

## No. 1988-181

## AN ACT

## HB 265

Providing for the Office of Small Business Advocate in the Department of Commerce; providing for the powers and duties of the Office of Small Business Advocate and the Pennsylvania Public Utility Commission in relation thereto; and making a temporary appropriation.

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 Small Business Advocate 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:

“Commission.” The Pennsylvania Public Utility Commission.

“Public utility.” A public utility as defined in 66 Pa.C.S. § 102 (relating to definitions).

“Small business consumer.” A person, sole proprietorship, partnership, corporation, association or other business entity which employs fewer than 250 employees and which receives public utility service under a small commercial, small industrial or small business rate classification.

Section 3. Office of Small Business Advocate.

(a) Office established.—There is hereby established within the Department of Commerce an Office of Small Business Advocate to represent the interest of small business consumers before the commission.

(b) Small Business Advocate.—The Governor shall appoint a Small Business Advocate, which appointment shall be subject to the approval of a majority of the members elected to the Senate. The Small Business Advocate shall serve as Small Business Advocate until a successor is appointed and qualified.

(c) Qualifications.—The Small Business Advocate shall be a person who by reason of training, experience and attainment is qualified to represent the interest of small business consumers. Compensation shall be set by the Executive Board.

(d) General restrictions.—No individual who serves as a Small Business Advocate shall, while serving in such position, engage in any business, vocation or other employment, or have other interests, inconsistent with his official responsibilities, nor shall he seek or accept employment nor render beneficial services for compensation with any “person” or “corporation,” as defined in 66 Pa.C.S. § 102 (relating to definitions), subject to the authority of the commission during the tenure of the appointment and for a period of two years after the appointment is served or terminated.

(e) Political office restrictions.—Any individual who is appointed to the position of Small Business Advocate shall not seek election nor accept appointment to any public office during the tenure as Small Business Advocate and for a period of two years after the appointment is served or terminated.

(f) Secretary of Commerce restrictions.—The Secretary of Commerce shall have administrative responsibilities for the office only and shall not be responsible, in any manner, for the policies, procedures or other substantive matters developed by the Office of Small Business Advocate in carrying out its duties under this act to represent the small business consumer.

#### Section 4. Assistant advocates; employees.

The Small Business Advocate, with the approval of the Secretary of Commerce, shall appoint attorneys as assistant small business advocates, and such additional clerical, technical and professional staff as may be appropriate, and may contract for such additional services as shall be necessary for the performance of his function. The compensation of assistant small business advocates and such clerical, technical and professional staff shall be set by the Executive Board. No assistant small business advocate or other staff employee shall, while serving in such position, engage in any business, vocation or other employment, or have other interests, inconsistent with his official responsibilities.

#### Section 5. Powers and duties of Small Business Advocate.

(a) Representing interests of small business consumers.—In addition to any other authority conferred upon him by this act, the Small Business Advocate is authorized, and it shall be his duty in carrying out his responsibilities under this act, to represent the interest of small business consumers as a party, or otherwise participate for the purpose of representing an interest of small business consumers before the commission in any matter properly before the commission, and before any court, or agency, initiating proceedings if in his judgment such may be necessary, in connection with any matter involving regulation by the commission or the corresponding regulatory agency of the United States, whether on appeal or otherwise initiated.

(b) Monitoring and participating in proceedings.—The Small Business Advocate may monitor all cases before corresponding regulatory agencies of the United States, including the Federal Communications Commission and the Federal Energy Regulatory Commission, which impact upon the interests of Pennsylvania small business consumers, and may formally participate in those proceedings which in his judgment warrant such participation.

(c) Exercise of discretion.—The Small Business Advocate may exercise discretion in determining the interests which will be advocated in any particular proceeding and in determining whether or not to participate in or initiate any particular proceeding and, in so determining, shall consider the public interest, the resources available and the substantiality of the effect of the proceeding on the interest of small business consumers. The Small Business Advocate may refrain from intervening when, in the judgment of the Small Business Advocate, such is not necessary to represent adequately the interest of small business consumers.

(d) **Action upon petition.**—In addition to any other authority conferred upon him by this act, the Small Business Advocate is authorized to represent an interest of small business consumers which is presented to him for his consideration upon petition in writing by a substantial number of small business consumers. The Small Business Advocate shall notify the principal sponsors of any such petition of the action taken or intended to be taken by him with respect to the interest of consumers presented in such petition. If the Small Business Advocate declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons.

