No. 1984-147

AN ACT

SB 987

Combining the radiation safety provisions of The Atomic Energy Development and Radiation Control Act and the Environmental Radiation Protection Act; empowering the Department of Environmental Resources to implement a comprehensive Statewide radiation protection program; further providing for the power of the Environmental Quality Board and for the duties of the Environmental Hearing Board; expanding the authority of the department to regulate other radiation sources; providing for radiation emergency response; establishing requirements for transport of spent reactor fuel; establishing fees; providing penalties; making repeals; and authorizing and directing the Department of Environmental Resources and the Governor to convey ownership to the Carl A. White Acid Mine Drainage Treatment Plant, situated in Washington Township, Indiana County, Pennsylvania, to the County of Indiana, subject to a right of reverter for stated conditions.

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

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Radiation Protection Act.

Section 102. Legislative findings.

The General Assembly hereby determines, declares and finds that, since radiation exposure has the potential for causing undesirable health effects, the citizens of the Commonwealth should be protected from unnecessary and harmful exposure resulting from use of radioactive materials, radiation sources, accidents involving nuclear power and radioactive material transportation. It is the purpose of this act to:

(1) Establish and maintain a comprehensive program of radiation protection in the Department of Environmental Resources.

(2) Provide for the licensing and regulation in cooperation with the Federal Government, other State agencies and appropriate private entities of radiologic equipment and procedures.

(3) Maintain a comprehensive environmental radiation monitoring program around nuclear power plants and at other locations throughout the Commonwealth.

(4) Establish a nuclear safety program to make evaluations of all nuclear power plants in the Commonwealth, such evaluations restricted to the specific use of the Secretary of Environmental Resources and his designees authorized by law for the purpose of informing the Governor, the General Assembly and concerned and affected Federal, State and local government organizations. It is not the intent of the act to duplicate or conflict with any aspect of the exclusive Federal regulatory authority applicable to nuclear power plants and licensed plant operators but rather

to provide the Commonwealth with requisite, qualified professional nuclear expertise to maintain a competent and continuing awareness of nuclear power plant activities throughout this Commonwealth and to exclusively employ that expertise for the appropriate and authorized needs of the Commonwealth when such activities may have a significant potential for consequences beyond the site of a nuclear power plant. Accordingly, except as expressly and directly stated, none of the provisions of Chapter 3 are applicable to nuclear power plants and licensed plant operators.

(5) Maintain a technical emergency radiation response capability within the Department of Environmental Resources, in conjunction with the Pennsylvania Emergency Management Agency, to respond to accidents at nuclear power plants or at any other location throughout the Commonwealth.

(6) Assume licensing and regulatory responsibility for radioactive materials from the Federal Government. This act shall not authorize the department to license or operate low-level radioactive waste disposal sites.

(7) Carry out comprehensive remedial action programs.

(8) Establish in the Pennsylvania Emergency Management Agency a comprehensive radiation emergency response program supported by fees from the nuclear industry.

(9) Establish a Radiation Transportation Emergency Response Plan and Procedures for notification of spent nuclear fuel shipments, Pennsylvania State Police escort and establishing fees.

(10) Establish fees.

(11) Provide for notification by nuclear power facility operating licensees of municipalities within the vicinity of nuclear power facilities of unusual radioactivity.

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:

"Abatement." Any action deemed necessary by the department to protect public health, safety or welfare, or public or private property, resulting from the use of a radiation source.

"Agency." The Pennsylvania Emergency Management Agency.

"Council." The Pennsylvania Emergency Management Council.

"Department." The Department of Environmental Resources and its authorized representatives.

"Director." The Director of the Pennsylvania Emergency Management Agency.

"Electronic product radiation." Any radiation emitted by products subject to the Radiation Control for Health and Safety Act of 1968 (Public Law 90-602, 82 Stat. 1173).

"NRC." The United States Nuclear Regulatory Commission or any predecessor or successor thereto.

"Person." An individual, corporation, firm, association, public utility, trust, estate, public or private institution, group, agency, political subdivision of the Commonwealth, any other state or political subdivision or agency thereof and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission or any successor thereto. In any provision of this act prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

"PSP." The Pennsylvania State Police.

"Radiation." Any ionizing radiation or electronic product radiation.

"Radiation source." An apparatus or material, other than a nuclear power reactor and nuclear fuel located on a plant site, emitting or capable of emitting radiation.

"Radiation source user." A person who owns or is responsible for a radiation source.

"Secretary." The Secretary of Environmental Resources or his authorized representative.

"Spent nuclear fuel." Fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

CHAPTER 2
FEDERAL-STATE AGREEMENTS

Section 201. Federal-State agreements.

The Governor, on behalf of this Commonwealth, is authorized to enter into agreements with Federal agencies for discontinuance of certain of the Federal Government's activities with respect to radiation protection and the assumption thereof by the Commonwealth.

CHAPTER 3
RADIATION PROTECTION

Section 301. Powers and duties of Department of Environmental Resources.

(a) Regulation in general.—The department is hereby designated as the agency of the Commonwealth for the purpose of registration, licensing, regulation and control of radiation, radiologic procedures, radiation sources and users of radiation sources but, notwithstanding anything in this act to the contrary, shall not have the power to license or regulate telecommunications equipment in duplication of any activity regulated by the Federal Government.

(b) Employees.—In accordance with the law of this Commonwealth, the department shall employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this act.

(c) Powers and duties.—The department shall have the power and its duties shall be to:

(1) Develop and conduct programs for evaluation of hazards associated with the use of radiation sources and with radiation source users.

(2) Develop and conduct comprehensive programs for the registration, licensing, control, management, regulation and inspection of radiation sources and radiation source users.

(3) Prevent and remedy hazards associated with the misuse of any device emitting electronic product radiation.

(4) Issue such orders or modifications thereof as may be necessary in conjunction with proceedings under this act.

(5) Carry out a comprehensive program of monitoring levels of radioactivity in Pennsylvania's environment, including all appropriate tests for alpha, beta and gamma levels in all appropriate media. Sites to be monitored shall include, but not be limited to, nuclear power reactor sites, other nuclear fuel cycle or research facilities, other sites with a substantial potential for environmental radioactivity contamination and other locations in the Commonwealth recommended by other agencies of the Commonwealth.

(6) Using personnel qualified by education, training and experience, enter nuclear power plants at times and in numbers as are reasonable under the circumstances to observe, identify and assess radiation safety issues for each nuclear power plant site in the Commonwealth.

(7) Develop, prepare and submit to the Senate Environmental Resources and Energy Committee and House Conservation Committee, within two years of the effective date of this act, a plan to provide the department with independent monitoring capabilities at all nuclear facilities in the Commonwealth in order to identify events requiring remedial action to protect the public from radiation exposure.

(8) Prepare a technical emergency radiation response plan for incorporation into the Pennsylvania Emergency Management Plan developed by the Pennsylvania Emergency Management Agency pursuant to Title 35 of the Pennsylvania Consolidated Statutes (relating to health and safety), and provide the capability for responding to emergencies at each nuclear power plant and at other important locations throughout the Commonwealth.

(9) Make available technical staff and equipment to determine levels of radiation in the environment and identify emergency measures to protect the public from exposure to such radiation in the event of an accident at a nuclear power plant, a transportation accident involving radioactive materials or any other condition or occurrence which necessitates radiation emergency assistance at any location in the Commonwealth.

(10) Advise the Governor, the General Assembly and the general public with regard to nuclear safety, nuclear emergencies, radioactive waste management, environmental monitoring results and other radiation control activities and consult and cooperate with the various departments, agencies and political subdivisions of the Commonwealth, the Federal Government, other states, interstate agencies, political subdivisions and with groups and individuals, including members of the public, concerned

with radiation safety and participate in matters before the Nuclear Regulatory Commission or its successor and other appropriate agencies and courts of the United States.

(11) Accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from any source, public or private, including the Federal Government, provided any funds received shall be subject to appropriation by the General Assembly.

(12) Encourage, participate in or conduct studies, investigations, training, research, remedial actions and demonstrations relating to control, regulation and monitoring of radiation sources.

