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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SIPTROTH, SOLOBAY, SURRA AND J. WHITE, SEPTEMBER 4, 2007

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REFERRED TO COMMITTEE ON LABOR RELATIONS, SEPTEMBER 4, 2007

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AN ACT

1 Providing for public employee occupational health and safety,  
2 for standards and procedures and for further duties of the  
3 Department of Labor and Industry; establishing the Public  
4 Employee Occupational Safety and Health Review Board and  
5 providing for its powers and duties; and providing for the  
6 establishment of various advisory committees, for enforcement  
7 and for civil and criminal penalties.

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24 The General Assembly of the Commonwealth of Pennsylvania  
25 hereby enacts as follows:  
26 CHAPTER 1  
27 PRELIMINARY PROVISIONS  
28 Section 101. Short title.  
29 This act shall be known and may be cited as the Public  
30 Employee Occupational Safety and Health Act.

1 Section 102. Declaration of policy.

2 The General Assembly finds and declares as follows:

3 (1) It is a basic right of all employees to work in an  
4 environment that is as free from hazards and risks to their  
5 safety and health as possible. This right should be afforded  
6 to public employees, who should not be exposed to workplace  
7 hazards any more than private sector employees.

8 (2) A significant percentage of employees in this  
9 Commonwealth are employed by the Commonwealth or by one of  
10 its political subdivisions. Many of these public employees  
11 perform job functions comparable to those performed by  
12 workers in the private sector.

13 (3) A safe place in which to work is economically  
14 advantageous to employers. Work-related accidents and  
15 injuries, and the absences caused thereby, decrease employee  
16 productivity and increase workers' compensation costs. Unsafe  
17 workplaces increase the risk of financial liability for  
18 injuries to members of the public who frequent public  
19 buildings. Occupational illnesses deplete the pool of human  
20 resources and increase medical expenditures. For public  
21 employees and their dependents, occupational accidents and  
22 illnesses pose a serious threat to finances, security and  
23 mental and physical well-being.

24 (4) Greater protection of the health and safety of  
25 public employees will assist government bodies to deliver  
26 needed public services in a safe, efficient and cost-  
27 effective manner.

28 (5) Under the Occupational Safety and Health Act of 1970  
29 (Public Law 91-596, 29 U.S.C. § 651 et seq.), Congress deems  
30 it necessary to protect the safety and health of workers

1 employed in the private sector. The OSHA Act was enacted to  
2 "assure so far as possible every working man and woman in the  
3 nation safe and healthful working conditions to preserve our  
4 human resources." To provide at least as much protection to  
5 public employees as is provided to employees in the private  
6 sector by the OSHA Act, the standards and regulations under  
7 the OSHA Act should be adopted and applied to public  
8 employees. Accordingly, the General Assembly hereby exercises  
9 its statutory authority to establish and enforce rules,  
10 standards and regulations protecting the health and safety of  
11 all employees of this Commonwealth and its political  
12 subdivisions.

13 (6) Swift and effective enforcement of the provisions of  
14 this act is vital to ensure that the health and safety of  
15 public employees is protected.

16 Section 103. Definitions.

17 The following words and phrases when used in this act shall  
18 have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "Adverse action." Any action by an employer which adversely  
21 affects a worker with respect to any terms or conditions of  
22 employment or opportunity for promotion. The term includes, but  
23 is not limited to, the action of dismissal, layoff, suspension,  
24 demotion, transfer of job or location, reduction in wages,  
25 changes in hours or conditions of work or reprimand.

26 "Advisory committee." The Public Employee Safety and Health  
27 Advisory Committee.

28 "Authorized employee representative." An employee authorized  
29 by the employees to represent them, or the designated  
30 representative of an employee organization recognized or

1 certified to represent the employees. The term includes  
2 "employee organization" as defined in section 301(3) of the act  
3 of July 23, 1970 (P.L.563, No.195), known as the Public Employee  
4 Relations Act.

5 "Board." The Public Employees Occupational Safety and Health  
6 Review Board.

7 "Committee." A work environment committee.

8 "Department." The Department of Labor and Industry of the  
9 Commonwealth.

10 "Harmful agent." A substance or condition determined by the  
11 department to present a risk to worker health or safety or to  
12 present imminent danger of death or serious physical harm to a  
13 public employee. The term includes, but is not limited to,  
14 radiation (whether ionizing or nonionizing), heat, cold, noise,  
15 vibration, repetitive motion, hypobaric pressure, hyperbaric  
16 pressure, poor illumination, poor ergonomic design, dust, fumes,  
17 biological hazards such as molds and allergens, inadequate  
18 ventilation and indoor air pollution. The department shall  
19 consult the scientific literature and rely on epidemiologic and  
20 case study reports brought to its attention in making such  
21 determinations for agents which are not generally recognized as  
22 harmful agents.

23 "Hazardous substance." Any chemical or mixture defined as  
24 hazardous under section 3 of the act of October 5, 1984  
25 (P.L.734, No.159), known as the Worker and Community Right-to-  
26 Know Act, and any other substance determined to be hazardous by  
27 the secretary. The secretary shall consult the scientific  
28 literature and rely on epidemiologic and case study reports  
29 brought to its attention in making such determinations for  
30 substances not defined as hazardous under the Worker and

1 Community Right-to-Know Act.

2 "Imminent danger." A hazard or condition which could  
3 reasonably be expected to cause death or serious physical harm  
4 immediately or before the imminence of the danger can be  
5 eliminated through the enforcement procedure under section 501.

6 "Infectious agent." Includes bacteria, viruses, fungi,  
7 parasites, rickettsia and protozoa determined by the board or  
8 the secretary to cause substantial acute or chronic illness or  
9 permanent disability as a direct or indirect result of exposure  
10 to the infectious agent by employees whose workplaces include,  
11 but are not limited to, hospitals; morgues; laboratories;  
12 clinics; prisons; homes or institutions for the aged and the  
13 mentally, physically or psychologically impaired; schools; day-  
14 care facilities; shelters, zoos or other animal-handling  
15 operations; water and waste treatment plants; and those public  
16 health and social service employees who may be exposed to  
17 infectious agents in the course of home or office visits. The  
18 department shall consult the scientific literature and rely on  
19 epidemiologic and case study reports brought to its attention in  
20 making such determinations for agents which are not generally  
21 recognized as infectious agents.

22 "Interested person." Includes any affected person; a  
23 representative of an organization of employers or employees; a  
24 nationally recognized standards-producing organization; a State  
25 board, commission or department; a professional organization  
26 concerned with occupational safety or health; a representative  
27 or a public interest organization; or a member of a department  
28 or college or university engaged in research related to  
29 occupational safety or health.

30 "Occupational safety and health specialist." An individual

1 who, because of professional or technical education, training or  
2 experience, understands the health and safety risks and the  
3 necessary precautions associated with the hazardous substances,  
4 harmful agents, infectious agents and safety hazards which the  
5 person is hired to address and to which public employees are  
6 exposed. The department shall promulgate regulations specifying  
7 criteria for education, training and experience.

