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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1566 Session of 2009

INTRODUCED BY GIBBONS, BRENNAN, BURNS, BUXTON, CALTAGIRONE, JOSEPHS, MANDERINO, MELIO, SOLOBAY AND STURLA, MAY 29, 2009

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 29, 2009

AN ACT

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

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

CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

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

Section 102. Declaration of policy.

The General Assembly finds and declares as follows:

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

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

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

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

(5) Under the Occupational Safety and Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.), Congress deems it necessary to protect the safety and health of workers employed in the private sector. The OSHA Act was enacted to

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

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

Section 103. Definitions.

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

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

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

"Authorized employee representative." An employee authorized by the employees to represent them, or the designated representative of an employee organization recognized or certified to represent the employees. The term includes

"employee organization" as defined in section 301(3) of the act of July 23, 1970 (P.L.563, No.195), known as the Public Employe Relations Act.

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

"Committee." A work environment committee.

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

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

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

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

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

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

"Occupational safety and health specialist." An individual who, because of professional or technical education, training or

experience, understands the health and safety risks and the necessary precautions associated with the hazardous substances, harmful agents, infectious agents and safety hazards which the person is hired to address and to which public employees are exposed. The department shall promulgate regulations specifying criteria for education, training and experience.

"OSHA." The Occupational Safety and Health Administration.

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

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

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

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

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

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

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

"Work environment inspector." An occupational safety and health specialist hired for the purpose of enforcing the

provisions of this act.

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

CHAPTER 3

PUBLIC EMPLOYEE HEALTH AND SAFETY

Section 301. Application of health and safety standards.

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

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

Section 302. Duties of public employers.

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

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

(2) Comply with the safety and health standards promulgated under this act. These requirements shall be included in all leases of the employer and in all contracts with individuals and contractors who provide services to the employer.

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

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

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

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

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

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

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

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

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

(6) Providing 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 secretary. 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.

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

(1) Occupy, maintain or permit a public employee to be

in a workplace that is not free from recognized hazards that cause or may cause death, serious physical harm or illness to employees.

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

Section 303. Powers and duties of department.

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

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

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

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

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

(4) Either alone or in conjunction with the State Workers' Insurance Board or the Department of Health, preparing and maintaining morbidity and accident statistics relating to public employees.

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

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

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

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

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

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

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

(12) In the event of an emergency or unusual situation, providing for an emergency temporary standard to take

immediate effect upon publication in newspapers of general circulation in Philadelphia, Pittsburgh, Harrisburg, Wilkes-Barre, Scranton and Erie, in accordance with 1 Pa. Code § 13.74 (relating to effectiveness prior to publication), if the department deems that:

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

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

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

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

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

(15) Employing assistants, experts, inspectors, hearing officers, consultants, occupational safety and health specialists, and other employees sufficient to carry out the purposes of this act.

(16) Collecting, maintaining and making available the

following statistics for each public employer:

(i) The number of inspections requested.

(ii) The number of inspections completed.

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

(iv) The number and amount of penalties assessed.

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

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

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

(20) Promulgating advisory recommendations for the establishment of safe numbers of firefighters assigned to each firefighting rig or apparatus to insure the public safety and protect the health and lives of the employees

performing those services. The secretary shall appoint a five-member Firefighters Safety Advisory Committee comprised of members knowledgeable in fire safety, including two members from affected bargaining units who have been designated by the relevant employee representative, for the purpose of developing such advisory recommendations which will insure the safety of firefighting personnel covered by this act. Before making its advisory recommendations, the committee shall consider such factors as community size, population and building patterns. The committee shall make its advisory recommendations and deliver its final report not later than one year after the effective date of this act.

Section 304. Advisory committee.

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

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

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

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

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

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

(c) Membership.--The advisory committee shall consist of 20 members appointed by the Governor for a term of four years each. One member shall be appointed from each of the following categories: fire service, fire service employees, municipalities, municipal employees, county governments, county

government employees, State government, State government employees, correctional institutions, correctional institution employees, local school boards, local school board employees, law enforcement, law enforcement employees, State hospitals and State hospital employees. Four members shall represent the public. The advisory committee shall select a chairperson from its own members, who shall serve a two-year term. Members shall be selected on the basis of their experience and competence in the field of occupational safety and health. In appointing employee members of the advisory committee, the Governor shall select these members from a list of candidates submitted by the relevant collective bargaining agent.

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

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

Section 305. Work environment inspectors.

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

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

(1) At any time, with or without prior notification, to enter and inspect any premises or workplace and take any

samples and photographs and make any examinations the inspector considers necessary to accomplish the purposes and goals of this act. In the event that entry is denied, the inspector shall notify the department, which may compel such entry through the appropriate legal process. The department may secure an order compelling entry by petitioning the Commonwealth Court to grant such petition upon a showing that entry has been denied.

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

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

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

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

Section 306. Work environment committees.

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

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

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

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

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

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

(e) Membership.--

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

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

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

(iii) For each 100 employees beyond 400 - 2 additional members. Additional members under this subparagraph may not exceed 12.

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

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

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

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

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

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

(2) Receiving, considering and disposing of concerns and complaints respecting the safety and health of the employees.

(3) Maintaining records in connection with the receipt

and disposition of concerns and complaints and other committee activities.