(13) Collect and disseminate information related to nuclear power, the control of radiation sources, radiation protection, emergency response and the effects of radiation exposure.

(14) Establish special advisory committees as may be necessary to assist the department in drafting rules and regulations and to advise the department regarding implementation of specific portions of the regulations or specific programs of the department. Each committee shall include members of the general public. Members of these committees may be reimbursed by the department for reasonable and necessary expenses incurred in connection with their duties as approved by the secretary.

(15) Issue registrations and licenses and specify the terms and conditions thereof. This is not intended to require registration and licenses of facilities and activities within the exclusive jurisdiction of the Nuclear Regulatory Commission.

(16) Require the payment of and collect fees established under Chapter 4.

(17) Issue orders and institute proceedings in courts against any person or municipality to compel compliance with this act, any rule or regulation, any order of the department or the terms and conditions of any registration or license.

(18) Institute prosecutions against any person or municipality for violation of this act.

(19) Assess civil penalties pursuant to section 308(e).

(20) Prepare a report on environmental radiation levels, as determined by the monitoring program, on at least an annual basis. Copies of the report shall be submitted to the President pro tempore of the Senate and the Speaker of the House of Representatives of the General Assembly and shall be made available to the general public. The report shall also contain a description and analysis of any emergency responses or other actions taken by the department under this act and any other information about environmental radiation or radiation emergencies which the department deems to be of sufficient importance to call to the attention of the General Assembly and the citizens of the Commonwealth.

(21) Administer a program, funded by the General Assembly, to assist in the decontamination of damaged nuclear power reactors.

(22) Do any and all other acts not inconsistent with any provision of this act which it may deem necessary or proper for the effective enforcement of this act.

(d) Notification.—Whenever the department, in the course of its powers and duties as set forth in subsection (c), determines that levels of radiation exceed the normal range of radioactivity in a given area, the department shall immediately notify the Governor, the agency and the NRC and shall also report its findings to the public and it shall subsequently submit a detailed report on the occurrence to both the Governor and the NRC and shall make such report public.

Section 302. Powers of Environmental Quality Board.

(a) Powers and duties.—The Environmental Quality Board or its successor shall have the power and its duty shall be to adopt the rules and regulations of the department to accomplish the purposes and carry out the provisions of this act.

(b) Review of fee structure.—The Environmental Quality Board or its successor shall review every four years the fee structure as authorized by sections 401 and 402(b).

Section 303. Licensing and registration.

(a) Authority.—The department is authorized to license radiation source users and register any radiation sources.

(b) Exemption.—The department shall be exempt from the licensing and registration requirements of this act and is authorized to exempt certain radiation sources and users from this act provided the department determines that such action will constitute an insignificant risk to the health and safety of the public and to persons exposed to radiation sources.

(c) Approval of transfer.—No license issued under this act and no right to possess or utilize radiation sources granted by any license shall be assigned, or in any manner disposed of, without the approval of the department.

(d) Terms and conditions of licenses.—The terms and conditions of all licenses issued under this act shall be subject to amendment, revision or modification by rules, regulations or orders issued in accordance with this act.

(e) Recognition of other licenses.—Rules and regulations promulgated under this act may provide for recognition of other state or Federal licenses.

Section 304. Records.

(a) General rule.—Each person who possesses or uses any radiation source shall maintain records relating to its receipt, storage, transfer or disposal, and such other records as the department may require, subject to any exemptions as may be provided by rules or regulations.

(b) Personnel radiation exposure records.—Each person who possesses or uses a radiation source shall maintain appropriate records of personnel radiation exposure, as mandated by the rules and regulations of the department. Copies of these records and those required to be kept by subsection (a) shall be submitted to the department on written request. Any person possessing or using a radiation source shall furnish upon a reasonable request to each employee for whom personnel monitoring is required or to the employee's representative, a copy of the employee's personal exposure record as the department, by rule or regulation, may prescribe.

Section 305. Inspection.

(a) Authority.—The department or its duly authorized representatives shall have the power to enter at all reasonable times with sufficient probable cause upon any public or private property, building, premise or place, for the purposes of determining compliance with this act, any license conditions or any rules, regulations or orders issued under this act. In the conduct of an investigation, the department or its duly authorized representatives shall have the authority to conduct tests, inspections or examinations of any radiation source, or of any book, record, document or other physical evidence related to the use of a radiation source.

(b) Search warrant.—An agent or employee of the department may apply for a search warrant, to an issuing authority, for the purposes of testing, inspecting or examining any radiation source or any public or private property, building, premise, place, book, record or other physical evidence related to the use of the radiation source. A warrant shall be issued only upon probable cause. It shall be sufficient probable cause to show any of the following:

(1) The test, inspection or examination is pursuant to a general administrative plan to determine compliance with this act.

(2) The agent or employee has reason to believe that a violation of this act has occurred or may occur.

(3) The agent or employee has been refused access to the radiation source, property, building, premise, place, book, record, document or other physical evidence related to the use of the radiation source or has been prevented from conducting tests, inspections or examinations.

Section 306. Conflicting laws.

Ordinances, resolutions or regulations now or hereafter in effect of the governing body of any agency or political subdivision of this Commonwealth relating to radiation or radiation sources shall be superseded by this act if such ordinances or regulations are not in substantial conformity with this act and any rules and regulations issued hereunder.

Section 307. Prohibited uses and acts.

It shall be unlawful for any person to use, manufacture, produce, transport, transfer, bury, receive, acquire, own, possess or dispose of any radiation source in violation of this act. It shall be unlawful for any person to operate an unregistered radiation source or to operate a radiation source or to administer a radiologic procedure without a license to do so where a license or registration is required by the department by rule or regulation.

Section 308. Penalties.

(a) Summary offense.—Any person, other than a municipal official exercising his official duties, who violates any provisions of this act or any rules or regulations or order promulgated or issued hereunder commits a summary offense and shall, upon conviction, be sentenced to pay a fine not less than $100 and not more than $1,000 for each separate offense and in default thereof shall be imprisoned for a term of not more than 30 days. All summary proceedings under this act may be brought before any district justice or magistrate in the county where the offense was committed and to

that end jurisdiction is hereby conferred upon district justices and magistrates, subject to appeal by either party in the manner provided by law.

(b) Misdemeanor.—Any person, other than a municipal official exercising his official duties, who violates any provision of this act or any rule or regulation or order promulgated or issued hereunder, within two years after having been convicted of any summary offense under this act, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $1,000 but not more than $25,000 for each separate offense or imprisonment in the county jail for a period of not more than one year, or both.

(c) Felony.—Any person who intentionally, knowingly or recklessly violates any provision of this act, or any rule or regulation or order of the department or any term or condition of any permit, and whose acts or omissions cause or create the possibility of a public nuisance or bodily harm to any person, commits a felony of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $2,500 but not more than $100,000 per day for each violation, or to a term of imprisonment of not less than one year but not more than ten years, or both.

(d) Separate offense for each day.—Each day of continued violation of any provision of this act or any rule or regulation or order promulgated or issued pursuant to this act shall constitute a separate offense.

(e) Civil penalty.—In addition to proceeding under any other remedy available at law or in equity for a violation of this act or a regulation or order of the department promulgated or issued hereunder, the department may assess a civil penalty upon the person for the violation. This penalty may be assessed whether or not the violation was willful or negligent. The civil penalty shall not exceed $25,000 plus $5,000 for each day of continued violation. In determining the civil penalty, the department shall consider, where applicable, the willfulness of the violation, gravity of the violation, good faith of the person charged, history of the previous violations, danger to the public health and welfare, damage to the air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration or abatement, savings resultant to the person in consequence of the violation and any other relevant facts. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, to file within a 30-day period an appeal of the action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. Civil penalties shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for collection of debts. If any person liable to pay a penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person, but only after same has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit to prothonotaries of the respective counties

certified copies of all such liens and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

Section 309. Enforcement and abatement.

(a) Public nuisance.—Any violation of this act or of any rule, regulation or order of the department or of any term or condition of any license or registration issued under this act shall constitute a public nuisance. Any person committing the violation shall be liable for the costs of abatement of the nuisance. The Environmental Hearing Board and every court of common pleas are hereby given jurisdiction over actions to recover the costs of the abatement.