8 "OSHA." The Occupational Safety and Health Administration.

9 "OSHA Act." The Occupational Safety and Health Act of 1970  
10 (Public Law 91-596, 29 U.S.C. § 651 et seq.).

11 "Public employee." An individual who engages to furnish his  
12 services subject to the direction and control of a public  
13 employer.

14 "Public employer." The Commonwealth and its political  
15 subdivisions, including school districts, and any office, board,  
16 commission, authority, agency or instrumentality thereof; any  
17 multistate authority; any regional transportation authority; or  
18 anyone contracting to perform services for the Commonwealth or  
19 any political subdivision or instrumentality thereof whose  
20 employees are not protected by the OSHA Act.

21 "Recognized hazard." Any hazardous substance, harmful agent,  
22 infectious agent or safety hazard as defined in this act.

23 "Right-to-Know Act." The act of act of October 5, 1984  
24 (P.L.734, No.159), known as the Worker and Community Right-to-  
25 Know Act.

26 "Safety hazard." A hazard that arises out of or is  
27 encountered in the course of employment and presents a risk to  
28 employee safety.

29 "Secretary." The Secretary of Labor and Industry of the  
30 Commonwealth.

1 "Work environment inspector." An occupational safety and  
2 health specialist hired for the purpose of enforcing the  
3 provisions of this act.

4 "Workplace." A building site, structure, mobile vehicle or  
5 other premises or location, whether indoors or outdoors, in  
6 which an employee is engaged in work.

### 7 CHAPTER 3

#### 8 PUBLIC EMPLOYEE HEALTH AND SAFETY

9 Section 301. Application of health and safety standards.

10 (a) Application.--This act applies to all public employers,  
11 public employees and places of public employment in this  
12 Commonwealth. This act and the regulations promulgated under it  
13 do not apply to employers whose operations are covered by OSHA  
14 or to employees of the Federal Government.

15 (b) Workers' compensation.--Nothing in this act shall be  
16 construed to supersede or affect any workers' compensation  
17 statute or to enlarge, diminish or affect common law or  
18 statutory rights, duties or liabilities or employers or  
19 employees with respect to injuries, disease or death of  
20 employees arising out of and in the course of employment.

21 Section 302. Duties of public employers.

22 (a) Duties.--A public employer shall do all of the  
23 following:

24 (1) Furnish, to each of its public employees, employment  
25 and a workplace which are free from recognized hazards that  
26 cause or may cause death, serious physical harm or illness to  
27 employees.

28 (2) Comply with the safety and health standards  
29 promulgated under this act. These requirements shall be  
30 included in all leases of the employer and in all contracts



1 with individuals and contractors who provide services to the  
2 employer.

3 (3) Assist the work environment inspector in the  
4 performance of his duties by supplying or making available  
5 information dealing with exposure reports, general safety and  
6 health records and other records required by this act which  
7 are necessary to comply with the purposes and goals of this  
8 act.

9 (4) Provide information to employees, their authorized  
10 representatives and committee members in the following ways:

11 (i) Posting information regarding protections and  
12 obligations of employees under occupational safety and  
13 health laws at areas in the workplace that are easily  
14 accessible to all employees.

15 (ii) Posting prominently each citation issued under  
16 this act, or a copy or copies thereof, at or near each  
17 place a violation referred to in the notice of violation  
18 occurred and at areas in the workplace that are easily  
19 accessible to all employees.

20 (iii) Providing timely access to all industrial  
21 hygiene information and other surveys and reports.  
22 Whenever a work environment inspector or any other  
23 representative of the employer is engaged in activities  
24 related to the monitoring, measuring and other means of  
25 assessment conducted to assess employee exposure to  
26 hazards, the inspector or employer representative shall  
27 be accompanied by employee representatives and committee  
28 members as provided in section 307(h).

29 (iv) Allowing access by employees and their  
30 representatives to accurate records of employee exposures

1 to hazardous substances, infectious agents, harmful  
2 agents or safety hazards.

3 (v) Notifying any employee who has been or is being  
4 exposed to hazardous materials, harmful agents or  
5 infectious agents, and informing any employee so exposed  
6 of corrective action being taken.

7 (vi) Allowing access by employees and their  
8 representatives to relevant medical records and posting a  
9 summary of relevant medical data in a timely manner.

10 (5) Consulting and working cooperatively with the  
11 committees at the workplace for the purpose of resolving  
12 concerns on matters of health, safety and welfare at the  
13 workplace. Every public employer shall be responsible for  
14 providing the committee with any information the employer  
15 receives pursuant to section 5 of the Right-to-Know-Act, and  
16 also for furnishing any information requested by the  
17 committee under rights guaranteed in this act.

18 (6) Providing education and training for employees  
19 exposed to hazardous substances, harmful agents, infectious  
20 agents and safety hazards with respect to the hazardous  
21 substances, harmful agents, infectious agents and safety  
22 hazards found in their workplace, pursuant to regulations  
23 promulgated by the secretary. Employees shall receive normal  
24 wages and benefits from the employer while attending such  
25 programs. Additional instruction shall be provided whenever  
26 the potential for exposure to hazardous substances, harmful  
27 agents, infectious agents or safety hazards is altered or  
28 whenever new information is received by the employer  
29 concerning the hazards of the substances, agents or safety  
30 hazards.

(b) Prohibitions.--A public employer shall not:

(1) Occupy, maintain or permit a public employee to be in a workplace that is not free from recognized hazards that cause or may cause death, serious physical harm or illness to employees.

(2) Interfere with an inspection by a work environment inspector.

Section 303. Powers and duties of department.

(a) Purpose.--The department is charged with the responsibility of promulgating and enforcing health and safety rules, regulations and standards to protect the health and safety of workers covered by this act.

(b) Powers and duties enumerated.--The powers and duties of the department in relation to this act include, but are not limited to, the following:

(1) Taking such action as necessary to enforce this act in a prompt and effective manner, including, but not limited to, the hiring of personnel.

(2) Within one year, proposing such rules and regulations as necessary to administer and enforce all sections of this act. Substantive regulations governing exposure levels and work conditions shall be at least as effective as OSHA standards addressing the same issues.

(3) Adopting all standards promulgated by OSHA which are in effect on the effective date of this act and adopting all standards adopted by OSHA in the future. Interested persons may petition the department to adopt additional regulations under this paragraph.

(4) Either alone or in conjunction with the State Workmen's Insurance Board or the Department of Health,

1 preparing and maintaining morbidity and accident statistics  
2 relating to public employees.

3 (5) Providing assistance to persons concerned with  
4 occupational health and safety and providing services to  
5 assist committees, employers and employees in maintaining  
6 standards for the protection of the health and safety of  
7 public employees.

8 (6) Promoting or conducting studies and research  
9 projects in connection with problems relating to the health  
10 and safety of public employees.

11 (7) Conducting educational programs, including seminars  
12 and courses of training for promoting the health and safety  
13 of public employees and for improving the qualifications of  
14 persons involved in the promotion of occupational health and  
15 safety.

