

ADMINISTRATIVE CODE OF 1929 - OMNIBUS AMENDMENTS

Act of Feb. 23, 1996, P.L. 27, No. 10

Cl. 71

Session of 1996

No. 1996-10

HB 272

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, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several 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 employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," providing for transfer of general fund surplus, for tree harvesting practices, for regulation of employment agencies, for an investigation of the financial integrity and stability of the State Workmen's Insurance Fund, for disposition of surplus property and for appeals of certificate of need applications and health care licensure orders; transferring functions of the Pennsylvania Energy Office and extending provisions; and making repeals.

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

Section 1. Section 622 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, added August 14, 1991 (P.L.331, No.35), is amended to read:

Section 622. Transfer of Portion of Surplus.--In any fiscal year in which the Secretary of the Budget certifies that there is a surplus of operating funds in the General Fund, [ten per centum (10%)] **fifteen per centum (15%)** of such surplus shall be deposited by the end of the next succeeding quarter into the Tax Stabilization Reserve Fund established under Chapter 2 of the act of July 1, 1985 (P.L.120, No.32), known as the "Tax Stabilization Reserve Fund Act."

Section 2. The act is amended by adding sections to read:

Section 625. Reappropriation of Lapsed Energy Conservation and Assistance Fund Money.--Notwithstanding the provisions of section 4 of the act of July 10, 1986 (P.L.1398, No.122) , known as the "Energy Conservation and Assistance Act," requiring at least seventy-five per centum (75%) of the annual appropriation made from the fund shall be for the supplemental programs established in section 5 of the "Energy Conservation

and Assistance Act," any funds lapsed from an annual appropriation may be reappropriated by the General Assembly to the program which lapsed the funds.

Section 1714. Anaerobic Manure Digesters.--The Department of Agriculture shall have the power and its duty shall be to administer the provisions of the act of December 12, 1994 (P.L.888, No.128) , known as the "Anaerobic Manure Digesters Act." Any regulations, guidelines or statements of policy issued by the Pennsylvania Energy Office for the functions transferred in this section shall remain in effect until such time as the need arises to amend such regulations, guidelines or statements of policy. All allocations, appropriations, fixed assets, equipment, files, records, contracts, agreements, obligations and all other material and supplies which are used, employed or expended in the first instance by the Pennsylvania Energy Office in connection with the functions transferred by this section shall be transferred from the Pennsylvania Energy Office to the Department of Agriculture and shall be considered as if these contracts, agreements and obligations had been incurred or entered into by the Department of Agriculture in the first instance.

Section 1932-A. Tree Harvesting Practices.--(a) The Department of Conservation and Natural Resources shall conduct a study of its tree harvesting practices in State forests which study shall include the following four areas:

- (1) The allowable scientific cut in State forests.
 - (2) The actual annual timber cut.
 - (3) Methods and considerations to attain and maintain the allowable scientific cut.
 - (4) The impact attaining the allowable scientific cut would have on State revenues and job creation.
- Not later than one year after the effective date of this section, the Department of Conservation and Natural Resources shall transmit to the Environmental Resources and Energy Committee of the Senate and the Commerce and Economic Development Committee of the House of Representatives a complete written report of its study, findings and recommendations.

(b) This section shall expire January 1, 1997.

Section 3. Section 2102 of the act is amended by adding a subsection to read:

Section 2102. General Health Administration.--The Department of Health shall have the power, and its duty shall be:

* * *

(n) To designate the Health Care Policy Board to adjudicate appeals, in accordance with 2 Pa.C.S. (relating to administrative law and procedure), of decisions made under Chapters 7 and 8 of the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act." The department shall promulgate regulations establishing appeal procedures to be followed. Until such time as final regulations have been promulgated, procedures set forth in 37 Pa. Code Ch. 197 (relating to practice and procedure) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) shall be followed for these appeals.

