

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2469

Session of  
1984

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INTRODUCED BY CAPPABIANCA, AFFLERBACH, F. E. TAYLOR, O'DONNELL,  
DUFFY, ITKIN, VAN HORNE, BOYES, ARTY, POTT, KOSINSKI, FLICK,  
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MORRIS, COLAFELLA, DeLUCA, BELARDI, D. W. SNYDER, WOGAN,  
MERRY AND DeWEESE, SEPTEMBER 18, 1984

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AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, SEPTEMBER 26, 1984

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## 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," providing for the Office of  
21 Small Business Advocate in the ~~Office of Attorney General~~ <—  
22 DEPARTMENT OF COMMERCE; creating a Small Business Advisory <—  
23 Board; providing for assessments on public utilities; and  
24 making an appropriation.

25 The General Assembly of the Commonwealth of Pennsylvania

26 hereby enacts as follows:

27 Section 1. The act of April 9, 1929 (P.L.177, No.175), known

1 as The Administrative Code of 1929, is amended by adding an  
2 article to read:

3 ARTICLE IX-B

4 OFFICE OF SMALL BUSINESS ADVOCATE

5 Section 901-B. Definitions.--As used in this article:

6 "COMMISSION" MEANS THE PENNSYLVANIA PUBLIC UTILITY  
7 COMMISSION.

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8 "Public utility" means a public utility as defined in clause  
9 (17) of section 2 of the act of May 28, 1937 (P.L.1053, No.286),  
10 known as the "Public Utility Law."

11 "Small business" means an independently owned and operated  
12 business entity with fewer than five hundred (500) employees in  
13 this Commonwealth.

14 "Small business organization" means any organization whose  
15 majority of members are small businesses, as defined, and whose  
16 policy is determined by those members.

17 Section 902-B. Office of Small Business Advocate.--(a)

18 There is hereby established within the ~~Office of Attorney~~  
19 ~~General~~ DEPARTMENT OF COMMERCE an Office of Small Business  
20 Advocate to represent the interest of small business before the  
21 Pennsylvania Public Utility Commission.

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22 (b) The Office of Small Business Advocate shall be headed by  
23 a Small Business Advocate who shall be appointed by the  
24 Governor, by and with the advice and consent of a majority of  
25 the members elected to the Senate. The Small Business Advocate  
26 shall be a person who by reason of training, experience and  
27 attainment is qualified to represent the interest of small  
28 business. Compensation shall be set by the Executive Board.

29 (c) No individual who serves as the Small Business Advocate  
30 shall, while serving in such position, engage in any business.

vocation, other employment, or have other interests,  
inconsistent with his official responsibilities, nor shall he  
seek or accept employment nor render beneficial services for  
compensation with any "person" or "corporation," as defined in  
section 2 of the act of May 28, 1937 (P.L.1053, No.286), known  
as the "Public Utility Law," subject to the authority of the  
commission during the tenure of the appointment and for a period  
of two (2) years after the appointment is served or terminated.

(d) Any individual who is appointed to the position of Small  
Business Advocate shall not seek election nor accept appointment  
to any political office during the tenure as Small Business  
Advocate and for a period of two (2) years after the appointment  
is served or terminated.

Section 903-B. Assistant Small Business Advocates;  
Employes.--The Small Business Advocate ~~with the approval of the~~ <—  
~~Attorney General~~ shall appoint attorneys as assistant small  
business advocates and such additional clerical, technical and  
professional staff as may be appropriate, and may contract for  
such additional services as shall be necessary for the  
performance of his function. The compensation of assistant  
advocates and such clerical, technical and professional staff  
shall be set by the Executive Board. No assistant small business  
advocate or other staff employe shall, while serving in such  
position, engage in any business, vocation, other employment, or  
have other interests, inconsistent with his official  
responsibilities.

Section 904-B. Powers and duties of the Small Business  
Advocate.--(a) In addition to any other authority conferred  
upon him by this act, the Small Business Advocate is authorized,  
and it shall be his duty, in carrying out his responsibilities

1 under this act, to represent the interest of small business as a  
2 party, or otherwise participate for the purpose of representing  
3 an interest of small business, before the commission in any  
4 matter properly before the commission, and before any court or  
5 agency, initiating proceedings if in his judgment such may be  
6 necessary, in connection with any matter involving regulation by  
7 the commission or the corresponding regulatory agency of the  
8 United States whether on appeal or otherwise initiated.