(b) Orders.—In addition to other remedies provided under this act or any other act, to aid in the enforcement of this act, the department may issue orders to persons as it deems necessary to protect health and safety. These orders may include an order modifying or revoking registrations or licenses, orders to cease unlawful activities or other acts involving radiation sources that are determined by the department to be detrimental to the public health and safety and such other orders as the department deems necessary to abate public nuisances. An order issued under this subsection shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not act as a supersedeas. It shall be the duty of any person to comply with any order issued under this subsection. Any person who fails to comply with an order issued under this subsection shall be guilty of contempt and shall be punished in an appropriate manner by the Commonwealth Court, which court is hereby granted jurisdiction, upon application by the department.

(c) Injunction.—In addition to any other remedies provided for in this act, the department may institute a suit in equity in the name of the Commonwealth for an injunction to restrain a violation of this act or the rules, regulations or orders adopted or issued hereunder, or to restrain the maintenance or threat of a public nuisance. In any such proceeding the court shall, upon motion by the department, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct or is engaged in conduct which is causing immediate and irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings.

(d) Impoundment, etc.—The department shall have the authority to impound any radiation source or to take other actions as are necessary to abate a public nuisance wherever the department believes that this action is necessary to protect the health and safety of the public.

(e) Emergency order.—Whenever the secretary finds that an emergency exists requiring immediate action to protect the public health and safety, the secretary may issue an emergency order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet the emergency. This order shall be effective immediately. Any person to whom this order is directed shall comply therewith immediately, unless a supersedeas is granted by the Environmental Hearing Board.

(f) Revocation of licenses or permits.—Repeated violations of any provisions of this act or any rules and regulations of the department promulgated under the authority of this act or nonpayment of fees or penalties shall be cause for revocation of licenses or permits issued by the department under this act.

Section 310. Liberal construction.

The penalties and remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of any remedy shall not prevent the department from exercising any other remedy at law or in equity. No provision of this act or any action taken by virtue of this act, including the granting of a registration or license, shall be construed as estopping the Commonwealth from proceeding in courts of law or equity to abate nuisances under existing law, nor shall this act in any other manner abridge or alter rights of action or remedies now or hereafter existing in equity or under the common law or statutory law, criminal or civil, exercised by the Commonwealth or any person to enforce their rights or to abate any nuisance, now or hereafter existing, in any court of competent jurisdiction.

CHAPTER 4
FEES

Section 401. Licensing and registration fees.

The department shall, by rule and regulation, set reasonable annual fees for the registration of radiation sources and the licensing of radiation source users. These fees shall be in an amount at least sufficient to cover the costs of administering the programs.

Section 402. Nuclear facility fees.

(a) General rule.—Persons engaged in the business of producing electricity utilizing nuclear energy, operating facilities for storing away-from-reactor spent nuclear fuel for others or fabrication of nuclear fuel or shipping spent nuclear fuel shall pay fees to cover the costs of the programs related to their activities as required by this act.

(b) Department fees.—Each person who has received a nuclear power reactor facility construction permit or operating license from the NRC shall pay to the department within 30 days of the effective date of this act and by July 1 of each year an annual fee of $150,000 per power reactor, regardless of the number of reactors per site.

(c) Agency fees.—

(1) Each person who has received or has applied for a nuclear power reactor facility operating license from the NRC shall pay to the agency a one-time fee of $200,000 per site within 30 days of the effective date of this act and an annual fee of $100,000 per site payable by July 1 of each year, regardless of the number of power reactors per site.

(2) Each person who has applied for or received a valid license from the NRC to operate an away-from-reactor spent fuel storage facility shall pay to the agency an annual fee of $50,000 per site payable by July 1 of each year.

(3) Each person who has applied for or received a valid license from the NRC to operate a reactor fuel fabrication facility shall pay to the agency an annual fee of $50,000 per site payable by July 1 of each year.

(4) Each shipper of spent reactor fuel to, within, through or across the boundaries of this Commonwealth shall pay to the agency a fee of $1,000 per shipment, payable prior to the proposed date of shipment.

(d) PSP fees.—

(1) Each shipper of spent reactor fuel to, within, through or across the Commonwealth shall reimburse the PSP for escort service at the following rates: $20 per hour per officer and 50¢ per mile for highway shipments. Rail shipments shall be based on a rate of $25 per hour per officer. If the shipment is canceled following PSP notification, the shipper shall compensate the PSP at an appropriate rate for four hours of officers' time.

(2) The PSP may adjust the rates by regulation as prevailing wage rates and transportation costs change.

(e) Penalties.—Any person violating any provision of this chapter shall be subject to the penalties and enforcement provisions of section 309(a) and (b).

Section 403. Creation of special funds.

(a) Radiation Protection Fund.—There is hereby created in the General Fund a restricted account to be known as the Radiation Protection Fund. Fees and penalties received under sections 401 and 402(b) shall be deposited in this fund and are hereby appropriated to the department for the purpose of carrying out its powers and duties under this act.

(b) Radiation Emergency Response Fund.—There is hereby created in the General Fund a restricted account to be known as the Radiation Emergency Response Fund. Fees received under section 402(c)(1), (2) and (3) shall be deposited in this fund as provided and are hereby appropriated to the agency for the purpose of carrying out its responsibilities under Chapter 5.

(c) Radiation Transportation Emergency Response Fund.—There is hereby created in the General Fund a restricted account to be known as the Radiation Transportation Emergency Response Fund. Fees received under section 402(c)(4) shall be deposited in this fund and are hereby appropriated to the agency for the purpose of carrying out its responsibilities under Chapter 6.

CHAPTER 5
RADIATION EMERGENCY RESPONSE PROGRAM

Section 501. Declaration of policy.

It is the policy of the General Assembly to protect the people of the Commonwealth against adverse health effects resulting from radiation accidents by establishing a mechanism for emergency preparedness to mitigate the effects of such accidents. The General Assembly finds that it is appropriate for the nuclear industry in the Commonwealth to bear the costs associated with preparing and implementing plans to deal with the effects of nuclear accidents or incidents.

Section 502. Response program.

In conjunction with the department, the agency shall develop a Radiation Emergency Response Program for incorporation into the Pennsylvania Emergency Management Plan development by the agency pursuant to Title 35 of the Pennsylvania Consolidated Statutes (relating to health and safety). Any volunteer organizations which are incorporated into the Radiation Emergency Response Program developed under the authority of this act shall be consulted prior to such incorporation. The Radiation Emergency Response Program shall include an assessment of potential nuclear accidents or incidents, the radiological consequences and necessary protective measures required to mitigate the effects of such accidents or incidents. The program shall include, but not be limited to:

(1) Development of a detailed fixed nuclear emergency response plan for areas surrounding each nuclear electrical generation facility, nuclear fabricator and away-from-reactor storage facility. The term "areas" shall be deemed to mean the emergency response zone designated by the NCR Emergency Response Plan applicable to each such fixed nuclear facility.

(2) Notification by nuclear power facility operating licensees of municipalities within the areas set forth in paragraph (1) of unusual radioactivity as defined in section 301(d).

(3) Training and equipping of State and local emergency response personnel.

(4) Periodical exercise of the accident scenarios designated in the NRC Emergency Response Plan applicable to each fixed nuclear facility.

(5) Procurement of specialized supplies and equipment.

(6) Provisions for financial assistance to municipalities, school districts, volunteer and State agencies as provided for in section 503.

Section 503. Financial assistance program.

(a) General provisions.—Applications by municipalities, school districts, volunteer organizations and State agencies to pay personnel, conduct training or purchase protective supplies and equipment principally required to carry out the purposes of Chapters 5 and 6 shall be made to the agency which shall make the disbursements pursuant to regulations promulgated by the council.

(b) *Reimbursement provisions.*—Municipalities, school districts, volunteer organizations and State agencies may apply for reimbursement of costs not previously recouped or to be reimbursed from other sources which were required to be expended, as a direct result of the preparation, establishment and testing of emergency response plans surrounding each nuclear electrical generation facility, for personnel costs, training expenses and protective supplies and equipment on or after March 28, 1979.