16 (8) Appointing advisory committees to assist in the  
17 administration of this act.

18 (9) Making grants for any of the purposes mentioned in  
19 this section.

20 (10) Promulgating a plan for the development and  
21 enforcement of occupational safety and health standards with  
22 respect to public employers and employees.

23 (11) Adopting health and safety standards and  
24 promulgating rules and regulations for hazardous substances,  
25 harmful agents, infectious agents and safety hazards, which  
26 shall include, but not be limited to, standards and  
27 regulations which have been enacted or proposed by OSHA or  
28 other Federal governmental agencies. Interested persons may  
29 petition the secretary to adopt standards and promulgate  
30 regulations under this paragraph.

1           (12) In the event of an emergency or unusual situation,  
2 providing for an emergency temporary standard to take  
3 immediate effect upon publication in newspapers or general  
4 circulation in Philadelphia, Pittsburgh, Harrisburg, Wilkes-  
5 Barre, Scranton and Erie, in accordance with 1 Pa. Code §  
6 13.74 (relating to effectiveness prior to publication), if  
7 the department deems that:

8           (i) Employees are exposed to grave danger from  
9 exposure to substances or agents determined to be toxic  
10 or physically harmful or from new hazards.

11           (ii) Such emergency standards are necessary to  
12 protect employees from such danger.

13 Such emergency standards shall be in effect no longer than  
14 120 days, or, if renewed in compliance with this section, not  
15 longer than 60 additional days. On or before the expiration  
16 date of the emergency standards or renewal thereof, the  
17 department shall promulgate regulations to replace the  
18 emergency temporary regulations.

19           (13) In accordance with 1 Pa. Code Ch. 7 (relating to  
20 procedure for adoption or change of regulations),  
21 promulgating such rules and regulations as may be deemed  
22 necessary to carry out the purposes and responsibilities to  
23 enforce the provisions of this act.

24           (14) Engaging in inspections and investigations and  
25 taking necessary action to ensure compliance by public  
26 employers with the provisions of this act and rules,  
27 regulations and standards established by the secretary.

28           (15) Employing assistants, experts, inspectors, hearing  
29 officers, consultants, occupational safety and health  
30 specialists, and other employees sufficient to carry out the

1 purposes of this act.

2 (16) Collecting, maintaining and making available the  
3 following statistics for each public employer:

4 (i) The number of inspections requested.

5 (ii) The number of inspections completed.

6 (iii) The number of citations issued and the number  
7 of violations involved.

8 (iv) The number and amount of penalties assessed.

9 (17) Promulgating regulations which provide for the  
10 elimination of all asbestos brakes and clutch facings in all  
11 vehicles owned, leased or otherwise used by the Commonwealth  
12 and its political subdivisions in accordance with 40 CFR 763  
13 (relating to asbestos).

14 (18) Promulgating regulations providing timely access to  
15 all industrial hygiene and other surveys and reports. Public  
16 employers shall provide the opportunity for employees and  
17 their representatives to walk around with work environment  
18 inspectors and all representatives of the employer engaged in  
19 activities related to the monitoring, measuring and other  
20 means of assessment in order to observe monitoring, measuring  
21 and other means of assessment conducted to assess employee  
22 exposure to hazards pursuant to standards promulgated under  
23 this act.

24 (19) Promulgating regulations or standards requiring  
25 proper work procedures, employee training and provision of  
26 any necessary vaccinations or inoculations at employer  
27 expense for any employee regularly exposed to infectious  
28 diseases in the course of his employment.

29 (20) Promulgating advisory recommendations for the  
30 establishment of safe numbers of firefighters assigned to

1 each firefighting rig or apparatus to insure the public  
2 safety and protect the health and lives of the employees  
3 performing those services. The secretary shall appoint a  
4 five-member Firefighters Safety Advisory Committee comprised  
5 of members knowledgeable in fire safety, including two  
6 members from affected bargaining units who have been  
7 designated by the relevant employee representative, for the  
8 purpose of developing such advisory recommendations which  
9 will insure the safety of firefighting personnel covered by  
10 this act. Before making its advisory recommendations, the  
11 committee shall consider such factors as community size,  
12 population and building patterns. The committee shall make  
13 its advisory recommendations and deliver its final report not  
14 later than one year after the effective date of this act.

15 Section 304. Advisory committee.

16 (a) Purpose.--The Public Employee Safety and Health Advisory  
17 Committee shall be established to provide advice and assistance  
18 to the department in fulfilling its responsibilities to  
19 administer and enforce this act.

20 (b) Duties enumerated.--The advisory committee shall:

21 (1) Recommend standards, rules and regulations for  
22 promulgation by the secretary.

23 (2) Review all standards, rules and regulations proposed  
24 by the secretary pursuant to section 303.

25 (3) Review records kept by the secretary in accordance  
26 with section 303.

27 (4) Take up such other matters as it deems appropriate.

28 (c) Membership.--The advisory committee shall consist of 20  
29 members appointed by the Governor for a term of four years each.  
30 One member shall be appointed from each of the following

1 categories: fire service, fire service employees,  
2 municipalities, municipal employees, county governments, county  
3 government employees, State government, State government  
4 employees, correctional institutions, correctional institution  
5 employees, local school boards, local school board employees,  
6 law enforcement, law enforcement employees, State hospitals and  
7 State hospital employees. Four members shall represent the  
8 public. The advisory committee shall select a chairperson from  
9 its own members, who shall serve a two-year term. Members shall  
10 be selected on the basis of their experience and competence in  
11 the field of occupational safety and health. In appointing  
12 employee members of the advisory committee, the Governor shall  
13 select these members from a list of candidates submitted by the  
14 relevant collective bargaining agent.

15 (d) Meetings.--The advisory committee shall meet at least  
16 every two months.

17 (e) The members of the advisory committee shall serve  
18 without compensation but shall be entitled to reimbursement for  
19 reasonable and necessary expenses, in accordance with the rules  
20 of the Executive Board.

21 Section 305. Work environment inspectors.

22 (a) Appointment.--The department shall appoint work  
23 environment inspectors to ensure that the provisions of this act  
24 are adequately enforced. Hiring and employment of inspectors  
25 shall be accomplished and conducted in accordance with the  
26 applicable provisions of the act of August 5, 1941 (P.L.752,  
27 No.286), known as the Civil Service Act.

28 (b) Duties.--Under the direction of the department, the  
29 duties of inspectors shall include, but not be limited to, the  
30 following:



1           (1) At any time, with or without prior notification, to  
2 enter and inspect any premises or workplace and take any  
3 samples and photographs and make any examinations the  
4 inspector considers necessary to accomplish the purposes and  
5 goals of this act. In the event that entry is denied, the  
6 inspector shall notify the department, which may compel such  
7 entry through the appropriate legal process. The department  
8 may secure an order compelling entry by petitioning the  
9 Commonwealth Court to grant such petition upon a showing that  
10 entry has been denied.