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

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

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

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

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

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

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

(11) Receiving from the public employer, at least 60 days in advance of implementation, notice concerning a change in workplace technology or process or an introduction into the workplace of a hazardous substance, harmful agent, infectious agent or safety hazard which has not previously

been recognized by the work environment committee for that workplace.

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

(g) Meetings.--

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

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

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

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

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

(6) Members of committees shall suffer no loss in wages, benefits or seniority for time spent on committee business.

(h) Training.--Every committee member shall be entitled to

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

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

(j) Work environment representative.--

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

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

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

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

prominently in the workplace the name of the work environment representative.

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

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

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

Section 307. Inspections.

(a) Report to work environment committee.--Any employee who believes that a violation of a safety or health standard rule or regulation exists, or that there is a threat of harm to an employee's health or safety, shall report such violation or threat of harm to the work environment committee. Within three working days of the receipt of such report, the work environment committee shall determine whether a violation or threat of harm exists, and upon such determination, recommend to the public employer corrective actions which will eliminate the violation or threat of harm. The work environment committee may also exercise its authority under section 306 when it determines such action is necessary. Nothing in this subsection shall preclude

the work environment committee from requesting an inspection by the department.

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

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

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

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

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

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

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

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

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

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

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

(k) Subpoena.--In making inspection and investigations under this act, the secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth. In case of contumacy or failure or refusal of a person to obey an order, a court of competent jurisdiction shall have jurisdiction to issue to the person an order requiring the person to appear to produce evidence, if asked, and, when ordered, to give testimony relating to the matter under investigation or in question. Failure to obey an order of the court may be punishable by the court as a contempt.

Section 308. Recordkeeping.

(a) Records required.--In accordance with the department's regulations, each public employer shall make, keep and preserve, and make available to the department, the records regarding its activities relating to this act as the department deems necessary or appropriate for developing information regarding

the causes and prevention of occupational accidents and illness. The regulations may include provisions requiring public employers to conduct periodic inspections. The department shall also issue regulations requiring that public employers, through posting of notices, training or other appropriate means, keep their employees informed of their rights to protection.

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

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

Section 309. Adverse action against employees.

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

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

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

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

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

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

(1) Cease the adverse action and reinstate the employee

to the employee's former employment without loss of pay, contractual and noncontractual rights, or benefits.

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

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

Section 310. Right to work under safe conditions.

(a) General rule.--

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

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

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

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

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

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

(b) Temporary assignments.--Notwithstanding any other

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

Section 311. Asbestos abatement.

(a) Program establishment.--The department shall establish an asbestos abatement program as described in this section.

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

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

(2) Maintain records of findings.

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

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

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

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

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

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

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

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

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

(f) Compensation.--

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

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

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

(h) Hearings.--

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

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

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

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

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

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

Section 313. Variances.

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

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

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

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

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

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

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

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

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

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

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

(5) A certification that the employer has informed its employees of the application:

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

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

(iii) by other appropriate means.

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

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

(e) Limitation of action.--A person who may be adversely affected by an order issued under this act may challenge the validity or applicability of the order within 120 days from the date of issuance, as provided in section 310.

CHAPTER 5

ENFORCEMENT

Section 501. Enforcement orders.

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

Section 502. Imminent danger.

If a work environment inspector concludes that an activity being carried on or scheduled to commence involves or will involve a risk of serious personal injury or harm and that the risk of such injury or harm is imminent, the inspector shall require that the work cease. The inspector may stop work-related and non-work-related activities in the vicinity of the imminent danger if such action is needed to protect the health and safety of other persons. If, upon inspection, the work environment inspector finds an imminent danger to exist, the inspector shall order the immediate abatement of the dangerous situation. Before the employer may recommence the activity, the inspector must

certify that the employer has come into compliance with this act.

Section 503. Citations.

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

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

Section 504. Notice of penalty.

If the department has reason to believe that an employer has failed to correct the violation for which a citation has been issued within the period permitted for correction, it shall notify the employer by certified mail of the failure and of the penalty proposed to be assessed under section 509 because of

such failure. In the case of a review proceeding initiated by the employer under this chapter in good faith and not solely for delay or the avoidance of penalties, the period permitted for correction of the violation shall not begin to run until the entry of a final order by the board. Notification by the department shall inform the employer that it has 15 working days from receipt of notice within which to notify the department that it wishes to contest the notification or the proposed assessment of the penalty. If, within 15 days from receipt of notification under this section, the employer fails to notify the department that it intends to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be deemed a final order of the board and not subject to review by court or agency.

Section 505. Proceedings by department.

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

Section 506. Injunctive relief.

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

imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or, where a cessation of operations is necessary, to permit it to be accomplished in a safe and orderly manner.

Section 507. Failure of secretary to act.

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

Section 508. Follow-up inspection.

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

Section 509. Penalties.

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

(1) Except as provided in paragraphs (3) and (4), an

employer who has received a citation for a violation of section 302 or of a standard, rule, regulation or order promulgated or issued under this act may be assessed a civil penalty of not more than $1,000 for each violation.

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

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

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

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

(4) An employer who violates posting requirements prescribed or established under this act shall be assessed a

civil penalty of not more than $1,000 for each violation.

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

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

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

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

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

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

Section 510. Civil actions.

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

against the board for failure to enforce this act or a rule or regulation promulgated under this act.

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

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

CHAPTER 11

MISCELLANEOUS PROVISIONS

Section 1101. Severability.

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

Section 1102. Repeals.

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

Section 1103. Effective date.

This act shall take effect in 120 days.