9 (b) The Small Business Advocate may monitor all cases before  
10 corresponding regulatory agencies of the United States,  
11 including the Federal Communications Commission and the Federal  
12 Energy Regulatory Commission, which impact upon the interests of  
13 Pennsylvania small businesses and may formally participate in  
14 those proceedings which in his judgment warrant such  
15 participation.

16 (c) The Small Business Advocate, in consultation with the  
17 Small Business Advisory Board, may exercise discretion in  
18 determining the interests of small business which will be  
19 advocated in any particular proceeding and in determining  
20 whether or not to participate in or initiate any particular  
21 proceeding and, in so determining, shall consider the public  
22 interest, the resources available and the substantiality of the  
23 effect of the proceeding on the interest of small business. The  
24 Small Business Advocate may refrain from intervening when in the  
25 judgment of the Small Business Advocate such is not necessary to  
26 represent adequately the interest of small business.

27 (d) In addition to any other authority conferred upon him by  
28 this act, the Small Business Advocate is authorized to represent  
29 an interest of small business which is presented to him for his  
30 consideration upon petition in writing by a substantial number

of persons, who make direct use or are ultimate recipients of a product or service supplied by a person, corporation, or municipal corporation subject to regulation by the commission. The Small Business Advocate shall notify the principal sponsors of any such petition within a reasonable time after receipt of any such petition of the action taken or intended to be taken by him with respect to the interest of small business presented in such petition. If the Small Business Advocate declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons therefor.

(e) Any action brought by the Small Business Advocate before a court or an agency of this Commonwealth shall be brought in the name of the Small Business Advocate. The Small Business Advocate may name a small business or small business group of small businesses in whose name the action may be brought or may join with a small business or group of small businesses in bringing the action.

(f) At such time as the Small Business Advocate determines, in accordance with applicable time limitations, to initiate, intervene, or otherwise participate in any commission, agency, or court proceeding, he shall issue publicly a written statement, a copy of which he shall file in the proceeding in addition to any required entry of his appearance, stating concisely the specific interest of small business to be protected.

Section 905-B. Small Business Advisory Board.--(a) There is hereby established a Small Business Advisory Board composed of seven (7) small business persons whose businesses and residences are in the Commonwealth, who shall be appointed as follows:

(1) ~~One member~~ THREE MEMBERS appointed by the Governor.

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~~(2) Two members appointed by the Attorney General.~~

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~~(3)~~ (2) One member each appointed by the majority and minority caucuses of the Senate and the House of Representatives.

(b) In appointing members to the board, those making the appointments should consider qualified candidates recommended by independent businesses and other small business organizations.

~~(c) The members of the board initially appointed and any person appointed to fill a vacancy shall serve until June 30, 1987.~~

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(C) THE MEMBERS OF THE BOARD INITIALLY APPOINTED SHALL SERVE UNTIL DECEMBER 31, 1986. THEREAFTER, EACH MEMBER SHALL BE APPOINTED FOR A TERM OF TWO YEARS TO BEGIN ON THE FIRST DAY OF EACH ODD-NUMBERED YEAR. THE BOARD SHALL ANNUALLY SELECT FROM AMONG ITS MEMBERS A CHAIRMAN AND SECRETARY. THE BOARD MAY ADOPT BYLAWS GOVERNING ITS PROCEEDINGS. A MAJORITY OF THE MEMBERS SHALL CONSTITUTE A QUORUM OF THE BOARD.

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(D) WHILE SERVING ON THE BOARD, NO MEMBER MAY HOLD A PUBLIC OFFICE OR PUBLIC APPOINTMENT FOR WHICH HE RECEIVES A SALARY.

(E) A VACANCY ON THE BOARD SHALL BE FILLED FOR THE BALANCE OF THE TERM IN THE SAME MANNER THAT THE VACATING MEMBER WAS APPOINTED. THE RESPECTIVE APPOINTING AUTHORITY MAY REMOVE A MEMBER ONLY FOR CAUSE.

~~(d)~~ (F) The Office of Small Business Advocate shall provide staff services for carrying out the board's responsibilities under this act.

