HOUSE BILL
No. 854  Session of 2021

INTRODUCED BY ECKER, MARCH 10, 2021

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 9, 2021

AN ACT

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employees in certain departments, boards, and commissions; providing for judicial administration; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employees of certain departments, boards and commissions shall be determined," providing for COVID-19 record retention AND FOR TEMPORARY REGULATORY FLEXIBILITY AUTHORITY.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is amended by adding Article ARTICLES to read:

ARTICLE XXI-E
COVID-19 RECORD RETENTION

Section 2101-E. Definitions.

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

"Contractor." A person that has entered into a contract with an executive agency. The term includes an officer, shareholder, owner and employee of the person.

"COVID-19." The coronavirus disease 2019, being an infectious disease caused by severe acute respiratory syndrome coronavirus 2 that was first identified during December 2019 in Wuhan, China.

"Executive agency." An office, department, authority, board, multistate agency or commission of the executive branch of the Commonwealth which is subject to the policy supervision and control of the Governor.

"Order." Any of the following:

(1) the declaration of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), or

(2) a declaration of disaster emergency relating to COVID-19 which is issued after March 6, 2020.

"Record." Information, regardless of physical form or characteristics, that documents a transaction or activity of an executive agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the executive agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.
Section 2102-E. Retention of records related to COVID-19.

(a) General rule.--An executive agency or contractor shall preserve all records in possession of the agency or contractor relating to any of the following for a period of 10 years after the order is terminated by executive order, proclamation or operation of law:

(1) A record created as part of the predecisional deliberations about an action of the executive agency or contractor which is in support of or undertaken under the authority of the order.

(2) A record created in connection with an action of the executive agency or contractor which is in support of or undertaken under the authority of the order.

(3) A record created as part of the predecisional deliberations about an action of the executive agency or contractor which is in support of or undertaken as part of the executive agency or contractor's response to COVID-19.

(4) A record created in connection with an action of the executive agency or contractor which is in support of or undertaken as part of the executive agency or contractor's response to COVID-19.

(b) Method of preservation.--The preservation of records under subsection (a) shall conform with the preservation of records undertaken by an executive agency or contractor in preparation for litigation.

(c) Revision of management directives.--The Office of Administration shall promptly revise its management directives relating to record management policies to conform with the requirements of this section, and shall provide public notice of the requirements of this article by publishing the requirements.
on its publicly accessible Internet website and shall submit the
requirements to the Legislative Reference Bureau for publication
in the Pennsylvania Bulletin.
Section 2103-E. Construction.

Nothing in this article shall be construed to reduce the
retention period of any Commonwealth record as provided by law
or prevent the transfer of records to the State Archives for
permanent retention.

COVID-19 RECORD RETENTION

SECTION 2101-E. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"COVID-19." THE CORONAVIRUS DISEASE 2019, BEING AN
INFECTIOUS DISEASE CAUSED BY SEVERE ACUTE RESPIRATORY SYNDROME
CORONAVIRUS 2 THAT WAS FIRST IDENTIFIED DURING DECEMBER 2019 IN
WUHAN, CHINA.

"EXECUTIVE AGENCY." AN OFFICE, DEPARTMENT, AUTHORITY, BOARD,
MULTISTATE AGENCY OR COMMISSION OF THE EXECUTIVE BRANCH OF THE
COMMONWEALTH WHICH IS SUBJECT TO THE POLICY SUPERVISION AND
CONTROL OF THE GOVERNOR.