Section 4. Section 2210 of the act is amended to read:

Section 2210. Employment and Unemployment.--The Department of Labor and Industry shall have the power:

- (a) To endeavor to bring together employers seeking employes and applicants for employment;
- (b) To supervise all public and private employment agencies[;], including modeling and theatrical agencies:

(1) No modeling or theatrical agency may charge a fee for its services until it has secured an assignment for an applicant, which assignment has been accepted by the applicant and where the applicant and the person with whom the assignment has been secured have agreed on a fee.

(2) A modeling or theatrical agency shall be entitled to charge a fee of more than ten per centum (10%) of the amount earned by an applicant for each job secured through the modeling or theatrical agency regardless of the job's duration.

(3) For the purpose of this subsection, the term "modeling agency" shall mean any person, copartnership, association or corporation engaged in the business of:

(i) conducting an agency, bureau, office or any other place for the purpose of procuring or offering, promising or attempting to provide engagements for persons who want to procure employment as models; or

(ii) giving information as to where such engagements may be procured or provided, whether such business is conducted in a building, on the street or elsewhere.

(4) For the purpose of this subsection, the term "theatrical employment agency" shall mean the business of conducting an agency, bureau, office or any other place for the purpose of procuring or offering, promising or attempting to provide engagements for persons who want employment in the following occupations: circus, fair, vaudeville, musical, theatrical and other entertainment or exhibitions or performances; or of giving information as to where such engagement may be procured or provided, whether such business is conducted in a building, on the street or elsewhere;

(c) To report on the extent of unemployment, the remedy therefor, and the means for the prevention thereof;

(d) To establish employment offices or labor exchanges at convenient places throughout the Commonwealth;

(e) To promote the intelligent distribution of labor and, when necessary, to assist in securing transportation for employes desiring to go to places where work is available.

Section 5. The act is amended by adding a section to read:

Section 2211.1. Investigation of State Workmen's Insurance Fund.--(a) The Joint State Government Commission shall establish a joint select committee to investigate the financial integrity and stability of the State Workmen's Insurance Fund.

(b) The investigation shall include an evaluation of the adequacy of the State Workmen's Insurance Fund's various reserves and surpluses, as measured against qualifying standards in benchmark tests of financial stability and performance tests of financial sufficiency against which workers' compensation insurance carriers are generally measured, and an evaluation of the fund's investment portfolio and investment practices.

(c) (1) The committee shall consist of ten members, three members of the Labor and Industry Committee of the Senate appointed by the President pro tempore of the Senate, two members of the Labor and Industry Committee of the Senate appointed by the Minority Leader of the Senate, three members of the Labor Relations Committee of the House of Representatives appointed by the Speaker of the House of Representatives and two members of the Labor Relations Committee of the House of Representatives appointed by the Minority Leader of the House of Representatives.

(2) The committee shall elect a chairman from its membership.

(3) The committee may hold hearings, take testimony and make its investigations at such places as it deems necessary

in this Commonwealth. It may issue subpoenas under the hand and seal of the chairman commanding any person to appear before the committee and to answer questions touching matters properly being inquired into by the committee and to produce such books, papers, records and documents as the committee deems necessary. The subpoenas may be served upon any person and shall have the same effect as subpoenas issued out of the courts of this Commonwealth. Any person who wilfully neglects or refuses to testify before the committee or to produce any books, papers, records or documents shall be subject to the penalties provided by the laws of this Commonwealth in such case. Each member of the committee shall have power to administer oaths and affirmations to witnesses appearing before the committee.

(4) The committee shall have the power, as part of its investigation, to commission an independent actuarial study of the State Workmen's Insurance Fund with the costs thereof to be borne by the State Workmen's Insurance Fund.

(d) The committee shall make a report of its investigation to the General Assembly by June 30, 1996.

(e) This section shall expire June 30, 1996.