(c) Reports.—On September 1 of each year, the agency shall submit a report on its operations for the preceding fiscal year to the Governor and the General Assembly. The report shall include a summary of the activities of the Radiation Emergency Response Program and activities pursuant to shipments of spent fuel, as provided for in Chapters 5 and 6, respectively, as well as a proposed operating budget, financial statement and a listing of applica-

tions received and disbursements or reimbursements made to municipalities, school districts, volunteer organizations and State agencies pursuant to Chapters 5 and 6 and an analysis of the adequacy of fees established pursuant to section 402(c).

CHAPTER 6
TRANSPORTATION OF SPENT NUCLEAR FUEL

Section 601. General rule.

It is unlawful for any person to transport upon the highways or rails of this Commonwealth any spent nuclear fuel unless that person notifies the agency in advance of transporting the spent nuclear fuel in accordance with 10 C.F.R. 71.5(a) and (b).

Section 602. Escort requirements.

All shipments of spent nuclear fuel to, within, through or across the boundaries of the Commonwealth shall be escorted by the Pennsylvania State Police.

Section 603. Authorization.

Spent nuclear fuel shipments shall be authorized subject to the Commonwealth's authority to delay individual highway and rail shipments due to specific holiday or safety considerations including, but not limited to, weather, highway or rail conditions.

Section 604. Radiation Transportation Emergency Response Plan.

(a) Planning.—The agency shall develop the Transportation Emergency Response Plan to respond to accidents involving the shipment of spent fuel. The plan shall:

(1) Incorporate local agencies and volunteer organizations along the preprescribed routes for transport of spent fuel.

(2) Incorporate any Commonwealth agency responsible for protection of the health and safety of the public as necessary and approved by the specific agency.

(b) Funding of State and local agencies.—Funds received under section 402(c)(4) shall be used to train and equip State and local agencies and volunteer organizations in accordance with regulations adopted by the council to implement the plan.

CHAPTER 7
MISCELLANEOUS PROVISIONS

Section 701. Transition provisions.

All registrations, licenses and orders issued and regulations promulgated under the act of January 28, 1966 (1965 P.L.1625, No.578), known as The Atomic Energy Development and Radiation Control Act, shall remain in full force unless and until modified, amended, suspended or revoked and all appropriations, allocations, personnel, agreements, leases, claims, demands and causes of action of any nature and equipment, files, records, real estate, personal property and all other materials owned, used, employed or expended in connection with that act by the Department of Commerce are hereby transferred to the Department of Environmental Resources.

Section 702. Repeals.

The following acts are repealed:

Act of January 28, 1966 (1965 P.L.1625, No.578), known as The Atomic Energy Development and Radiation Control Act.

Act of July 20, 1979 (P.L.151, No.49), known as the Environmental Radiation Protection Act.

Section 703. Conveyance.

(a) Authority.—The Department of Environmental Resources, with the approval of the Governor, is hereby authorized and directed on behalf of the Commonwealth to convey ownership in the building named the Carl A. White Acid Mine Drainage Treatment Plant, situated in Washington Township, Indiana County, Pennsylvania, hereinafter referred to as the plant, to the County of Indiana, Pennsylvania for the following purposes: The County of Indiana, or its designee, shall utilize all or part of the plant, which is currently shut down, to treat brines produced from oil and gas wells, with the treatment of brines produced from oil and gas wells in the Commonwealth to be given priority in all respects; and, if and when directed by the department, shall utilize a maximum of 50% of the plant to treat abandoned mine acid discharge flowing in the Crooked Creek Watershed. If and when the department shall deem treatment of such abandoned mine acid discharge to be feasible, it shall notify the County of Indiana, or its designee, of the quantity of such discharges to be treated and the required quality of the effluent; provided, however, that such treatment shall not require the utilization of more than 50% of the plant.

(b) Reversion.—If, for any reason whatsoever, the County of Indiana, or its designee, shall discontinue the utilization of the Carl A. White Acid Mine Drainage Treatment Plant for the treatment of oil and gas well brines, or shall fail to treat any abandoned mine acid discharges which the department has determined to be necessary and feasible to treat, then, and in that event, ownership and possession of the plant shall revert to the department, and the department shall have the option of continuing the operation of the plant for the treatment of abandoned mine acid discharge or of dismantling the plant. If, in the event of such reverter, the department shall elect to continue the operation of the plant for the treatment of abandoned mine acid discharge, it shall so notify the County of Indiana, or its designee, and the plant shall be returned to the department in the same condition that it was in when transferred to the county. The county, or its designee, shall bear any costs for returning the plant to said condition.

(c) Approval and execution.—The agreement of ownership shall be approved as provided by law and shall be executed by the Secretary of Environmental Resources in the name of the Commonwealth of Pennsylvania.

Section 704. Effective date.
This act shall take effect in 15 days.

APPROVED—The 10th day of July, A. D. 1984.

DICK THORNBURGH

No. 1985-120

AN ACT

SB 417

Providing for an Appalachian States Low-Level Radioactive Waste Compact.

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

Section 1. Agreement.

The Commonwealth of Pennsylvania hereby solemnly covenants and agrees with the state of West Virginia, any eligible states as defined in Article 5(A) of this compact and the United States of America, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, as follows:

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

Preamble

Whereas, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. §§ 2021b - 2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste;

Whereas, Under section 4(a)(1)(A) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. § 2021d(a)(1)(A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders;

Whereas, To promote the health, safety and welfare of residents within, the Commonwealth of Pennsylvania and other eligible states as defined in Article 5(A) of this compact shall enter into a compact for the regional management and disposal of low-level radioactive waste.

Now, therefore, the Commonwealth of Pennsylvania and the state of West Virginia and other eligible states hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

Article 1
Definitions

As used in this compact, unless the context clearly indicates otherwise:

(a) "Broker" means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

(b) "Carrier" means a person who transports low-level waste to a regional facility.

(c) "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.

(d) "Disposal" means the isolation of low-level waste from the biosphere.

(e) "Facility" means any real or personal property within the region, and improvements thereof or thereon, and any and all plant structures, machinery and equipment acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(f) "Generate" means to produce low-level waste requiring disposal.

(g) "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

(h) "Hazardous life" means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by Federal law or by standards to be set by a host state, whichever is more restrictive.

(i) "Host state" means Pennsylvania or other party state so designated by the Commission in accordance with Article 3 of this compact.

(j) "Institutional control period" means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

(k) "Low-level waste" means radioactive waste that:

(1) is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 as amended; and

(2) is classified by the Federal Government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal Government, as defined in Public Law 96-573, or Federal research and development activities.

(l) "Management" means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(m) "Operator" means a person who operates a regional facility.

(n) "Party state" means any state that has become a party in accordance with Article 5 of this compact.

(o) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

(p) "Region" means the combined geographical area within the boundaries of the party states.

(q) "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(r) "Shallow land burial" means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

(s) "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the Federal Government.

Article 2
The Commission

(A) Creation and Organization.

(1) Creation - There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

(2) Commission Membership - The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state and two additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than one-half the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office; provided, that no member shall have been employed by or be employed by a regional facility operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least three years after leaving office.

(3) Compensation - Members of the Commission and alternates shall serve without compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

(4) Voting Power - Each Commission member is entitled to one vote. Unless otherwise provided in this compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.

(5) Organization and Procedure -

(a) The Commission shall provide for its own organization and procedures and shall adopt by-laws not inconsistent with this compact and any rules and regulations necessary to implement this compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

(b) All meetings of the Commission shall be open to the public with at least 14 days' advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the Administrative Procedure Act (5 U.S.C. Ch.5, Subch.II, and Ch.7). The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least 14 days prior to the Executive Session, except that the chairman may convene an emergency meeting with less advance notice, in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting provision shall be null and void.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission, except for information privileged against introduction in judicial proceedings, personnel records and minutes of a properly convened Executive Session, shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 U.S.C. § 552) and applicable Pennsylvania law and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff, including an Executive Director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law, the Commission may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

(B) Powers and Duties.

