



Senate Environmental Resources and Energy Committee

Senator Mary Jo White
Chairman

Patrick Henderson, Executive Director

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June 29, 2007

Susan M. Wilson, Executive Director
Citizens Advisory Council
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Dear Ms. Wilson:

Thank you for your recent letter on behalf of the Citizens Advisory Council regarding Senate Bill 354. I introduced this legislation to better define the scope of rule making petitions submitted to the Environmental Quality Board (EQB).

The right to petition one's government, afforded under both the U.S. and Pennsylvania constitutions, is a fundamental right of citizens, and one that I respect greatly. It is completely different from the ability to "petition" the EQB. As you know, the formal EQB petition process is unique, and is a process that to my knowledge is not replicated anywhere else in state government.

In response to Council's concern that SB 354 would curtail the right of citizens to petition the EQB to change or alter an existing regulation, I believe it would not. Any existing regulation must have its underpinnings in legislation. The role of a regulation is to implement, or carry out, a public policy that has been enacted by the elected legislature and Governor. There is nothing within SB 354 that would prohibit accepting a petition to the extent that the petition seeks to modify an existing regulation. In fact, to my knowledge, no petition ever accepted by the EQB would have been prohibited had SB 354 been enacted. This is a prospective bill that recognizes the growing awareness among some groups that the EQB petition process, as it exists now, can be manipulated to entertain public policy decisions that are more appropriately reserved for the elected legislature and Governor.

Stated clearly, my goal in introducing SB 354 is to ensure that the EQB only accepts rule making petitions which seek to create or modify a regulatory requirement that is necessary to achieve compliance with either a state or federal environmental statute. For better or worse, we do not have initiative and referendum in Pennsylvania; the EQB petition process should not be used as a substitute for this on environmental issues. I also wish to state for the record that both the mercury emission and truck idling petitions accepted by the EQB would have been permissible under Senate Bill 354, because both petitions sought to regulate or further regulate air emissions that are necessary to achieve compliance with both state and federal clean air statutes.

Council also requested updated language on SB 354. Currently, SB 354 is before the Senate Environmental Resources and Energy Committee. I plan to offer an amendment to the bill in committee, most likely in the Fall. If adopted, the relevant language would read:

- (h) Any person may petition the Environmental Quality Board to initiate a rule making proceeding for the issuance, amendment or repeal of a regulation seeking to establish control measures, standards or any other requirement for an emission or discharge which, at the time the petition is submitted, is currently regulated by the Department of Environmental Protection or is necessary to achieve, maintain or satisfy the requirements of a Federal or State environmental statute, and which regulation is or is to be administered and enforced by the department.**

Additionally, the following will respond to specific questions raised in Council's letter:

- 1) *What specific concern is the bill intended to address?*

As discussed above, I am concerned that the current petition process leaves the door open to have the EQB consider significant public policy matters that, in my view, are the prerogative of the elected legislature and Governor. Nothing in SB 354 reduces the rule making authority of the EQB to initiate its own regulation, presumably under the direction of the duly appointed and confirmed Secretary of Environmental Protection.

- 2) *What kinds of petitions would the bill impact?*

The bill would impact rule making petitions which seek to impose a regulatory requirement not deemed by the U.S. Congress, Pennsylvania General Assembly, U.S. Environmental Protection Agency or the Pennsylvania Department of Environmental Protection as being necessary to achieve, maintain or satisfy the requirements of a federal or state environmental statute. While being cognizant that many citizens may wish to seek a new regulation because of legitimate concerns, we should also not be so naïve as to ignore the reality that some petitions may be motivated by less than pure or transparent intentions.

The bill would not affect stream re-designation petitions, which address the various categories of "existing uses", since such existing uses are defined both in state and federal regulation and are necessary to achieve and maintain compliance with the federal Clean Water Act.

- 3) *How does the proposal enhance public participation in decision-making?*

In my view, the bill encourages the public to bring matters they believe should be regulated – but currently are not – to the appropriate venues for consideration; namely the General Assembly and/or the Secretary of Environmental Protection.

- 4) *What are the benefits to the citizens of the Commonwealth? What are the adverse impacts to the citizenry?*

If I thought the bill adversely impacted the citizens of Pennsylvania, I would not support it. I believe the benefit is ensuring that public policy decisions which will affect the lives of Pennsylvanians are appropriated reserved to those duly elected or chosen by the citizens to make these public policy decisions, namely the General Assembly, the Governor and the Secretary of Environmental Protection.

- 5) *How might this proposal affect environmental justice communities? There are concerns that it further restricts regulatory access that may have been insufficient to begin with.*

I would need to better understand the concerns related to environmental justice communities and this particular bill, as they are not articulated in the letter. I do not think this bill places any particular group of citizens at a disadvantage, or that it inappropriately limits the ability of a citizen to seek recourse for a particular problem. There is absolutely nothing in SB 354 that would constrain a citizen or group of citizens from petitioning for more stringent standards if they felt that current environmental standards affecting their air, land or water quality are insufficient to protect public health.

Recently, my office shared with members of Council a listing of bills before the Senate Environmental Resources and Energy Committee. I welcome Council's interest in SB 354, and the opportunity to share my thoughts as well. Following is a brief overview of several other bills which have been voted on by the Committee since the new legislative session began in January:

Senate Bill 76

Authorizes the Department of Public Welfare to provide matching funds for low-income home energy assistance programs that are administered by utilities.

Senate Bill 105

Requires DEP to provide counsel to the members of the EQB. Counsel shall assist individual members in reviewing regulations, drafting amendments and understanding procedural matters while regarding all communication with the EQB member as privileged and confidential. This bill aims to add some true independence to the EQB.

Senate Bill 355

Requires DEP to post and maintain all clean air state implementation plans on its website, and to provide the same to the standing Senate and House oversight committees.

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Senate Bill 356

Establishes the Pennsylvania Center for Environmental Education in statute. Addresses long-standing governance issues, and updates the Environmental Education Act to appropriately include the Department of Conservation and Natural Resources.

Senate Bill 782

Provides for an increase in nuclear power plant fees to offset the costs incurred by DEP and PA Emergency Management Agency. This legislation was listed as a top priority for DEP and the Governor.

House Bill 483

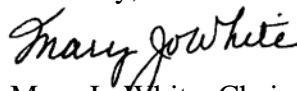
Establishes the "Mine Families First" program within DEP. Ensures that families of miners have access to timely and accurate information and services during a mine emergency.

Additionally, the Committee has held five public hearings this year, including confirmation hearings for Secretary McGinty and Secretary DiBerardinis, coal bed methane issues, and two joint hearings with the Senate Consumer Protection and Professional Licensure Committee on a Pennsylvania energy policy.

I am proud to note that the Senate Environmental Resources and Energy Committee was the first and remains one of the only legislative committees to maintain a comprehensive website. All public hearing information, including testimony, transcripts and video, is posted on the website. Committee meeting information, including text of bills, summaries, amendments, and roll call votes, is also posted. I invite you to visit the website to stay current on committee activities (www.senatormjwhite.com/environmental.htm).

Thank you again for your letter. I am grateful for the dedicated service of the Council's members, and welcome your input on legislative and other matters of mutual interest.

Sincerely,



Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee

cc: Citizens Advisory Council Members
Secretary Kathleen A. McGinty
Senate Environmental Resources & Energy Committee Members
House Environmental Resources & Energy Committee Members