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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1330** Session of  
2007

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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, MENSCH AND CALTAGIRONE, MAY 24, 2007

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SENATOR REGOLA, LOCAL GOVERNMENT, IN SENATE, AS AMENDED,  
FEBRUARY 6, 2008

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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

1 subsections (a) and (c) and in section 5571.1 (relating to  
2 appeals from ordinances, resolutions, maps, etc.), an appeal  
3 from a tribunal or other government unit to a court or from a  
4 court to an appellate court must be commenced within 30 days  
5 after the entry of the order from which the appeal is taken, in  
6 the case of an interlocutory or final order.

7 (c) Exceptions.--

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

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

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

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

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

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

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

1 after its entry.

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

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

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

14 § 5571.1. Appeals from ordinances, resolutions, maps, etc.

15 (a) Applicability; court of common pleas.--

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

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

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

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

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

30 (c) Exemption from limitation.--An appeal shall be exempt

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

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

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

12 (2) In all cases in which an appeal filed in court more  
13 than ~~one year~~ TWO YEARS after the intended effective date of <—  
14 the ordinance is allowed to proceed in accordance with  
15 subsection (c), ~~the public and the political subdivision~~ <—  
16 involved AND RESIDENTS AND LANDOWNERS WITHIN THE POLITICAL <—  
17 SUBDIVISION shall be presumed to have substantially relied  
18 upon the validity and effectiveness of the ordinance, ~~as a~~ <—  
19 matter of law.

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

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

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

1           (2) In the case of an appeal which is exempt from the  
2           30-day time limitation in accordance with subsection (c), the  
3           party alleging the defect must meet the burden of proving  
4           each of the following:

5           (i) That there was a failure to strictly comply with  
6           statutory procedure.

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

14           (III) THAT THERE EXIST FACTS SUFFICIENT TO REBUT ANY ←  
15           PRESUMPTION THAT MAY EXIST PURSUANT TO SUBSECTION (D)(2)  
16           THAT WOULD, UNLESS REBUTTED, RESULT IN A DETERMINATION  
17           THAT THE ORDINANCE IS NOT VOID FROM INCEPTION.

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

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

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

1       "Ordinance." An ordinance, resolution, map or similar action  
2 of a political subdivision.

3       "Statutory procedure." The pre-enactment and postenactment  
4 procedures ~~required by statute~~ PRESCRIBED BY STATUTE OR       <—  
5 ORDINANCE in adopting an ordinance.

6       Section 3. This act shall take effect immediately.