

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1095 Session of
2013

INTRODUCED BY FARNESE, BREWSTER, HUGHES, BOSCOLA AND STACK,
OCTOBER 7, 2013

REFERRED TO JUDICIARY, OCTOBER 7, 2013

AN ACT

1 Amending Titles 27 (Environmental Resources) and 42 (Judiciary
2 and Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in costs and fees, further providing for
4 participation in environmental law or regulation; repealing
5 provisions relating to participation in environmental law or
6 regulation; and, in particular rights and immunities,
7 providing for participation in law or regulation related to
8 an issue in the public interest.

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

11 Section 1. Section 7707 of Title 27 of the Pennsylvania
12 Consolidated Statutes is repealed:

13 [§ 7707. Participation in environmental law or regulation.

14 A person that successfully defends against an action under
15 Chapter 83 (relating to participation in environmental law or
16 regulation) shall be awarded reasonable attorney fees and the
17 costs of litigation. If the person prevails in part, the court
18 may make a full award or a proportionate award.]

19 Section 2. Chapter 83 of Title 27 is repealed:

20 [CHAPTER 83

21 PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION

1 § 8301. Definitions.

2 The following words and phrases when used in this chapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Communication to the government." A written or oral
6 statement or writing made:

7 (1) before a legislative, executive or judicial
8 proceeding or any other official proceeding authorized by
9 law;

10 (2) in connection with an issue under consideration or
11 review by a legislative, executive or judicial body or any
12 other official proceeding authorized by law; or

13 (3) to a government agency in connection with the
14 implementation and enforcement of environmental law and
15 regulations.

16 "Enforcement of environmental law and regulation." Activity
17 relating to the identification and elimination of violations of
18 environmental laws and regulations, including investigations of
19 alleged violations, inspections of activities subject to
20 regulation under environmental law and regulations and responses
21 taken to produce correction of the violations.

22 "Government agency." The Federal Government, the
23 Commonwealth and any of the Commonwealth's departments,
24 commissions, boards, agencies, authorities, political
25 subdivisions or their departments, commissions, boards, agencies
26 or authorities.

27 "Implementation of environmental law and regulation."
28 Activity relating to the development and administration of
29 environmental programs developed under environmental law and
30 regulations.

1 § 8302. Immunity.

2 (a) General rule.--Except as provided in subsection (b), a
3 person that, pursuant to Federal or State law, files an action
4 in the courts of this Commonwealth to enforce an environmental
5 law or regulation or that makes an oral or written communication
6 to a government agency relating to enforcement or implementation
7 of an environmental law or regulation shall be immune from civil
8 liability in any resulting legal proceeding for damages where
9 the action or communication is aimed at procuring favorable
10 governmental action.

11 (b) Exceptions.--A person shall not be immune under this
12 section if the allegation in the action or any communication to
13 the government is not relevant or material to the enforcement or
14 implementation of an environmental law or regulation and:

15 (1) the allegation in the action or communication is
16 knowingly false, deliberately misleading or made with
17 malicious and reckless disregard for the truth or falsity;

18 (2) the allegation in the action or communication is
19 made for the sole purpose of interfering with existing or
20 proposed business relationships; or

21 (3) the oral or written communication to a government
22 agency relating to enforcement or implementation of an
23 environmental law or regulation is later determined to be a
24 wrongful use of process or an abuse of process.

25 § 8303. Right to a hearing.

26 A person who wishes to raise the defense of immunity from
27 civil liability under this chapter may file a motion with the
28 court requesting the court to conduct a hearing to determine the
29 preliminary issue of immunity. If a motion is filed, the court
30 shall then conduct a hearing and if the motion is denied, the

1 moving party shall have an interlocutory appeal of right to the
2 Commonwealth Court, during which time all discovery shall be
3 stayed.

4 § 8304. Intervention.

5 A government agency has the right to petition to intervene or
6 otherwise participate as an amicus curiae in the action
7 involving public petition and participation.

8 § 8305. Construction.

9 Nothing in this chapter shall be construed to limit any
10 constitutional, statutory or common law protections of
11 defendants to actions involving public petition and
12 participation.]

13 Section 3. Title 42 is amended by adding a section to read:

14 § 8340.3. Participation in law or regulation related to an
15 issue in the public interest.

16 (a) Immunity.--

17 (1) A person who:

18 (i) acts in furtherance of the right of advocacy on
19 issues of public interest in connection with enforcement
20 or implementation of government action related to an
21 issue of public interest; or

22 (ii) makes a communication genuinely aimed at
23 procuring a favorable governmental action shall be immune
24 from civil liability.

