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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 265      Session of  
1987

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Report of the Committee of Conference

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To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the House of Representatives and Senate for the purpose of considering House Bill No. 265, entitled:

"An act \* \* \* PROVIDING FOR THE OFFICE OF SMALL BUSINESS ADVOCATE IN THE OFFICE OF ATTORNEY GENERAL; PROVIDING FOR THE POWERS AND DUTIES OF THE OFFICE OF SMALL BUSINESS ADVOCATE AND THE PENNSYLVANIA PUBLIC UTILITY COMMISSION IN RELATION THERETO; AND MAKING A TEMPORARY APPROPRIATION,"

respectfully submit the following bill as our report:

ITALO S. CAPPABIANCA

WILLIAM R. LLOYD, JR.

DONALD W. DORR

(Committee on the part of the House of Representatives.)

CLARENCE D. BELL

ROY C. AFFLERBACH

(Committee on the part of the Senate.)

AN ACT

1 Providing for the Office of Small Business Advocate in the  
2 Department of Commerce; providing for the powers and duties  
3 of the Office of Small Business Advocate and the Pennsylvania  
4 Public Utility Commission in relation thereto; and making a  
5 temporary appropriation.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Small  
10 Business Advocate Act.

11 Section 2. Definitions.

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

15 "Commission." The Pennsylvania Public Utility Commission.

16 "Public utility." A public utility as defined in 66 Pa.C.S.  
17 § 102 (relating to definitions).

18 "Small business consumer." A person, sole proprietorship,  
19 partnership, corporation, association or other business entity  
20 which employs fewer than 250 employees and which receives public  
21 utility service under a small commercial, small industrial or  
22 small business rate classification.

23 Section 3. Office of Small Business Advocate.

24 (a) Office established.--There is hereby established within  
25 the Department of Commerce an Office of Small Business Advocate  
26 to represent the interest of small business consumers before the  
27 commission.

28 (b) Small Business Advocate.--The Governor shall appoint a  
29 Small Business Advocate, which appointment shall be subject to  
30 the approval of a majority of the members elected to the Senate.

1 The Small Business Advocate shall serve as Small Business  
2 Advocate until a successor is appointed and qualified.

3 (c) Qualifications.--The Small Business Advocate shall be a  
4 person who by reason of training, experience and attainment is  
5 qualified to represent the interest of small business consumers.  
6 Compensation shall be set by the Executive Board.

7 (d) General restrictions.--No individual who serves as a  
8 Small Business Advocate shall, while serving in such position,  
9 engage in any business, vocation or other employment, or have  
10 other interests, inconsistent with his official  
11 responsibilities, nor shall he seek or accept employment nor  
12 render beneficial services for compensation with any "person" or  
13 "corporation," as defined in 66 Pa.C.S. § 102 (relating to  
14 definitions), subject to the authority of the commission during  
15 the tenure of the appointment and for a period of two years  
16 after the appointment is served or terminated.

17 (e) Political office restrictions.--Any individual who is  
18 appointed to the position of Small Business Advocate shall not  
19 seek election nor accept appointment to any public office during  
20 the tenure as Small Business Advocate and for a period of two  
21 years after the appointment is served or terminated.

22 (f) Secretary of Commerce restrictions.--The Secretary of  
23 Commerce shall have administrative responsibilities for the  
24 office only and shall not be responsible, in any manner, for the  
25 policies, procedures or other substantive matters developed by  
26 the Office of Small Business Advocate in carrying out its duties  
27 under this act to represent the small business consumer.

28 Section 4. Assistant advocates; employees.

29 The Small Business Advocate, with the approval of the  
30 Secretary of Commerce, shall appoint attorneys as assistant

1 small business advocates, and such additional clerical,  
2 technical and professional staff as may be appropriate, and may  
3 contract for such additional services as shall be necessary for  
4 the performance of his function. The compensation of assistant  
5 small business advocates and such clerical, technical and  
6 professional staff shall be set by the Executive Board. No  
7 assistant small business advocate or other staff employee shall,  
8 while serving in such position, engage in any business, vocation  
9 or other employment, or have other interests, inconsistent with  
10 his official responsibilities.

