

## AN ACT

1 Amending Titles 27 (Environmental Resources) and 42 (Judiciary  
2 and Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, in costs and fees, further providing for  
4 participation in environmental law or regulation; repealing  
5 provisions relating to participation in environmental law or  
6 regulation; and, in particular rights and immunities,  
7 providing for participation in law or regulation related to  
8 an issue in the public interest.

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

11 Section 1. Section 7707 of Title 27 of the Pennsylvania  
12 Consolidated Statutes is repealed:

13 [§ 7707. Participation in environmental law or regulation.

14 A person that successfully defends against an action under  
15 Chapter 83 (relating to participation in environmental law or  
16 regulation) shall be awarded reasonable attorney fees and the  
17 costs of litigation. If the person prevails in part, the court  
18 may make a full award or a proportionate award.]

19 Section 2. Chapter 83 of Title 27 is repealed:

20 [CHAPTER 83

1 PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION

2 § 8301. Definitions.

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

6 "Communication to the government." A written or oral  
7 statement or writing made:

8 (1) before a legislative, executive or judicial  
9 proceeding or any other official proceeding authorized by  
10 law;

11 (2) in connection with an issue under consideration or  
12 review by a legislative, executive or judicial body or any  
13 other official proceeding authorized by law; or

14 (3) to a government agency in connection with the  
15 implementation and enforcement of environmental law and  
16 regulations.

17 "Enforcement of environmental law and regulation." Activity  
18 relating to the identification and elimination of violations of  
19 environmental laws and regulations, including investigations of  
20 alleged violations, inspections of activities subject to  
21 regulation under environmental law and regulations and responses  
22 taken to produce correction of the violations.

23 "Government agency." The Federal Government, the  
24 Commonwealth and any of the Commonwealth's departments,  
25 commissions, boards, agencies, authorities, political  
26 subdivisions or their departments, commissions, boards, agencies  
27 or authorities.

28 "Implementation of environmental law and regulation."  
29 Activity relating to the development and administration of  
30 environmental programs developed under environmental law and

1 regulations.

2 § 8302. Immunity.

3 (a) General rule.--Except as provided in subsection (b), a  
4 person that, pursuant to Federal or State law, files an action  
5 in the courts of this Commonwealth to enforce an environmental  
6 law or regulation or that makes an oral or written communication  
7 to a government agency relating to enforcement or implementation  
8 of an environmental law or regulation shall be immune from civil  
9 liability in any resulting legal proceeding for damages where  
10 the action or communication is aimed at procuring favorable  
11 governmental action.

12 (b) Exceptions.--A person shall not be immune under this  
13 section if the allegation in the action or any communication to  
14 the government is not relevant or material to the enforcement or  
15 implementation of an environmental law or regulation and:

16 (1) the allegation in the action or communication is  
17 knowingly false, deliberately misleading or made with  
18 malicious and reckless disregard for the truth or falsity;

19 (2) the allegation in the action or communication is  
20 made for the sole purpose of interfering with existing or  
21 proposed business relationships; or

22 (3) the oral or written communication to a government  
23 agency relating to enforcement or implementation of an  
24 environmental law or regulation is later determined to be a  
25 wrongful use of process or an abuse of process.

26 § 8303. Right to a hearing.

27 A person who wishes to raise the defense of immunity from  
28 civil liability under this chapter may file a motion with the  
29 court requesting the court to conduct a hearing to determine the  
30 preliminary issue of immunity. If a motion is filed, the court

1 shall then conduct a hearing and if the motion is denied, the  
2 moving party shall have an interlocutory appeal of right to the  
3 Commonwealth Court, during which time all discovery shall be  
4 stayed.

5 § 8304. Intervention.

6 A government agency has the right to petition to intervene or  
7 otherwise participate as an amicus curiae in the action  
8 involving public petition and participation.

9 § 8305. Construction.

10 Nothing in this chapter shall be construed to limit any  
11 constitutional, statutory or common law protections of  
12 defendants to actions involving public petition and  
13 participation.]

14 Section 3. Title 42 is amended by adding a section to read:

15 § 8340.3. Participation in law or regulation related to an  
16 issue in the public interest.

17 (a) Immunity.--

18 (1) A person who:

19 (i) acts in furtherance of the right of advocacy on  
20 issues of public interest in connection with enforcement  
21 or implementation of government action related to an  
22 issue of public interest; or

23 (ii) makes a communication genuinely aimed at  
24 procuring a favorable governmental action shall be immune  
25 from civil liability.

26 (2) A communication is not genuinely aimed at procuring  
27 a favorable governmental action if it:

28 (i) is not material or relevant to the enforcement  
29 or implementation of government action related to an  
30 issue in the public interest;

1           (ii) was knowingly false when made;  
2           (iii) was rendered with reckless disregard as to the  
3           truth or falsity of the statement when made; or  
4           (iv) represented a wrongful use of process or abuse  
5           of process.