The Commission:

(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

(b) Shall ensure, to the extent authorized by Federal law, that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state which generates 25 percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by Federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and Federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article 2(A)(5)(e) and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available, to the party states and to the public, information concerning low-level waste management and disposal needs, technologies and problems.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

(l) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

(m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this compact.

(n) Notwithstanding any other provision of this compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with non-party states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any Federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.

(C) Budget and Operation.

(1) Fiscal Year - The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

(2) Current Expense Budget - Upon legislative enactment of this compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:

Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed $200,000.

Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such costs will not exceed $100,000.

The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.

(3) Annual Budget Request - For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2(B)(k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

(4) Annual Report to Include Budget - The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit -

(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

(b) Each signatory party, by its duly authorized officers, shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

Article 3
Rights, Responsibilities and
Obligations of Party States

(A) Regional Facilities.

There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management, reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable Federal laws and regulations.

(B) Equal Access to Regional Facilities.

Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste, provided, however, that the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing within three (3) days of its action and shall, within thirty (30) working days, provide in writing the reasons for the closing.

(C) Initial Host State.

Pennsylvania and party states which generated 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the three years 1982 through 1984, are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

(D) Exemption From Being Initial Host State.

Party states which generated less than 25 percent of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the years 1982 through 1984, shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than the 25 percent threshold over successive 3-year periods. Once a state generates an average of 25 percent or more of the volume or curies generated by Pennsylvania over a successive 3-year period, it shall be designated as a "host state" for a 30-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

(E) Useful Life of Regional Facilities.

Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designed for at least a 30-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the Federal Government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a 3-year period 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania.

(F) Duties of Host State.

Each host state shall:

(a) Cause a regional facility to be sited and developed on a timely basis.

(b) Ensure by law, consistent with applicable state and Federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure or other regulation, operation, closure, decommissioning, long-term care and the institutional control period of the regional facility within the state. To the extent authorized by Federal law, a host state may adopt more stringent laws, rules or regulations than required by Federal law.

(c) Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste from its initial generation to the end of its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

(d) Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

(e) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

(f) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

(g) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

(h) Prohibit the use of any shallow land burial, as defined in Article 1(r), and develop alternative means for treatment, storage and disposal of low-level waste.

(i) Establish by law, to the extent not prohibited by Federal law, requirements for financial responsibility, including, but not limited to:

(i) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(ii) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventative or corrective measures of low-level waste to the regional facility; and

(iii) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers and operators as deemed necessary by the host state.

(G) Duties of Party State.

Each party state:

(a) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2(C)(2) and (3).

(b) To the extent authorized by Federal law, shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include, but are not limited to:

(i) Periodic inspections of packaging and shipping practices;

(ii) Periodic inspections of low-level waste containers while in custody of carriers; and

(iii) Appropriate enforcement actions with respect to violations.

(c) To the extent authorized by Federal law, shall, after receiving notification from a host state or other person that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regula-

tions upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

(d) Shall maintain a registry of all generators and quantities generated within the state.

(H) Liability.

In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

(I) Failure of Party State to Fulfill Obligations.

A party state which fails to fulfill its obligations, including timely funding of the Commission, may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal and equitable remedies available to the party states.

Article 4
Prohibited Acts and Penalties

(A) Prohibition.

It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

(B) Waste Disposed of Within Region.

After establishment of the regional facility(s), it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

(a) The impact on the health, safety and environmental quality of the citizens of the party states;

(b) The impact of importing waste on the available capacity and projected life of the regional facility;

(c) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Waste Generated Within Region.

Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Liability.

Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or Federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state the ability and willingness to comply with the law.

(E) Conflict of Interest.

(1) Prohibitions -

No commissioner, officer or employee shall:

(a) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

(b) Solicit or accept money or any other thing of value in addition to the expenses paid to him by the Commission for services performed within the scope of his official duties.

(c) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

(2) Forfeiture of Office or Employment -

Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

(3) Agreement Void -

Any contract or agreement knowingly made in contravention of this section is void.

(4) Criminal and Civil Sanctions -

Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by Federal law and the law of the signatory state in which such misconduct occurs.

Article 5
Eligibility, Entry Into Effect,
Congressional Consent, Withdrawal

(A) Eligibility.

Only the States of Pennsylvania, West Virginia, Delaware and Maryland are eligible to become parties to this compact.

(B) Entry into Effect.

An eligible state may become a party state by legislative enactment of this compact or by executive order of the governor adopting this compact; provided, however, a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless the legislature shall have enacted this compact before such adjournment.

(C) Congressional Consent.

This compact shall take effect when it has been enacted by the legislatures of Pennsylvania and one or more eligible states. However, Article 4(B) and (C) shall not take effect until Congress has consented to this compact. Every fifth year after such consent has been given, Congress may withdraw consent.

(D) Withdrawal.

A party state may withdraw from the compact by repealing the enactment of this compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal.

Article 6
Construction and Severability

(A) Construction.

The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

(B) Severability.

If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

Section 2. Repealer.

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

Section 3. Effectuation by Governor.

The Governor is authorized to take such action as may be necessary and proper in his discretion to effectuate the compact and the initial organization and operation of the Commission.

Section 4. Budgetary processes.

The term "budgetary processes" in Article 2(C)(2) of the compact shall be construed to include the presentation by the Commission of its proposed budget for each fiscal period to the Secretary of the Budget, in accordance with the rules and practices of the Commonwealth governing administrative agencies, for study and consideration by the Secretary of the Budget, and each such budget shall include a statement of moneys required to administer, manage and support the Commission during the ensuing fiscal period. The statement shall include any request for appropriation of funds by the Commonwealth and shall be accompanied by a tabulation of similar requests which the Commission makes or expects to make to each other signatory party, and the formula or factors upon which such respective requests are based. Further, the term "budgetary processes" as applied to the Commonwealth shall not be considered complied with until it includes appropriation by the General Assembly and the signing of the appropriation into law by the Governor.

Section 5. Effective date.
This act shall take effect immediately.

APPROVED—The 22nd day of December, A. D. 1985.

DICK THORNBURGH

No. 1986-62

AN ACT

HB 1934

Providing for a radon gas demonstration project; providing for a low-interest loan program for homes contaminated by radon gas infiltration; providing further duties of the Department of Environmental Resources and the Pennsylvania Housing Finance Agency; and making an appropriation.

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

Section 1. Short title.

This act shall be known and may be cited as the Radon Gas Demonstration Project and Home Improvement Loan Act.

Section 2. Radon Gas Demonstration Project.

(a) The Department of Environmental Resources shall have the power and its duty shall be to develop and implement, in cooperation with the United States Government and private industry, methods of remedial action to reduce unsafe levels of naturally occurring radon gas in residential buildings. The department may enter into contracts with builders, remodelers and other private contractors to assist the department in developing experimental or prototypic systems of remedial action. Such systems shall be installed or incorporated into occupied residential buildings with the permission of the owners. Upon completion, any and all materials so incorporated shall become fixtures of the property and shall not be removed without the consent of the property owner.

(b) The department shall establish minimum standards for materials and craftsmanship of contractors participating in this project. In addition, the department shall advise homeowners, in areas known to be affected by high radon concentrations, of ways to avoid unscrupulous or unqualified contractors.

Section 3. Low-interest home improvement loans.

(a) The Pennsylvania Housing Finance Agency is hereby authorized to establish a low-interest loan program to assist persons whose residences have been infiltrated by dangerous levels of radon gas to finance home improvements designed to either prevent such infiltration or avoid dangerous concentrations of radon gas from accumulating.

(b) The Pennsylvania Housing Finance Agency shall administer a low-interest loan program pursuant to the provisions of Article IV-B of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law.

(c) The Department of Environmental Resources shall establish minimum standards for materials and craftsmanship of contractors providing home improvements financed pursuant to this section and may assist the Pennsylvania Housing Finance Agency in the administration of the low-interest loan program.

Section 4. Sovereign immunity.

(a) The Department of Environmental Resources and the Pennsylvania Housing Finance Agency, and all employees, officers, officials and board members thereof, shall enjoy sovereign and official immunity from suit as provided by 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) for all actions taken pursuant to this act, and the limited waiver of sovereign immunity provided by 42 Pa.C.S. Ch. 85 (relating to matters affecting government units) shall not apply to actions taken within the scope of this act.

