
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1166

Session of
1985

INTRODUCED BY LEVIN, COHEN, PERZEL, TELEK, BURNS, BELFANTI,
RYBAK, HARPER, PISTELLA, EVANS, WESTON, KOSINSKI, DONATUCCI,
CESSAR, STEWART, DEAL, FREEMAN, BOYES, GANNON, KENNEY AND
PETRONE, MAY 7, 1985

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 23, 1986

AN ACT

1 Relating to the protection of the occupational health and safety
2 of public employees; providing penalties; and making an
3 appropriation.

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

12 Section 1. Short title.

13 This act shall be known and may be cited as the Public
14 Employee Occupational Safety and Health Act.

15 Section 2. Declaration of policy.

16 (a) Declaration.--The General Assembly declares that it is a
17 basic right of all employees to work in an environment that is
18 as free from hazards and risks to their safety and health as is
19 possible. It is the intent of the General Assembly to ensure
20 that this right is afforded to all employees of the
21 Commonwealth, its counties, cities, incorporated towns,
22 boroughs, and other public employers who serve the people of
23 this Commonwealth.

24 (b) Finding.--A significant percentage of all of those
25 employed in this Commonwealth are employed by the Commonwealth
26 or by one of its political subdivisions. Many of these public
27 employees perform job functions comparable to those performed by
28 workers in the private sector. In the Occupational Safety and
29 Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.),
30 Congress deemed it necessary to protect the safety and health of

1 workers employed in the private sector. The Occupational Safety
2 and Health Act of 1970 was enacted to "assure so far as possible
3 every working man and woman in the Nation safe and healthful
4 working conditions to preserve our human resources." The General
5 Assembly of the Commonwealth of Pennsylvania hereby exercises
6 its statutory authority to establish and enforce standards and
7 regulations protecting the health and safety of all employees of
8 Pennsylvania State or local governments and their subdivisions.
9 The General Assembly has further determined that a safe place in
10 which to work is economically advantageous to employers. Work-
11 related accidents and injuries, and the absences caused thereby,
12 decrease employee productivity and increase workers'
13 compensation costs. Unsafe premises increase the risk of
14 financial liability for injuries to members of the public who
15 frequent our public buildings. Occupational illness depletes the
16 pool of human resources and increases medical expenditures. For
17 employees and their dependents, occupational accidents and
18 illnesses pose a serious threat to finances, security, and
19 mental and physical well-being.

20 (c) Police power.--The General Assembly, in an exercise of
21 the Commonwealth's police power, charges the Work Environment
22 Board with the responsibility to ensure that all public
23 employees in Pennsylvania are afforded a safe and healthful work
24 environment.

25 (d) Application.--Notwithstanding any other provision in
26 this act, a safety or health standard promulgated under this act
27 shall apply only to employees not covered by a Federal
28 occupational safety or health standard promulgated under section
29 6 of the Occupational Safety and Health Act of 1970, or

30 amendments thereto. EMPLOYEES OF THE UNITED STATES GOVERNMENT

<—

1 AND EMPLOYEES OVER WHOSE WORKING CONDITIONS FEDERAL AGENCIES,
2 OTHER THAN THE UNITED STATES DEPARTMENT OF LABOR, EXERCISE
3 STATUTORY AUTHORITY TO PRESCRIBE OR ENFORCE STANDARDS OR
4 REGULATIONS AFFECTING OCCUPATIONAL SAFETY AND HEALTH SIMILAR TO
5 THE OCCUPATIONAL STANDARDS ISSUED BY THE OCCUPATIONAL SAFETY AND
6 HEALTH ADMINISTRATION SHALL NOT BE SUBJECT TO SAFETY OR HEALTH
7 STANDARDS PROMULGATED UNDER THIS ACT.

8 Section 3. Definitions.

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

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

18 "Authorized employee representative." An employee authorized
19 by the employees to represent them, or the designated
20 representative of an employee organization recognized or
21 certified to represent the employees.

22 "Board." The Work Environment Board.

23 "Committee." A work environment committee.

24 "Employee." A person who engages to furnish his services
25 subject to the direction and control of an employer.

26 "Employer." The Commonwealth, any political subdivision of
27 this Commonwealth, a public authority or any other governmental
28 agency or instrumentality thereof; any bi-state authority, such
29 as the Delaware River Port Authority; or anyone contracting to
30 perform services for the Commonwealth or any political

1 subdivision or instrumentality thereof.

2 "Executive Director." The Executive Director of the Work
3 Environment Board.

4 "Harmful agent." An agent ~~that presents~~ DETERMINED BY THE <—
5 BOARD TO PRESENT a risk to worker health or safety, or imminent
6 danger of death or serious physical harm to an employee. The
7 term includes, but is not limited to, radiation (whether
8 ionizing or nonionizing), stress, heat, cold, noise, vibration,
9 repetitive motion, hypobaric pressure, hyperbaric pressure, poor
10 illumination, poor ergonomic design, dust, fumes, biological
11 hazards such as molds and allergens, inadequate ventilation, and
12 indoor air pollution. THE BOARD SHALL CONSULT THE SCIENTIFIC <—
13 LITERATURE AND RELY ON EPIDEMIOLOGIC AND CASE STUDY REPORTS
14 BROUGHT TO ITS ATTENTION IN MAKING SUCH DETERMINATIONS FOR
15 AGENTS WHICH ARE NOT GENERALLY RECOGNIZED AS HARMFUL AGENTS.

16 "Hazardous substance." Any chemical or mixture defined as
17 hazardous under section 3 of the act of October 5, 1984
18 (P.L.734, No.159), known as the Worker and Community Right-to-
19 Know Act, and any other substance ~~deemed~~ DETERMINED TO BE <—
20 hazardous by the board. THE BOARD SHALL CONSULT THE SCIENTIFIC <—
21 LITERATURE AND RELY ON EPIDEMIOLOGIC AND CASE STUDY REPORTS
22 BROUGHT TO ITS ATTENTION IN MAKING SUCH DETERMINATIONS FOR
23 SUBSTANCES NOT DEFINED AS HAZARDOUS UNDER THE ACT OF OCTOBER 5,
24 1984 (P.L.734, NO.159), KNOWN AS THE WORKER AND COMMUNITY RIGHT-
25 TO-KNOW ACT.