"ORDER." ANY OF THE FOLLOWING:

(1) THE DECLARATION OF DISASTER EMERGENCY ISSUED BY THE
GOVERNOR ON MARCH 6, 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH
21, 2020); OR

(2) A DECLARATION OF DISASTER EMERGENCY RELATING TO

"RECORD." INFORMATION, REGARDLESS OF PHYSICAL FORM OR
CHARACTERISTICS, THAT DOCUMENTS A TRANSACTION OR ACTIVITY OF AN
EXECUTIVE AGENCY AND THAT IS CREATED, RECEIVED OR RETAINED

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PURSUANT TO LAW OR IN CONNECTION WITH A TRANSACTION, BUSINESS OR ACTIVITY OF THE EXECUTIVE AGENCY. THE TERM INCLUDES A DOCUMENT, PAPER, LETTER, MAP, BOOK, TAPE, PHOTOGRAPH, FILM OR SOUND RECORDING, INFORMATION STORED OR MAINTAINED ELECTRONICALLY AND A DATA-PROCESSED OR IMAGE-PROCESSED DOCUMENT.

SECTION 2102-E. RETENTION OF RECORDS RELATED TO COVID-19.

AN EXECUTIVE AGENCY SHALL PRESERVE ALL RECORDS IN POSSESSION OF THE AGENCY RELATING TO THE ORDER IN ACCORDANCE WITH THE EXECUTIVE AGENCY'S EXISTING RECORD RETENTION POLICY.

SECTION 2103-E. CONSTRUCTION.

NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REDUCE THE RETENTION PERIOD OF ANY COMMONWEALTH RECORD AS PROVIDED BY LAW OR PREVENT THE TRANSFER OF RECORDS TO THE STATE ARCHIVES FOR PERMANENT RETENTION.

ARTICLE XXI-F

TEMPORARY REGULATORY FLEXIBILITY AUTHORITY

SECTION 2101-F. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"COVID-19." THE CORONAVIRUS DISEASE 2019, BEING AN INFECTIOUS DISEASE CAUSED BY SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 THAT WAS FIRST IDENTIFIED DURING DECEMBER 2019 IN WUHAN, CHINA.

"ORDER." ANY OF THE FOLLOWING:

(1) THE DECLARATION OF DISASTER EMERGENCY ISSUED BY THE GOVERNOR ON MARCH 6, 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020); OR

SECTION 2102-F. TEMPORARY REGULATORY FLEXIBILITY AUTHORITY.

(A) EXTENSION.--THE SUSPENSION OF A REGULATORY STATUTE PRESCRIBING THE PROCEDURES FOR CONDUCT OF COMMONWEALTH BUSINESS, OR AN ORDER, RULE OR REGULATION OF AN COMMONWEALTH AGENCY WHICH WAS SUSPENDED UNDER 35 PA.C.S. § 7301(F)(1) (RELATING TO GENERAL AUTHORITY OF GOVERNOR) AS OF THE LAST DAY THAT THE ORDER, AS AMENDED AND RENEWED, WAS IN EFFECT IS EXTENDED UNTIL SEPTEMBER 30, 2021, UNLESS SOONER TERMINATED BY THE AUTHORITY WHICH INITIALLY AUTHORIZED THE SUSPENSION.

(B) APPLICABILITY.--A SUSPENSION WHICH IS EXTENDED UNDER SUBSECTION (A) SHALL BE RETROACTIVE TO THE LAST DAY THAT THE ORDER, AS AMENDED AND RENEWED, WAS IN EFFECT.

(C) NOTICE.--UPON THE TERMINATION OF AN EXTENSION OF A SUSPENSION UNDER SUBSECTION (A), THE AUTHORITY WHICH TERMINATED THE EXTENSION OF THE SUSPENSION SHALL NOTIFY ALL OF THE FOLLOWING:

(1) THE PRESIDENT PRO TEMPORE OF THE SENATE.
(2) THE MAJORITY LEADER OF THE SENATE.
(3) THE MINORITY LEADER OF THE SENATE.
(4) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.
(5) THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES.
(6) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.
(7) THE CHAIR AND MINORITY CHAIR OF EACH COMMITTEE OF THE SENATE AND OF THE HOUSE OF REPRESENTATIVES WHICH HAVE OVERSIGHT AUTHORITY OVER THE COMMONWEALTH AGENCY WHICH ADMINISTERS THE REGULATORY STATUTE, ORDER, RULE OR REGULATION.

Section 2. This act shall take effect immediately.