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~~(e)~~ (G) The members of the board shall not be entitled to compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members of

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1 the board. SUCH EXPENSES SHALL NOT EXCEED ONE HUNDRED AND FIFTY <—  
2 PER CENTUM (150%) OF REIMBURSABLE LODGING AND SUBSISTENCE  
3 EXPENSE ALLOWANCES PURSUANT TO 4 PA. CODE CH. 40 (RELATING TO  
4 TRAVEL AND SUBSISTENCE). Expenses so paid shall be deemed to be  
5 expenses of the Office of Small Business Advocate.

6 ~~(f)~~ (H) The purpose of the Small Business Advisory Board <—  
7 shall be to assist and advise the Small Business Advocate on  
8 whether or not the office should enter into a particular rate  
9 case before the Pennsylvania Public Utility Commission <—  
10 COMMISSION, which sub-class among commercial or business <—  
11 customers should be represented, and any other matter within the  
12 purview of the Office of Small Business Advocate.

13 Section 906-B. Assessment Upon Public Utilities;  
14 Disposition, Appropriation and Disbursement of Assessments.--(a)  
15 Before November 1, 1985, for fiscal year 1986-1987 and before  
16 November 1 of each year thereafter, the Office of Small Business  
17 Advocate shall estimate the total expenditures for the Office of  
18 Small Business Advocate and submit the estimate to the Governor  
19 in accordance with section 610 of the act. At the same time the  
20 Small Business Advocate submits his estimate to the Governor,  
21 the Small Business Advocate shall also submit that estimate to  
22 the General Assembly. Such estimate shall be no less than two <—  
23 hundred and thirty one thousandths of one per centum (.0231%) of  
24 twenty per centum (20%) of the total gross intrastate operating  
25 revenues of all of the following public utilities subject to the  
26 jurisdiction of the Pennsylvania Public Utility Commission for  
27 the preceding calendar year: electric, gas, telephone, water,  
28 sewage and steam heat. SUCH ESTIMATE SHALL NOT EXCEED FIVE ONE <—  
29 HUNDREDTHS OF ONE PER CENTUM (.05%) OF THE TOTAL GROSS  
30 INTRASTATE OPERATING REVENUES OF ALL PUBLIC UTILITIES SUBJECT TO

1 THE JURISDICTION OF THE COMMISSION FOR THE PRECEDING CALENDAR  
2 YEAR. The Small Business Advocate or his designated  
3 representatives shall be afforded an opportunity to appear  
4 before the Governor and the Senate and House Appropriations  
5 Committees regarding his estimate. If the General Assembly fails  
6 to approve the Small Business Advocate's budget for the purposes  
7 of this section by March 30, the Pennsylvania Public Utility <—  
8 Commission COMMISSION shall, after the first year of operation <—  
9 of the office, assess public utilities on the basis of the last  
10 approved allocation. At such time as the General Assembly  
11 approves the proposed budget, the Small Business Advocate and  
12 the commission shall make an adjustment in the assessments to  
13 reflect the approved budget. The Office of Small Business  
14 Advocate shall subtract from the budget finally approved by the  
15 General Assembly any balance of the appropriation to be carried  
16 over into such fiscal year from the preceding one. The remainder  
17 so determined shall constitute the total assessment, and shall  
18 be allocated to, and paid by, public utilities in the manner  
19 hereafter prescribed.

20 (b) For the fiscal year 1985-1986, the allocation shall be  
21 made as described in subsection (c) but, for each fiscal year  
22 thereafter, the allocation shall be made as follows:

23 (1) The Office of Small Business Advocate shall determine  
24 for the preceding calendar year the amount of its expenditures  
25 directly attributable, or in its judgment properly allocable, to  
26 its activities in connection with each group of utilities  
27 furnishing the same kind of service and debit the amount so  
28 determined to such group.

29 (2) The Office of Small Business Advocate shall then  
30 allocate the total assessment prescribed by subsection (a) to



each group in the proportion which the sum of the debits made to it bears to the sum of the debits made to all groups. The Office of Small Business Advocate shall transmit to the Pennsylvania Public Utility Commission COMMISSION the result of the aforesaid allocation.

(c) The Pennsylvania Public Utility Commission COMMISSION shall thereafter complete the assessment procedure and collect the assessments as follows: each public utility within a group shall then be assessed for and shall pay to the Pennsylvania Public Utility Commission COMMISSION such proportion of the amount allocated to its group as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of its group for that year, but for the fiscal year 1985-1986 every public utility shall be assessed for and shall pay to the commission such proportion of the total assessment as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of all public utilities that are assessed.

