



TO: The Honorable Members of the Senate Environmental Resources and Energy Committee

FROM: Kevin Sunday, Director, Government Affairs

DATE: June 23, 2021

RE: Support SBs 717 & 718 and SR 139

On behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth, I write to urge a **yes** vote on **SBs 717 and 718 and SR 139**, which are scheduled for consideration during this morning's voting meeting. The bills provide much-needed reform and transparency to the state's Environmental Hearing Board, which is an administrative court that hears disputes involving DEP permits, and the resolution further reinforces the need for reform to the federal government's costly and ineffective ethanol mandate. Further, regulatory reform is a key component of our Bringing PA Back initiative, a member-driven recovery effort to advocate for policies that will rebuild Pennsylvania's economy in a manner that provides opportunity for all.

SB 717 provides for reforms to the appeals processes for parties challenging the issuance or denial of permits before the Environmental Hearing Board, an administrative court which reviews DEP's decisions. This bill would, at the discretion of the Department, limit the scope of review in such appeals to the "record of decision," or all correspondence between state government, the public and the applicant, in cases where DEP develops a final document outlining the reasons for its decision, which may include a letter to the applicant informing them of the approval or rejection of a permit. Importantly, this is the standard of review for one of the state's bedrock environmental laws, the Hazards Sites Cleanup Act, as well as most federal environmental statutes. Further, the bill does not obligate DEP to produce such a decision document for all permits or authorizations; however, the bill would provide DEP, the public and the regulated community the certainty that, when DEP does on its own accord develop such a document ahead of issuing or denying a permit, the only appealable issues are those that were raised during public comment and the permit review. In order to have standing, litigants who want to challenge permits will have to raise these issues during public comment, which is standard practice for the review of federal permits. This bill will result in DEP having more certainty in its decisions and less public resources expended defending permits. In cases where there is not a record of decision or where DEP declines to invoke such a standard to defend its decision, the current *de novo* standard of review would apply.

Additionally, SB 718 establishes a Senate confirmation for new judges appointed to the EHB. Given the significant role these administrative judges play in allowing permits to stand or be denied, and by extension the magnitude of these decisions on the state's economy, its environmental resources and

local communities, we believe it is reasonable that the branch of government directly accountable to the public consent to nominations to the court.

Finally, SR 139 is a bipartisan resolution urging the United States Environmental Protection Agency to grant a waiver to East Coast refiners in response to economic hardships the misbegotten ethanol mandate has placed on the few remaining refineries in the region. Gov. Wolf, along with various other governors of both parties in various states, has formally requested such federal action, and the PA Chamber, along with a host of other stakeholders, has supported that request. Broadly, the ethanol mandate, which requires a certain percentage of gasoline and diesel to be produced with biofuels or be offset by purchasing credits, has been criticized by environmental groups, farmers, recreational boat and aviation groups, labor unions and the business community. Recent events, including the temporary closure of the Colonial Pipeline and the importation of Russian LNG into Boston harbor, point to the importance of the northeast retaining and expanding its energy infrastructure. As such, we ask for your support for this resolution.

Thank you for your consideration of our views on these important bills. For further questions or discussion, please contact me at [ksunday@pachamber.org](mailto:ksunday@pachamber.org) or (717) 645-2071.