

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 527**Session of
1987

INTRODUCED BY FISHER, KELLEY, WILT, HELFRICK, REIBMAN,
GREENWOOD, SALVATORE AND PETERSON, MARCH 10, 1987

SENATOR FISHER, ENVIRONMENTAL RESOURCES AND ENERGY, AS
AMENDED, MARCH 16, 1987

AN ACT

1 Establishing the Environmental Hearing Board as an independent,
2 quasi-judicial agency; providing for the membership and
3 staff, powers and duties, seats and existing members of the
4 board; making an appropriation; and making a repeal.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Environmental
9 Hearing Board Enabling Act.

10 Section 2. Definitions.

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

14 "Board." The Environmental Hearing Board.

15 "Department." The Department of Environmental Resources of
16 the Commonwealth.

17 "Rules committee." The Environmental Hearing Board Rules
18 Committee established under section 5.

1 Section 3. Board.

2 (a) Establishment.--The Environmental Hearing Board is
3 established as an independent quasi-judicial agency.

4 (b) Membership.--The board shall consist of five members.
5 The members shall be full-time administrative law judges.
6 Members shall be appointed by the Governor with the consent of a
7 majority of the members elected to the Senate. Members of the
8 board on the effective date of this act may complete their
9 terms.

10 (c) Chairperson.--The Governor shall designate one member of
11 the board to serve as chairperson.

12 (d) Terms.--A member of the board shall serve for a term of
13 six years or until a successor is appointed and qualified. Of
14 the two additional members appointed under this act, one shall
15 serve a term of six years and the other shall serve a term of
16 four years. Vacancies shall be filled in the same manner as the
17 original appointment.

18 (e) Qualifications.--A member of the board must:

19 (1) Be an attorney in good standing before the Bar of
20 the Supreme Court of Pennsylvania.

21 (2) Have three years of practice before administrative
22 agencies or have equivalent experience.

23 (f) Staff and facilities.--The board shall appoint a
24 secretary to the board. The board shall provide facilities at
25 each seat under the provisions of section 6. The board may
26 employ hearing examiners and other personnel necessary to
27 exercise its functions.

28 (g) Salary.--Members of the board and the chairperson shall
29 receive the same salaries, respectively, as the commissioner and
30 chairman of the Pennsylvania Public Utility Commission.

1 Section 4. Jurisdiction.

2 (a) General rule.--The board has the power and duty to hold
3 hearings and issue adjudications under 2 Pa.C.S. Ch. 5 Subch. A
4 (relating to practice and procedure of Commonwealth agencies) on
5 orders, permits, licenses or decisions of the department.

6 (b) Continued powers.--The board shall continue to exercise
7 the powers to hold hearings and issue adjudications which powers
8 were vested in the agencies listed in section 1901-A of the act
9 of April 9, 1929 (P.L.177, No.175), known as The Administrative
10 Code of 1929.

11 (c) Departmental action.--The department may take an action
12 initially without regard to 2 Pa.C.S. Ch. 5 Subch. A; but no
13 action of the department adversely affecting a person shall be
14 final as to that person until the person has had the opportunity
15 to appeal the action to the board. If a person has not perfected
16 an appeal in accordance with the regulations of the board under
17 subsection (g), the board's action shall be final as to the
18 person.

19 (d) Supersedeas.--

20 (1) An appeal taken to the board from an order, a permit
21 revocation, a license revocation or a decision by the
22 department may, at the discretion of the board, act as a
23 supersedeas.

24 (2) The board shall promulgate regulations on grounds
25 for issuance or denial of a supersedeas. The grounds shall be
26 substantially similar to the grounds on which a court of
27 equity could issue or deny a preliminary injunction.

28 (3) The board shall promulgate regulations on grounds
29 for issuance or denial of a temporary supersedeas. The
30 grounds shall be substantially similar to the grounds on

1 which a court of equity could issue or deny a temporary
2 restraining order.

3 (e) Joinder.--In an appeal from an order of the department
4 or in a response to a civil penalty complaint or assessment
5 before the board, a party may join additional parties who may be
6 exclusively liable or who may be liable jointly or severally
7 with the party who makes the joinder. The regulations shall be
8 substantially similar to the joinder rules in the Pennsylvania
9 Rules of Civil Procedure.

10 (f) Subpoenas.--The board has the power to subpoena
11 witnesses, records and papers. The board may enforce its
12 subpoenas in Commonwealth Court. Commonwealth Court, after a
13 hearing, may make an adjudication of contempt or may issue
14 another appropriate order.

15 (g) Procedure.--Hearings of the board shall be conducted in
16 accordance with the regulations of the board in effect at the
17 effective date of this act until new regulations are promulgated
18 under section 5.

19 Section 5. Rules committee.

20 (a) Establishment.--The Environmental Hearing Board Rules
21 Committee is established. The rules committee shall consist of
22 seven attorneys who are in good standing before the Bar of the
23 Supreme Court of Pennsylvania and who have practiced before the
24 board for a minimum of three years. Two members shall be
25 appointed by the President pro tempore of the Senate. Two
26 members shall be appointed by the Speaker of the House of
27 Representatives. One member shall be appointed by the Secretary
28 of Environmental Resources. Two members shall be appointed by
29 the Governor, upon the advice of the Pennsylvania Bar
30 Association.

1 (b) Function.--The rules committee shall recommend to the
2 board regulations for hearings conducted by the board. The
3 regulations shall include time limits and procedure for the
4 taking of appeals and locations of hearings. Regulations under
5 this subsection shall be promulgated by the board upon a
6 majority affirmative vote on the recommended regulations.

7 Section 6. Seats of the board.

8 (a) Location.--The board shall have offices and hearing
9 rooms in Harrisburg, Pittsburgh and Philadelphia. The
10 headquarters of the board shall be in Harrisburg. The board may
11 hear cases at other locations in this Commonwealth.

12 (b) Assignments.--At least one member of the board shall sit
13 in each seat of the board. The remaining two members of the
14 board shall be assigned to a seat by the chairperson. At least
15 once during the term of a member of the board, that member shall
16 rotate to one of the other seats of the board. The chairperson
17 shall determine rotation and shall determine assignment of cases
18 within each geographic area.

19 Section 7. Appropriation.

20 The sum of \$1,000,000, or as much thereof as may be
21 necessary, is hereby appropriated to the Environmental Hearing
22 Board for the fiscal year July 1, ~~1986, to June 30, 1987~~ 1987, <—
23 TO JUNE 30, 1988, to carry out the provisions of this act.

24 Section 8. Repeals.

25 Sections 472, 709(m) and 1921-A of the act of April 9, 1929
26 (P.L.177, No.175), known as The Administrative Code of 1929, are
27 repealed.

28 Section 9. Applicability.

29 This act shall not affect the terms or eligibility of the
30 current members of the board or of current members of the board

1 who are subsequently reappointed and confirmed for a new term or
2 to serve an unexpired term.
3 Section 10. Effective date.
4 This act shall take effect in 60 days.