(b) Notwithstanding any other law to the contrary, the Pennsylvania Housing Finance Agency is a Commonwealth agency of the Commonwealth for all purposes, including, but not limited to, the assertion of sovereign immunity as provided by 1 Pa.C.S. § 2310 and, except as provided by subsection (a), the limited waiver of sovereign immunity as provided by 42 Pa.C.S. Ch. 85.

Section 5. Appropriation.

The sum of $1,000,000, or as much thereof as may be necessary, is hereby appropriated to the Department of Environmental Resources for the demonstration project authorized in section 2. Any funds remaining unexpended, unencumbered and uncommitted on June 30, 1987, shall lapse.

Section 6. Effective date.

(a) Section 5 of this act shall take effect July 1, 1986.

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

APPROVED—The 16th day of May, A. D. 1986.

DICK THORNBURGH

No. 1987-43

AN ACT

SB 137

Providing for certification of persons who perform radon testing and radon remediation; providing for the confidentiality of certain data; imposing penalties; and making an appropriation.

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

Section 1. Short title.

This act shall be known and may be cited as the Radon Certification Act.

Section 2. Legislative findings and intent.

(a) Findings.—The General Assembly finds and declares as follows:

(1) Radon levels in public and private buildings can present a significant health risk to the occupants.

(2) Property owners in affected areas should have their residences and other buildings tested for radon levels.

(3) Property owners do contract for measures to test and to reduce levels in specific buildings.

(4) Private consultants and firms do perform radon testing or remedial work or radon testing and remedial work.

(5) There is a need to assure property owners that the consultants and firms are qualified to perform the services.

(b) Intent.—It is the intention of the General Assembly and the purpose of this act to protect property owners from unqualified or unscrupulous consultants and firms by requiring the Department of Environmental Resources

to establish and carry out a program of certification of persons who perform radon progeny testing or carry out remedial radon measures.

Section 3. 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:

"Department." The Department of Environmental Resources of the Commonwealth.

Section 4. Program for certification of persons who test for radon.

The department shall, within 90 days of the effective date of this act, submit proposed regulations to establish a program for the certification of persons who test for the presence of radon gas and radon progeny in buildings and on building lots.

Section 5. Program for certification of persons who mitigate the presence of radon.

The department shall, within 90 days of the effective date of this act, submit proposed regulations to establish a program for the certification of persons who mitigate, and safeguard buildings from, the presence of radon gas and radon progeny.

Section 6. Certification required for testing and mitigation.

(a) General rule.—Beginning 60 days after the establishment of the interim certification program by the department under section 11, no person who is not certified under section 11, or who is not certified under section 4 or 5 after certification programs are established under these sections, shall test for, mitigate or safeguard a building from the presence of radon gas and radon progeny.

(b) Exception.—Subsection (a) shall not apply to either of the following:

(1) A person performing testing or mitigation on a building which the person owns.

(2) A builder utilizing preventative or safeguarding measures in new construction.

Section 7. Disclosure of information to department.

A person certified under sections 4, 5 and 11 to provide testing or mitigation services shall, within 45 days of the date the services are provided, disclose to the department the address or location of the building, the name of the owner of the building where the services were provided and the results of any tests performed.

Section 8. Fees.

The department shall, by regulation, establish a fee schedule to cover the costs of the certification programs established under sections 4, 5 and 11. The fees collected shall be placed in the Radiation Protection Fund established under section 403 of the act of July 10, 1984 (P.L.688, No.147), known as the Radiation Protection Act.

Section 9. Confidentiality of data.

Except for use in conducting legitimate scientific studies, as determined by the department, data relating to individuals and data relating to radon gas and radon progeny contamination at nonpublic properties, including resi-

dential dwellings, gathered under this act shall be considered confidential by the department. The department shall not release the data in its possession to anyone other than the owner of the property.

Section 10. Employment of trained persons.

The department is authorized to employ persons with training necessary to implement the provisions of this act.

Section 11. Interim certification.

The department shall, at the time of submission of proposed regulations, establish an interim certification program based upon the proposed regulations. All persons subject to the proposed regulations shall apply to the department for interim certification until the permanent program is implemented. The department shall use the proposed regulations as guidance for interim certification.

Section 12. Additional powers of department.

(a) Radiation protection.—In addition to the powers and duties provided for in this act, the department shall have the powers conferred and duties imposed under applicable provisions of the act of July 10, 1984 (P.L.688, No.147), known as the Radiation Protection Act and regulations promulgated under that act.

(b) Certification exemption.—The department shall be exempt from the requirements for certification as provided under sections 4, 5 and 6.

Section 13. Rules and regulations.

The department shall adopt rules and regulations to administer and enforce this act. The rules and regulations shall include, but not be limited to, provisions relating to the following subjects:

(1) Qualifications and minimum experience requirements.
(2) Proficiency testing.
(3) Periodic recertification.
(4) Measures for decertification.
(5) Truth in advertising requirements.

Section 14. Penalties.

A person who violates section 6 of this act, or any rule or regulation adopted under section 6, commits a misdemeanor of the third degree. Any person who fails to disclose the information required under section 7 commits a summary offense.

Section 15. Effective date.

This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1987.

ROBERT P. CASEY

No. 1988-12

AN ACT

SB 948

Providing for low-level radioactive waste disposal; further providing for powers and duties of the Department of Environmental Resources and the Environmental Quality Board; providing for the siting of low-level radioactive waste disposal facilities and for the licensing of operators thereof; establishing certain funds and accounts for the benefit of host municipalities and the general public; establishing the Low-Level Waste Advisory Committee and providing for its powers and duties; providing for membership on the Appalachian States Low-Level Radioactive Waste Commission; requiring certain financial assurances; providing enforcement procedures; providing penalties; making repeals; and making appropriations.

TABLE OF CONTENTS

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

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Section 102. Legislative findings.

The General Assembly hereby determines, declares and finds that low-level radioactive wastes are generated within this Commonwealth; that these wastes must be isolated for the full hazardous life of the wastes in order to protect the public health and safety; that the Low-Level Radioactive Waste Policy Amendments Act of 1985 requires each state to be responsible for providing for the availability of capacity for disposal of low-level wastes generated within its borders; that shallow land burial is prohibited under the terms of the Appalachian States Low-Level Radioactive Waste Compact; that the illegal disposal of low-level radioactive waste poses severe risks to the health and safety of the public and the protection of the environment; that low-level radioactive waste disposal carried out in an environmentally

sound manner to protect the health and safety of the public is in the public interest; and acknowledging that the Department of Environmental Resources shall be the Commonwealth agency with these responsibilities. It is the purpose of this act to:

(1) Implement Pennsylvania's duties and responsibilities arising under the Appalachian States Low-Level Radioactive Waste Compact.

(2) Establish and maintain, to the extent allowable under Federal law, a comprehensive and pervasive low-level waste disposal management, licensing and regulatory program in the Department of Environmental Resources for which all costs shall be borne by the low-level waste generators, brokers, carriers and the regional facility operator regulated by this act.

(3) To the extent allowed under Federal law, require the minimization of the amount of low-level waste generated and the reduction of the volume and toxicity of low-level waste requiring disposal.

(4) Protect the public health, safety and welfare, and the environment from the short- and long-term dangers of low-level waste and its transportation, management and disposal.

(5) Establish an open public process to locate a regional facility in the Commonwealth, to determine the operator and disposal technology and to license the regional disposal facility.

(6) Provide for benefits and guarantees for communities affected by the establishment, operation and presence of a low-level radioactive waste disposal facility.

(7) Assure the participation of the public and of elected and appointed officials at all levels of government in the decisionmaking process, create a Public Advisory Committee and assist in public education efforts related to low-level waste disposal.

(8) Prohibit shallow land burial of low-level radioactive waste; except that the department shall develop standards by regulation for the onsite handling and disposal of naturally occurring radioactive materials, ores and their waste products.

