

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 393 Session of  
1999

INTRODUCED BY FEESE, GEORGE, MAITLAND, SNYDER, BARRAR, TIGUE,  
PLATTS, GEIST, NICKOL, FARGO, CORRIGAN, KREBS, SAYLOR,  
CHADWICK, DEMPSEY, TRELLO, LAUGHLIN, LYNCH, LEH, STAIRS,  
HERMAN, WALKO, CURRY, HENNESSEY, MASLAND, MAHER, CLARK,  
STERN, STEIL, BAKER, SCHRODER, McCALL, GANNON, S. H. SMITH,  
YOUNGBLOOD, SEYFERT AND STEELMAN, FEBRUARY 8, 1999

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 1999

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for  
3 participation in environmental law or regulation.

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

6 Section 1. Title 42 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 8340.1. Participation in environmental law or regulation.

9 (a) Immunity.--

10 (1) A person who acts in furtherance of the person's  
11 right of petition or free speech under the Constitution of  
12 the United States or the Constitution of Pennsylvania in  
13 connection with an issue related to enforcement or  
14 implementation of environmental law or regulation shall be  
15 immune from civil liability in any action except where the  
16 communication to the government agency is not genuinely aimed

1 at procuring a favorable governmental action, result or  
2 outcome.

3 (2) A communication is not genuinely aimed at procuring  
4 a favorable governmental action, result or outcome if it:

5 (i) is not material or relevant to the enforcement  
6 or implementation of environmental law or regulation;

7 (ii) was knowingly false or deliberately misleading  
8 when made;

9 (iii) was rendered with reckless disregard as to the  
10 truth or falsity of the statement when made;

11 (iv) was undertaken for the purpose of interfering  
12 with business relationships;

13 (v) represented a wrongful use of process or abuse  
14 of process; or

15 (vi) violates the constitutional rights of another  
16 person.

17 (b) Stay or discovery.--The court shall stay all discovery  
18 proceedings in the action upon the filing of preliminary  
19 objections, provided, however, that the court, on motion and  
20 after a hearing and for good cause shown, may order that  
21 specified discovery be conducted. The stay of discovery shall  
22 remain in effect until notice of the entry of the order ruling  
23 on the preliminary objections.

24 (c) Admissibility of court determination.--If the court  
25 determines that the plaintiff has established that there is a  
26 substantial likelihood that the plaintiff will prevail on the  
27 claim, neither that determination nor the fact of that  
28 determination shall be admissible in evidence at any later stage  
29 of the case, and no burden of proof or degree of proof otherwise  
30 applicable shall be affected by that determination.

1     (d) Intervention.--The government agency involved in the  
2 furtherance of a person's right of petition or free speech under  
3 the Constitution of the United States or the Constitution of  
4 Pennsylvania in connection with a public issue may intervene or  
5 otherwise participate as an amicus curiae in the action  
6 involving public petition and participation.

7     (e) Legal protections of defendants.--Nothing in this  
8 section shall be construed to limit any constitutional,  
9 statutory or common-law protections of defendants to actions  
10 involving public petition and participation.

11     (f) Abuse of legal process.--In addition to other costs or  
12 remedies allowed by general rule or statute, in any  
13 administrative or judicial proceeding related to the enforcement  
14 or implementation of environmental law or regulation, the agency  
15 or court may award costs, including reasonable attorney fees, if  
16 the agency or court determines that an action, appeal, claim,  
17 motion or pleading is frivolous or taken solely for delay or  
18 that the conduct of a party or counsel is dilatory or vexatious.

19     (g) Definitions.--The following words and phrases when used  
20 in this section shall have the meanings given to them in this  
21 subsection unless the context clearly indicates otherwise:

22     "Act in furtherance of a person's right of petition or free  
23 speech under the United States Constitution or the Constitution  
24 of Pennsylvania in connection with a public issue." Any written  
25 or oral statement or writing made before a legislative,  
26 executive or judicial proceeding, or any other official  
27 proceeding authorized by law; any written or oral statement or  
28 writing made in connection with an issue under consideration or  
29 review by a legislative, executive or judicial body, or any  
30 other official proceeding authorized by law; any written or oral

1 statement or writing made in a place open to the public or a  
2 public forum in connection with an issue of public interest; or  
3 any written or oral statement or writing made to a government  
4 agency in connection with the implementation and enforcement of  
5 environmental law and regulations.

6 "Enforcement of environmental law and regulations." Any  
7 activity related to the identification and elimination of  
8 violations of environmental laws and regulations, including  
9 investigations of alleged violations, inspections of activities  
10 subject to regulation under environmental law and regulations  
11 and responses taken to produce correction of the violations.

12 "Government agency." The Federal Government, the  
13 Commonwealth and all of its departments, commissions, boards,  
14 agencies and authorities, and all political subdivisions and  
15 their authorities.

16 "Implementation of environmental law and regulations." Any  
17 activity related to the development and administration of  
18 environmental programs developed under environmental law and  
19 regulations.

20 Section 2. This act shall take effect in 60 days.