

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1432 Session of
1987

INTRODUCED BY GEORGE, ITKIN, LUCYK, STEIGHNER, BELARDI, TRELLO,
MORRIS, BATTISTO, LLOYD, KUKOVICH, VAN HORNE, KOSINSKI,
STABACK, LASHINGER, McHALE, McCALL, DeLUCA, FOX AND BROUJOS,
MAY 27, 1987

SENATOR FISHER, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE,
AS AMENDED, JUNE 7, 1988

AN ACT

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

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 Environmental
10 Hearing Board 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 "Board." The Environmental Hearing Board ~~established under~~ <—
16 ~~this act~~ OF THE COMMONWEALTH. <—

17 "Department." The Department of Environmental Resources of

1 the Commonwealth.

2 "Rules committee." The Environmental Hearing Board Rules
3 Committee established under section 5.

4 "Secretary." The Secretary of Environmental Resources of the
5 Commonwealth.

6 Section 3. Board.

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

9 (b) Membership.--The board shall consist of ~~three~~ FIVE <—
10 members. The members shall be full-time administrative law
11 judges. Members shall devote full time to their official duties.
12 No member or hearing examiner shall hold any office or position,
13 the duties of which are incompatible with the duties of his
14 office, or be engaged in any business, employment or vocation
15 for which he shall receive any remuneration, except that members
16 may speak, write or lecture if any reimbursed expenses,
17 honorariums, royalties or other moneys received in connection
18 with these activities are disclosed. Members shall be appointed
19 by the Governor with the consent of a majority of the members
20 elected to the Senate. ~~Initial appointments to this board by the~~ <—
21 ~~Governor may be made prior to the effective date of this act,~~
22 ~~and the terms shall take effect on the effective date hereof.~~
23 MEMBERS OF THE BOARD ON THE EFFECTIVE DATE OF THIS ACT MAY <—
24 COMPLETE THEIR TERMS AND CONTINUE IN OFFICE UNTIL THEIR
25 SUCCESSORS ARE APPOINTED AND QUALIFIED.

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

28 (d) Terms.--A member of the board shall serve for a term of
29 six years or until a successor is appointed and qualified. ONE <—
30 OF THE ADDITIONAL MEMBERS APPOINTED UNDER THIS ACT SHALL SERVE

1 AN INITIAL TERM OF FOUR YEARS. Vacancies shall be filled in the
2 same manner as the original appointment. ~~Initial appointments to~~ <—
3 ~~the board shall be as follows:~~

4 ~~(1) One member for a term of two years.~~

5 ~~(2) One member for a term of four years.~~

6 ~~(3) One member for a term of six years.~~

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

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

10 (2) Have five years of practice before administrative
11 agencies or have equivalent experience.

12 (f) Staff and facilities.--The board shall appoint a
13 secretary to the board. The board shall provide facilities at
14 each seat under the provisions of section 6. The board may
15 employ hearing examiners and such additional personnel necessary
16 to exercise its functions. Hearing examiners shall be attorneys
17 in good standing before the Bar of the Supreme Court of
18 Pennsylvania and shall have three years of practice before
19 administrative agencies or equivalent experience. ~~All employees~~ <—
20 ~~of the board shall be subject to the act of August 5, 1941~~
21 ~~(P.L.752, No.286), known as the Civil Service Act.~~

22 ~~(g) Salary. Salaries of board members appointed under this~~
23 ~~act shall be \$55,000 per year and \$57,500 for the chairperson~~
24 ~~during the first two years after the effective date of this act.~~
25 ~~Salaries of the board members and the chairperson shall be set~~
26 ~~by the Executive Board two years after the effective date of~~
27 ~~this act.~~

28 (G) SALARY.--MEMBERS OF THE BOARD AND THE CHAIRPERSON SHALL <—
29 RECEIVE THE SAME SALARIES, RESPECTIVELY, AS THE COMMISSIONERS
30 AND THE 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. The <—
6 ~~board shall have the power to issue adjudications on all matters~~
7 ~~pending before the former Environmental Hearing Board where the~~
8 ~~former Environmental Hearing Board has not issued adjudications~~
9 ~~on the matters prior to the date that it is abolished.~~

10 (B) POWERS CONTINUED.--THE BOARD SHALL CONTINUE TO EXERCISE <—
11 THE POWERS TO HOLD HEARINGS AND ISSUE ADJUDICATIONS WHICH
12 (POWERS) WERE VESTED IN AGENCIES LISTED IN SECTION 1901-A OF THE
13 ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS THE
14 ADMINISTRATIVE CODE OF 1929.