26 "Imminent danger." A hazard or condition which could
27 reasonably be expected to cause death or serious physical harm
28 immediately or before the imminence of the danger can be
29 eliminated through the enforcement procedure under section 16.

30 "Infectious agent." Infectious agents shall include, but not

1 be limited to, bacteria, viruses, fungi, parasites, rickettsia
2 and protozoa determined by the board to cause substantial acute
3 or chronic illness or permanent disability as a direct or
4 indirect result of exposure to the infectious agent by employees
5 whose workplaces include, but are not limited to, hospitals;
6 morgues; laboratories; clinics; prisons; homes or institutions
7 for the aged and the mentally, physically, or psychologically
8 impaired; schools; day care facilities; shelters; zoos or other
9 animal-handling operations; water and waste treatment plants;
10 and also those public health and social service employees who
11 may be exposed to infectious agents in the course of home or
12 office visits. THE BOARD SHALL CONSULT THE SCIENTIFIC LITERATURE <—
13 AND RELY ON EPIDEMIOLOGIC AND CASE STUDY REPORTS BROUGHT TO ITS
14 ATTENTION IN MAKING SUCH DETERMINATIONS FOR AGENTS WHICH ARE NOT
15 GENERALLY RECOGNIZED AS INFECTIOUS AGENTS.

16 "Interested person." Any affected person; a representative
17 of any organization of employers or employees; a nationally
18 recognized standards producing organization; a State board,
19 commission or department; a professional organization concerned
20 with occupational safety or health; a representative of a public
21 interest organization; or a member of a department or college or
22 university engaged in research related to occupational safety or
23 health.

24 "Occupational safety and health specialist." A person who,
25 because of professional or technical education, training, or
26 experience, understands the health and safety risks and the
27 necessary precautions associated with the hazardous substances,
28 harmful agents, infectious agents and safety hazards which the
29 person is hired to address and to which public employees are
30 exposed. The board shall adopt a standard which specifies the

1 criteria to be considered in determining whether or not a person
2 is a technically qualified individual.

3 "Public employee." Any employee of this Commonwealth, a
4 political subdivision of this Commonwealth, a public authority
5 or any other governmental agency or instrumentality thereof.

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

8 "Safety hazard." A hazard arising out of or encountered in
9 the course of employment that presents a risk to employee
10 safety. Areas to be monitored for safety hazards shall include,
11 but not be limited to, confined spaces, electrical wiring, fire
12 safety, vehicle safety, job-site preparation, machine guards,
13 walking and working surfaces, traffic control, firefighting
14 equipment and breathing apparatus, and trenching and shoring.

15 "Work environment inspector." An occupational safety and
16 health specialist hired for the purpose of enforcing all THE
17 provisions of this act. <—

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

21 Section 4. Application of health and safety standards.

22 A safety or health standard promulgated under this act shall
23 apply to every public employer, and the board shall have
24 authority to enforce the standard in accordance with this act,
25 notwithstanding any other safety or health standard or any other
26 provision in this act or in any other general, local or special
27 law or charter.

28 Section 5. Employer's duties.

29 Employers shall have the following duties:

30 (1) An employer shall furnish, to each of its employees,

1 employment and a workplace which are safe and healthful for
2 the employees. Such employment and workplace shall be free
3 from recognized hazards that cause or may cause death,
4 serious physical harm, or illness to employees.

5 (2) No employer shall occupy, maintain or permit an
6 employee to be in a workplace that is not safe and healthful.

7 (3) An employer shall comply with the safety and health
8 standards promulgated under this act. These requirements
9 shall be included in all leases of the employer and in all
10 contracts with individuals and contractors who provide
11 services to the employer.

12 (4) An employer shall refrain from any restraint on the
13 right of the work environment inspector to inspect the
14 employer's place of business. An employer shall assist the
15 work environment inspector in the performance of inspection
16 duties by supplying or making available information dealing
17 with exposure reports, general safety and health records, and
18 other records required by this act which are necessary to
19 comply with the purposes and goals of this act.

20 (5) An employer shall provide information to employees,
21 their authorized representatives and committee members in the
22 following ways, as prescribed by authorized regulations:

23 (i) Posting information regarding protections and
24 obligations of employees under occupational safety and
25 health laws at areas in the work place easily accessible
26 to all employees.

27 (ii) Posting prominently each citation issued under
28 this act, or a copy or copies thereof, at or near each
29 place a violation referred to in the notice of violation
30 occurred and at areas in the workplace easily accessible

1 to all employees.

2 (iii) Providing timely access to all industrial
3 hygiene information and other surveys and reports.
4 Whenever a work environment inspector or any other
5 representative of the employer engages in activities
6 related to the monitoring, measuring, and other means of
7 assessment conducted to assess employee exposure to
8 hazards, the inspector or employer representative shall
9 be accompanied by employee representatives and committee
10 members as provided in section 11(g).

11 (iv) Allowing access by employees and their
12 representatives to accurate records of employee exposures
13 to hazardous substances, infectious agents, harmful
14 agents or safety hazards.

15 (v) Notifying any employee who has been or is being
16 exposed to hazardous materials, harmful agents, or
17 infectious agents, and informing any employee so exposed
18 of corrective action being taken.

19 (vi) Allowing access by employees and their
20 representatives to relevant medical records and posting a
21 summary of relevant medical data in a timely manner.

22 (6) An employer shall consult and work cooperatively
23 with the committees at the workplace for the purpose of
24 resolving concerns on matters of health, safety and welfare
25 at the worksite. Every employer shall be responsible for
26 providing the committee with any information the employer
27 receives pursuant to section 5 of the act of October 5, 1984
28 (P.L.734, No.159), known as the Worker and Community Right-
29 to-Know Act, and also for furnishing any information
30 requested by the committee under rights guaranteed in

subsection (d) of said section and under any provision of this act.

(7) An employer shall provide education and training for employees exposed to hazardous substances, harmful agents, infectious agents, and safety hazards, with respect to the hazardous substances, harmful agents, infectious agents, and safety hazards found in their workplace, pursuant to regulations promulgated by the board. Employees shall receive normal wages and benefits from the employer while attending such programs. Additional instruction shall be provided whenever the potential for exposure to hazardous substances, harmful agents, infectious agents, or safety hazards is altered or whenever new information is received by the employer concerning the hazards of the substances, agents, or safety hazards.