11 Section 5. Powers and duties of the Small Business Advocate.

12 (a) Representing interests of small business consumers.--In  
13 addition to any other authority conferred upon him by this act,  
14 the Small Business Advocate is authorized, and it shall be his  
15 duty in carrying out his responsibilities under this act, to  
16 represent the interest of small business consumers as a party,  
17 or otherwise participate for the purpose of representing an  
18 interest of small business consumers before the commission in  
19 any matter properly before the commission, and before any court,  
20 or agency, initiating proceedings if in his judgment such may be  
21 necessary, in connection with any matter involving regulation by  
22 the commission or the corresponding regulatory agency of the  
23 United States, whether on appeal or otherwise initiated.

24 (b) Monitoring and participating in proceedings.--The Small  
25 Business Advocate may monitor all cases before corresponding  
26 regulatory agencies of the United States, including the Federal  
27 Communications Commission and the Federal Energy Regulatory  
28 Commission, which impact upon the interests of Pennsylvania  
29 small business consumers, and may formally participate in those  
30 proceedings which in his judgment warrant such participation.

1 (c) Exercise of discretion.--The Small Business Advocate may  
2 exercise discretion in determining the interests which will be  
3 advocated in any particular proceeding and in determining  
4 whether or not to participate in or initiate any particular  
5 proceeding and, in so determining, shall consider the public  
6 interest, the resources available and the substantiality of the  
7 effect of the proceeding on the interest of small business  
8 consumers. The Small Business Advocate may refrain from  
9 intervening when, in the judgment of the Small Business  
10 Advocate, such is not necessary to represent adequately the  
11 interest of small business consumers.

12 (d) Action upon petition.--In addition to any other  
13 authority conferred upon him by this act, the Small Business  
14 Advocate is authorized to represent an interest of small  
15 business consumers which is presented to him for his  
16 consideration upon petition in writing by a substantial number  
17 of small business consumers. The Small Business Advocate shall  
18 notify the principal sponsors of any such petition of the action  
19 taken or intended to be taken by him with respect to the  
20 interest of consumers presented in such petition. If the Small  
21 Business Advocate declines or is unable to represent such  
22 interest, he shall notify such sponsors and shall state his  
23 reasons.

24 (e) Name in which action is brought.--Any action brought by  
25 the Small Business Advocate before a court or any agency of this  
26 Commonwealth shall be brought in the name of the Small Business  
27 Advocate. The Small Business Advocate may name a small business  
28 consumer or group of small business consumers in whose name the  
29 action may be brought or may join consumers in bringing such  
30 action.

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

9 Section 6. Assessment upon public utilities; disposition,  
10 appropriation and disbursement of such  
11 assessments.

12 (a) Estimate of expenditures.--Before November 1 of each  
13 year, the Small Business Advocate shall estimate the total  
14 expenditures for the Office of Small Business Advocate and  
15 submit the estimate to the Governor in accordance with section  
16 610 of the act of April 9, 1929 (P.L.177, No.175), known as The  
17 Administrative Code of 1929. At the same time the Small Business  
18 Advocate submits his estimate to the Governor, the Small  
19 Business Advocate shall also submit the estimate to the General  
20 Assembly. Such estimate shall not exceed 0.0125% of the total  
21 gross intrastate operating revenues of all public utilities  
22 subject to the jurisdiction of the commission for the preceding  
23 calendar year. The Small Business Advocate, or his designated  
24 representatives, shall be afforded an opportunity to appear  
25 before the Governor and the Senate and House Appropriations  
26 Committees regarding his estimate. If the General Assembly fails  
27 to approve the Small Business Advocate's budget for the purposes  
28 of this section by March 20, the commission shall assess public  
29 utilities on the basis of the last approved allocation. At such  
30 time as the General Assembly approves the proposed budget, the

1 Small Business Advocate and the commission shall make an  
2 adjustment in the assessment to reflect the approved budget. The  
3 Office of Small Business Advocate shall subtract from the budget  
4 finally approved by the General Assembly any balance of the  
5 appropriation to be carried over into such fiscal year from the  
6 preceding one. The remainder so determined shall constitute the  
7 total assessment, and shall be allocated to and paid by public  
8 utilities in the manner hereafter prescribed.

9 (b) Allocation of assessment.--For each fiscal year the  
10 allocation shall be made as follows:

11 (1) The Office of Small Business Advocate shall  
12 determine for the preceding calendar year the amount of its  
13 expenditures directly attributable, or in its judgment  
14 properly allocable, to its activities in connection with each  
15 group of utilities furnishing the same kind of service and  
16 debit the amount so determined to such group.