Section 6. The definition of "surplus property" in section 2401-A of the act, added July 1, 1981 (P.L.143, No.48), is amended to read:

Section 2401-A. Limited Definitions.--The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Surplus property." Any buildings, land or other real estate owned by the Commonwealth that has been deemed surplus to the needs of the administering agency which [last had] **has current** use of the property [and which has been turned over to the jurisdiction of the Department of General Services for final verification and declaration of its surplus status]. The definition of and the designation of surplus property shall not apply to any lands designated as State parks or State forests or any lands acquired by the Pennsylvania Fish and Boat Commission or the Pennsylvania Game Commission.

Section 7. Sections 2402-A(a) and (b), 2404-A(a), (b) and (d)(1), 2405-A(4) and 2406-A of the act, added July 1, 1981 (P.L.143, No.48), are amended to read:

Section 2402-A. Annual Property Survey.--(a) The department shall distribute to all agencies, not later than [30 days after the effective date of this article and not later than May 1] **January 1** of each year [thereafter], a request to compile information on all State-owned real property. The survey shall require the agency, for each parcel of real property, within its jurisdiction, to identify its location, size, current use, the presence of any buildings or other improvements, the condition of all buildings and improvements and other relevant property attribute data. The survey shall require the agency to identify any property currently surplus to the needs of the agency.

(b) Agencies shall send to the department, not later than [60 days after the effective date of this article and not later than July] **March 1** of each year [thereafter], completed annual property surveys. The department shall compile and consolidate the agency surveys and send a copy of the compilation to the Chairmen and Minority Chairmen of the House and Senate State Government Committees or their successor committees.

* * *

Section 2404-A. Legislative Oversight and Public Review.--(a) The property disposition plan shall be transmitted to the Chairmen and Minority Chairmen of the House and Senate State Government Committees or their successor committees not later than [90 days after the effective date of this article and not later than September 1 for each year thereafter.] **May 1 of each year.** The House and Senate Committees shall conduct public hearings which may be joint hearings to review the plan and shall advise the department of any suggested modifications in the plan not later than [120 days after the effective date of this article and not later than October 1 for each year thereafter.] **June 1 of each year.**

(b) The department shall publish its proposed property disposition plan in the Pennsylvania Bulletin not later than [90 days after the effective date of this article and not later than September 1 for each year thereafter] **May 1 of each year** and invite public comments on the plan during the following 30-day period. The proposed plan shall not require review by the Attorney General for form and legality prior to publication, but during the 30-day comment period the department shall request that the Attorney General review the plan for form and legality. The Attorney General shall communicate his evaluation of the plan, in writing, to the department and to the Chairmen and Minority Chairmen of the House and Senate State Government Committees or their successor committees.

* * *

(d) (1) Not later than [150 days following the effective date of this article and no later than October 15 of each year thereafter] **June 15**, the department shall transmit the plan to the Governor for his approval and the Governor shall transmit the plan to the Chief Clerk of the House of Representatives and the Secretary of the Senate for consideration by the General Assembly in the manner specified by the act of April 7, 1955 (P.L.23, No.8), known as the "Reorganization Act of 1955," except that either House of the General Assembly may reject a plan for the disposition of a specific parcel while approving the balance of the surplus property disposition plan.

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Section 2405-A. Conditions Upon Conveyances.--Any proposed disposition of property shall be subject to the following conditions and limitations:

* * *

(4) After appropriate public notice, the sale of declared surplus property by the department shall be open to public review and inspection. Acceptance of an offer shall be subject to a minimum price requirement as established by the department, which shall not be less than the fair market value. [Prospective buyers shall submit sealed offers to purchase declared surplus property through the mail.] **Declared surplus property shall be sold by the department through either a competitive sealed bidding process in which prospective buyers submit sealed offers through the mail or at an auction conducted by an auctioneer holding a license under the provisions of the act of December 22, 1983 (P.L.327, No.85) , known as the "Auctioneer and Auction Licensing Act."** The use of either method of sale shall be at the department's discretion. Except as provided in clause (3), sale of the declared surplus property shall be to the highest bidder, provided that no offer may be accepted which is below the fair market value, established through independent appraisal.