6           (b) Stay of proceedings.--The court shall stay all  
7           proceedings in the action upon the filing of preliminary  
8           objections for legal insufficiency of a pleading or other  
9           appropriate motion on the basis of immunity provided by this  
10           section. However, the court, on motion and after a hearing and  
11           for good cause shown, may order that specified discovery be  
12           conducted. The stay of proceedings shall remain in effect until  
13           notice of the entry of the order ruling on the preliminary  
14           objections or on another appropriate motion.

15           (c) Expedited hearing.--The court shall conduct an expedited  
16           hearing on the filing of any motion or preliminary objections  
17           based on immunity provided under this section.

18           (d) Admissibility of court determination.--If the court  
19           determines that the plaintiff has established that there is a  
20           substantial likelihood that the plaintiff will prevail on the  
21           claim, neither that determination nor the fact of that  
22           determination shall be admissible in evidence at any later stage  
23           of the case, and no burden of proof or degree of proof otherwise  
24           applicable shall be affected by that determination.

25           (e) Intervention.--The government agency involved in  
26           furtherance of the right of advocacy on issues of public  
27           interest in connection with an issue of public interest may  
28           intervene or participate as an amicus curiae as provided by  
29           general rule.

30           (f) Legal protections of defendants.--Nothing in this

1 section shall be construed to limit any constitutional,  
2 statutory or common-law protections of defendants to actions  
3 involving public petition and participation.

4 (g) Abuse of legal process.--In addition to other costs or  
5 remedies allowed by general rule or statute, including, but not  
6 limited, to Subchapter E of Chapter 83 (relating to wrongful use  
7 of civil proceedings) in any administrative or judicial  
8 proceeding related to the enforcement or implementation of law  
9 or regulation related to an issue of public interest, the agency  
10 or court may award costs, including reasonable attorney fees, if  
11 the agency or court determines that an action, appeal, claim,  
12 motion or pleading is frivolous or taken solely for delay or  
13 that the conduct of a party or counsel is dilatory or vexatious.

14 (h) Personal information.--A request for information that  
15 discloses the personal identification of an individual and is  
16 sought pursuant to discovery shall be quashed on the motion of a  
17 person whose information is sought.

18 (i) Special damages.--The court may award the prevailing  
19 party who is provided with immunity from suit pursuant to this  
20 section the costs of litigation including reasonable attorney  
21 fees if there is a showing that the action brought was frivolous  
22 or intended to cause unnecessary delay.

23 (j) Parties.--In considering any motion or preliminary  
24 objections provided by this section, the court may additionally  
25 consider both of the following factors weighing in favor of  
26 granting immunity under subsection (a) (1) (ii):

27 (1) If the person making the communication possesses the  
28 following characteristics:

29 (i) Is an executive committee, board of directors,  
30 officers or other leadership chosen through elections.

1           (ii) Has written rules, such as bylaws or articles  
2           of incorporation, that establish its mission and  
3           operation.

4           (iii) Is organized for a specific purpose that  
5           includes activities designed for the participation in  
6           government actions.

7           (2) If the communication at issue was made at, or  
8           resulted from, a meeting open to the general public which was  
9           conducted in accordance with written rules, bylaws or  
10           articles of incorporation under subsection (j) (1) (ii).

11           (k) Definitions.--The following words and phrases when used  
12           in this section shall have the meanings given to them in this  
13           subsection unless the context clearly indicates otherwise:

14           "Act in furtherance of the right of advocacy on issues of  
15           public interest." Any of the following:

16           (1) any written or oral statement made:

17           (i) in connection with an issue under consideration  
18           or review by a legislative, executive or judicial body,  
19           or any other official proceeding authorized by law; or

20           (ii) in a place open to the public or a public forum  
21           in connection with an issue of public interest; or

22           (2) any other expression or expressive conduct that  
23           involves petitioning the government or communicating views to  
24           members of the public in connection with an issue of public  
25           interest.

26           "Government action." Any action regarding the enactment,  
27           promulgation, issuance, implementation or interpretation of any  
28           statute, regulation, policy, procedure or directive by a  
29           government agency.

30           "Government agency." The Federal Government, the

1 Commonwealth and any of its departments, commissions, boards,  
2 agencies and authorities and any political subdivision and its  
3 authorities.

4 "Issue of public interest." An issue related to:

5 (1) Health or safety.

6 (2) Environmental, economic or community well-being.

7 (3) A government agency or a public figure.

8 (4) A good, product or service in the market place.

9 (5) Land use or licensing.

10 The term does not include private interests, including, but not  
11 limited to, statements directed primarily toward protecting the  
12 speaker's commercial interests rather than toward commenting on  
13 or sharing information about a matter of public significance.

14 Section 4. This act shall take effect in 60 days.