17 (2) The Office of Small Business Advocate shall then  
18 allocate the total assessment prescribed in subsection (a) to  
19 each group in the proportion which the sum of the debits made  
20 to it bears to the sum of the debits made to all groups. The  
21 Office of Small Business Advocate shall transmit to the  
22 commission the result of the aforesaid allocation.

23 (c) Collection of assessment.--The commission shall  
24 thereafter complete the assessment procedure and collect the  
25 assessments as follows: Each public utility within a group shall  
26 then be assessed for and shall pay to the commission such  
27 proportion of the amount allocated to its group as the gross  
28 intrastate operating revenues of the public utility for the  
29 preceding calendar year bear to the total gross intrastate  
30 operating revenues of its group for that year. The commission

1 shall give notice by registered mail to each public utility of  
2 the amount lawfully charged against it under the provisions of  
3 this section, which amount shall be paid by the public utility  
4 within 30 days of receipt of such notice, unless the commission  
5 specifies on the notices sent to all public utilities an  
6 installment plan of payment, in which case each public utility  
7 shall pay each installment on or before the date specified  
8 therefor by the commission. Within 15 days after receipt of such  
9 notice, the public utility against which such assessment has  
10 been made may file with the commission objections setting out in  
11 detail the grounds upon which the objector regards such  
12 assessment to be excessive, erroneous, unlawful or invalid. The  
13 commission, after notice to the objector, shall hold hearing  
14 upon such objections. After such hearing, the commission shall  
15 record upon its minutes its findings on the objections and shall  
16 transmit to the objector, by registered mail, notice of the  
17 amount, if any, charged against it in accordance with such  
18 findings, which amount, or any installment thereof, then due  
19 shall be paid by the objector within ten days after receipt of  
20 the notice of the findings of the commission with respect to  
21 such objections. If any payment prescribed by this subsection is  
22 not made as aforesaid, the commission may suspend or revoke  
23 certificates of public convenience, certify automobile  
24 registrations to the Secretary of Transportation for suspension  
25 or revocation or, through the Office of Attorney General, may  
26 institute an appropriate action at law for the amount lawfully  
27 assessed, together with any additional cost incurred by the  
28 commission or the Office of Attorney General by virtue of such  
29 failure to pay.

30 (d) No delay.--No suit or proceeding shall be maintained in



1 any court for the purpose of restraining or in any way delaying  
2 the collection or payment of any assessment made under  
3 subsections (a), (b) and (c), but every public utility against  
4 which an assessment is made shall pay the same as provided in  
5 subsection (c). Any public utility making any such payment may,  
6 at any time within two years from the date of payment, sue the  
7 Commonwealth in an action at law to recover the amount paid, or  
8 any part thereof, upon the ground that the assessment was  
9 excessive, erroneous, unlawful or invalid, in whole or in part,  
10 provided that objections, as hereinbefore provided, were filed  
11 with the commission and payment of the assessment was made under  
12 protest either as to all or part thereof. In any action for  
13 recovery of any payments made under this section, the claimant  
14 shall be entitled to raise every relevant issue of law, but the  
15 findings of fact made by the commission, pursuant to this  
16 section, shall be prima facie evidence of the facts therein  
17 stated. Any records, books, data, documents and memoranda  
18 relating to the expenses of the Office of Small Business  
19 Advocate shall be admissible in evidence in any court and shall  
20 be prima facie evidence of the truth of their contents. If it is  
21 finally determined in any such action that all or any part of  
22 the assessment for which payment was made under protest was  
23 excessive, erroneous, unlawful or invalid, the Office of Small  
24 Business Advocate shall make a refund to the claimant out of the  
25 appropriation specified herein as directed by the court.

26 (e) Procedure exclusive.--The procedure in this section  
27 providing for the determination of the lawfulness of assessments  
28 and the recovery back of payments made pursuant to such  
29 assessments shall be exclusive of all other remedies and  
30 procedures.

