

No. 1988-94

AN ACT

HB 1432

Establishing the Environmental Hearing Board as an independent, quasi-judicial agency; providing for the membership and staff, the powers and duties, the seats and the existing members of the board; transferring certain funds; and making repeals.

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

Section 1. Short title.

This act shall be known and may be cited as the Environmental Hearing Board Act.

Section 2. Definitions.

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

“Board.” The Environmental Hearing Board of the Commonwealth.

“Department.” The Department of Environmental Resources of the Commonwealth.

“Rules committee.” The Environmental Hearing Board Rules Committee established under section 5.

“Secretary.” The Secretary of Environmental Resources of the Commonwealth.

Section 3. Board.

(a) **Establishment.**—The Environmental Hearing Board is established as an independent quasi-judicial agency.

(b) **Membership.**—The board shall consist of five members. The members shall be full-time administrative law judges. Members shall devote full time to their official duties. No member or hearing examiner shall hold any office or position, the duties of which are incompatible with the duties of his office, or be engaged in any business, employment or vocation for which he shall receive any remuneration, except that members may speak, write or lecture if any reimbursed expenses, honorariums, royalties or other moneys received in connection with these activities are disclosed. Members shall be appointed by the Governor with the consent of a majority of the members elected to the Senate. Members of the board on the effective date of this act may complete their terms and continue in office until their successors are appointed and qualified.

(c) **Chairperson.**—The Governor shall designate one member of the board to serve as chairperson.

(d) **Terms.**—A member of the board shall serve for a term of six years or until a successor is appointed and qualified. One of the additional members appointed under this act shall serve an initial term of four years. Vacancies shall be filled in the same manner as the original appointment.

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

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

(2) Have five years of practice before administrative agencies or have equivalent experience.

(f) Staff and facilities.—The board shall appoint a secretary to the board. The board shall provide facilities at each seat under the provisions of section 6. The board may employ hearing examiners and such additional personnel necessary to exercise its functions. Hearing examiners shall be attorneys in good standing before the Bar of the Supreme Court of Pennsylvania and shall have three years of practice before administrative agencies or equivalent experience. All employees of the board shall be subject to the act of August 5, 1941 (P.L.752, No.286), known as the Civil Service Act.

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

Section 4. Jurisdiction.

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

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

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

(d) Supersedeas.—

(1) No appeal shall act as an automatic supersedeas. The board may, however, grant a supersedeas upon cause shown. The board, in granting or denying a supersedeas, shall be guided by relevant judicial precedent and the board's own precedent. Among the factors to be considered are:

(i) Irreparable harm to the petitioner.

(ii) The likelihood of the petitioner prevailing on the merits.

(iii) The likelihood of injury to the public or other parties, such as the permittee in third party appeals.

(2) A supersedeas shall not be issued in cases where pollution or injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect.

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

(e) Intervention.—Any interested party may intervene in any matter pending before the board.

(f) Subpoenas.—The board may subpoena witnesses, records and papers. The board may enforce its subpoenas in Commonwealth Court. Commonwealth Court, after a hearing, may make an adjudication of contempt or may issue another appropriate order.

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

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

Section 5. Rules committee.

(a) Establishment.—The Environmental Hearing Board Rules Committee is established. The rules committee shall consist of nine attorneys who are in good standing before the Bar of the Supreme Court of Pennsylvania and who have practiced before the board for a minimum of three years or who have comparable experience. One member shall be appointed by the President pro tempore and one member shall be appointed by the Minority Leader of the Senate. One member shall be appointed by the Speaker and one member shall be appointed by the Minority Leader of the House of Representatives. One member shall be appointed by the Chairman of the Citizens Advisory Council to the department. Two members shall be appointed by the Governor, upon the advice of the Pennsylvania Bar Association. Two members shall be appointed by the secretary. The initial appointments of the Governor and the secretary shall serve terms of one year; the initial appointments of the President pro tempore and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives and the Chairperson of the Citizens Advisory Council shall serve terms of two years commencing three months after the effective date of this act. Thereafter, members of the rules committee shall serve terms of two years and may be reappointed for additional terms. Such vacancies as may arise shall be filled in the same manner as the original appointment. The chairperson of the board shall be a member of the committee ex officio.

(b) Expenses.—The board shall reimburse members of the rules committee for necessary and reasonable expenses incurred in attending rules committee meetings.

(c) Function.—The rules committee shall recommend to the board regulations for hearings conducted by the board and for the use of mediation under section 4(h). The regulations shall include time limits and procedure for the taking of appeals and locations of hearings. Regulations under this subsection shall be promulgated by the board upon a majority affirmative vote on the recommended regulations.

(d) **Bylaws.**—The rules committee shall adopt bylaws to govern the conduct of its affairs.

Section 6. Seats of the board.

(a) **Location.**—The board shall have offices and hearing rooms in Harrisburg and Pittsburgh and, at the discretion of the board, Philadelphia. The headquarters of the board shall be in Harrisburg. The board may hear cases at other locations in this Commonwealth.

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

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

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

Section 7. Appropriation.

The unexpended portion of the appropriation made to the Department of Environmental Resources for the Environmental Hearing Board is hereby transferred to the Environmental Hearing Board established by this act for the current fiscal year.

Section 8. Repeals.

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

(b) **General.**—All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 9. Applicability.

This act shall not affect the terms or eligibility of the current members of the board.

Section 10. Effective date.

This act shall take effect January 1, 1989.

APPROVED—The 13th day of July, A. D. 1988.

ROBERT P. CASEY