11           (2) To require the employer to produce, for inspection  
12 by the work environment inspector, books, records, documents  
13 or any other material maintained by the employer, to assist  
14 the inspector in making determinations and in enforcing this  
15 act.

16           (3) To conduct private interviews with, or solicit  
17 statements from, employees.

18           (4) To perform all other duties as authorized by the  
19 secretary.

20       (c) Cooperation.--Work environment inspectors shall  
21 cooperate with the work environment committees.

22 Section 306. Work environment committees.

23       (a) Purpose and establishment.--To best assure that the  
24 health and safety of the public employees of this Commonwealth  
25 are protected, work environment committees, consisting of  
26 representatives of employees and employers, shall be established  
27 under this section. Nothing in this section shall diminish the  
28 employer's responsibility to assure a safe and healthful work  
29 environment.

30       (b) Formation.--An employer, except as provided in

1 subsection (c), shall cause a work environment committee to be  
2 established:

3 (1) at a workplace where at least 50 or more employees  
4 are regularly employed; and

5 (2) at an individual workplace or at classes of  
6 workplaces which the department may designate.

7 (c) Exemption.--Public Employers employing more than 400  
8 employees who are covered by this act and who are employed at  
9 more than 15 workplaces maintained by the employer may apply to  
10 the department for a modification from the requirements of  
11 subsections (a) and (b). It shall be the employer's  
12 responsibility to submit to the department for approval an  
13 alternative plan for the formation of work environment  
14 committees, which plan shall otherwise conform to the intent of  
15 this section. In considering the alternative plan of an  
16 employer, the department shall solicit and consider evaluations  
17 of the plan from the authorized employee representative.

18 (d) Small units.--Public employers who employ fewer than 50  
19 employees, regardless of the number of workplaces maintained by  
20 the employer, shall designate one employee-selected member and  
21 one employer-selected member as work environment  
22 representatives. The work environment representative designated  
23 by the employees shall represent employees of the employer  
24 employed at all workplaces.

25 (e) Membership.--

26 (1) A work environment committee shall consist of not  
27 less than four nor more than 12 persons as follows:

28 (i) For 25 through 100 employees - 4 members.

29 (ii) For 101 through 400 employees - 6 members.

30 (iii) For each 100 employees beyond 400 - 2

1 additional members. Additional members under this  
2 subparagraph may not exceed 12.

3 (2) Membership shall be equally divided between  
4 employee-selected members and employer-selected members.

5 (3) Public employee members of work environment  
6 committees shall be appointed by the employee organizations  
7 for the employees at the workplace. If there is more than one  
8 bargaining agent, employee members shall be selected from the  
9 three largest bargaining agents in accordance with  
10 regulations promulgated by the department. If there is no  
11 employee organization, the public employees shall directly  
12 elect the members of the committee.

13 (4) The employer shall post prominently in the workplace  
14 the names of all committee members.

15 (5) The number of members of a work environment  
16 committee may be altered by agreement between an employer and  
17 the certified collective bargaining representative of the  
18 employer's employees. However, in no event shall there be  
19 less than one employee-selected member and one employer-  
20 selected member. The provisions of paragraphs (2), (3) and  
21 (4) shall apply with regard to the size and selection of  
22 committees.

23 (f) Powers and duties.--The powers and duties of work  
24 environment committees shall include, but not be limited to, the  
25 following:

26 (1) Regularly inspecting the workplace to identify  
27 hazardous conditions and to check for compliance with the  
28 general intent of this act and the standards and regulations  
29 promulgated hereunder.

30 (2) Receiving, considering and disposing of concerns and

1 complaints respecting the safety and health of the employees.

2 (3) Maintaining records in connection with the receipt  
3 and disposition of concerns and complaints and other  
4 committee activities.

5 (4) Investigating imminent danger situations, accidents  
6 and unusual environmental conditions.

7 (5) When it determines that an imminent danger exists,  
8 ordering the dangerous activity to cease and requesting the  
9 immediate presence of a work environment inspector. Once  
10 activity has ceased, it may not resume until the work  
11 environment inspector deems it safe. An affected party may  
12 appeal the determination of the work environment inspector to  
13 the board. In the event the committee is unavailable, both of  
14 the cochairpersons of the committee may take joint action  
15 under this paragraph.

16 (6) Reviewing health and safety records to monitor  
17 incidents of accidents and illnesses and to identify problem  
18 areas.

19 (7) Developing and promoting measures to protect the  
20 safety, health and welfare of individuals in the workplace  
21 and checking the effectiveness of those measures.

22 (8) Cooperating with a work environment inspector  
23 exercising duties under this act.

24 (9) Developing and promoting programs for education and  
25 information concerning safety and health in the workplace.

26 (10) Suffering no loss in pay, benefits or accrual of  
27 seniority for time spent on committee business.

28 (11) Receiving from the public employer, at least 60  
29 days in advance of implementation, notice concerning a change  
30 in workplace technology or process or an introduction into

1 the workplace of a hazardous substance, harmful agent,  
2 infectious agent or safety hazard which has not previously  
3 been recognized by the work environment committee for that  
4 workplace.

5 (12) Developing medical testing for work-related  
6 illnesses or disabilities which may arise out of or in the  
7 course of employment, including illnesses or disabilities  
8 resulting from or contributed to by exposure to hazardous  
9 substances, harmful agents, infectious agents or safety  
10 hazards. The department shall promulgate regulations  
11 necessary to protect the confidentiality of employees.

12 (g) Meetings.--

13 (1) Committees shall hold regular meetings at least  
14 quarterly or as needed as determined by the cochairpersons.  
15 The meetings of a committee shall be held during ordinary  
16 working hours unless otherwise agreed upon. Additional  
17 meetings shall be held as necessary.

18 (2) There shall be two committee cochairpersons, one  
19 selected by employee members of the committee and one  
20 selected by employer members of the committee.

21 (3) Decisions shall be made by a majority of committee  
22 members present and voting. In case of a deadlock, a work  
23 environment inspector shall be called in to resolve the  
24 issue.

25 (4) Minutes of all meetings shall be taken, and the  
26 approval of each cochairperson shall be indicated by  
27 signature.

28 (5) A copy of the minutes shall be posted prominently in  
29 the workplace.

30 (6) Members of committees shall suffer no loss in wages,

benefits or seniority for time spent on committee business.

(h) Training.--Every committee member shall be entitled to not less than 16 hours of occupational health and safety training in his or her first year of service and additional training shall be provided no less frequently than biannually in subsequent years. Training shall be provided at employer expense. The form, nature and location of the training shall be approved by the committee. Participating employees shall receive their regular rate of pay and benefits while attending such training.

(i) Nonliability.--The bargaining representatives and work environment committees, and individual members of such committees, shall not be held liable for any work-connected injuries, disabilities or diseases which may be incurred by employees.

(j) Work environment representative.--

(1) A public employer shall cause an employee to be designated as the work environment representative:

(i) at a workplace where a work environment committee is not required but where five or more employees are regularly employed; and

(ii) at an individual workplace or classes of workplaces which the board may designate.

