Compensation shall be set by
2 the Executive Board.

3 (d) General restrictions.--The advocate shall not engage in
4 any business, vocation or other employment, or have other
5 interests inconsistent with his official responsibilities, nor
6 shall he seek or accept employment with nor render beneficial
7 services for compensation for any "person" or "corporation," as
8 defined in 66 Pa.C.S. § 102 (relating to definitions), subject
9 to the authority of the Pennsylvania Public Utility Commission,
10 during the tenure of his appointment and for a period of one
11 year after the appointment is served or terminated.

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

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

22 Section 6.2. Assistant advocates; employees.

23 The advocate, with the approval of the Chairperson of the
24 Environmental Hearing Board, shall appoint attorneys as
25 assistant advocates, and additional clerical, technical and
26 professional staff as may be appropriate, and may contract for
27 additional services as shall be necessary for the performance of
28 his function. The compensation of assistant advocates and
29 clerical, technical and professional staff shall be set by the
30 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
participate for the purpose of representing the interests of
citizens or municipalities, in any matter before the board or
department or before any court or agency. The advocate may
initiate proceedings as in his judgment may be necessary in
connection with any matter involving regulation by the
department or the corresponding regulatory agency of the Federal
Government, whether on appeal or otherwise.

(b) Monitoring and participating in proceedings.--The

advocate may monitor all cases before corresponding regulatory
agencies of the Federal Government, such as the Environmental
Protection Agency, which may impact upon the interests of
citizens or municipalities and may formally participate in those
proceedings which in his judgment warrant participation.

(c) Exercise of discretion.--The advocate may exercise

discretion in determining the interests which will be advocated
in any particular proceeding and in determining whether to
participate in or initiate any particular proceeding. In making
this determination, the advocate shall consider the public
interest, the resources available and the substantiality of the
effect of the proceeding on the interests of citizens and
municipalities. The advocate may refrain from intervening when,

1 in his judgment, intervention is not necessary to represent
2 adequately the interests of citizens or municipalities.

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

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

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

24 Section 6.4. Funding.

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

30 (b) Requisitions.--All requisitions upon the appropriation

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

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

17 Section 6.5. Duties of department.

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

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

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

1 Section 6.6. Savings provision; construction.

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

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

9 Section 6.7. Reports.

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

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