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Section 2406-A. Allocation of Sale Proceeds.--The proceeds of the sale of real estate under the provisions of section 2405-A shall be paid into the State Treasury, through the Department of Revenue and deposited in the Capital Facilities Redemption Fund, or if the land was acquired by moneys wholly or mainly out of a special fund, such proceeds shall be credited to the proper special fund, and all proceeds of the sale of authority properties shall be paid to the respective fiscal agent of the authority in accordance with the bond resolution. The costs and fees incurred by the Department of General Services, including but not limited to costs of **auctions or sales at auction**, title searches, notice, surveys and appraisals, shall be deducted from the purchase price and that amount shall be an executively authorized augmentation to the appropriation from which the costs and fees were paid by the department.

Section 8. (a) The sum of \$57,000,000 shall be transferred from the 1994-1995 ending balance of the General Fund to the Tax Stabilization Reserve Fund during 1995-1996.

(b) Up to \$7,000,000 may be transferred from the Capital Loan Fund to the Machinery and Equipment Loan Fund during the fiscal year July 1, 1995, to June 30, 1996, upon approval of the Secretary of the Budget.

(c) Notwithstanding section 12 of the act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act, no assistance shall be approved pursuant to said act after June 30, 1997.

(d) Notwithstanding section 9 of the act of July 10, 1989 (P.L.313, No.52), known as the Industrial Communities Action Program Act, no grants shall be awarded by the Department of Commerce to any eligible applicant under said act after June 30, 1997.

(e) The sum of \$2,000,000 is hereby appropriated from the Energy Conservation and Assistance Fund to the Department of Environmental Protection for the fiscal year July 1, 1995, to June 30, 1996.

Section 9. (a) The following acts and parts of acts are repealed:

Act of July 22, 1974 (P.L.610, No.207), known as the Nursing Home Loan Agency Law, with the exception of sections 404, 405 and 408.

The definitions of "administrator" and "arbitration panel" in section 103, Articles III, IV, V and VI with the exception of sections 602, 605 and 606, section 1005 and as much of sections 1001 and 1006 as pertains to the Arbitration Panels for Health Care and the Office of Administrator for Arbitration Panels for Health Care of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.

Chapter 5 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, except that:

(1) The board shall continue to function until June 30, 1996, for the sole purpose of completing action on appeals which have proceeded to the stage that a hearing has been scheduled or to a further stage of the proceedings; and the Department of Health shall provide funding for the board for the period of time needed to complete action on such appeals.

(2) Pending appeals on which the board is not able to complete action by June 30, 1996, will be transferred to the Department of Health to be adjudicated in accordance with section 2102(n) of the act.

(3) Appeals for which a hearing has not been scheduled as of December 31, 1995, shall be transferred to the

Department of Health to be adjudicated in accordance with section 2102(n) of the act.

(4) Section 506 shall continue as it pertains to time frames and manner of appeal, issues to be considered on appeal, receipt and consideration of evidence on appeal, deference to be given to expertise of the Department of Health, and written notification of decisions rendered.

Section 12 of the act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act.

Section 12 of the act of July 2, 1984 (P.L.568, No.113), known as the Employee-Ownership Assistance Program Act.

Section 9 of the act of July 10, 1989 (P.L.313, No.52), known as the Industrial Communities Action Program Act.

(b) The following acts and parts of acts are repealed to the extent specified:

All provisions of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, are repealed to the extent any of those provisions are inconsistent with the provisions of section 2102(n) of the act.

Section 10. This act shall take effect as follows:

(1) The amendment of sections 2401-A, 2402-A(a) and (b), 2404-A(a), (b) and (d)(1), 2405-A(4) and 2406-A of the act shall take effect January 1, 1996.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 23rd day of February, A. D. 1996.

THOMAS J. RIDGE