

## No. 2008-40

## AN ACT

HB 1330

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for appeals generally and for appeals from ordinances, resolutions, maps, etc.

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

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

§ 5571. Appeals generally.

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

(b) Other courts.—Except as otherwise provided in subsections (a) and (c) *and in section 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.)*, an appeal from a tribunal or other government unit to a court or from a court to an appellate court must be commenced within 30 days after the entry of the order from which the appeal is taken, in the case of an interlocutory or final order.

(c) Exceptions.—

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

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

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

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

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

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

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

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

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

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

**§ 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.

(2) In all cases in which an appeal filed in court more than two years after the intended effective date of the ordinance is allowed to proceed in accordance with subsection (c), the political subdivision involved and residents and landowners within the political subdivision shall be presumed to have substantially relied upon the validity and effectiveness of the ordinance.

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

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

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

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

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

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

(iii) That there exist facts sufficient to rebut any presumption that may exist pursuant to subsection (d)(2) that would, unless rebutted,

*result in a determination that the ordinance is not void from inception.*

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

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

*“Intended effective date.” Notwithstanding the validity of the challenged ordinance, the effective date specified in the challenged ordinance or, if no effective date is specified, the date 60 days after the date the ordinance would have been finally adopted but for the alleged defect in the process of enactment or adoption.*

*“Ordinance.” An ordinance, resolution, map or similar action of a political subdivision.*

*“Statutory procedure.” The preenactment and postenactment procedures prescribed by statute or ordinance in adopting an ordinance.*

Section 3. This act shall take effect immediately.

APPROVED—The 4th day of July, A.D. 2008.

EDWARD G. RENDELL