The Pennsylvania Public Utility Commission COMMISSION shall give notice by registered or certified mail to each public utility of the amount lawfully charged against it under the provisions of this section, which amount shall be paid by the public utility within thirty (30) days of receipt of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case each public utility shall pay each installment on or before the date specified therefor by the commission. Within fifteen (15) days after receipt of such notice, the public utility against which such assessment has been made may file with the commission

1 objections setting out in detail the grounds upon which the  
2 objector regards such assessment to be excessive, erroneous,  
3 unlawful or invalid. The commission, after notice to the  
4 objector, shall hold a hearing upon such objections. After such  
5 hearing, the commission shall record upon its minutes its  
6 findings on the objections and shall transmit to the objector,  
7 by registered or certified mail, notice of the amount, if any,  
8 charged against it in accordance with such findings, which  
9 amount, or any installment thereof, then due shall be paid by  
10 the objector within ten (10) days after receipt of notice of the  
11 findings of the commission with respect to such objections. If  
12 any payment prescribed by this subsection is not made as  
13 aforesaid, the commission may suspend or revoke certificates of  
14 public convenience, certify automobile registrations to the  
15 Secretary of Transportation for suspension or revocation or,  
16 through the Office of Attorney General, may institute an  
17 appropriate action at law for the amount lawfully assessed,  
18 together with any additional cost incurred by the commission or  
19 the Office of Attorney General by virtue of such failure to pay.

20 (d) No suit or proceeding shall be maintained in any court  
21 for the purpose of restraining or in anywise delaying the  
22 collection or payment of any assessment made under subsections  
23 (a), (b) and (c), but every public utility against which an  
24 assessment is made shall pay the same as provided in subsection  
25 (c). Any public utility making any such payment may, at any time  
26 within two (2) years from the date of payment, sue the  
27 Commonwealth in an action at law to recover the amount paid, or  
28 any part thereof, upon the ground that the assessment was  
29 excessive, erroneous, unlawful, or invalid, in whole or in part,  
30 provided objections, as hereinbefore provided, were filed with

1 the commission, and payment of the assessment was made under  
2 protest either as to all or part thereof. In any action for  
3 recovery of any payments made under this section, the claimant  
4 shall be entitled to raise every relevant issue of law, but the  
5 findings of fact made by the commission, pursuant to this  
6 section, shall be prima facie evidence of the facts therein  
7 stated. Any records, books, data, documents, and memoranda  
8 relating to the expenses of the Office of Small Business  
9 Advocate shall be admissible in evidence in any court and shall  
10 be prima facie evidence of the truth of their contents. If it is  
11 finally determined in any such action that all or any part of  
12 the assessment for which payment was made under protest was  
13 excessive, erroneous, unlawful, or invalid, the Office of Small  
14 Business Advocate shall make a refund to the claimant out of the  
15 appropriation specified herein as directed by the court.

16 (e) The procedure in this section providing for the  
17 determination of the lawfulness of assessments and the recovery  
18 back of payments made pursuant to such assessments shall be  
19 exclusive of all other remedies and procedures.

20 (f) It is the intent and purpose of this section that each  
21 public utility shall advance to the Office of Small Business  
22 Advocate its reasonable share of the cost of administering this  
23 act. The Office of Small Business Advocate shall keep records of  
24 the costs incurred in connection with the administration and  
25 enforcement of this act or any other act. The Office of Small  
26 Business Advocate and the Pennsylvania Public Utility Commission <—  
27 COMMISSION shall also keep a record of the manner in which it <—  
28 shall have computed the amount assessed against every public  
29 utility. Such records shall be open to inspection by all  
30 interested parties. The determination of such costs and

1 assessments by the Office of Small Business Advocate and the  
2 ~~Pennsylvania Public Utility Commission~~ COMMISSION, and the <—  
3 records and data upon which the same are made, shall be  
4 considered prima facie correct. In any proceeding instituted to  
5 challenge the reasonableness or correctness of any assessment  
6 under this section, the party challenging the same shall have  
7 the burden of proof.

8 (g) All assessments received, collected, or recovered under  
9 this act shall be paid by the commission into the General Fund  
10 of the State Treasury through the Department of Revenue.