15 ~~(b)~~ (C) Departmental action.--The department may take an <—
16 action initially without regard to 2 Pa.C.S. Ch. 5 Subch. A, but
17 no action of the department adversely affecting a person shall
18 be final as to that person until the person has had the
19 opportunity to appeal the action to the board UNDER SUBSECTION <—
20 (G). If a person has not perfected an appeal in accordance with
21 the regulations of the board, the department's action shall be
22 final as to the person.

23 ~~(c)~~ (D) Supersedeas.-- <—

24 (1) No appeal shall act as an automatic supersedeas. The
25 board may, however, grant a supersedeas upon cause shown. The
26 board, in granting or denying a supersedeas, shall be guided
27 by relevant judicial precedent and the board's own precedent.
28 Among the factors to be considered are:

29 (i) Irreparable harm to the petitioner.

30 (ii) The likelihood of the petitioner prevailing on

1 the merits.

2 (iii) The likelihood of injury to the public or
3 other parties, such as the permittee in third party
4 appeals.

5 (2) A supersedeas shall not be issued in cases where
6 pollution or injury to the public health, safety or welfare
7 exists or is threatened during the period when the
8 supersedeas would be in effect.

9 (3) THE BOARD SHALL PROMULGATE REGULATIONS FOR ISSUANCE <—
10 OR DENIAL OF A TEMPORARY SUPERSEDEAS.

11 ~~(d)~~ (E) Intervention.--Any interested party may intervene in <—
12 any matter pending before the board.

13 ~~(e)~~ (F) Subpoenas.--The board may subpoena witnesses, <—
14 records and papers. The board may enforce its subpoenas in
15 Commonwealth Court. Commonwealth Court, after a hearing, may
16 make an adjudication of contempt or may issue another
17 appropriate order.

18 ~~(f)~~ (G) Procedure.--Hearings of the board shall be conducted <—
19 in accordance with the regulations of the ~~former Environmental~~ <—
20 ~~Hearing Board~~ BOARD in effect at the effective date of this act <—
21 until new regulations are promulgated under section 5.

22 (H) VOLUNTARY MEDIATION.--SUBJECT TO BOARD APPROVAL, PARTIES <—
23 TO ANY PROCEEDING MAY REQUEST PERMISSION TO UTILIZE VOLUNTARY
24 MEDIATION SERVICES TO RESOLVE THE DISPUTE OR NARROW THE AREAS OF
25 DIFFERENCE. IF THE BOARD APPROVES, THE HEARING SHALL BE
26 CONTINUED UNTIL THE PARTIES REPORT THE RESULTS OF THE MEDIATION.
27 IF THE PARTIES ACCEPT THE MEDIATION REPORT AND THE RESULT IS
28 CONSISTENT WITH STATE AND FEDERAL ENVIRONMENTAL LAWS, THEN THE
29 BOARD MAY ENTER THE SETTLEMENT AS ITS DECISION. IF MEDIATION IS
30 UNSUCCESSFUL, THEN THE HEARING SHALL BE RESCHEDULED AND

1 CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF LAW.

2 Section 5. Rules committee.

3 (a) Establishment.--The Environmental Hearing Board Rules
4 Committee is established. The rules committee shall consist of
5 nine attorneys who are in good standing before the Bar of the
6 Supreme Court of Pennsylvania and who have practiced before the
7 board for a minimum of three years or who have comparable
8 experience. One member shall be appointed by the President pro
9 tempore and one member shall be appointed by the Minority Leader
10 of the Senate. One member shall be appointed by the Speaker and
11 one member shall be appointed by the Minority Leader of the
12 House of Representatives. One member shall be appointed by the
13 Chairman of the Citizens Advisory Council to the department. Two
14 members shall be appointed by the Governor, upon the advice of
15 the Pennsylvania Bar Association. Two members shall be appointed
16 by the secretary. The initial appointments of the Governor and
17 the secretary shall serve terms of one year; the initial
18 appointments of the President pro tempore and Minority Leader of
19 the Senate, the Speaker and Minority Leader of the House of
20 Representatives and the Chairperson of the Citizens Advisory
21 Council shall serve terms of two years commencing three months
22 after the effective date of this act. Thereafter, members of the
23 rules committee shall serve terms of two years and may be
24 reappointed for additional terms. Such vacancies as may arise
25 shall be filled in the same manner as the original appointment.
26 The chairperson of the board shall be a member of the committee
27 ex officio.

