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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2116 Session of  
1991

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INTRODUCED BY SURRA, VEON, HANNA, HAYDEN, CAPPABIANCA, CARONE,  
JOSEPHS, FAJT, BUSH, LEVDANSKY, SCRIMENTI, CLARK, COLAFELLA,  
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BROUJOS, PISTELLA, CIVERA, TRELLO, STEIGHNER, TRICH, FOX,  
BILLOW, CORRIGAN, BELARDI AND STURLA, NOVEMBER 12, 1991

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REFERRED TO COMMITTEE ON CONSERVATION, NOVEMBER 12, 1991

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AN ACT

1 Providing for the Office of Citizen Advocate for the Environment  
2 in the Department of Environmental Resources; and providing  
3 for the powers and duties of the office.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Citizen  
8 Advocate for the Environment Act.

9 Section 2. Definitions.

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

13 "Advocate." The Citizen Advocate for the Environment.

14 "Citizen." A resident of this Commonwealth, who is 18 years  
15 of age or older.

16 "Department." The Department of Environmental Resources of  
17 the Commonwealth.

1 "Office." The Office of Citizen Advocate for the  
2 Environment.

3 Section 3. Office of Citizen Advocate for the Environment.

4 (a) Office established.--There is hereby established within  
5 the department the Office of Citizen Advocate for the  
6 Environment to represent the interests of citizens before the  
7 department.

8 (b) Appointment.--The Governor shall appoint a Citizen  
9 Advocate for the Environment, which appointment shall be subject  
10 to the approval of a majority of the members elected to the  
11 Senate. The advocate shall serve until a successor is appointed  
12 and qualified.

13 (c) Qualifications.--The advocate shall be a person who, by  
14 reason of training, experience and attainment, is qualified to  
15 represent the interests of citizens. Compensation shall be set  
16 by the Executive Board.

17 (d) General restrictions.--The advocate shall not engage in  
18 any business, vocation or other employment, or have other  
19 interests inconsistent with his official responsibilities, nor  
20 shall he seek or accept employment with nor render beneficial  
21 services for compensation for any "person" or "corporation," as  
22 defined in 66 Pa.C.S. § 102 (relating to definitions), subject  
23 to the authority of the Pennsylvania Public Utility Commission  
24 during the tenure of his appointment and for a period of one  
25 year after the appointment is served or terminated.

26 (e) Political office restrictions.--The advocate shall not  
27 seek election nor accept appointment to any public office during  
28 his tenure as advocate and for a period of one year afterward.

29 (f) Secretary of Environmental Resources restrictions.--The  
30 Secretary of Environmental Resources shall have administrative

1 responsibilities for the office, but shall not be responsible,  
2 in any manner, for the policies, procedures or other substantive  
3 matters developed by the office in carrying out its duties under  
4 this act to represent citizens.

5 Section 4. Assistant advocates; employees.

6 The advocate, with the approval of the Secretary of  
7 Environmental Resources, shall appoint attorneys as assistant  
8 advocates, and such additional clerical, technical and  
9 professional staff as may be appropriate, and may contract for  
10 such additional services as shall be necessary for the  
11 performance of his function. The compensation of assistant  
12 advocates and clerical, technical and professional staff shall  
13 be set by the Executive Board. No assistant advocate or other  
14 staff employee shall, while serving in the position, engage in  
15 any business, vocation or other employment, or have other  
16 interests inconsistent with his official responsibilities.

17 Section 5. Powers and duties of advocate.

18 (a) Representing interests of citizens.--In addition to any  
19 other authority conferred by this act, the advocate is  
20 authorized, and it shall be his duty in carrying out his  
21 responsibilities under this act, to represent the interests of  
22 citizens as a party, or otherwise to participate for the purpose  
23 of representing the interests of citizens, before the department  
24 in any matter before the department or before any court or  
25 agency. The advocate may initiate such proceedings as in his  
26 judgment may be necessary in connection with any matter  
27 involving regulation by the department or the corresponding  
28 regulatory agency of the Federal Government, whether on appeal  
29 or otherwise.

30 (b) Monitoring and participating in proceedings.--The

1 advocate may monitor all cases before corresponding regulatory  
2 agencies of the Federal Government, such as the Environmental  
3 Protection Agency, which may impact upon the interests of  
4 Commonwealth citizens and may formally participate in those  
5 proceedings which in his judgment warrant participation.

6 (c) Exercise of discretion.--The advocate may exercise  
7 discretion in determining the interests which will be advocated  
8 in any particular proceeding and in determining whether to  
9 participate in or initiate any particular proceeding. In making  
10 such determination, the advocate shall consider the public  
11 interest, the resources available and the substantiality of the  
12 effect of the proceeding on the interests of citizens. The  
13 advocate may refrain from intervening when, in his judgment,  
14 intervention is not necessary to represent adequately the  
15 interests of Commonwealth citizens.

