
By Mr. Woods of Franklin, petition of George L. Woods, Jr., for legislation to establish a board of appeals in the Department of Public Health. Social Welfare.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Two.

AN ACT ESTABLISHING A BOARD OF APPEALS IN THE DEPARTMENT OF PUBLIC HEALTH.

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

1 Chapter 17 of the General Laws is hereby amended by
2 inserting after section 3 the following two sections: —

3 *Section 3A.* There shall be in the department but not under
4 its control a board of appeals for public health consisting of
5 five members, one of whom shall be the commissioner of
6 public health or his designee, one of whom shall be the com-
7 missioner of public works or his designee, and three persons to
8 be appointed by the governor, of whom one shall be the mayor
9 of a city and another shall be selectman in a town. Each
10 member shall serve for a term of three years and until the
11 qualification of his successor the governor shall from time to
12 time designate one member to serve as chairman.

13 Said board may make such rules or regulations, not incon-
14 sistent with law, as it may deem necessary in the performance
15 of its duties and may establish forms of appeals and petitions,
16 and reasonable fees for the filing thereof. Said board shall hold
17 such meetings as are required to perform its duties. Notice of
18 all meetings, including the time and place, shall be required by
19 rules or regulations. A majority of said board may transact
20 business, but a lesser number may adjourn from time to time.

21 No member of said board shall act or vote as such on any
22 matter in connection with which his private interest, as dis-
23 tinguished from the public interest, is immediately concerned.

24 The appointive members shall receive twenty-five dollars a day
25 while in conference, and their necessary traveling expenses
26 while in the performance of their official duties.

27 *Section 3B.* Whoever is aggrieved by a notice, interpretation,
28 order, requirement or direction of an inspector or other person
29 charged with the enforcement of the rules and regulations of
30 the department of public health, may, within ten days after the
31 service of notice thereof, appeal therefrom, to the board of
32 appeals in public health.

33 Said board shall, after such notice as it may direct, hold a
34 public hearing on such appeal at a time and place to be fixed
35 by it, but not later than thirty days after the entry of such
36 appeal, unless such time shall be extended by agreement with
37 the appellant. The appellant may appear in person or by agent
38 or attorney at such hearing. Said board shall hear all pertinent
39 evidence and determine the facts, and shall issue an appropriate
40 decision or order reversing, affirming or modifying in whole or
41 in part said notice, interpretation, order, requirement or direc-
42 tion. Such decision or order of the board shall be made within
43 a reasonable time, and within forty-five days after such hearing,
44 unless such time is extended by like agreement. The board shall
45 forthwith send by registered mail a copy of its decision or
46 order to the interested parties.

47 Any person aggrieved by a decision or order of the board of
48 appeals in public health, whether or not a party to the pro-
49 ceeding, or any municipal board or officer, may within thirty
50 days after receipt of notice of such decision or order appeal to
51 the superior court sitting in equity. Said court shall hear all
52 pertinent evidence and determine the facts and may annul such
53 decision if it is found to exceed the authority of said board, or
54 may make such other decree as justice and equity may require.
55 The foregoing remedy shall be exclusive, but the parties shall
56 have all rights of appeal and exception as in other equity cases.
57 Costs shall not be allowed against the board unless it appears
58 to the court that said board acted with gross negligence or in
59 bad faith or with malice in making the decision or order
60 appealed from. Costs shall not be allowed against a party
61 appealing from the decision or order of said board unless it
62 appears to the court that said appellant acted in bad faith or

63 with malice in making the appeal to the court.

64 Compliance with any notice, interpretation, order, require-
65 ment or direction of an inspector or other person charged with
66 the enforcement of the rules and regulations of the department
67 of public health shall be excused pending the final determina-
68 tion of any appeal therefrom taken under this section.

