

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1330 Session of 2007

INTRODUCED BY KESSLER, FREEMAN, SAYLOR, BRENNAN, CARROLL, CREIGHTON, CURRY, EVERETT, FLECK, GALLOWAY, GERBER, GRUCELA, HARPER, HENNESSEY, KING, KORTZ, KULA, LEACH, LENTZ, LONGIETTI, MACKERETH, MELIO, MOYER, O'NEILL, SEIP, K. SMITH, WATSON AND MENSCH, MAY 24, 2007

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 28, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 ~~appeal~~ APPEALS GENERALLY AND FOR APPEALS from ordinances, ←
4 resolutions, maps, etc.

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

7 Section 1. Section 5571 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 5571. Appeals generally.

10 (a) General rule.--The time for filing an appeal, a petition
11 for allowance of appeal, a petition for permission to appeal or
12 a petition for review of a quasi-judicial order, in the Supreme
13 Court, the Superior Court or the Commonwealth Court shall be
14 governed by general rules. No other provision of this subchapter
15 shall be applicable to matters subject to this subsection.

16 (b) Other courts.--Except as otherwise provided in
17 subsections (a) and (c) and in section 5571.1 (relating to

1 appeals from ordinances, resolutions, maps, etc.), an appeal
2 from a tribunal or other government unit to a court or from a
3 court to an appellate court must be commenced within 30 days
4 after the entry of the order from which the appeal is taken, in
5 the case of an interlocutory or final order.

6 (c) Exceptions.--

7 (1) Election cases.--The time for appeal from an order
8 in any matter arising under the act of June 3, 1937
9 (P.L.1333, No.320), known as the "Pennsylvania Election
10 Code," or any other statute relating to registration or
11 elections shall, if such statutes provide for a lesser time
12 for appeal, be governed by the appropriate provision of such
13 statutes.

14 (2) Financing cases.--The time for appeal from an order
15 in any matter arising under the act of July 12, 1972
16 (P.L.781, No.185), known as the "Local Government Unit Debt
17 Act," or any other statute relating to the incurring of debt
18 by a government unit, shall if such statutes provide for a
19 lesser time for appeal, be governed by the appropriate
20 provision of such statutes.

21 (3) Probate matters.--The time for appeal from an order
22 of a register of wills under Title 20 (relating to decedents,
23 estates and fiduciaries) shall, if such statute provides a
24 greater time for appeal, be governed by the appropriate
25 provision of such statute.

26 (4) Execution matters.--The time for appeal from an
27 order of any system or related personnel entered in
28 connection with enforcement of attachments, judgments or
29 similar process or orders shall be governed by general rule.

30 [(5) Ordinances, resolutions, maps, etc.--

1 Notwithstanding section 909.1(a)(2) of the act of July 31,
2 1968 (P.L.805, No.247), known as the Pennsylvania
3 Municipalities Planning Code, questions relating to an
4 alleged defect in the process of enactment or adoption of any
5 ordinance, resolution, map or similar action of a political
6 subdivision, including appeals and challenges to the validity
7 of land use ordinances adopted pursuant to the Pennsylvania
8 Municipalities Planning Code, shall be raised by appeal or
9 challenge commenced within 30 days after the intended
10 effective date of the ordinance, resolution, map or similar
11 action. As used in this paragraph, the term "intended
12 effective date" means the effective date specified in the
13 ordinance, resolution, map or similar action or, if no
14 effective date is specified, the date 60 days after the date
15 the ordinance, resolution, map or similar action was finally
16 adopted but for the alleged defect in the process of
17 enactment or adoption.]

18 (6) Implied determinations.--When pursuant to law a
19 determination is deemed to have been made by reason of the
20 expiration of a specified period of time after submission of
21 a matter to a tribunal or other government unit or after
22 another prior event, any person affected may treat the
23 expiration of such period as equivalent to the entry of an
24 order for purposes of appeal and any person affected shall so
25 treat the expiration of the period where the person has
26 actual knowledge (other than knowledge of the mere lapse of
27 time) that an implied determination has occurred.

28 (d) Interlocutory appeals.--A petition for permission to
29 appeal from an interlocutory order must be filed within 30 days
30 after its entry.

1 (e) Action following grant of permission to appeal.--The
2 period limited by this section is tolled by the filing of a
3 petition for permission to appeal. If the petition is granted
4 further proceedings in the matter, including any time
5 limitations, shall be governed by general rules or rules of
6 court, and not by the provisions of subsections (b) through (d).

7 (f) Cross appeals.--An appellee may be permitted by general
8 rules or rules of court to take an appeal within the time
9 limited by rule from an order from which another party has taken
10 a timely appeal, notwithstanding the fact that the time
11 otherwise limited by this section has expired.

