

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

AS AMENDED ON THIRD CONSIDERATION, APRIL 28, 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 terms

9 AND CONTINUE IN OFFICE UNTIL THEIR SUCCESSORS ARE APPOINTED AND <—
10 QUALIFIED.

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

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

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

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

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

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

29 (g) Salary.--Members of the board and the chairperson shall
30 receive the same salaries, respectively, as the ~~commissioner~~ <—

1 COMMISSIONERS and chairman of the Pennsylvania Public Utility <—
2 Commission.

3 Section 4. Jurisdiction.

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

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

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

21 (d) Supersedeas.--

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

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

30 (3) The board shall promulgate regulations on grounds

1 for issuance or denial of a temporary supersedeas. The <—
2 ~~grounds shall be substantially similar to the grounds on~~
3 ~~which a court of equity could issue or deny a temporary~~
4 ~~restraining order.~~

5 (e) Joinder.--In an appeal from an order of the department
6 or in a response to a civil penalty complaint or assessment
7 before the board, a party may join additional parties who may be
8 ~~exclusively liable or who may be liable jointly or severally~~ <—

9 ~~with the party who makes the joinder. The regulations shall be~~
10 ~~substantially similar to the joinder rules in the Pennsylvania~~
11 ~~Rules of Civil Procedure.~~ LIABLE UNDER THE PROVISIONS OF <—

12 APPLICABLE ENVIRONMENTAL STATUTES.

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

18 (g) Procedure.--Hearings of the board shall be conducted in
19 accordance with the regulations of the board in effect at the
20 effective date of this act until new regulations are promulgated
21 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, ANY 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 ~~seven~~ ELEVEN attorneys who are in good standing before the Bar <—
6 of the Supreme Court of Pennsylvania and who have practiced
7 before the board for a minimum of three years. Two members shall
8 be appointed by the President pro tempore of the Senate. Two
9 members shall be appointed by the Speaker of the House of
10 Representatives. ~~One member~~ TWO MEMBERS shall be appointed by <—
11 the Secretary of Environmental Resources. Two members shall be
12 appointed by the Governor, upon the advice of the Pennsylvania
13 Bar Association. THREE MEMBERS SHALL BE APPOINTED BY THE BOARD. <—

14 (b) Function.--The rules committee shall recommend to the
15 board regulations for hearings conducted by the board. The
16 regulations shall include time limits and procedure for the
17 taking of appeals and locations of hearings. Regulations under
18 this subsection shall be promulgated by the board upon a
19 majority affirmative vote on the recommended regulations.

20 (C) TERMS.--MEMBERS OF THE RULES COMMITTEE SHALL SERVE A <—
21 TWO-YEAR TERM OF OFFICE. THE RULES COMMITTEE SHALL ADOPT BYLAWS
22 TO GOVERN THE CONDUCT OF ITS AFFAIRS.

23 Section 6. Seats of the board.

24 (a) Location.--The board shall have offices and hearing
25 rooms in Harrisburg, Pittsburgh and Philadelphia. The
26 headquarters of the board shall be in Harrisburg. The board may
27 hear cases at other locations in this Commonwealth.

28 (b) Assignments.--At least one member of the board shall sit
29 in each seat of the board. The remaining two members of the
30 board shall be assigned to a seat by the chairperson. ~~At least~~ <—

1 ~~once during the term of a member of the board, that member shall~~
2 ~~rotate to one of the other seats of the board. The chairperson~~
3 ~~shall determine rotation and shall determine assignment of cases~~
4 ~~within each geographic area.~~ THE CHAIRPERSON SHALL, WITHIN 60 <—

5 DAYS OF THE EFFECTIVE DATE OF THIS ACT, ESTABLISH EITHER:

6 (1) A ROTATION SCHEDULE INVOLVING THE MOVEMENT OF BOARD
7 MEMBERS BETWEEN THE THREE HEARING SITES; OR

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

10 Section 7. Appropriation.

11 The sum of \$1,000,000, or as much thereof as may be
12 necessary, is hereby appropriated to the Environmental Hearing
13 Board for the fiscal year July 1, 1987, to June 30, 1988, to
14 carry out the provisions of this act.

15 Section 8. Repeals.

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

19 Section 9. Applicability.

20 This act shall not affect the terms or eligibility of the
21 current members of the board or of current members of the board
22 who are subsequently reappointed and confirmed for a new term or
23 to serve an unexpired term.

24 Section 10. Effective date.

25 This act shall take effect in 60 days.