(e) **Name in which action is brought.**—Any action brought by the Small Business Advocate before a court or any agency of this Commonwealth shall be brought in the name of the Small Business Advocate. The Small Business Advocate may name a small business consumer or group of small business consumers in whose name the action may be brought or may join consumers in bringing such action.

(f) **Issuance of written statement.**—At such time as the Small Business Advocate determines, in accordance with applicable time limitations, to initiate, intervene or otherwise participate in any commission, agency or court proceeding, he shall issue publicly a written statement, a copy of which he shall file in the proceeding in addition to any required entry of his appearance, stating concisely the specific interest of small business consumers to be protected.

**Section 6. Assessment upon public utilities; disposition, appropriation and disbursement of such assessments.**

(a) **Estimate of expenditures.**—Before November 1 of each year, the Small Business Advocate shall estimate the total expenditures for the Office of Small Business Advocate and submit the estimate to the Governor in accordance with section 610 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. At the same time the Small Business Advocate submits his estimate to the Governor, the Small Business Advocate shall also submit the estimate to the General Assembly. Such estimate shall not exceed 0.0125% of the total gross intrastate operating revenues of all public utilities subject to the jurisdiction of the commission for the preceding calendar year. The Small Business Advocate, or his designated representatives, shall be afforded an opportunity to appear before the Governor and the Senate and House Appropriations Committees regarding his estimate. If the General Assembly fails to approve the Small Business Advocate's budget for the purposes of this section by March 20, the commission shall assess public utilities on the basis of the last approved allocation. At such time as the General Assembly approves the proposed budget, the Small Business Advocate and the commission shall make an adjustment in the assessment to reflect the approved budget. The Office of Small Business Advocate shall subtract from the budget finally approved by the General Assembly any balance of the appropriation to be carried over into such fiscal year from the preceding one. The remainder so determined shall constitute the total assessment and shall be allocated to and paid by public utilities in the manner hereafter prescribed.

(b) Allocation of assessment.—For each fiscal year the allocation shall be made as follows:

(1) The Office of Small Business Advocate shall determine for the preceding calendar year the amount of its expenditures directly attributable, or in its judgment properly allocable, to its activities in connection with each group of utilities furnishing the same kind of service and debit the amount so determined to such group.

(2) The Office of Small Business Advocate shall then allocate the total assessment prescribed in subsection (a) to each group in the proportion which the sum of the debits made to it bears to the sum of the debits made to all groups. The Office of Small Business Advocate shall transmit to the commission the result of the aforesaid allocation.

(c) Collection of assessment.—The commission shall thereafter complete the assessment procedure and collect the assessments as follows: Each public utility within a group shall then be assessed for and shall pay to the commission such proportion of the amount allocated to its group as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of its group for that year. The commission shall give notice by registered mail to each public utility of the amount lawfully charged against it under the provisions of this section, which amount shall be paid by the public utility within 30 days of receipt of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case each public utility shall pay each installment on or before the date specified therefor by the commission. Within 15 days after receipt of such notice, the public utility against which such assessment has been made may file with the commission objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold hearing upon such objections. After such hearing, the commission shall record upon its minutes its findings on the objections and shall transmit to the objector, by registered mail, notice of the amount, if any, charged against it in accordance with such findings, which amount, or any installment thereof, then due shall be paid by the objector within ten days after receipt of the notice of the findings of the commission with respect to such objections. If any payment prescribed by this subsection is not made as aforesaid, the commission may suspend or revoke certificates of public convenience, certify automobile registrations to the Secretary of Transportation for suspension or revocation or, through the Office of Attorney General, may institute an appropriate action at law for the amount lawfully assessed, together with any additional cost incurred by the commission or the Office of Attorney General by virtue of such failure to pay.

(d) No delay.—No suit or proceeding shall be maintained in any court for the purpose of restraining or in any way delaying the collection or payment of any assessment made under subsections (a), (b) and (c), but every public utility against which an assessment is made shall pay the same as provided in subsection (c). Any public utility making any such payment may, at

any time within two years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful or invalid, in whole or in part, provided that objections, as hereinbefore provided, were filed with the commission and payment of the assessment was made under protest either as to all or part thereof. In any action for recovery of any payments made under this section, the claimant shall be entitled to raise every relevant issue of law, but the findings of fact made by the commission, pursuant to this section, shall be prima facie evidence of the facts therein stated. Any records, books, data, documents and memoranda relating to the expenses of the Office of Small Business Advocate shall be admissible in evidence in any court and shall be prima facie evidence of the truth of their contents. If it is finally determined in any such action that all or any part of the assessment for which payment was made under protest was excessive, erroneous, unlawful or invalid, the Office of Small Business Advocate shall make a refund to the claimant out of the appropriation specified herein as directed by the court.