(2) The work environment representative shall be appointed by the employee organization recognized or certified as the employee representative (bargaining agent) for the employees at the workplace. In the event that there is more than one bargaining agent, the work environment representative shall be appointed by the largest bargaining agent. In the absence of a recognized or certified employee

1 representative, the employees shall elect the work  
2 environment representative. The employer shall post  
3 prominently in the workplace the name of the work environment  
4 representative.

5 (3) The work environment representative shall, in  
6 cooperation with a representative of the employer, perform  
7 the same duties and have the same powers and rights as set  
8 out for the work environment committee in subsection (e).

9 (4) A work environment representative shall be entitled  
10 to not less than 16 hours of occupational health and safety  
11 training in his or her first year of service and additional  
12 training shall be provided no less frequently than biannually  
13 in subsequent years. Training shall be provided at employer  
14 expense. The form, nature and location of the training shall  
15 be acceptable to the representative who receives it.

16 (5) The work environment representative shall not be  
17 held liable for a work-connected injury, disability or  
18 disease which may be incurred by an employee.

19 Section 307. Inspections.

20 (a) Report to work environment committee.--Any employee who  
21 believes that a violation of a safety or health standard rule or  
22 regulation exists, or that there is a threat of harm to an  
23 employee's health or safety, shall report such violation or  
24 threat of harm to the work environment committee. Within three  
25 working days of the receipt of such report, the work environment  
26 committee shall determine whether a violation or threat of harm  
27 exists, and upon such determination, recommend to the public  
28 employer corrective actions which will eliminate the violation  
29 or threat of harm. The work environment committee may also  
30 exercise its authority under section 306 when it determines such

1 action is necessary. Nothing in this subsection shall preclude  
2 the work environment committee from requesting an inspection by  
3 the department.

4 (b) Request for inspection.--Any employee who believes that  
5 the violation or threat of harm still exists after the work  
6 environment committee's review and action by the public employer  
7 may request an inspection by the department by giving notice to  
8 the department of the violation or threat of harm.

9 (c) Manner of request.--Requests for inspections may be made  
10 orally or in writing and shall set forth the grounds for the  
11 request. The department shall, upon request of the complaining  
12 party, keep confidential the name of the person making the  
13 complaint.

14 (d) Action on request.--Whenever the department receives a  
15 request for inspection of an imminent danger or where the  
16 department is aware of the likelihood of an imminent danger, an  
17 inspection shall be made immediately. In all other cases,  
18 inspections shall be made as soon as possible, but at least  
19 within 72 hours, if the department determines there are  
20 reasonable grounds to believe that a recognized hazard exists.  
21 If the department determines there are no reasonable grounds to  
22 believe that a recognized hazard exists, it shall notify the  
23 employees or the representative of the employees, in writing, of  
24 such a determination within five days of a request for an  
25 inspection. The department shall provide, to the employee's  
26 representative and to the committee and the employer, a copy of  
27 the inspection report and any order or agreements made to the  
28 individual making the complaint. Prior to or during any  
29 inspection of a workplace, any employees or representatives of  
30 employees employed in such workplace may notify the department



1 or any representative thereof responsible for conducting the  
2 inspection, in writing, of any violation of this act which they  
3 have reason to believe exists in such workplace. The department  
4 shall, by regulation, establish procedures for informal review  
5 of any refusal by its representative to perform an inspection or  
6 issue a citation with respect to any such alleged violation and  
7 shall furnish the employees or representative of employees  
8 requesting such review a written statement of the reasons for  
9 the department's final disposition of the case.

10 (e) Inspection without notice.--Inspections may be made  
11 without any notice to the employer or the employees.

12 (f) Accessibility of locations.--Inspectors of the  
13 department shall have immediate access to any location in which  
14 there is a suspected hazard or condition for the purposes of  
15 conducting an inspection.

16 (g) Intermittent inspections.--The department shall make a  
17 determination as to those occupations and workplaces where there  
18 is a possibility of health or safety hazards to employees or the  
19 public and shall conduct regular unannounced inspections of  
20 these workplaces.

21 (h) Escort of inspector.--A representative of the employer  
22 and an authorized employee representative shall accompany the  
23 inspector for the entire inspection whenever the inspector  
24 conducts an inspection in accordance with this act. In addition,  
25 the work environment committee may designate one committee  
26 member to accompany the inspector, the representative of the  
27 employer and the authorized employee representative on any or  
28 all parts of the inspection which address, but are not limited  
29 to, work areas and processes of which the committee member or  
30 committee members have firsthand knowledge. The authorized

1 employee representatives and designated committee members shall  
2 attend all opening, interim and closing conferences pertaining  
3 to the inspection. Authorized employee representatives and  
4 committee members shall receive full employment benefits for all  
5 time spent on such activities.

6 (i) Inspection regardless of complaint.--The authority of  
7 the department to inspect a premises pursuant to an employee  
8 complaint shall not be limited to the alleged violation  
9 contained in the complaint. The department may inspect any other  
10 areas of the premises.

11 (j) Inspection of public employer's premises.--The  
12 department may, upon its own initiative, conduct an inspection  
13 of any premises occupied by a public employer.

14 (k) Subpoena.--In making inspection and investigations under  
15 this act, the secretary may require the attendance and testimony  
16 of witnesses and the production of evidence under oath.

17 Witnesses shall be paid the same fees and mileage that are paid  
18 witnesses in the courts of this Commonwealth. In case of  
19 contumacy or failure or refusal of a person to obey an order, a  
20 court of competent jurisdiction shall have jurisdiction to issue  
21 to the person an order requiring the person to appear to produce  
22 evidence, if asked, and, when ordered, to give testimony  
23 relating to the matter under investigation or in question.

24 Failure to obey an order of the court may be punishable by the  
25 court as a contempt.

26 Section 308. Recordkeeping.

27 (a) Records required.--In accordance with the department's  
28 regulations, each public employer shall make, keep and preserve,  
29 and make available to the department, the records regarding its  
30 activities relating to this act as the department deems

1 necessary or appropriate for developing information regarding  
2 the causes and prevention of occupations accidents and illness.  
3 The regulations may include provisions requiring public  
4 employers to conduct periodic inspections. The department shall  
5 also issue regulations requiring that public employers, through  
6 posting of notices, training or other appropriate means, keep  
7 their employees informed of their rights to protection.

8 (b) Medical problems.--The department shall require public  
9 employers to maintain accurate records and to make public,  
10 monthly reports and biannual summaries on a form provided by the  
11 department of work-related deaths and injuries and illnesses,  
12 medical treatment, loss of consciousness, assaults on employees,  
13 restrictions of work or motion, or transfers to other jobs.  
14 Public employers, the authorized representative of the employees  
15 and the committee shall, upon request, have the rights to  
16 examine and copy any and all such reports.

