

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1330** Session of
2007

INTRODUCED BY KESSLER, FREEMAN, SAYLOR, BRENNAN, CARROLL,
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LONGIETTI, MACKERETH, MELIO, MOYER, O'NEILL, SEIP, K. SMITH,
WATSON, MENSCH AND CALTAGIRONE, MAY 24, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JULY 7, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 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) Applicability; court of common pleas.--

15 (1) This section shall apply to any appeal raising
16 questions relating to an alleged defect in the process of, or
17 procedure for, enactment or adoption of any ordinance,
18 resolution, map or similar action of a political subdivision.

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

21 (b) Appeals of defects in statutory procedure.--

22 (1) Any appeal raising questions relating to an alleged
23 defect in statutory procedure shall be brought within 30 days
24 of the intended effective date of the ordinance.

25 (2) Except as provided in subsection (c), it is the
26 express intent of the General Assembly that this 30-day
27 limitation shall apply regardless of the ultimate validity of
28 the challenged ordinance.

29 (c) Exemption from limitation.--An appeal shall be exempt
30 from the time limitation in subsection (b) if the party bringing

1 the appeal establishes that, because of the particular nature of
2 the alleged defect in statutory procedure, the application of
3 the time limitation under subsection (b) would result in an
4 impermissible deprivation of constitutional rights.

5 (d) Presumptions.--Notwithstanding any other provision of
6 law, appeals pursuant to this section shall be subject to, and
7 in accordance with, the following:

8 (1) An ordinance shall be presumed to be valid and to
9 have been enacted or adopted in strict compliance with
10 statutory procedure.

11 (2) In all cases in which an appeal filed in court more
12 than one year after the intended effective date of the
13 ordinance is allowed to proceed in accordance with subsection
14 ~~(b)~~ (C), the public and the political subdivision involved ←
15 shall be presumed to have substantially relied upon the
16 validity and effectiveness of the ordinance, as a matter of
17 law.

18 (3) An ordinance shall not be found void from inception
19 unless the party alleging the defect in statutory procedure
20 meets the burden of proving the elements set forth in
21 subsection (e).

22 (e) Burden of proof.--Notwithstanding any other provision of
23 law, an ordinance shall not be found void from inception except
24 as follows:

25 (1) In the case of an appeal brought within the 30-day
26 time limitation of subsection (b), the party alleging the
27 defect must meet the burden of proving that there was a
28 failure to strictly comply with statutory procedure.

29 (2) In the case of an appeal which is exempt from the
30 30-day time limitation in accordance with subsection (c), the

1 party alleging the defect must meet the burden of proving
2 each of the following:

3 (i) That there was a failure to strictly comply with
4 statutory procedure.

5 (ii) That there was a failure to substantially
6 comply with statutory procedure which resulted in
7 insufficient notification to the public of impending
8 changes in, or the existence of, the law ORDINANCE, so ←
9 that the public would be prevented from commenting on
10 those changes and intervening, if necessary, or from
11 having knowledge of the existence of the ordinance.

12 ~~(iii) That the public and the political subdivision~~ ←
13 ~~have not substantially relied upon the validity and~~
14 ~~effectiveness of the ordinance.~~

15 (f) Void ordinances.--A determination that an ordinance is
16 void from inception shall not affect any previously acquired
17 rights of property owners who have exercised good faith reliance
18 on the validity of the ordinance prior to the determination.

19 (g) Definitions.--As used in this section, the following
20 words and phrases shall have the meanings given to them in this
21 subsection:

22 "Intended effective date." Notwithstanding the validity of
23 the challenged ordinance, the effective date specified in the
24 challenged ordinance or, if no effective date is specified, the
25 date 60 days after the date the ordinance would have been
26 finally adopted but for the alleged defect in the process of
27 enactment or adoption.

28 "Ordinance." An ordinance, resolution, map or similar action
29 of a political subdivision.

30 "Statutory procedure." The pre-enactment and postenactment

1 procedures required by statute in adopting an ordinance.

2 Section 3. This act shall take effect immediately.