(9) Provide a comprehensive and effective strategy for the siting of commercial low-level waste compactors and other waste management facilities, and to ensure the proper transportation, disposal and storage of low-level radioactive waste.

(10) Assure that the low-level radioactive waste facility will be above grade of the land, unless other designs provide significant improvement in recoverability, monitoring, public health and environmental protection.

(11) Prohibit the commercial incineration of radioactive wastes.

(12) Assure that waste disposed of at the regional facility does not include radioactive waste originating outside the Appalachian Compact states except as otherwise provided in this act.

(13) Provide that no low-level radioactive waste shall be disposed of at any disposal facility not licensed to accept low-level radioactive waste or at any municipal landfill or commercial incinerator.

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:

"Account." The Long-Term Care Account.

"Affected municipalities." Any unit of local government other than the host municipality designated as an affected municipality pursuant to section 318. Affected municipalities may be counties, cities, boroughs, townships or school districts.

"Appalachian Compact" or "compact." A compact entered into by Pennsylvania under the terms of the Low-Level Radioactive Waste Policy Amendments Act of 1985, and as contained in the Appalachian States Low-Level Radioactive Waste Compact Law.

"Appalachian States Low-Level Radioactive Waste Compact Law." The act of December 22, 1985 (P.L.539, No.120).

"Atomic Energy Act of 1954." Public Law 83-703, 68 Stat. 921, 42 U.S.C. § 2011 et seq.

"Broker." Any intermediate person who collects, consolidates, handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste.

"Carrier." A person who transports low-level waste from or to any generator or waste management facility or to a regional facility.

"Commercial incinerator." An incinerator of low-level radioactive waste, except one which incinerates waste at the site of generation or at which only waste generated within the compact by the owner of the incinerator is incinerated.

"Commission." The Appalachian States Low-Level Radioactive Waste Commission.

"Compact states." The combined states including Pennsylvania which have entered into the Appalachian States Low-Level Radioactive Waste Compact.

"Curie." A unit of measure of radioactivity.

"Custodial agency." The government entity designated by the Governor other than the licensing agency responsible for the long-term monitoring and care of the regional facility.

"Department." The Department of Environmental Resources of the Commonwealth.

"Disposal." The isolation of low-level waste from the biosphere.

"Engineered structure." Man-made state-of-the-art barrier designed to provide additional measures for containment of radioactive waste from the environment, protection of the inadvertent intruder and stability of the disposal facility and designed to prevent any radioactive release.

"Facility." Any real or personal property and improvements thereof or thereon, and any and all plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

"Fund." The Low-Level Waste Fund.

"Generate." To produce low-level waste requiring disposal.

"Generator." A person whose activity results in the production of low-level waste requiring disposal.

"Hazardous life." The time required for radioactive materials to decay to safe levels of radioactivity, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by the Federal law or by standards to be set by the host state, whichever is more restrictive.

"Hazardous wastes." As defined in the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and regulations adopted thereunder.

"Host municipality." One or more city, borough, incorporated town or township, excluding counties, in which the low-level waste disposal facility will be constructed, as designated by the department pursuant to section 318.

"Institutional control period." The time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency, which shall continue for the hazardous life of the waste.

"Low-level waste." Radioactive waste that:

(1) is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (68 Stat. 922, 42 U.S.C. § 2014(e)(2)), waste generated as a result of atomic energy defense activities of the Federal Government, and waste for which the Federal Government is responsible under section 3(b)(1) of the Low-Level Radioactive Waste Policy Amendments Act of 1985; and

(2) is classified by the Federal Government as low-level waste, consistent with the Low-Level Radioactive Waste Policy Amendments Act of 1985; or

(3) contains naturally occurring or accelerator-produced radioactive material, which is not excluded by paragraph (1) or (2).

"Low-Level Radioactive Waste Policy Amendments Act of 1985." Public Law 99-240, 99 Stat. 1842, 42 U.S.C. § 2021b et seq.

"Management." The reduction, collection, consolidation, storage, processing, incineration, separation, minimization, compaction, segregation, solidification, evaporation, packaging or treatment of low-level waste.

"Operator." A person who operates a regional facility.

"Person." Any individual, corporation, partnership, association, public or private institution, cooperative enterprise, municipal authority, public utility, trust, estate, group, Federal Government or agency, other than the United States Nuclear Regulatory Commission or any successor thereto, state institution and agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of this act prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include officers and directors of any corporation or other legal entity having officers and directors.

"Protection Fund." The Regional Facility Protection Fund.

"Radiation Protection Act." The act of July 10, 1984 (P.L.688, No.147).

"Regional facility." A facility which has been approved by the commission and licensed under this act for the disposal of low-level waste.

"Secretary." The Secretary of Environmental Resources of the Commonwealth.

"Separation." Segregation and isolation of all low-level radioactive waste in accordance with a waste classification system to be established by regulation by the department.

"Shallow land burial." The disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures and in proper packaging as determined under this act.

"Zero release capacity." The ability not to release radioactivity.

CHAPTER 3
LOW-LEVEL WASTE DISPOSAL

Section 301. Powers and duties of the Department of Environmental Resources.

The department shall have the power and its duty shall be to:

(1) Develop and implement a comprehensive program for the regulation of the generation, storage, handling, transportation, processing, minimization, separation, management and disposal of low-level radioactive waste to the extent allowable under Federal law or State law, whichever is more stringent.

(2) Implement a regulatory, inspection, enforcement and monitoring program consistent with the terms of an agreement between the United States Nuclear Regulatory Commission and the Commonwealth, as provided for in section 201 of the Radiation Protection Act, and this act.

(3) Enter into a contract with an operator-licensee designate to screen the State to locate potentially suitable sites, to study the sites in detail and to submit a license application to operate the regional facility.

(4) License a regional facility operator in accordance with section 308 and regulations promulgated hereunder.

(5) Issue permits to generators, brokers and carriers of low-level waste for access to the regional facility in accordance with provisions of this act and with specific regulations promulgated under this act.

(6) Receive title to the land for use as a regional facility from the licensee for eventual transfer to the custodial agency or acquire land by eminent domain in the manner provided in the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, if the operator-licensee designate cannot acquire the property prior to submitting an application to the department for a license.

(7) Use Commonwealth property for the regional facility where such use is consistent with uses authorized under State law.

(8) Provide for the licensing and regulation of a custodial agency for the long-term care and monitoring of the regional facility for the duration

of the institutional control period in accordance with regulations established by the Environmental Quality Board.

(9) Provide for the emergency care and monitoring of the regional facility, which may include the appointment of an interim operator if the department determines that:

(i) the licensee has failed to comply with the terms and conditions of the contract or is in violation of this act, regulation or license conditions, permits or orders issued under this act, or the Radiation Protection Act, and a threat exists to the health or safety of the public or the environment; or

(ii) the licensee is in repeated or continuing violation of this act, regulations or the terms and conditions of any license, permit or order issued under this act, or the Radiation Protection Act.

(10) Implement policies, including fee schedules and other incentives, to the extent authorized by the Appalachian Compact and State and Federal law to reduce the volume and toxicity of low-level radioactive waste.

(11) Promulgate regulations establishing a low-level radioactive waste classification system which shall take into consideration curie concentration, toxicity, hazardous life and prior treatment of wastes.

(12) Promulgate regulations establishing standards for the hazardous life of low-level waste which shall be at least as restrictive as Federal standards.

(13) Provide for emergency response capability in cooperation with the Pennsylvania Emergency Management Agency.

(14) Do any and all other acts not inconsistent with the provisions of this act which are necessary and proper for the effective implementation and enforcement of this act and the Radiation Protection Act.

Section 302. Powers and duties of the Environmental Quality Board.

(a) Rules and regulations.—The Environmental Quality Board, exercising authority under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall have the power and its duty shall be to adopt regulations developed by the department for the implementation of this act. These regulations shall include, but are not limited to: generation, transportation, handling, separation, minimization, treatment and disposal of low-level radioactive waste; permit and license fees, standards and procedures; facility siting, including standards and siting regulations for new low-level waste incinerators and compactors and for the regional facility; facility design; manifest and reporting requirements; facility operational management; financial responsibility assurance; public participation; host and affected municipality benefits and guarantees; monitoring and inspection; compliance and enforcement; and any other regulatory requirements the department finds necessary or appropriate for the protection of the public health and the environment from low-level radioactive wastes, provided that the provisions of any siting regulations adopted under this section shall not apply to any commercial compactor facility which obtained a license from the United States Nuclear Regulatory Commission

authorizing operation pursuant to the Atomic Energy Act prior to the effective date of this act.