17 (c) Exposure.--The department shall issue regulations  
18 requiring employers to maintain accurate records of employee  
19 exposures to hazardous substances, harmful agents, infectious  
20 agents or safety hazards. The regulations shall make appropriate  
21 provisions for each employee or former employee to have access  
22 to his exposure records. These requirements shall be at least as  
23 effective as those established in the Right-to-Know Act. A  
24 public employer shall immediately notify any public employee who  
25 has been or is being exposed to hazardous substances, harmful  
26 physical agents or infectious agents. Public employees exposed  
27 to such hazards shall be informed by the employer of the  
28 corrective action proposed and the time limit for  
29 implementation, and shall immediately be scheduled for  
30 participation in the medical surveillance program.

1 Section 309. Adverse action against employees.

2 (a) Prohibition.--No adverse action shall be taken against  
3 any public employee:

4 (1) by reason of the employee's participation in or  
5 association with any functions of a committee;

6 (2) by reason of the employee's inquiry about or  
7 utilization of any rights or responsibilities he may have  
8 under this act; or

9 (3) for any other reason having to do with exercising  
10 any rights granted under this act.

11 (b) Presumption.--Where an adverse action is taken against  
12 any employee who has, in the prior six months, in any way been  
13 involved with the enforcement or protection of any rights  
14 granted under this act, it shall be presumed that the action was  
15 taken in violation of this act, and it shall be the burden of  
16 the employer to prove that the action was not taken for improper  
17 reasons described in subsection (a) or for reasons otherwise  
18 contrary to the policies and provisions of this act.

19 (c) Complaints.--An employee who believes that adverse  
20 action has been taken against him in violation of this act may,  
21 within 180 days after he becomes aware of such action, file a  
22 complaint with the department alleging the adverse action. Upon  
23 receipt of the complaint, the department shall, within 30 days  
24 of receipt of such complaint, make an investigation and shall,  
25 if requested, withhold the name of the complainant from the  
26 employer. Whenever the department determines that this act has  
27 been violated, it shall bring an action in Commonwealth Court  
28 against the employer alleged to have violated this act. In the  
29 event of a finding of adverse action, the employer shall:

30 (1) Cease the adverse action and reinstate the employee

1 to his former employment without loss of pay, contractual and  
2 noncontractual rights, or benefits.

3 (2) Pay to the worker any wages and benefits the worker  
4 would have earned had he not had adverse action taken against  
5 him.

6 (3) Remove any reprimand or other reference to the  
7 matter from the employer's records on the employee.

8 Section 310. Right to work under safe conditions.

9 (a) General rule.--

10 (1) A public employee may not be compelled to work at a  
11 workplace if all of the following apply:

12 (i) A reasonable individual would believe, in good  
13 faith, that performing assigned work at the workplace  
14 would involve a danger of death or serious injury or  
15 illness.

16 (ii) The public employee is unable to obtain  
17 correction of the condition by the employer.

18 (iii) There is insufficient time to eliminate the  
19 danger through resort to regular statutory or contractual  
20 enforcement procedures.

21 (2) In addition, a public employee may not be compelled  
22 to work at a workplace or to perform a specific assignment,  
23 if the work environment committee has exercised its authority  
24 under section 306.

25 (3) If paragraph (1) or (2) applies, a public employee  
26 may refuse to perform assigned duties in the workplace until  
27 the work environment inspector has investigated the matter  
28 and advised the employee in writing that a hazard no longer  
29 exists.

30 (b) Temporary assignments.--Notwithstanding any other

1 provision of this act, temporary assignment to alternative work  
2 shall be at no loss of pay, benefits, or contractual or  
3 noncontractual rights to the employee until the matter mentioned  
4 in subsection (a) is resolved, and shall be deemed not to  
5 constitute adverse action within the meaning of this act.

6 Section 311. Asbestos abatement.

7 The department shall establish an asbestos abatement program  
8 as described in this section.

9 (a) Duties of public employers.--Public employers shall,  
10 within 18 months from the effective date of this act, perform  
11 the following:

12 (1) Conduct building inspections to determine the  
13 presence of asbestos hazards in the workplace. Inspections  
14 shall be conducted by OSHA specialists.

15 (2) Maintain records of findings.

16 (3) Notify the public employees, authorized employee  
17 representatives and committees of the results of the  
18 inspection and release to these individuals and groups the  
19 records from the inspections. Members of the public shall  
20 have access to the records of inspections of public  
21 buildings.

22 (b) Abatement plan.--Where asbestos exists in a facility,  
23 the public employer shall file an asbestos abatement plan with  
24 the department within 30 months of the effective date of this  
25 act. This plan shall conform to the practices recommended by the  
26 Environmental Protection Agency for abatement of asbestos.

27 Section 312. Public Employee Occupational Safety and Health  
28 Review Board.

29 (a) Creation.--There is hereby created an administrative  
30 board within the department, to be known as the Public Employee

1 Occupational Safety and Health Review Board. The board shall  
2 consist of five members appointed by the Governor from among  
3 persons who, by reason of training, education or experience, are  
4 qualified to carry out the functions of the board under this  
5 section. Two of the members must be sensitive to the interests  
6 of public employees and shall be appointed by the Governor from  
7 among ten candidates submitted by the President of the  
8 Pennsylvania AFL-CIO. Two of the members must be sensitive to  
9 the interests of public employers and shall be appointed from a  
10 list of ten candidates submitted by the Pennsylvania Local  
11 Government Conference. The Governor shall designate one of the  
12 members to serve as chairman of the board.

13 (b) Terms.--The initial chairman, appointed by the Governor,  
14 shall serve a term of five years. Thereafter, a chairman shall  
15 be elected by the members for a term of four years. Two of the  
16 initial appointees shall serve terms of two years, one of the  
17 initial appointees shall serve a term of three years, and one of  
18 the initial appointees shall serve a term of four years.  
19 Appointments after initial appointments shall be for terms of  
20 four years.

21 (c) Meetings.--The board shall hold monthly meetings and  
22 additional meetings as it deems necessary. A majority of the  
23 board shall constitute a quorum for the transaction of business.  
24 Special meetings of the board shall be called upon reasonable  
25 notice by the chairman or by any two members of the board.

26 (d) Hearings and regulations.--The board shall hear and rule  
27 on appeals from citations, notifications and penalties issued  
28 under this act. Hearings and appeals from decisions of the board  
29 shall be as provided in 2 Pa.C.S. (relating to administrative  
30 law and procedure).

1 (e) Staff.--The board may employ a secretary, administrative  
2 law judges and other employees as necessary.

3 (f) Compensation.--

4 (1) The chairman and members of the board shall be paid  
5 a salary to be established by the Executive Board.

6 (2) Except as set forth in paragraph (1), the salaries,  
7 compensation or wages of employees of the board shall be  
8 determined by the board.

9 (g) Expenses.--The members or employees of the board shall  
10 be reimbursed for necessary expenses incurred in the performance  
11 of their duties.

12 (h) Hearings.--

13 (1) Hearings authorized by this section shall be  
14 conducted by an administrative law judge appointed by the  
15 board to serve in its place. The administrative law judge may  
16 be a full-time employee, may serve by contract or may be paid  
17 on a per diem basis, at the discretion of the board.