Section 6. The Work Environment Board.

(a) Establishment.--The Work Environment Board is hereby established as an independent administrative board.

(b) Purpose.--The purpose of the board shall include, but not be limited to, the following:

(1) Establish, maintain and enforce standards and issue orders for the protection of the health and safety of public employees in the Commonwealth of Pennsylvania.

(2) Administer and enforce this act and all regulations related thereto.

(3) Either alone or in conjunction with the Workmen's Compensation Appeal Board of the Department of Labor and Industry, or the Department of Health, prepare and maintain morbidity and accident statistics relating to public employees.

1 (4) Provide assistance to persons concerned with
2 occupational health and safety and provide services to assist
3 committees, employers, and public employees in maintaining
4 standards for the protection of the health and safety of
5 public employees.

6 (5) Promote or conduct studies and research projects in
7 connection with problems relating to the health and safety of
8 public employees.

9 (6) Conduct educational programs, including seminars and
10 courses of training for promoting the health and safety of
11 public employees and for improving the qualifications of
12 persons involved in the promotion of occupational health and
13 safety.

14 (7) Appoint advisory committees to assist in the
15 administration of this act.

16 (8) Make grants for any of the purposes mentioned in
17 this section.

18 (c) Membership.--The board shall consist of five members.
19 The following officials shall each appoint one member to the
20 board:

21 (1) The President pro tempore of the Senate.

22 (2) The Minority Leader of the Senate.

23 (3) The Speaker of the House of Representatives.

24 (4) The Minority Leader of the House of Representatives.

25 (5) The Governor.

26 The initial appointees of the President pro tempore of the
27 Senate and the Minority Leader of the Senate shall serve terms
28 of three years. The initial appointees of the Speaker of the
29 House of Representatives and the Minority Leader of the House of
30 Representatives shall serve terms of two years. The initial

1 appointee of the Governor shall serve a term of four years.
2 Thereafter, terms of office shall be for four years. The board
3 shall elect a chairman from among its members for a term of four
4 years.

5 (d) Duties.--The board shall promulgate a plan for the
6 development and enforcement of occupational safety and health
7 standards with respect to public employers and employees. The
8 board shall also have the following powers and duties:

9 (1) The board shall review the safety and health
10 standards promulgated under the Occupational Safety and
11 Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et
12 seq.), which are in effect on the effective date of this act,
13 and shall adopt, by rule, those standards which the board
14 deems to provide maximum protection to the lives, safety and
15 health of public employees. In addition, the board may, at
16 its discretion, adopt at its own, any standards and
17 regulations currently in existence in Pennsylvania State law.
18 THE STANDARDS ADOPTED BY THE BOARD SHALL BE AT LEAST AS <—
19 EFFECTIVE AS STANDARDS ADOPTED BY THE OCCUPATIONAL SAFETY AND
20 HEALTH ADMINISTRATION.

21 (2) The board shall have the authority to adopt health
22 and safety standards and promulgate regulations for any and
23 all hazardous substances, harmful agents, infectious agents
24 and safety hazards regardless of whether standards and
25 regulations have been enacted or proposed by OSHA or other
26 Federal governmental agencies, or State or local health
27 codes. Interested persons may petition the board to adopt
28 standards and promulgate regulations under this paragraph.

29 (3) No standards shall be adopted for products
30 distributed or used in interstate commerce which are

1 different from Federal standards for such products unless
2 such standards are required by compelling local conditions
3 and do not unduly burden interstate commerce.

4 (4) In the event of an emergency or unusual situation,
5 the board shall provide for an emergency temporary standard
6 to take immediate effect upon publication in newspapers of
7 general circulation in Philadelphia, Pittsburgh, Harrisburg,
8 Wilkes-Barre/Scranton and Erie, in accordance with 1 Pa. Code
9 § 13.74 (relating to effectiveness prior to publication), if
10 the administrator deems that:

11 (i) employees are exposed to grave danger from
12 exposure to substances or agents determined to be toxic
13 or physically harmful or from new hazards; and

14 (ii) such emergency standards are necessary to
15 protect employees from such danger.

16 Such emergency standards shall be in effect no longer than
17 120 days, or, if renewed in compliance with this section, not
18 longer than 60 additional days. On or before the expiration
19 date of the emergency standards or renewal thereof, the
20 administrator shall develop a permanent standard to replace
21 the emergency standard.

22 (5) The board, in accordance with 1 Pa. Code Ch. 7
23 (relating to procedure for adoption or change of
24 regulations), shall promulgate such rules and regulations as
25 may be deemed necessary to carry out the purposes and
26 responsibilities of the board and to enforce the provisions
27 of this act.

28 (6) The board shall engage in inspections and
29 investigations and shall take necessary action to ensure
30 compliance by public employers with the provisions of this

1 act and rules, regulations and standards established by the
2 board.

3 (7) The board shall employ an executive director and may
4 employ assistants, experts, inspectors, hearing officers,
5 consultants, occupational safety and health specialists, and
6 other employees sufficient to carry out the purposes of this
7 act. All such personnel of the board shall be under the
8 supervision of the executive director, to whom the board
9 delegates such responsibility.

10 (8) In accordance with the powers and duties described
11 and established in this act and effective immediately, as a
12 first order of business, the board shall promulgate and
13 establish an asbestos abatement program which shall include,
14 but not be limited to, the following provisions:

15 (i) The board shall, within one year of the
16 effective date of this act, promulgate regulations
17 relating to and requiring the ~~abatement of asbestos~~ <—
18 ~~hazards from all worksites.~~ ASSESSMENT OF ASBESTOS <—
19 HAZARDS IN ALL WORKPLACES AND THE DEVELOPMENT OF AN
20 ASBESTOS HAZARD ABATEMENT PLAN FOR ALL WORKPLACES WHERE
21 ASBESTOS EXISTS.

22 (ii) All public employers shall, within one year
23 after the effective date of this act:

24 (A) Conduct building inspections to determine
25 the presence of asbestos HAZARD in all facilities. <—
26 Such inspections shall be conducted by occupational
27 safety and health specialists.

28 (B) Maintain records of the findings.

29 (C) Notify the employees, employee
30 representatives and committees of the results of

1 inspections and release to said individuals and
2 groups the records from the inspections. Members of
3 the public shall have access to the records of
4 inspections of public buildings.

