

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, MAY 4, 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 DEVOTE FULL TIME TO THEIR OFFICIAL DUTIES. NO <—

7 MEMBER SHALL HOLD ANY OFFICE OR POSITION, THE DUTIES OF WHICH

8 ARE INCOMPATIBLE WITH THE DUTIES OF HIS OFFICE OR BE ENGAGED IN

9 ANY BUSINESS, EMPLOYMENT OR VOCATION FOR WHICH HE SHALL RECEIVE

10 ANY REMUNERATION, EXCEPT THAT MEMBERS MAY SPEAK, WRITE OR

11 LECTURE IF ANY REIMBURSED EXPENSES, HONORARIUMS, ROYALTIES OR

12 OTHER MONEYS RECEIVED IN CONNECTION WITH THESE ACTIVITIES ARE

13 DISCLOSED. Members shall be appointed by the Governor with the

14 consent of a majority of the members elected to the Senate.

15 Members of the board on the effective date of this act may

16 complete their terms and continue in office until their

17 successors are appointed and qualified.

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

20 (d) Terms.--A member of the board shall serve for a term of
21 six years or until a successor is appointed and qualified. Of
22 the two additional members appointed under this act, one shall
23 serve a term of six years and the other shall serve an initial
24 term of four years. Vacancies shall be filled in the same manner
25 as the original appointment.

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

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

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

1 (f) Staff and facilities.--The board shall appoint a
2 secretary to the board. The board shall provide facilities at
3 each seat under the provisions of section 6. The board may
4 employ hearing examiners and other personnel necessary to
5 exercise its functions.

6 (g) Salary.--Members of the board and the chairperson shall
7 receive the same salaries, respectively, as the commissioners
8 and chairman of the Pennsylvania Public Utility Commission.

9 Section 4. Jurisdiction.

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

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

19 (c) Departmental action.--The department may take an action
20 initially without regard to 2 Pa.C.S. Ch. 5 Subch. A; but no
21 action of the department adversely affecting a person shall be
22 final as to that person until the person has had the opportunity
23 to appeal the action to the board. If a person has not perfected
24 an appeal in accordance with the regulations of the board under
25 subsection (g), the department's action shall be final as to the
26 person.

27 (d) Supersedeas.--

28 (1) An appeal taken to the board from an order, a permit
29 revocation, a license revocation or a decision by the
30 department may, at the discretion of the board, act as a

1 supersedeas.

2 (2) The board shall promulgate regulations on grounds
3 for issuance or denial of a supersedeas.

4 (3) The board shall promulgate regulations on grounds
5 for issuance or denial of a temporary supersedeas.

6 (e) Joinder.--In an appeal from an order of the department
7 or in a response to a civil penalty complaint or assessment
8 before the board, a party may join additional parties who may be
9 liable under the provisions of applicable environmental
10 statutes.

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

16 (g) Procedure.--Hearings of the board shall be conducted in
17 accordance with the regulations of the board in effect at the
18 effective date of this act until new regulations are promulgated
19 under section 5.

20 (h) Voluntary mediation.--Subject to board approval, parties
21 to any proceeding may request permission to utilize voluntary
22 mediation services to resolve the dispute or narrow the areas of
23 difference. If the board approves, any hearing shall be
24 continued until the parties report the results of the mediation.
25 If the parties accept the mediation report and the result is
26 consistent with State and Federal environmental laws, then the
27 board may enter the settlement as its decision. If mediation is
28 unsuccessful, then the hearing shall be rescheduled and
29 conducted in accordance with the provisions of law.

30 Section 5. Rules committee.

1 (a) Establishment.--The Environmental Hearing Board Rules
2 Committee is established. The rules committee shall consist of
3 eleven attorneys who are in good standing before the Bar of the
4 Supreme Court of Pennsylvania and who have practiced before the
5 board for a minimum of three years. Two members shall be
6 appointed by the President pro tempore of the Senate. Two
7 members shall be appointed by the Speaker of the House of
8 Representatives. Two members shall be appointed by the Secretary
9 of Environmental Resources. Two members shall be appointed by
10 the Governor, upon the advice of the Pennsylvania Bar
11 Association. Three members shall be appointed by the board.

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

18 (c) Terms.--Members of the rules committee shall serve a
19 two-year term of office. The rules committee shall adopt bylaws
20 to govern the conduct of its affairs.

21 Section 6. Seats of the board.

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

26 (b) Assignments.--At least one member of the board shall sit
27 in each seat of the board. The remaining two members of the
28 board shall be assigned to a seat by the chairperson. The
29 chairperson shall, within 60 days of the effective date of this
30 act, establish either:

1 (1) a rotation schedule involving the movement of board
2 members between the three hearing sites; or

3 (2) a case assignment schedule which will assign cases
4 to board members from outside of their regional location.

5 Section 7. Appropriation.

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

10 Section 8. Repeals.

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

14 Section 9. Applicability.

15 This act shall not affect the terms or eligibility of the
16 current members of the board or of current members of the board
17 who are subsequently reappointed and confirmed for a new term or
18 to serve an unexpired term.

19 Section 10. Effective date.

20 This act shall take effect in 60 days.