18 (2) An administrative law judge appointed by the board  
19 shall hear and make a determination upon proceedings  
20 instituted before the board and upon motions in connection  
21 with a proceeding assigned to the administrative law judge by  
22 the chairman of the board and shall make a report of a  
23 determination, which constitutes the administrative law  
24 judge's final disposition of the proceedings. The report of  
25 the administrative law judge shall become the final order of  
26 the board within 30 days after the report is issued unless,  
27 within that period, a board member has directed that the  
28 report shall be reviewed by the board.

29 (3) In the conduct of hearings, the board or  
30 administrative law judge may subpoena and examine witnesses,



1 require the production of evidence, administer oaths and take  
2 testimony and depositions.

3 (4) After hearing an appeal, the board may sustain,  
4 modify or dismiss a citation or penalty.

5 (5) The rules or procedures prescribed by the board  
6 shall provide affected employees or representatives of  
7 affected employees an opportunity to participate as parties  
8 to hearings under this subsection.

9 Section 313. Variances.

10 (a) Application.--A public employer may apply to the  
11 department for a temporary order granting an exception from a  
12 standard promulgated under this act. The temporary order may be  
13 granted only if the employer files an application which meets  
14 the requirements of this section and establishes that the public  
15 employer:

16 (1) Is unable to comply with a standard by its effective  
17 date because of the unavailability of professional or  
18 technical personnel or of materials and equipment needed to  
19 come into compliance with the standard or because necessary  
20 construction or alteration of facilities cannot be completed  
21 by the effective date.

22 (2) Is taking all available steps to safeguard employees  
23 against the hazards covered by the standard.

24 (3) Has an effective program for coming into compliance  
25 with the standard as quickly as possible.

26 (b) Temporary orders.--A temporary order issued under this  
27 section shall prescribe the practices, means, methods,  
28 operations and processes which the employer must adopt and use  
29 while the order is in effect and state in detail compliance  
30 requirements. The temporary order may be granted only after

1 notice to employees, employee representatives and the committee,  
2 and after an opportunity for a hearing. The department may,  
3 however, issue one interim order, to be effective until a  
4 decision is made on the basis of the hearing. A temporary order  
5 shall be in effect for as long as the period needed by the  
6 employer to achieve compliance with the standard, or for one  
7 year, whichever is shorter. An order may be renewed, not more  
8 than twice, if the requirements of this section are met and if  
9 an application for renewal is filed at least 90 days prior to  
10 the expiration date of the order. An interim renewal of an order  
11 shall remain in effect no longer than 180 days.

12 (c) Contents of application for temporary order.--An  
13 application for a temporary order shall contain all of the  
14 following:

15 (1) A specification of the standard, or portion thereof,  
16 from which the employer or owner seeks a variance.

17 (2) A representation by the employer, supported by  
18 representations from qualified persons who have firsthand  
19 knowledge of the facts represented, that the employer is  
20 unable to comply with the standard, or portion thereof, and a  
21 detailed statement of the reasons therefor.

22 (3) A statement of the steps the employer has taken and  
23 will take, with dates specified, to protect employees against  
24 the hazard covered by the standard.

25 (4) A statement of when the employer expects to be able  
26 to comply with the standard and what steps the employer has  
27 taken and will take, with dates specified, to come into  
28 compliance with the standard.

29 (5) A certification that the employer has informed his  
30 employees of the application:

1 (i) by giving a copy of the application to their  
2 authorized representative and to the committee;

3 (ii) by posting a statement giving a summary of the  
4 application and specifying where a copy may be examined  
5 at the place or places where notices to employees are  
6 normally posted; and

7 (iii) by other appropriate means.

8 A description of how employees have been informed shall be  
9 contained in the certification. The information to employees  
10 shall also inform them of their right to petition the board  
11 for a hearing.

12 (d) Variance rule.--Affected public employees shall be given  
13 notice of each application for a variance and an opportunity to  
14 participate in a hearing. The department shall issue an order if  
15 it determines, on the record, after opportunity for an  
16 inspection, where appropriate, and a hearing, that the proponent  
17 of the variance has demonstrated by a preponderance of the  
18 evidence that the conditions, practices, means, methods,  
19 operations or processes used or proposed to be used by an  
20 employer will provide employment and workplaces which are as  
21 safe and healthful as those which would prevail if he complied  
22 with the standard. The order shall prescribe the conditions the  
23 employer must maintain and the practices, means, methods,  
24 operations and processes which he must adopt and utilize to the  
25 extent they differ from the standard in question. At any time  
26 after six months from its issuance and in the manner prescribed  
27 for its issuance under this section, an order may be modified or  
28 revoked upon application by an employer, any employee or  
29 employee representative, or by the board on its own motion.

30 (e) Limitation of action.--A person who may be adversely

1 affected by an order issued under this act may challenge the  
2 validity or applicability of the order within 120 days from the  
3 date of issuance, as provided in section 310.

#### 4 CHAPTER 5

#### 5 ENFORCEMENT

6 Section 501. Enforcement orders.

7 If a work environment inspector determines that an employer  
8 has violated this act, or a health or safety standard or  
9 regulation promulgated under this act, the department shall,  
10 within seven days, issue to the employer a citation, which shall  
11 describe particularly the nature of the violation, including a  
12 reference to the provision of this act or the standard,  
13 regulation or order alleged to have been violated, and any  
14 corrective action required. The department shall fix a  
15 reasonable time for compliance, not to exceed 72 hours, unless  
16 the employer can demonstrate to the board that the violation  
17 cannot be remedied within that time.

18 Section 502. Imminent danger.

19 If a work environment inspector concludes that an activity  
20 being carried on or scheduled to commence involves or will  
21 involve a risk of serious personal injury or harm and that the  
22 risk of such injury or harm is imminent, the inspector shall  
23 require that the work cease. The inspector may stop work-related  
24 and nonwork-related activities in the vicinity of the imminent  
25 danger if such action is needed to protect the health and safety  
26 of other persons. If, upon inspection, the work environment  
27 inspector finds an imminent danger to exist, the inspector shall  
28 order the immediate abatement of the dangerous situation. Before  
29 the employer may recommence the activity, the inspector must  
30 certify that the employer has come into compliance with this

1 act.

2 Section 503. Citations.

3 (a) Posting of citation.--Whenever the department issues a  
4 citation to an employer, the employer shall post the citation or  
5 a copy of the citation in a conspicuous place, at or near each  
6 place of violation cited in the citation, where it is clearly  
7 visible to the affected employees. The department shall furnish  
8 copies of such citation to employee representatives and to the  
9 committee.