5 (iii) Where asbestos exists in a facility, the
6 employer shall file an asbestos abatement plan with the
7 board. This plan shall conform to all practices
8 recommended by the Environmental Protection Agency for
9 abatement of asbestos. THIS PLAN SHALL DETAIL ALL <—

10 RELEVANT ASPECTS OF ABATEMENT, INCLUDING, BUT NOT LIMITED
11 TO, THE METHODS OF ABATEMENT, THE TIME FRAME OF ABATEMENT
12 AND THE IDENTITY AND QUALIFICATIONS OF ANY PROFESSIONAL
13 ASBESTOS ABATEMENT PERSONNEL INVOLVED IN THE ABATEMENT.

14 Abatement plans shall be subject to approval of the
15 committees at the affected locations. ~~Within 30 days of~~ <—
16 ~~receipt of the plan, the board shall review the plan and~~
17 ~~assign a date on which abatement is to commence.~~ NOTHING <—

18 IN THIS ACT MANDATES THE BOARD TO REQUIRE REMOVAL OF
19 ASBESTOS IN WORKPLACES WHERE ASBESTOS EXISTS.

20 (9) The board shall promulgate regulations that, within
21 two years, eliminate the use of all asbestos brakes and
22 clutch facings in all vehicles owned, leased, or otherwise
23 used by this Commonwealth and its political subdivisions.

24 (10) The board shall promulgate regulations providing
25 timely access to all industrial hygiene and other surveys and
26 reports. Employers shall provide the opportunity for
27 employees and their representatives to walk around with work
28 environment inspectors and all representatives of the
29 employer engaged in activities related to the monitoring,
30 measuring, and other means of assessment, to observe

1 monitoring, measuring, and other means of assessment
2 conducted to assess employee exposure to hazards pursuant to
3 standards promulgated under this act.

4 (11) The board shall provide for the preparation of
5 regulations or standards requiring proper work procedures,
6 employee training and provision of any necessary vaccinations
7 or inoculations at employer expense for any employee
8 regularly exposed to infectious diseases in the course of his
9 or her employment.

10 (12) The board shall promulgate regulations and
11 standards requiring safe staffing patterns for firefighting
12 and correctional personnel and individuals employed in mental
13 health or mental retardation facilities to insure the public
14 safety and protect the health and lives of the employees
15 performing those services. In order to carry out this
16 paragraph:

17 (i) The board shall appoint a five-member Fire
18 Fighters Safety Advisory Committee, comprised of members
19 knowledgeable in fire safety, for the purposes of
20 recommending standards of adequate staffing levels which
21 will insure the safety of fire-fighting personnel covered
22 by this act. Before making its recommendations, the
23 committee shall consider such factors as community size,
24 population and building patterns. The committee shall
25 make its recommendations and deliver its final report not
26 later than one year after the effective date of this act.
27 The board shall review and act upon adoption of a
28 standard within 90 days of receipt of the committee's
29 report.

30 (ii) The board shall appoint a five-member Safety

1 Advisory Committee for Correctional Facilities for the
2 purposes of recommending standards of adequate staffing
3 levels which will insure the safety of correctional
4 personnel covered by this act. The committee shall make
5 its recommendations and deliver its final report not
6 later than one year after the effective date of this act.
7 The board shall review and act upon adoption of a
8 standard within 90 days of receipt of the committee's
9 report.

10 (iii) The board shall appoint a five-member Safety
11 Advisory Committee for Mental Health and Mental
12 Retardation Facilities for the purpose of recommending
13 standards of adequate staffing levels which will insure
14 the safety of employees employed in such facilities
15 covered by this act. The committee shall make its
16 recommendations and deliver its final report not later
17 than one year after the effective date of this act. The
18 board shall review and act upon adoption of the standard
19 within 90 days of receipt of the committee's report.

20 (13) The board shall assess the public employee health
21 and safety programs and report on the operation and
22 effectiveness of this act:

23 (i) The board shall examine the incidence of work-
24 related injuries, the incidence of injuries or
25 occupational illness to the public, and the effect of
26 this act upon insurance costs of public employers.

27 (ii) The board shall issue an interim report to the
28 General Assembly and the Governor one year after the
29 effective date of this act. A final report shall be
30 issued two years after the effective date of this act.

1 Section 7. Grants for hazard abatement.

2 (a) General.--The board shall receive, review and act upon
3 applications for funding of capital projects designed to abate
4 occupational health and safety hazards. The board shall have the
5 authority to fund 75% of the cost of any capital abatement
6 project necessary to comply with an order issued by the board
7 under this act.

8 (b) Discretion.--The board may require, as part of an
9 application, such information as it deems necessary and shall
10 act upon the application within a reasonable time. The board
11 shall furnish the Budget Secretary, Secretary of Labor and
12 Industry, Auditor General, President pro tempore of the Senate
13 and the Speaker of the House of Representatives with a copy of
14 each application within three days following receipt thereof by
15 the board.

16 (c) Factors determining recipients of grants.--In
17 determining which applicants shall receive grants from the fund
18 and the amount of funding, the board shall consider the
19 following factors:

20 (1) The degree of possible physical harm which the
21 hazard to be abated could inflict on the public employees and
22 other citizens at risk.

23 (2) The imminent nature of the possible infliction of
24 harm.

25 (3) The number of public employees and other citizens at
26 risk.

27 (4) The ability of the applying public employer to fund
28 the capital abatement project out of its own funds.

29 (5) The total amount of debt for capital construction
30 projects for which the applying public employer is

1 responsible and the ability of the applying public employer
2 to meet its annual debt service.

3 (d) Duty to abate violation.--The fact that a public
4 employer has applied for funds pursuant to this act shall not
5 relieve that employer of the obligation to abate a violation of
6 this act.

7 Section 8. Work environment inspectors.

8 (a) Appointment.--The executive director shall appoint work
9 environment inspectors to ensure that the provisions of this act
10 are adequately enforced. HIRING AND EMPLOYMENT OF INSPECTORS <—
11 SHALL BE ACCOMPLISHED AND CONDUCTED IN ACCORDANCE WITH THE
12 APPLICABLE PROVISIONS OF THE ACT OF AUGUST 5, 1941 (P.L.752,
13 NO.286), KNOWN AS THE CIVIL SERVICE ACT.