25 (2) A communication is not genuinely aimed at procuring
26 a favorable governmental action if it:

27 (i) is not material or relevant to the enforcement
28 or implementation of government action related to an
29 issue in the public interest;

30 (ii) was knowingly false when made;

1 (iii) was rendered with reckless disregard as to the
2 truth or falsity of the statement when made; or
3 (iv) represented a wrongful use of process or abuse
4 of process.

5 (b) Stay of proceedings.--The court shall stay all
6 proceedings in the action upon the filing of preliminary
7 objections for legal insufficiency of a pleading or other
8 appropriate motion on the basis of immunity provided by this
9 section. However, the court, on motion and after a hearing and
10 for good cause shown, may order that specified discovery be
11 conducted. The stay of proceedings shall remain in effect until
12 notice of the entry of the order ruling on the preliminary
13 objections or on another appropriate motion.

14 (c) Expedited hearing.--The court shall conduct an expedited
15 hearing on the filing of any motion or preliminary objections
16 based on immunity provided under this section.

17 (d) Admissibility of court determination.--If the court
18 determines that the plaintiff has established that there is a
19 substantial likelihood that the plaintiff will prevail on the
20 claim, neither that determination nor the fact of that
21 determination shall be admissible in evidence at any later stage
22 of the case, and no burden of proof or degree of proof otherwise
23 applicable shall be affected by that determination.

24 (e) Intervention.--The government agency involved in
25 furtherance of the right of advocacy on issues of public
26 interest in connection with an issue of public interest may
27 intervene or participate as an amicus curiae as provided by
28 general rule.

29 (f) Legal protections of defendants.--Nothing in this
30 section shall be construed to limit any constitutional,

statutory or common-law protections of defendants to actions involving public petition and participation.

(g) Abuse of legal process.--In addition to other costs or remedies allowed by general rule or statute, including, but not limited, to Subchapter E of Chapter 83 (relating to wrongful use of civil proceedings) in any administrative or judicial proceeding related to the enforcement or implementation of law or regulation related to an issue of public interest, the agency or court may award costs, including reasonable attorney fees, if the agency or court determines that an action, appeal, claim, motion or pleading is frivolous or taken solely for delay or that the conduct of a party or counsel is dilatory or vexatious.

(h) Personal information.--A request for information that discloses the personal identification of an individual and is sought pursuant to discovery shall be quashed on the motion of a person whose information is sought.

(i) Special damages.--The court may award the prevailing party who is provided with immunity from suit pursuant to this section the costs of litigation including reasonable attorney fees if there is a showing that the action brought was frivolous or intended to cause unnecessary delay.

(j) Parties.--In considering any motion or preliminary objections provided by this section, the court may additionally consider both of the following factors weighing in favor of granting immunity under subsection (a)(1)(ii):

(1) If the person making the communication possesses the following characteristics:

(i) Is an executive committee, board of directors, officers or other leadership chosen through elections.

(ii) Has written rules, such as bylaws or articles

1 of incorporation, that establish its mission and
2 operation.

3 (iii) Is organized for a specific purpose that
4 includes activities designed for the participation in
5 government actions.

6 (2) If the communication at issue was made at, or
7 resulted from, a meeting open to the general public which was
8 conducted in accordance with written rules, bylaws or
9 articles of incorporation under subsection (j)(1)(ii).

10 (k) Definitions.--The following words and phrases when used
11 in this section shall have the meanings given to them in this
12 subsection unless the context clearly indicates otherwise:

13 "Act in furtherance of the right of advocacy on issues of
14 public interest." Any of the following:

15 (1) any written or oral statement made:

16 (i) in connection with an issue under consideration
17 or review by a legislative, executive or judicial body,
18 or any other official proceeding authorized by law; or

19 (ii) in a place open to the public or a public forum
20 in connection with an issue of public interest; or

21 (2) any other expression or expressive conduct that
22 involves petitioning the government or communicating views to
23 members of the public in connection with an issue of public
24 interest.

25 "Government action." Any action regarding the enactment,
26 promulgation, issuance, implementation or interpretation of any
27 statute, regulation, policy, procedure or directive by a
28 government agency.

29 "Government agency." The Federal Government, the
30 Commonwealth and any of its departments, commissions, boards,

1 agencies and authorities and any political subdivision and its
2 authorities.

3 "Issue of public interest." An issue related to:

4 (1) Health or safety.

5 (2) Environmental, economic or community well-being.

6 (3) A government agency or a public figure.

7 (4) A good, product or service in the market place.

8 (5) Land use or licensing.

9 The term does not include private interests, including, but not
10 limited to, statements directed primarily toward protecting the
11 speaker's commercial interests rather than toward commenting on
12 or sharing information about a matter of public significance.

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