10 (b) Notice of citation.--If, after inspection or  
11 investigation, the department issues a citation, it shall,  
12 within a reasonable time after the termination of the inspection  
13 or investigation, notify the employer by certified mail of the  
14 penalty, if any, proposed to be assessed under section 509.  
15 Notification shall inform the employer that it has 15 working  
16 days from the receipt of notice within which to notify the  
17 department that it wishes to contest the citation or proposed  
18 assessment of penalty. If the employer fails to notify the  
19 department within 15 days and if no notice is filed by an  
20 employee or representative of employees under subsection (a)  
21 within 15 days, the citation and assessment, as proposed, shall  
22 be deemed a final order of the board and not subject to review  
23 by a court or agency.

24 Section 504. Notice of penalty.

25 If the department has reason to believe that an employer has  
26 failed to correct the violation for which a citation has been  
27 issued within the period permitted for correction, it shall  
28 notify the employer by certified mail of the failure and of the  
29 penalty proposed to be assessed under section 509 because of  
30 such failure. In the case of a review proceeding initiated by

1 the employer under this chapter in good faith and not solely for  
2 delay or the avoidance of penalties, the period permitted for  
3 correction of the violation shall not begin to run until the  
4 entry of a final order by the board. Notification by the  
5 department shall inform the employer that it has 15 working days  
6 from receipt of notice within which to notify the department  
7 that it wishes to contest the notification or the proposed  
8 assessment of the penalty. If, within 15 days from receipt of  
9 notification under this section, the employer fails to notify  
10 the department that it intends to contest the notification or  
11 proposed assessment of penalty, the notification and assessment  
12 as proposed shall be deemed a final order of the board and not  
13 subject to review by court or agency.

14 Section 505. Proceedings by department.

15 If the time for compliance with an order or citation of the  
16 board has elapsed and the employer has not complied with the  
17 order or citation, the department shall commence a proceeding in  
18 Commonwealth Court to enforce the order and shall levy  
19 additional fines and penalties under section 509.

20 Section 506. Injunctive relief.

21 Commonwealth Court may, upon petition of the department or  
22 any affected party, restrain any conditions or practices in any  
23 place of public employment which could be expected to cause  
24 death or physical harm. An order issued under this section may  
25 require such steps to be taken as may be necessary to avoid,  
26 correct or remove an imminent danger and to prohibit the  
27 employment or presence of an individual in locations or under  
28 conditions where an imminent danger exists, except individuals  
29 whose presence is necessary to avoid, correct or remove the  
30 imminent danger or to maintain the capacity of a continuous

1 process operation to resume normal operations without a complete  
2 cessation of operations, or, where a cessation of operations is  
3 necessary, to permit it to be accomplished in a safe and orderly  
4 manner.

5 Section 507. Failure of secretary to act.

6 Whenever the department fails to seek relief under this  
7 chapter within five days of being notified of such condition,  
8 any employee who may be injured by reason of the failure, or the  
9 authorized employee representative of such employee or the  
10 committee, may seek injunctive relief, as provided in this  
11 section, or any other appropriate remedies. In the event that  
12 such an action is successful, the employer shall pay the costs  
13 and legal fees of the petitioning parties.

14 Section 508. Follow-up inspection.

15 If, at the time of or after inspection or investigation, the  
16 department issues a citation for a violation, the department  
17 shall conduct a reinspection at the end of the period fixed for  
18 abatement of the violation. A public employer shall not be given  
19 advance warning of a reinspection by the department.

20 Section 509. Penalties.

21 (a) Civil penalties.--The department may assess the  
22 penalties set forth in this subsection, giving due consideration  
23 to the appropriateness of the penalty with respect to the size  
24 of the employer being charged, the gravity of the violation, the  
25 good faith of the employer and the history of previous  
26 violations. Penalties collected shall be deposited in a fund  
27 maintained, administered and distributed by the board for  
28 programs approved under this act. Penalties are as follows:

29 (1) Except as provided in paragraphs (3) and (4), an  
30 employer who has received a citation for a violation of

1 section 302 or of a standard, rule, regulation or order  
2 promulgated or issued under this act may be assessed a civil  
3 penalty of not more than \$1,000 for each violation.

4 (2) In addition to the penalties provided in paragraphs  
5 (3) and (4):

6 (i) An employer who willfully or repeatedly violates  
7 section 302 or a standard, rule, regulation or order  
8 promulgated or issued under this act may be assessed a  
9 civil penalty of not more than \$10,000 for each  
10 violation.

11 (ii) An employer who fails to correct a violation  
12 for which a citation has been issued within the period  
13 permitted for its correction may be assessed a civil  
14 penalty of not more than \$1,000 for each day during which  
15 the violation continues.

16 (3) An employer who has received a citation for a  
17 serious violation of section 302 of a standard, rule,  
18 regulation or order promulgated or issued under this act  
19 shall be assessed a civil penalty of not more than \$1,000 for  
20 each violation. For purposes of this paragraph, a serious  
21 violation shall be deemed to exist in a workplace if there is  
22 a substantial probability that death or serious physical harm  
23 could result from a condition which exists, or from one or  
24 more practices, means, methods, operations or processes which  
25 have been adopted or are in use in the workplace, unless the  
26 employer did not and could not, with the exercise of  
27 reasonable diligence, know of the presence of the violation.

28 (4) An employer who violates posting requirements  
29 prescribed or established under this act shall be assessed a  
30 civil penalty of not more than \$1,000 for each violation.



(b) Criminal penalties.--Criminal penalties are as follows:

(1) If an employer intentionally violates this act or a standard, rule, regulation or order promulgated or issued under this act and if the violation causes the death of an employee, the employer commits a misdemeanor of the third degree and shall:

(i) Upon conviction for the first offense, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than six months, or both.

(ii) Upon conviction for a subsequent offense, be sentenced to pay a fine of not more than \$20,000 or to imprisonment for not more than one year, or both.

(2) A person who, without authority from the executive director or a designee, gives advance notice of an inspection to be conducted under this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$1,000 or to imprisonment for not more than six months, or both.

(3) A person who knowingly makes a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained under this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$10,000 or to imprisonment for not more than six months, or both.

#### Section 510. Civil actions.

(a) Standing.--A person may bring a civil action on the person's own behalf against an employer for a violation of this act or of a rule or regulation promulgated under this act or against the board for failure to enforce this act or a rule or

1 regulation promulgated under this act.

2 (b) Costs and fees.--A court of competent jurisdiction may  
3 award, whenever it seems appropriate, costs of litigation,  
4 including reasonable attorney and expert witness fees.

5 (c) Waiver of sovereign immunity.--The right to sue as  
6 embodied in the various sections of this act constitutes an  
7 express waiver of sovereign immunity for the purpose of 1  
8 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed;  
9 specific waiver).

## 10 CHAPTER 11

### 11 MISCELLANEOUS PROVISIONS

#### 12 Section 1101. Severability.

13 The provisions of this act are severable. If any provision of  
14 this act or its application to any person or circumstance is  
15 held invalid, the invalidity shall not affect other provisions  
16 or applications of this act which can be given effect without  
17 the invalid provision or application.

#### 18 Section 1102. Repeals.

19 All acts and parts of acts are repealed insofar as they are  
20 inconsistent with this act.

#### 21 Section 1103. Effective date.

22 This act shall take effect in 120 days.