14 (b) Duties.--Under the direction of the executive director
15 and pursuant to the authority of the board, duties of inspectors
16 shall include, but not be limited to, the following:

17 (1) At any time, with or without prior notification, to
18 enter and inspect any premises or workplace and take any
19 samples and photographs and make any examinations the
20 inspector considers necessary to accomplish the purposes and
21 goals of this act. IN THE EVENT THAT ENTRY IS DENIED, THE <—
22 INSPECTOR SHALL NOTIFY THE BOARD WHICH MAY COMPEL SUCH ENTRY
23 THROUGH THE APPROPRIATE LEGAL PROCESS. THE BOARD SHALL BE
24 EMPOWERED TO SECURE AN ORDER COMPELLING ENTRY BY PETITIONING
25 THE COMMONWEALTH COURT TO GRANT SUCH PETITION UPON A SHOWING
26 THAT ENTRY HAS BEEN DENIED.

27 (2) To require the employer to produce for inspection by
28 the work environment inspector, books, records, documents, or
29 any other material maintained by the employer, to assist the
30 inspector in making determinations and in enforcing this act.

1 (3) TO CONDUCT PRIVATE INTERVIEWS WITH, OR SOLICIT <—
2 STATEMENTS FROM, EMPLOYEES.

3 ~~(3)~~ (4) To perform all other duties as authorized by the <—
4 board.

5 (c) Coverage.--Work environment inspectors shall be entitled
6 to benefits under the act of June 28, 1935 (P.L.477, No.193),
7 referred to as the Enforcement Officer Disability Benefits Law.

8 (d) Cooperation.--Work environment inspectors shall
9 cooperate with the work environment committees.

10 Section 9. Work environment committees.

11 (a) Purpose and establishment.--To best assure that the
12 health and safety of the public employees of this Commonwealth
13 are protected, work environment committees, consisting of
14 representatives of employees and employers, shall be established
15 under this section. Nothing in this section shall diminish the
16 employer's responsibility to assure a safe and healthful work
17 environment.

18 (b) Formation.--An employer, except as provided in
19 subsection (c), shall cause a work environment committee to be
20 established:

21 (1) at a workplace where at least 25 or more employees
22 are regularly employed; and

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

25 (c) Exemption.--

26 (1) Notwithstanding the provisions of subsection (b),
27 the board may designate individual workplaces or classes of
28 workplaces where a work environment committee is not required
29 to be established until the number of employees exceeds 50.

30 (2) Employers who employ more than 400 employees covered

1 by this act and who are employed at more than 15 workplaces
2 maintained by the employer may apply to the board for a
3 modification from the requirements of subsection (b) and
4 section 10(a). It shall be the employer's responsibility to
5 submit to the board for approval an alternative plan for the
6 formation of work environment committees which plan shall
7 otherwise conform to this section. In considering the
8 alternative plan of an employer, the board shall solicit and
9 consider evaluations of the plan from the bargaining agents
10 representing employees of the employer.

11 (3) Notwithstanding subsection (b) and section 10(a),
12 employers who employ less than 25 employees, regardless of
13 the number of workplaces maintained by the employer, shall
14 cause one employee to be designated as a work environment
15 representative in accordance with section 10(b). The work
16 environment representative under this paragraph shall have
17 the powers, duties and training required under section 10 and
18 shall represent employees of the employer employed at all
19 workplaces.

20 (d) Membership committees.--

21 (1) The committee shall consist of not less than 4 or
22 more than 12 persons as follows:

23 (i) For 25 through 49 employees - 4 members.

24 (ii) For 50 through 100 employees - 6 members.

25 (iii) For each 100 employees beyond 100 - 2
26 additional members. Additional members under this
27 subparagraph may not exceed 12.

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

30 (3) Employee members of work environment committees

1 shall be appointed by the employee organizations recognized
2 or certified as the employee representatives (bargaining
3 agents) for the employees at the workplace. In the event that
4 there is more than one bargaining agent, employee members
5 shall be selected from the three largest bargaining agents in
6 accordance with regulations promulgated by the board. In the
7 absence of a recognized or certified employee representative,
8 "public employees," as defined in section 301(2) of the act
9 of July 23, 1970 (P.L.563, No.195), known as the Public
10 Employe Relations Act, shall elect their representatives.

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

13 (e) Powers and duties.--The powers and duties of work
14 environment committees shall include, but not be limited to, the
15 following:

16 (1) Regularly inspect the workplace to identify
17 hazardous conditions and to check for compliance with the
18 general intent of this act and the standards and regulations
19 promulgated under this act.

20 (2) Receive, consider and dispose of concerns and
21 complaints respecting the safety and health of the employees.

22 (3) Maintain records in connection with the receipt and
23 disposition of concerns and complaints and other committee
24 activities.

25 (4) Investigate imminent danger situations, accidents
26 and unusual environmental conditions.

27 (5) When it determines that an imminent danger exists,
28 order the dangerous activity to cease and request the
29 immediate presence of a work environment inspector. Once
30 activity has ceased, it may not resume until the work

1 environment inspector deems it safe. An affected party may
2 appeal the determination of the work environment inspector to
3 the board. In the event the committee is unavailable, either
4 of the cochairpersons of the committee may take action under
5 this paragraph.

6 (6) Review health and safety records to monitor
7 incidents of accidents and illnesses and to identify problem
8 areas.

9 (7) Develop and promote measures to protect the safety,
10 health and welfare of individuals in the workplace and to
11 check the effectiveness of those measures.

12 (8) Cooperate with a work environment inspector
13 exercising duties under this act.

14 (9) Develop and promote programs for education and
15 information concerning safety and health in workplace.

16 (10) Suffer no loss in pay, benefits or accrual of
17 seniority for time spent on committee business.

18 (11) Receive from the employer, at least 60 days in
19 advance of implementation, notice concerning a change in
20 workplace technology or process or an introduction into the
21 workplace of a ~~substance or material suspected of being a~~ <—
22 hazardous substance, harmful agent, infectious agent or
23 safety hazard.

24 (12) Develop medical testing for work-related illnesses
25 or disabilities which may arise out of or in the course of
26 employment, including illnesses or disabilities resulting
27 from or contributed to by exposure to hazardous substances,
28 harmful agents, infectious agents or safety hazards. The
29 board shall promulgate regulations necessary to protect the
30 confidentiality of employees.