12 Section 2. Title 42 is amended by adding a section to read:

13 ~~§ 5571.1. Appeals from ordinances, resolutions, maps, etc.~~ <—

14 ~~(a) General rule.--~~

15 ~~(1) Questions relating to an alleged defect in the~~
16 ~~process of enactment or adoption of an ordinance, resolution,~~
17 ~~map or similar action of a political subdivision may, at any~~
18 ~~time, be raised by appeal.~~

19 ~~(2) An appeal pursuant to this section shall be to the~~
20 ~~court of common pleas.~~

21 ~~(b) Presumption, burdens, etc. Notwithstanding any other~~
22 ~~provision of law, an appeal pursuant to this section shall be~~
23 ~~subject to and in accordance with the following:~~

24 ~~(1) An ordinance, resolution, map or similar action of a~~
25 ~~political subdivision shall be presumed to be valid and to~~
26 ~~have been enacted or adopted in strict compliance with~~
27 ~~statutory procedural requirements.~~

28 ~~(2) Notwithstanding any other provision of law and~~
29 ~~except as provided in paragraph (3), a defect in the process~~
30 ~~of enactment or adoption of an ordinance, resolution, map or~~

~~similar action of a political subdivision shall not
invalidate it or render it void.~~

~~(3) To invalidate or render void an ordinance,
resolution, map or similar action of a political subdivision,
pursuant to an appeal, the party alleging the defect in the
process of enactment or adoption shall have the burden of
proving the following:~~

~~(i) that there was a failure to strictly comply with
statutory procedural requirements; and~~

~~(ii) that as a result of this failure the public did
not have sufficient notification of impending changes in
the law so that the public generally could comment on
those changes and intervene if necessary.~~

~~(4) In an appeal taken more than two years after the
governing body of the political subdivision has voted to
finally adopt or enact an ordinance, resolution, map or
similar action, the ordinance, resolution, map or similar
action shall not be invalidated or rendered void unless the
proof required in paragraph (3) is established by clear and
convincing evidence.~~

~~(5) Proof of public acquiescence in and reliance on the
ordinance, resolution, map or similar action of a political
subdivision shall create an irrebuttable presumption that the
public did have sufficient notification of impending changes
in the law so that the public generally could comment on
those changes and intervene if necessary.~~

~~(6) In an appeal taken not more than 60 days after the
governing body of the political subdivision has voted to
finally adopt or enact an ordinance, resolution, map or
similar action, the prospective enforcement of the ordinance,~~

~~resolution, map or similar action may be enjoined if the
element of proof in paragraph (3)(i) is established.~~

§ 5571.1. APPEALS FROM ORDINANCES, RESOLUTIONS, MAPS, ETC. ←

(A) APPLICABILITY; COURT OF COMMON PLEAS.--

(1) THIS SECTION SHALL APPLY TO ANY APPEAL RAISING
QUESTIONS RELATING TO AN ALLEGED DEFECT IN THE PROCESS OF, OR
PROCEDURE FOR, ENACTMENT OR ADOPTION OF ANY ORDINANCE,
RESOLUTION, MAP OR SIMILAR ACTION OF A POLITICAL SUBDIVISION.

(2) AN APPEAL PURSUANT TO THIS SECTION SHALL BE TO THE
COURT OF COMMON PLEAS.

(B) APPEALS OF DEFECTS IN STATUTORY PROCEDURE.--

(1) ANY APPEAL RAISING QUESTIONS RELATING TO AN ALLEGED
DEFECT IN STATUTORY PROCEDURE SHALL BE BROUGHT WITHIN 30 DAYS
OF THE INTENDED EFFECTIVE DATE OF THE ORDINANCE.

(2) EXCEPT AS PROVIDED IN SUBSECTION (C), IT IS THE
EXPRESS INTENT OF THE GENERAL ASSEMBLY THAT THIS 30-DAY
LIMITATION SHALL APPLY REGARDLESS OF THE ULTIMATE VALIDITY OF
THE CHALLENGED ORDINANCE.

(C) EXEMPTION FROM LIMITATION.--AN APPEAL SHALL BE EXEMPT
FROM THE TIME LIMITATION IN SUBSECTION (B) IF THE PARTY BRINGING
THE APPEAL ESTABLISHES THAT, BECAUSE OF THE PARTICULAR NATURE OF
THE ALLEGED DEFECT IN STATUTORY PROCEDURE, THE APPLICATION OF
THE TIME LIMITATION UNDER SUBSECTION (B) WOULD RESULT IN AN
IMPERMISSIBLE DEPRIVATION OF CONSTITUTIONAL RIGHTS.