28 (b) Expenses.--The board shall reimburse members of the
29 rules committee for necessary and reasonable expenses incurred
30 in attending rules committee meetings.

1 (c) Function.--The rules committee shall recommend to the
2 board regulations for hearings conducted by the board AND FOR <—
3 THE USE OF MEDIATION UNDER SECTION 4(H). The regulations shall
4 include time limits and procedure for the taking of appeals and
5 locations of hearings. Regulations under this subsection shall
6 be promulgated by the ~~Environmental Quality Board upon a~~ <—
7 ~~recommendation from the Environmental Hearing Board. Regulations~~
8 ~~promulgated under this subsection shall not be subject to the~~
9 ~~act of June 25, 1982 (P.L.633, No.181), known as the Regulatory~~
10 ~~Review Act.~~ BOARD UPON A MAJORITY AFFIRMATIVE VOTE ON THE <—
11 RECOMMENDED REGULATIONS.

12 (D) BYLAWS.--THE RULES COMMITTEE SHALL ADOPT BYLAWS TO
13 GOVERN THE CONDUCT OF ITS AFFAIRS.

14 Section 6. Seats of the board.

15 (a) Location.--The board shall have offices and hearing
16 rooms in Harrisburg, PHILADELPHIA and Pittsburgh. The <—
17 headquarters of the board shall be in Harrisburg. The board may
18 ~~maintain additional offices and hearing rooms and hear cases at~~ <—
19 other locations in this Commonwealth.

20 (b) Assignments.--At least one member of the board shall sit
21 in each seat of the board. The remaining member TWO MEMBERS of <—
22 the board shall be assigned to a seat by the chairperson. At <—
23 ~~least once during the term of a member of the board, that member~~
24 ~~shall rotate to one of the other seats of the board. The~~
25 ~~chairperson shall determine rotation and shall determine~~
26 ~~assignment of cases within each geographic area.~~

27 ~~Section 7. Abolishment of Environmental Hearing Board.~~

28 ~~The Environmental Hearing Board established or otherwise~~
29 ~~provided for under section 472, 709(m) or 1921 A of the act of~~
30 ~~April 9, 1929 (P.L.177, No.175), known as The Administrative~~

1 ~~Code of 1929, is abolished three months after the effective date~~
2 ~~of this act. Current members of that board shall be eligible for~~
3 ~~appointment to the board established under this act if they meet~~
4 ~~the requirements of section 3(e).~~

5 ~~Section 8. Transfer of funds.~~

6 THE CHAIRPERSON SHALL, WITHIN 60 DAYS OF THE EFFECTIVE DATE OF
7 THIS ACT, ESTABLISH EITHER:

8 (1) A ROTATION SCHEDULE INVOLVING THE MOVEMENT OF BOARD
9 MEMBERS AMONG THE THREE HEARING SITES; OR

10 (2) A CASE ASSIGNMENT SCHEDULE WHICH WILL ASSIGN CASES
11 TO BOARD MEMBERS FROM OUTSIDE THEIR REGIONAL LOCATION.

12 SECTION 7. APPROPRIATION.

13 The sum of \$647,000, or the unexpended portion thereof, of
14 the amount of the appropriation made to the Department of
15 Environmental Resources for general government operations and
16 designated for use of the Environmental Hearing Board is hereby
17 transferred to the Environmental Hearing Board established by
18 this act for the current fiscal year.

19 Section 9 8. Repeals.

20 (a) Specific.--Sections 472, 709(m) and 1921-A of the act of
21 April 9, 1929 (P.L.177, No.175), known as The Administrative
22 Code of 1929, are repealed.

23 (b) General.--All acts and parts of acts are repealed
24 insofar as they are inconsistent with this act.

25 SECTION 9. APPLICABILITY.

26 THIS ACT SHALL NOT AFFECT THE TERMS OR ELIGIBILITY OF THE
27 CURRENT MEMBERS OF THE BOARD.

28 Section 10. Effective date.

29 ~~This act shall take effect as follows:~~

30 ~~(1) Section 9 shall take effect in three months.~~

1 ~~(2) The remainder of this act shall take effect~~
2 ~~immediately.~~
3 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.

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