1 (f) Meetings.--

2 (1) Committees shall hold regular meetings at least once
3 each month. The meetings of a committee shall be held during
4 ordinary working hours unless otherwise agreed upon.

5 Additional meetings shall be held as necessary.

6 (2) There shall be two committee cochairpersons, one
7 selected by employee members of the committee and one
8 selected by employer members of the committee.

9 (3) Decisions shall be made by a majority of committee
10 members present and voting. In case of a deadlock, a work
11 environment inspector shall be called in to resolve the
12 issue.

13 (4) Minutes of all meetings shall be taken, and the
14 approval of each cochairperson shall be indicated by
15 signature.

16 (5) A copy of the minutes shall be posted prominently in
17 the workplace.

18 (g) Training.--Every committee member shall be entitled to
19 not less than 24 hours of occupational health and safety
20 training annually. Training shall be provided at employer
21 expense. The form, nature and location of the training shall be
22 approved by the committee. Participating employees shall receive
23 their regular rate of pay and benefits while attending such
24 training.

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

30 Section 10. Work environment representative.

1 (a) Designation.--An employer shall cause an employee to be
2 designated as the work environment representative:

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

6 (2) at an individual workplace or classes of workplace
7 which the board may designate.

8 (b) Appointment.--

9 (1) The work environment representative shall be
10 appointed by the employee organization recognized or
11 certified as the employee representative (bargaining agent)
12 for the employees at the workplace. In the event that there
13 is more than one bargaining agent, the work environment
14 representative shall be appointed by the largest bargaining
15 agent. In the absence of a recognized or certified employee
16 representative, the employees shall elect the work
17 environment representative.

18 (2) The employer shall post prominently in the workplace
19 the name of the work environment representative.

20 (c) Powers and duties.--The work environment representative
21 shall, in cooperation with a representative of the employer,
22 perform the same duties and have the same powers and rights as
23 set out for the work environment committee in section 9(e).

24 (d) Training.--A work environment representative shall be
25 entitled to not less than 24 hours of occupational health and
26 safety training annually. Training shall be provided at employer
27 expense. The form, nature and location of the training shall be
28 acceptable to the representative who receives it.

29 (e) Nonliability.--The work environment representative shall
30 not be held liable for a work-connected injury, disability or

1 disease which may be incurred by an employee.

2 Section 11. Inspections.

3 (a) Request for inspection.--Any person who believes that a
4 violation of a safety or health standard exists, or that an
5 imminent danger exists, may request an inspection by giving
6 notice to the board of the violation or danger.

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

11 (c) Action on request.--Whenever the board receives a
12 request for inspection of an imminent danger or where the board
13 is aware of the likelihood of an imminent danger, an inspection
14 shall be made immediately. In all other cases, inspections shall
15 be made as soon as possible but at least within five days IF THE <—
16 BOARD DETERMINES THERE ARE REASONABLE GROUNDS TO BELIEVE A
17 RECOGNIZED HAZARD EXISTS. IF THE BOARD DETERMINES THERE ARE NO
18 REASONABLE GROUNDS TO BELIEVE THAT A RECOGNIZED HAZARD EXISTS,
19 THE BOARD SHALL NOTIFY THE EMPLOYEES OR REPRESENTATIVE OF THE
20 EMPLOYEES, IN WRITING, OF SUCH A DETERMINATION WITHIN FIVE DAYS
21 OF A REQUEST FOR AN INSPECTION. The board shall provide a copy
22 of the inspection report and any order or agreements made to the
23 individual making the complaint, to the employee's
24 representative and to the committee and the employer. PRIOR TO <—
25 OR DURING ANY INSPECTION OF A WORKPLACE, ANY EMPLOYEES OR
26 REPRESENTATIVE OF EMPLOYEES EMPLOYED IN SUCH WORKPLACE MAY
27 NOTIFY THE BOARD OR ANY REPRESENTATIVE OF THE BOARD RESPONSIBLE
28 FOR CONDUCTING THE INSPECTION, IN WRITING, OF ANY VIOLATION OF
29 THIS ACT WHICH THEY HAVE REASON TO BELIEVE EXISTS IN SUCH
30 WORKPLACE. THE BOARD SHALL, BY REGULATION, ESTABLISH PROCEDURES

1 FOR INFORMAL REVIEW OF ANY REFUSAL BY A REPRESENTATIVE OF THE
2 BOARD TO ISSUE A CITATION WITH RESPECT TO ANY SUCH ALLEGED
3 VIOLATION AND SHALL FURNISH THE EMPLOYEES OR REPRESENTATIVE OF
4 EMPLOYEES REQUESTING SUCH REVIEW A WRITTEN STATEMENT OF THE
5 REASONS FOR THE BOARD'S FINAL DISPOSITION OF THE CASE.

6 (d) Inspection without notice.--Inspections may be made
7 without any notice to the employer or the employees.

8 (e) Accessibility of locations.--Inspectors of the board
9 shall have immediate access to any location in which there is a
10 suspected hazard or condition for the purposes of conducting an
11 inspection.

12 (f) Intermittent inspections.--The board shall determine
13 those occupations and workplaces where there is a possibility of
14 health or safety hazards to employees or the public and shall
15 conduct regular unannounced inspections of these workplaces.

16 (g) Escort of inspector.--A representative of the employer
17 and an authorized employee representative shall accompany the
18 inspector for the entire inspection whenever the inspector
19 conducts an inspection in accordance with this act. In addition,
20 the work environment committee may designate one committee
21 member to accompany the inspector, the representative of the
22 employer, and the authorized employee representative on any or
23 all parts of the inspection which address, but are not limited
24 to, work areas and processes of which the committee member or
25 committee members have firsthand knowledge. The authorized
26 employee representatives and designated committee members shall
27 attend all opening, interim and closing conferences pertaining
28 to the inspection. Authorized employee representatives and
29 committee members shall receive full employment benefits for all
30 time spent on such activities.

1 (h) Inspection regardless of complaint.--The authority of
2 the board to inspect a premises pursuant to an employee
3 complaint shall not be limited to the alleged violation
4 contained in the complaint. The board may inspect any other
5 areas of the premises.

6 (i) Inspection of public employer's premises.--The board
7 may, upon its own initiative, conduct an inspection of any
8 premises occupied by a public employer.