(D) PRESUMPTIONS.--NOTWITHSTANDING ANY OTHER PROVISION OF
LAW, APPEALS PURSUANT TO THIS SECTION SHALL BE SUBJECT TO, AND
IN ACCORDANCE WITH, THE FOLLOWING:

(1) AN ORDINANCE SHALL BE PRESUMED TO BE VALID AND TO
HAVE BEEN ENACTED OR ADOPTED IN STRICT COMPLIANCE WITH
STATUTORY PROCEDURE.

1 (2) IN ALL CASES IN WHICH AN APPEAL FILED IN COURT MORE
2 THAN ONE YEAR AFTER THE INTENDED EFFECTIVE DATE OF THE
3 ORDINANCE IS ALLOWED TO PROCEED IN ACCORDANCE WITH SUBSECTION
4 (B), THE PUBLIC AND THE POLITICAL SUBDIVISION INVOLVED SHALL
5 BE PRESUMED TO HAVE SUBSTANTIALLY RELIED UPON THE VALIDITY
6 AND EFFECTIVENESS OF THE ORDINANCE, AS A MATTER OF LAW.

7 (3) AN ORDINANCE SHALL NOT BE FOUND VOID FROM INCEPTION
8 UNLESS THE PARTY ALLEGING THE DEFECT IN STATUTORY PROCEDURE
9 MEETS THE BURDEN OF PROVING THE ELEMENTS SET FORTH IN
10 SUBSECTION (E).

11 (E) BURDEN OF PROOF.--NOTWITHSTANDING ANY OTHER PROVISION OF
12 LAW, AN ORDINANCE SHALL NOT BE FOUND VOID FROM INCEPTION EXCEPT
13 AS FOLLOWS:

14 (1) IN THE CASE OF AN APPEAL BROUGHT WITHIN THE 30-DAY
15 TIME LIMITATION OF SUBSECTION (B), THE PARTY ALLEGING THE
16 DEFECT MUST MEET THE BURDEN OF PROVING THAT THERE WAS A
17 FAILURE TO STRICTLY COMPLY WITH STATUTORY PROCEDURE.

18 (2) IN THE CASE OF AN APPEAL WHICH IS EXEMPT FROM THE
19 30-DAY TIME LIMITATION IN ACCORDANCE WITH SUBSECTION (C), THE
20 PARTY ALLEGING THE DEFECT MUST MEET THE BURDEN OF PROVING
21 EACH OF THE FOLLOWING:

22 (I) THAT THERE WAS A FAILURE TO STRICTLY COMPLY WITH
23 STATUTORY PROCEDURE.

24 (II) THAT THERE WAS A FAILURE TO SUBSTANTIALLY
25 COMPLY WITH STATUTORY PROCEDURE WHICH RESULTED IN
26 INSUFFICIENT NOTIFICATION TO THE PUBLIC OF IMPENDING
27 CHANGES IN, OR THE EXISTENCE OF, THE LAW, SO THAT THE
28 PUBLIC WOULD BE PREVENTED FROM COMMENTING ON THOSE
29 CHANGES AND INTERVENING, IF NECESSARY, OR FROM HAVING
30 KNOWLEDGE OF THE EXISTENCE OF THE ORDINANCE.

1 (III) THAT THE PUBLIC AND THE POLITICAL SUBDIVISION
2 HAVE NOT SUBSTANTIALLY RELIED UPON THE VALIDITY AND
3 EFFECTIVENESS OF THE ORDINANCE.

4 (F) VOID ORDINANCES.--A DETERMINATION THAT AN ORDINANCE IS
5 VOID FROM INCEPTION SHALL NOT AFFECT ANY PREVIOUSLY ACQUIRED
6 RIGHTS OF PROPERTY OWNERS WHO HAVE EXERCISED GOOD FAITH RELIANCE
7 ON THE VALIDITY OF THE ORDINANCE PRIOR TO THE DETERMINATION.

8 (G) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
9 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
10 SUBSECTION:

11 "INTENDED EFFECTIVE DATE." NOTWITHSTANDING THE VALIDITY OF
12 THE CHALLENGED ORDINANCE, THE EFFECTIVE DATE SPECIFIED IN THE
13 CHALLENGED ORDINANCE OR, IF NO EFFECTIVE DATE IS SPECIFIED, THE
14 DATE 60 DAYS AFTER THE DATE THE ORDINANCE WOULD HAVE BEEN
15 FINALLY ADOPTED BUT FOR THE ALLEGED DEFECT IN THE PROCESS OF
16 ENACTMENT OR ADOPTION.

17 "ORDINANCE." AN ORDINANCE, RESOLUTION, MAP OR SIMILAR ACTION
18 OF A POLITICAL SUBDIVISION.

19 "STATUTORY PROCEDURE." THE PRE-ENACTMENT AND POSTENACTMENT
20 PROCEDURES REQUIRED BY STATUTE IN ADOPTING AN ORDINANCE.

21 Section 3. This act shall take effect immediately.