

SENATE NO. 499

AN ACT PROVIDING FOR THE ESTABLISHMENT OF AN ENVIRONMENTAL APPEALS BOARD WITHIN THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. There shall be within the division of administrative law appeals, and under the
2 direction and supervision of its chief administrative magistrate, an environmental appeals panel
3 consisting of no fewer than five administrative magistrates appointed by said chief administrative
4 magistrate, who shall serve as professional employees as defined by chapter one hundred fifty E but
5 not as confidential employees. The administrative magistrates of said panel shall be initially the
6 persons who, on January 1, 2004, were serving as administrative law judges in the office of
7 administrative appeals in the executive office of environmental affairs and who were transferred
8 thereafter to the division of administrative law appeals, and who were employed at the division of
9 administrative law appeals on November 1, 2004.

10 The administrative magistrates of said panel shall adjudicate, under chapter thirty A and the
11 standard adjudicatory rules of practice and procedure promulgated by the executive office of
12 environmental affairs and who were transferred thereafter to the division of administrative law
13 appeals, and who were employed at the division of administrative law appeals on November 1, 2004.

14 The administrative magistrates of said panel shall adjudicate, under chapter thirty A and the
15 standard adjudicatory rules of practice and procedure promulgated by the executive office for
16 administration and finance pursuant to chapter thirty A section 9, any and all appeals of permits,

17 variances, enforcement orders, civil administrative penalties and other decisions, determinations and
18 actions issued by the department of environmental protection or division, board, commission or
19 program thereof. Each such decision, determination and action shall give notice that persons having a
20 right to appeal same shall do so by filing said appeal, within the time prescribed by statute or
21 regulation, with the division of administrative law appeals, together with payment of any applicable
22 appeal filing fee.

23 The administrative magistrates of said panel shall adjudicate appeals transferred to the division of
24 administrative law appeals by the board of registration of hazardous waste site cleanup professionals,
25 and any other appeals transferred to the division of administrative law appeals by any other agency of
26 the Commonwealth, or by any municipality of the Commonwealth or agency thereof, in which damage
27 to the environment as defined in section seven A of chapter two hundred and fourteen is or might be at
28 issue.

29 Said panel shall maintain, to the fullest extent practicable, a complete physical and technological
30 separation from any agency, department, board, commission or program whose decisions,
31 determinations or actions may be appealed to it.

32 Said panel shall implement procedures to identify, upon the receipt of each appeal or as soon
33 thereafter as possible, jurisdictional defects warranting dismissal, settlement potential favoring
34 assignment to an administrative magistrate of the division of administrative law appeals for settlement
35 facilitation or to an outside mediator or dispute resolution office for alternative dispute resolution, and
36 circumstances justifying expedited adjudication including but not limited to a court order or decision
37 directing same, or the involvement of a public work or project, or the involvement of a project or work
38 implicating national security, an imminent threat to public health, or environmental damage.

39 Every decision issued by a commissioner or other head of agency, or designee, following the
40 issuance of a recommended decision by an administrative magistrate of said panel, shall be an agency
41 decision subject to judicial review pursuant to chapter thirty A.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in the General Court assembled.

The undersigned, citizen of _____, respectfully petitions for the passage of the accompanying bill and for legislation.

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John Hart, Jr.(JAH0) | First Suffolk