9 Section 12. Recordkeeping.

10 (a) Records required.--In accordance with the board's
11 regulations, each employer shall make, keep and preserve, and
12 make available to the board, the records regarding his
13 activities relating to this act as the board deems necessary or
14 appropriate for developing information regarding the causes and
15 prevention of occupational accidents and illness. The
16 regulations may include provisions requiring employers to
17 conduct periodic inspections. The board shall also issue
18 regulations requiring that employers, through posting of
19 notices, training or other appropriate means, keep their
20 employees informed of their rights to protection.

21 (b) Regulations concerning reports.--The board shall
22 prescribe regulations requiring employers to maintain accurate
23 records and to make public, monthly reports and biannual
24 summaries of work-related deaths and injuries and illnesses,
25 medical treatment, loss of consciousness, assaults on employees,
26 restrictions of work or motion, or transfers to other jobs.

27 (c) Examination of reports.--Employers, the authorized
28 representative of the employees, and the committee shall, upon
29 request, have the right to examine and copy any and all such
30 reports.

1 (d) Regulations concerning records.--The board shall issue
2 regulations requiring employers to maintain accurate records of
3 employee exposures to ~~potentially~~ hazardous substances, harmful <—
4 agents, infectious agents, or safety hazards. The regulations
5 shall make appropriate provisions for each employee or former
6 employee to have access to his exposure records. Each employer
7 shall immediately notify any employee who has been or is being
8 exposed to hazardous substances, harmful physical agents, or
9 infectious agents. Employees exposed to such hazards shall be
10 informed by the employer of the corrective action proposed and
11 the time limit for implementation, and shall immediately be
12 scheduled for participation in the medical surveillance program.
13 Section 13. Adverse action against employees.

14 (a) Prohibition.--No adverse action shall be taken against
15 any employee by reason of the employee's participation in or
16 association with any functions of a committee; by reason of the
17 employee's inquiry about or utilization of any rights or
18 responsibilities he may have under this act; or for any other
19 reasons having to do with exercising any rights granted under
20 provisions of this act.

21 (b) Presumption.--Where an adverse action is taken against
22 any employee who has, in the prior 12 months, in any way been
23 involved with the enforcement or protection of any rights
24 granted under this act, it shall be presumed that the action was
25 taken in violation of this act and it shall be the burden of the
26 employer to prove that the action was not taken for improper
27 reasons described in subsection (a) or for reasons otherwise
28 contrary to the policies and provisions of this act.

29 Section 14. Right to work under safe conditions.

30 (a) General rule.--

1 (1) An employee may not be compelled to work at a
2 workplace if all of the following apply:

3 (i) A reasonable employee would believe, in good
4 faith, that performing assigned work at the workplace
5 would involve a danger of death or serious injury or
6 illness.

7 (ii) The employee is unable to obtain correction of
8 the condition by the employer.

9 (iii) There is insufficient time to eliminate the
10 danger through resort to regular statutory or contractual
11 enforcement procedures.

12 (2) If paragraph (1) applies, an employee may refuse to
13 perform assigned duties in the workplace until the work
14 environment inspector has investigated the matter and advised
15 the employee, in writing, that a hazard no longer exists.

16 (b) Adverse action barred.--No adverse action shall be taken
17 against any employee by reason of the fact that the employee has
18 exercised the right conferred upon him by subsection (a).

19 (c) Presumption.--Where adverse action is taken against an
20 employee who has exercised the right conferred upon him by
21 subsection (a), there shall be the presumption in favor of the
22 employee that the action was taken against him for that reason
23 and it shall be the burden of the employer to prove that the
24 action was not taken for improper reasons.

25 (d) Temporary assignments.--Notwithstanding any other
26 provision of this act, temporary assignment to alternative work
27 shall be at no loss of pay, benefits or contractual or
28 noncontractual rights to the employee until the matter mentioned
29 in subsection (a) is resolved, and shall be deemed not to
30 constitute adverse action within the meaning of this act.

1 Section 15. Rights of affected employees.

2 An employee who believes that adverse action has been taken
3 against him in violation of section 13 or 14 may, within 180
4 days after he becomes aware of such action, file a complaint
5 with the board alleging the adverse action. Upon receipt of the
6 complaint, the board shall make an investigation and shall, if
7 requested, withhold the name of the complainant from the
8 employer. Whenever the board determines that this act has been
9 violated, it shall bring an action in Commonwealth Court against
10 the employer alleged to have violated this act. In the event of
11 a finding of adverse action, the employer shall:

12 (1) Cease the adverse action and reinstate the employee
13 to his former employment without loss of pay, contractual and
14 noncontractual rights, or benefits.

15 (2) Pay to the worker any wages and benefits the worker
16 would have earned had he not had adverse action taken against
17 him.

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

20 Section 16. Enforcement.

21 (a) Order of the board.--Whenever the board or a work
22 environment inspector determines that an employer has violated
23 this act, or a health or safety standard or regulation
24 promulgated under this act, the board shall, within ~~five~~ SEVEN <—
25 days, issue to the employer a citation, which shall describe
26 particularly the nature of the violation, including a reference
27 to the provision of this act, standard, regulation or order
28 alleged to have been violated, and any corrective action
29 required. The board shall fix a reasonable time for compliance,
30 not to exceed ~~24~~ 72 hours, unless the employer can demonstrate <—

1 to the board that the violation cannot be remedied within that
2 time.

3 (b) Imminent danger.--Whenever and wherever a work
4 environment inspector concludes that an activity being carried
5 on or scheduled to commence involves or will involve a risk of
6 serious personal injury or harm and that the risk of such injury
7 or harm is imminent, the inspector shall require that the work
8 cease. The inspector may stop work-related and nonwork-related
9 activities in the vicinity of the imminent danger if such action
10 is needed to protect the health and safety of other persons. If,
11 upon inspection, the work environment inspector finds an
12 imminent danger to exist, the inspector shall order the
13 immediate abatement of the dangerous situation. Before the
14 employer may recommence the activity, the inspector must certify
15 that the employer has come into compliance with this act.

16 (c) Posting of citation.--Whenever the board issues to an
17 employer a citation, the employer shall post the citation or a
18 copy of the citation in a conspicuous place, at or near each
19 place of violation cited in the citation, where it is clearly
20 visible to the affected employees. The board shall furnish
21 copies of such citation to employee representatives and the
22 committee.