16 (d) Action upon petition.--In addition to any other  
17 authority conferred upon him by this act, the advocate is  
18 authorized to represent an interest of small business consumers  
19 presented to him for consideration upon petition in writing by  
20 500 or more citizens. The advocate shall notify the principal  
21 sponsors of any petition of the action taken or intended to be  
22 taken with respect to the interest presented in the petition. If  
23 the advocate declines or is unable to represent the interest, he  
24 shall notify the sponsors and shall explain the reasons for his  
25 failure to act.

26 (e) Name in which action is brought.--Any action brought by  
27 the advocate before a court or any agency of this Commonwealth  
28 shall be brought in the name of the advocate. The advocate may  
29 name a citizen or group of citizens in whose name the action may  
30 also be brought or may join citizens in bringing the action.

1 (f) Issuance of written statement.--If the advocate  
2 determines, in accordance with applicable time limitations, to  
3 initiate, intervene or otherwise participate in any department,  
4 agency or court proceeding, he shall issue publicly a written  
5 statement, a copy of which he shall file in the proceeding, in  
6 addition to any required entry of his appearance, stating  
7 concisely the specific interests of citizens to be protected.

8 Section 6. Funding.

9 (a) Surcharge on department fees.--A surcharge of \$1 shall  
10 be placed on all fees imposed by the department.

11 (b) Use of proceeds of surcharge.--All proceeds from the  
12 surcharge on the department's fees shall be paid into the  
13 General Fund of the State Treasury through the Department of  
14 Revenue. The proceeds shall be held in trust solely for the  
15 purpose of defraying the cost of the administration and  
16 performance of the duties of the office, and shall be earmarked  
17 for the use of, and annually appropriated to, the Office of  
18 Citizen Advocate for the Environment for disbursement solely for  
19 that purpose.

20 (c) Requisitions.--All requisitions upon the appropriation  
21 shall be signed by the advocate or such deputies as he may  
22 designate in writing to the State Treasurer, and shall be  
23 presented to the State Treasurer and dealt with by him in the  
24 manner prescribed by the act of April 9, 1929 (P.L.343, No.176),  
25 known as The Fiscal Code.

26 (d) Estimate of expenditures.--Before November 1 of each  
27 year, the advocate shall estimate the total expenditures for the  
28 office and submit the estimate to the Governor in accordance  
29 with section 610 of the act of April 9, 1929 (P.L.177, No.175),  
30 known as The Administrative Code of 1929. At the same time the

1 advocate submits his estimate to the Governor, he shall also  
2 submit a copy of the estimate to the General Assembly. The  
3 advocate or his designated representatives shall be afforded an  
4 opportunity to appear before the Governor, the Senate  
5 Appropriations Committee and the House Appropriations Committee  
6 regarding the estimate. The office shall subtract from the  
7 budget finally approved by the General Assembly any balance of  
8 the previous appropriation to be carried over into the next  
9 fiscal year. The remainder so determined shall constitute the  
10 total appropriation and shall be allocated to and paid to the  
11 office from the funds held in trust in the General Fund for the  
12 purpose of defraying the cost of administration and performance  
13 of the duties of the office.

14 Section 7. Duties of department.

15 In dealing with any proposed action which may substantially  
16 affect the interests of citizens, including, but not limited to,  
17 the adoption of rules, regulations, guidelines, orders,  
18 standards or final policy decisions, the department shall:

19 (1) Notify the advocate when notice of the proposed  
20 action is given to the public or at a time fixed by agreement  
21 between the advocate and the department in a manner to assure  
22 the advocate reasonable notice and adequate time to determine  
23 whether to intervene in the matter.

24 (2) Consistent with its other statutory  
25 responsibilities, take such action with due consideration to  
26 the interests of citizens.

27 Section 8. Savings provision; construction.

28 (a) No bar to other action.--Nothing contained in this act  
29 shall in any way limit the right of any citizen to bring a  
30 proceeding before either the department, an agency or a court.

1 (b) No impairment to department.--Nothing contained in this  
2 act shall be construed to impair the statutory authority or  
3 responsibility of the department.

4 Section 9. Reports.

5 The advocate shall annually transmit to the Governor and to  
6 the General Assembly and make available to the public an annual  
7 report on the conduct of the office. Included in the report  
8 shall be an accounting of the office's expenditures for the  
9 calendar year, which are directly attributable, or, in the  
10 office's judgment, properly allocable, to its activities. The  
11 advocate shall make recommendations as may from time to time be  
12 necessary or desirable to protect the interests of citizens.

13 Section 10. Sunset.

14 The Office of Citizen Advocate for the Environment shall  
15 continue, together with its statutory functions and duties,  
16 until December 31, 1996, when it shall terminate and go out of  
17 existence unless reestablished or continued by the General  
18 Assembly. Evaluation and review, termination, reestablishment  
19 and continuation of the agency shall be conducted pursuant to  
20 the provisions of the act of December 22, 1981 (P.L.508,  
21 No.142), known as the Sunset Act.

22 Section 11. Effective date.

23 This act shall take effect immediately.