11 (h) All such assessments, allocated to and paid by public  
12 utilities shall be held in trust solely for the purpose of  
13 defraying the cost of the administration and performance of the  
14 duties of the Office of Small Business Advocate relating to  
15 proceedings before the ~~Pennsylvania Public Utility Commission~~ <—  
16 COMMISSION, the corresponding regulatory agencies of the United <—  
17 States, related judicial proceedings, and other matters within  
18 the jurisdiction of the Office of Small Business Advocate, and  
19 shall be earmarked for the use of, and annually appropriated to,  
20 the Office of Small Business Advocate for disbursement solely  
21 for that purpose.

22 (i) All requisitions upon such appropriation shall be signed  
23 by the Small Business Advocate or such deputies as he may  
24 designate in writing to the State Treasurer and shall be  
25 presented to the State Treasurer and dealt with by him and the  
26 Treasury Department in the manner prescribed by the act of April  
27 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

28 Section 907-B. Reports.--The Small Business Advocate shall  
29 annually transmit to the Governor, ~~the Attorney General~~ and the <—  
30 General Assembly and shall make available to the public an

1 annual report on the conduct of the Office of Small Business  
2 Advocate. The Small Business Advocate shall make recommendations  
3 as may, from time to time, be necessary or desirable to protect  
4 the interest of small businesses.

5 SECTION 908-B. DUTIES OF THE COMMISSION.--IN DEALING WITH <—  
6 ANY PROPOSED ACTION WHICH MAY SUBSTANTIALLY AFFECT THE INTEREST  
7 OF SMALL BUSINESS, INCLUDING, BUT NOT LIMITED TO, A PROPOSED  
8 CHANGE OF RATES AND THE ADOPTION OF RULES, REGULATIONS,  
9 GUIDELINES, ORDERS, STANDARDS OR FINAL POLICY DECISIONS, THE  
10 COMMISSION SHALL:

11 (1) NOTIFY THE SMALL BUSINESS ADVOCATE WHEN NOTICE OF THE  
12 PROPOSED ACTION IS GIVEN TO THE PUBLIC OR AT A TIME FIXED BY  
13 AGREEMENT BETWEEN THE SMALL BUSINESS ADVOCATE AND THE COMMISSION  
14 IN A MANNER TO ASSURE THE SMALL BUSINESS ADVOCATE REASONABLE  
15 NOTICE AND ADEQUATE TIME TO DETERMINE WHETHER TO INTERVENE IN  
16 SUCH MATTER.

17 (2) CONSISTENT WITH ITS OTHER STATUTORY RESPONSIBILITIES,  
18 TAKE SUCH ACTION WITH DUE CONSIDERATION TO THE INTEREST OF SMALL  
19 BUSINESS.

20 SECTION 909-B. SAVINGS PROVISION; CONSTRUCTION.--(A)  
21 NOTHING CONTAINED IN THIS ARTICLE SHALL IN ANY WAY LIMIT THE  
22 RIGHT OF ANY SMALL BUSINESS TO BRING A PROCEEDING BEFORE EITHER  
23 THE COMMISSION OR A COURT.

24 (B) NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO  
25 IMPAIR THE STATUTORY AUTHORITY OR RESPONSIBILITY OF THE  
26 COMMISSION TO REGULATE PUBLIC UTILITIES IN THE PUBLIC INTEREST.

27 SECTION 2. (A) THE OFFICE OF SMALL BUSINESS ADVOCATE SHALL  
28 CONTINUE TOGETHER WITH ITS STATUTORY FUNCTIONS AND DUTIES UNTIL  
29 DECEMBER 31, 1989, WHEN IT SHALL TERMINATE AND GO OUT OF  
30 EXISTENCE UNLESS REESTABLISHED OR CONTINUED BY THE GENERAL

1 ASSEMBLY.

2 (B) EVALUATION AND REVIEW, TERMINATION, REESTABLISHMENT AND  
3 CONTINUATION OF THE AGENCY SHALL BE CONDUCTED PURSUANT TO THE  
4 PROVISIONS OF THE ACT OF DECEMBER 22, 1981 (P.L.508, NO.142),  
5 KNOWN AS THE "SUNSET ACT."

6 Section ~~2~~ 3. The sum of \$400,000, or as much thereof as may <—  
7 be necessary, is appropriated from the General Fund to the  
8 Office of Small Business Advocate for the fiscal year 1984-1985,  
9 for the purpose of establishing and operating an Office of Small  
10 Business Advocate.

11 Section ~~3~~ 4. This act shall take effect in 60 days. <—