(e) Procedure exclusive.—The procedure in this section providing for the determination of the lawfulness of assessments and the recovery back of payments made pursuant to such assessments shall be exclusive of all other remedies and procedures.

(f) Records.—It is the intent and purpose of this section that each public utility shall advance to the Office of Small Business Advocate its reasonable share of the cost of administering this act. The Office of Small Business Advocate shall keep records of the costs incurred in connection with the administration and enforcement of this act or any other act. The Office of Small Business Advocate and the commission shall also keep a record of the manner in which it shall have computed the amount assessed against every public utility. Such records shall be open to inspection by all interested parties. The determination of such costs and assessments by the Office of Small Business Advocate and the commission, and the records and data upon which the same are made, shall be considered prima facie correct. In any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof.

(g) Payment into General Fund.—All assessments received, collected or recovered under this act shall be paid by the commission into the General Fund of the State Treasury through the Department of Revenue.

(h) Use of assessments.—All such assessments, allocated to and paid by public utilities, shall be held in trust solely for the purpose of defraying the cost of the administration and performance of the duties of the Office of Small Business Advocate relating to proceedings before the commission, the corresponding regulatory agencies of the United States, related judicial proceedings and other such matters within the jurisdiction of the Office of Small Business Advocate, and shall be earmarked for the use of, and annually appropriated to, the Office of Small Business Advocate for disbursement solely for that purpose.

(i) Requisitions.—All requisitions upon such appropriation shall be signed by the Small Business Advocate or such deputies as he may designate in writing to the State Treasurer and shall be presented to the State Treasurer and dealt with by him and the Treasury Department in the manner prescribed by the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

**Section 7. Duties of the commission.**

In dealing with any proposed action which may substantially affect the interest of small business consumers, including, but not limited to, a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, the commission shall:

(1) Notify the Small Business Advocate when notice of the proposed action is given to the public or at a time fixed by agreement between the Small Business Advocate and the commission in a manner to assure the Small Business Advocate reasonable notice and adequate time to determine whether to intervene in such matter.

(2) Consistent with its other statutory responsibilities, take such action with due consideration to the interest of small business consumers.

**Section 8. Savings provision; construction.**

(a) No bar to other action.—Nothing contained in this act shall in any way limit the right of any small business consumer to bring a proceeding before either the commission or a court.

(b) No impairment to commission.—Nothing contained in this act shall be construed to impair the statutory authority or responsibility of the commission to regulate public utilities in the public interest.

(c) No impairment to Office of Consumer Advocate.—Nothing contained in this act shall be construed to limit or impair the statutory authority or responsibility of the Office of Consumer Advocate or the Consumer Advocate to represent the interests of consumers before the commission or in any other authorized manner.

**Section 9. Reports.**

The Small Business Advocate shall annually transmit to the Governor and to the General Assembly, and shall make available to the public, an annual report on the conduct of the Office of Small Business Advocate. The Small Business Advocate shall make recommendations as may from time to time be necessary or desirable to protect the interest of small business consumers.

**Section 10. Sunset.**

The Office of Small Business Advocate shall continue together with its statutory functions and duties until December 31, 1993, when it shall terminate and go out of existence unless reestablished or continued by the General Assembly. Evaluation and review, termination, reestablishment and continuation of the agency shall be conducted pursuant to the provisions of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

**Section 11. Appropriation.**

For the period from the effective date of this act to June 30, 1989, the sum of \$250,000, or as much thereof as may be necessary, is hereby appropriated from the General Fund to the Office of Small Business Advocate to carry out the provisions of this act. All such moneys appropriated from the General

Fund shall be repaid to the General Fund in the next fiscal year from the funds assessed for the operation of the Office of Small Business Advocate under this act.

Section 12. Effective date.

This act shall take effect immediately.

APPROVED—The 21st day of December, A. D. 1988.

ROBERT P. CASEY