23 (d) Appeals.--Any party affected by a determination of the
24 board issued under this act may petition the Commonwealth Court
25 for review of the determination. Judicial review by the
26 Pennsylvania Labor Relations Board may be obtained by any party
27 affected by the decision in the manner provided in Title 2 of
28 the Pennsylvania Consolidated Statutes (relating to
29 administrative law and procedure). The order or citation shall
30 remain in full force and effect during pendency of an appeal.

1 (e) Proceedings by the board.--Whenever the time for
2 compliance with an order or citation of the board has elapsed
3 and the employer has not complied with the order or citation,
4 the board shall immediately seek judicial enforcement, by
5 injunction and other appropriate remedies, of such order or
6 citation, by commencing a proceeding in Commonwealth Court,
7 which shall have jurisdiction to enforce a lawful order of the
8 board, and by levying additional fines and penalties under
9 section 18.

10 (f) Injunctive relief.--The Commonwealth Court shall, upon
11 petition of the board or any affected party, restrain any
12 conditions or practices in any place of public employment which
13 could be expected to cause death or physical harm. An order
14 issued under this section may require such steps to be taken as
15 may be necessary to avoid, correct or remove an imminent danger
16 and prohibit the employment or presence of an individual in
17 locations or under conditions where an imminent danger exists,
18 except individuals whose presence is necessary to avoid, correct
19 or remove the imminent danger or to maintain the capacity of a
20 continuous process operation to resume normal operations without
21 a complete cessation of operations, or, where a cessation of
22 operations is necessary, to permit it to be accomplished in a
23 safe and orderly manner.

24 (g) Failure of the board to act.--Whenever the board fails
25 to seek relief under this section within five days of being
26 notified of such condition, any employee who may be injured by
27 reason of the failure, or the authorized employee representative
28 of such employee or the committee, may seek injunctive relief,
29 as provided in this section or any other appropriate remedies.
30 In the event that such an action is successful, the employer

1 shall pay the costs and legal fees of the petitioning parties.

2 (h) Follow-up inspection.--If at the time of or after
3 inspection or investigation, the inspector or board issues an
4 order for a violation, the board shall conduct a reinspection at
5 the end of the period fixed for abatement of the violation. No
6 employer shall be given advance warning of a reinspection by any
7 authorized representative of the board. Any authorized
8 representative of the board who gives advance notice of any
9 inspection to be conducted commits a misdemeanor and shall, upon
10 conviction, be punished by a fine of not more than \$1,000 or by
11 imprisonment for not more than six months, or both.

12 Section 17. Variances.

13 (a) Application for exception.--An employer may apply to the
14 board for a temporary order granting an exception from a
15 standard promulgated under this act. The temporary order may be
16 granted only if the employer files an application which meets
17 the requirements of this section and establishes that the
18 employer:

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

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

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

29 (b) Temporary orders.--A temporary order issued under this
30 section shall prescribe the practices, means, methods,

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

15 (c) Contents of application for temporary order.--An
16 application for a temporary order shall contain:

17 (1) A specification of the standard or portion thereof
18 from which the employer or owner seeks a variance.

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

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

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

1 (5) A certification that the employer has informed his
2 employees of the application by giving a copy of the
3 application to their authorized representative and committee;
4 by posting a statement giving a summary of the application
5 and specifying where a copy may be examined at the place or
6 places where notices to employees are normally posted; and by
7 other appropriate means. A description of how employees have
8 been informed shall be contained in the certification. The
9 information to employees shall also inform them of their
10 right to petition the board for a hearing.

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

30 (e) Time limit for challenge.--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 16(d).

4 Section 18. Civil and criminal penalties.

5 (a) Civil penalties.--In accordance with 2 Pa.C.S. Ch. 5,
6 Subch.A (relating to practice and procedure of Commonwealth
7 agencies), and Ch. 7, Subch. A (relating to judicial review of
8 Commonwealth agency action), the board has the authority to
9 assess the penalties set forth in this subsection, giving due
10 consideration to the appropriateness of the penalty with respect
11 to the size of the business of the employer being charged, the
12 gravity of the violation, the good faith of the employer and the
13 history of previous violations. Penalties collected shall be
14 deposited in a fund maintained, administered and distributed by
15 the board for programs approved under section 7. Penalties are
16 as follows:

17 (1) Except as provided in paragraphs (3) and (4), an
18 employer who has received a citation for a violation of
19 section 5 or of a standard, rule, regulation or order
20 promulgated or issued under this act may be assessed a civil
21 penalty of not more than \$1,000 for each violation.

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

24 (i) An employer who willfully or repeatedly violates
25 section 5 or a standard, rule, regulation or order
26 promulgated or issued under this act may be assessed a
27 civil penalty of not more than \$10,000 for each
28 violation.

29 (ii) An employer who fails to correct a violation
30 for which a citation has been issued within the period

1 permitted for its correction may be assessed a civil
2 penalty of not more than \$1,000 for each day during which
3 the violation continues.

4 (3) An employer who has received a citation for a
5 serious violation of section 5 or of a standard, rule,
6 regulation or order promulgated or issued under this act
7 shall be assessed a civil penalty of not more than \$1,000 for
8 each violation. For purposes of this paragraph, a serious
9 violation shall be deemed to exist in a workplace if there is
10 a substantial probability that death or serious physical harm
11 could result from a condition which exists, or from one or
12 more practices, means, methods, operations or processes which
13 have been adopted or are in use in the workplace unless the
14 employer did not and could not, with the exercise of
15 reasonable diligence, know of the presence of the violation.

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

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

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

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

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

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

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

14 Section 19. Right to sue.

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

20 (b) Costs and fees.--A court of competent jurisdiction may
21 award, whenever it deems appropriate, costs of litigation,
22 including reasonable attorney and expert witness fees.

23 Section 20. Severability.

24 The provisions of this act are severable. If any provision of
25 this act or its application to any person or circumstance is
26 held invalid, the invalidity shall not affect other provisions
27 or applications of this act which can be given effect without
28 the invalid provision or application.

29 Section 21. Appropriation.

30 The sum of \$3,000,000 is hereby appropriated to the Work

- 1 Environment Board to carry out the purposes of this act.
- 2 Section 22. Effective date.
- 3 This act shall take effect in 60 days.