1 (f) Records.--It is the intent and purpose of this section  
2 that each public utility shall advance to the Office of Small  
3 Business Advocate its reasonable share of the cost of  
4 administering this act. The Office of Small Business Advocate  
5 shall keep records of the costs incurred in connection with the  
6 administration and enforcement of this act or any other act. The  
7 Office of Small Business Advocate and the commission shall also  
8 keep a record of the manner in which it shall have computed the  
9 amount assessed against every public utility. Such records shall  
10 be open to inspection by all interested parties. The  
11 determination of such costs and assessments by the Office of  
12 Small Business Advocate and the commission, and the records and  
13 data upon which the same are made, shall be considered prima  
14 facie correct. In any proceeding instituted to challenge the  
15 reasonableness or correctness of any assessment under this  
16 section, the party challenging the same shall have the burden of  
17 proof.

18 (g) Payment into General Fund.--All assessments received,  
19 collected or recovered under this act shall be paid by the  
20 commission into the General Fund of the State Treasury through  
21 the Department of Revenue.

22 (h) Use of assessments.--All such assessments, allocated to  
23 and paid by public utilities, shall be held in trust solely for  
24 the purpose of defraying the cost of the administration and  
25 performance of the duties of the Office of Small Business  
26 Advocate relating to proceedings before the commission, the  
27 corresponding regulatory agencies of the United States, related  
28 judicial proceedings and other such matters within the  
29 jurisdiction of the Office of Small Business Advocate, and shall  
30 be earmarked for the use of, and annually appropriated to, the

1 Office of Small Business Advocate for disbursement solely for  
2 that purpose.

3 (i) Requisitions.--All requisitions upon such appropriation  
4 shall be signed by the Small Business Advocate or such deputies  
5 as he may designate in writing to the State Treasurer and shall  
6 be presented to the State Treasurer and dealt with by him and  
7 the Treasury Department in the manner prescribed by the act of  
8 April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

9 Section 7. Duties of the commission.

10 In dealing with any proposed action which may substantially  
11 affect the interest of small business consumers, including, but  
12 not limited to, a proposed change of rates and the adoption of  
13 rules, regulations, guidelines, orders, standards or final  
14 policy decisions, the commission shall:

15 (1) Notify the Small Business Advocate when notice of  
16 the proposed action is given to the public or at a time fixed  
17 by agreement between the Small Business Advocate and the  
18 commission in a manner to assure the Small Business Advocate  
19 reasonable notice and adequate time to determine whether to  
20 intervene in such matter.

21 (2) Consistent with its other statutory  
22 responsibilities, take such action with due consideration to  
23 the interest of small business consumers.

24 Section 8. Savings provision; construction.

25 (a) No bar to other action.--Nothing contained in this act  
26 shall in any way limit the right of any small business consumer  
27 to bring a proceeding before either the commission or a court.

28 (b) No impairment to commission.--Nothing contained in this  
29 act shall be construed to impair the statutory authority or  
30 responsibility of the commission to regulate public utilities in

1 the public interest.

2 (c) No impairment to Office of Consumer Advocate.--Nothing  
3 contained in this act shall be construed to limit or impair the  
4 statutory authority or responsibility of the Office of Consumer  
5 Advocate or the Consumer Advocate to represent the interests of  
6 consumers before the commission or in any other authorized  
7 manner.

8 Section 9. Reports.

9 The Small Business Advocate shall annually transmit to the  
10 Governor and to the General Assembly, and shall make available  
11 to the public, an annual report on the conduct of the Office of  
12 Small Business Advocate. The Small Business Advocate shall make  
13 recommendations as may from time to time be necessary or  
14 desirable to protect the interest of small business consumers.

15 Section 10. Sunset.

16 The Office of Small Business Advocate shall continue together  
17 with its statutory functions and duties until December 31, 1993,  
18 when it shall terminate and go out of existence unless  
19 reestablished or continued by the General Assembly. Evaluation  
20 and review, termination, reestablishment and continuation of the  
21 agency shall be conducted pursuant to the provisions of the act  
22 of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

23 Section 11. Appropriation.

24 For the period from the effective date of this act to June  
25 30, 1989, the sum of \$250,000, or as much thereof as may be  
26 necessary, is hereby appropriated from the General Fund to the  
27 Office of Small Business Advocate to carry out the provisions of  
28 this act. All such moneys appropriated from the General Fund  
29 shall be repaid to the General Fund in the next fiscal year from  
30 the funds assessed for the operation of the Office of Small

- 1 Business Advocate under this act.
- 2 Section 12. Effective date.
- 3 This act shall take effect immediately.