(b) Site selection.—

(1) In addition to the authority to adopt regulations under this act, the Environmental Quality Board shall make the preliminary determination as to whether three proposed potentially suitable sites satisfy the applicable siting regulations.

(2) The effect of the board's preliminary approval of a site is to approve a potentially suitable site for further study. This preliminary approval assures access for further study of the site, in accordance with section 307(f), and public participation, especially by the potential host municipality during the evaluation and study of a potentially suitable site.

(3) The board's preliminary site approval is not a final action regarding the potentially suitable site. The board's preliminary approval is appealable only to the extent the owner of the land which constitutes the site can demonstrate immediate and present damages from further study activity to be undertaken on the site. The final determination as to whether the potentially suitable site meets the siting regulations shall be made by the secretary after the further studies are completed, as part of the license application decision.

(c) Procedure.—The board shall establish procedures, including appropriate public participation, governing the preliminary site approval process. The public participation process shall include at least one public information meeting and one public hearing held by the board in each potential host municipality and an opportunity for comment on the public record. The host municipality and host county shall have a minimum of 180 days from the receipt of funds under section 318(a) to offer comments during the public participation process established under this section.

(d) Technical assistance.—

(1) The board may contract for the services of an independent consultant to assist the board in its review of all matters relating to the evaluation and preliminary approval of the sites proposed and submitted to the board by the operator-licensee designate under the provisions of section 307.

(2) The consultant shall be selected through a request-for-proposal process. The proposal shall include sufficient information to evaluate the consultant's expertise, competence and qualifications for assisting in the evaluation of the proposed sites.

(3) No consultant shall have a direct financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any associated industry, nor shall they have acted as a consultant to the department in any matter involving low-level radioactive waste within five years from the date of this act. Any consultant which may have a potential conflict of interest as described in the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, or other applicable statute or executive order shall reveal and explain the potential conflict as part of the request-for-proposal process.

Section 303. Generation, transportation, handling, management and disposal of low-level waste.

Each person who generates, transports, handles, manages or disposes of low-level waste shall:

(1) Maintain records to identify the volume and radioactivity content of low-level waste generated and shipped, the method of transportation, the origin and disposition of such low-level waste, and such additional records as the department may require.

(2) Furnish information as required by the department on such low-level waste to persons transporting, managing, storing or disposing of such wastes.

(3) Use a manifest system as specified in section 310(a)(1) for all low-level waste transported.

(4) Transport low-level waste for handling, management or disposal to the approved facilities which the generator or broker has designated on the manifest form.

(5) Submit reports to the department quarterly, listing the quantities, types and classes of low-level waste generated during a particular time period.

(6) Maintain such operation, train personnel and assure financial responsibility for such handling or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(7) Immediately notify designated public agencies of any accident away from the site of generation involving potential or actual spill or accidental discharge of such waste, and take immediate steps to contain and clean up the spill or discharge.

(8) Separate all low-level radioactive wastes in accordance with the waste classification system to be established by the department.

Section 304. Siting regulations.

The department shall develop siting regulations which shall be designed to allow for screening of the State by the operator-licensee designate and the selection of three potentially suitable sites. The regulations shall also contain detailed site specific provisions which the operator-licensee designate shall use to evaluate a potentially suitable site approved for further study. Potentially suitable sites shall not have any slopes for the disposal area of more than 15% as mapped on a scale of 1:24,000 with a contour interval of either 10 or 20 feet as available on published U.S.G.S. 7.5 minute quadrangles. The regulations shall include, but not be limited to, consideration for public health and safety, flooding, tectonics, protection of lands in the public trust, protection and exploitation and exploration of natural resources, demographics, transportation, wildlife, air quality, ecology, topography and hydrogeology. The regulations shall also provide that potentially suitable sites shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the above considerations or significantly mask the monitoring of the facility. The regulations shall be at least as stringent as those regulations adopted under the Atomic Energy Act of 1954. The

Environmental Quality Board shall hold at least one public information meeting and at least one public hearing on the siting regulations, and shall solicit and take into consideration written public comments, prior to final adoption. There shall be 30 days' public notice before any hearing. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of general circulation in each county.

Section 305. Facility design and operational management regulations.

The department shall establish by regulation minimum engineering design and operational management criteria for the regional facility. These criteria shall be in addition to those required by regulations adopted under the Atomic Energy Act of 1954. Shallow land burial, as defined in this act, is prohibited. An above-land grade facility is required unless other designs provide significant improvement in recoverability, monitoring, public health and environmental protection. The facility shall have the goal of a zero release capacity. The criteria shall include, but not be limited to, provisions for enhanced containment, recoverability, long-term passive isolation, minimization of risks from water intrusion, protection from inadvertent intruders, monitoring and special requirements for various classes of wastes which shall include, but not be limited to, provisions for the segregation and recoverability of Class C waste. The Environmental Quality Board shall hold at least one public information meeting and at least one public hearing on the regulations, and shall solicit and take into consideration written public comments, prior to final adoption. There shall be 30 days' public notice before the hearings. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of general circulation in each county.

Section 306. Operator-licensee designate selection.

(a) Proposals.—The secretary shall, through a request-for-proposal process, select an operator-licensee designate. The proposals shall include detailed methods to be used for site screening and selection of potentially suitable sites; an explanation of how the operator plans to meet requirements of this act for public participation, including details of provisions for information to and solicitation of information from the public, the host municipality and the host county; the design of the proposed regional facility; the detailed site specific studies to be conducted to determine the environmental qualifications of the sites; a description of facility operational plans; a description of operator qualifications, including relevant experience, financial history, compliance history and current financial and compliance status of the operator; details of the method of operating the regional facility; a proposed method to determine the impact of the regional facility on the potential host and affected municipalities; a proposal for a minimum host municipality benefits and guarantee package; a proposed fee schedule for disposal based on projected disposal costs and waste classification; and any other criteria the secretary may require.

(b) Qualifications.—

(1) The department shall develop standards for operator qualifications which shall be reviewed by the Low-Level Waste Public Advisory Committee prior to the start of the request-for-proposal process. The stan-

dards shall include, but not be limited to, provisions for consideration of the following:

(i) The relevant experience of the operator-licensee applicant.

(ii) The financial history of the operator-licensee applicant.

(iii) The compliance history of the operator-licensee applicant. In reviewing the applicant's compliance history, the department:

(A) shall require the applicant to provide a record of its compliance history with environmental protection statutes of the Commonwealth, other states and of the Federal Government, including, but not limited to, any violations of the provisions of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act, or any other state or Federal statute relating to environment protection or to the protection of public health, safety and welfare or any rule or regulation, order or any condition of any license issued by the department or any major violations, orders or consent decrees or similar administrative enforcement actions, or civil or criminal litigation involving the requirements above; and

(B) may deny the applicant the opportunity for consideration as an operator if he has engaged in unlawful conduct, or if the applicant's partner, associate, officer, parent corporation, subsidiary corporation, contractor or agent has engaged in such unlawful conduct, or has shown a lack of ability or intention to comply with the requirements listed in clause (A), unless the applicant demonstrates to the satisfaction of the secretary that the applicant has the ability and intention to comply with requirements as referred to in clause (A). Evidence of the ability and intention to comply with these requirements shall include, but not be limited to, evidence that:

(I) the applicant does not have a pattern of major violations of the environmental requirements referred to in this section;

(II) the applicant does not have a record of continuing violations of the environmental requirements referred to in this section. For the purpose of this subclause, a continuing violation includes, but is not limited to, a violation that is not being abated or removed or a violation where the applicant is not cooperating in good faith with the appropriate State or Federal environmental agency to remedy or abate the violation;

(III) the applicant has complied or is complying with all orders or consent decrees of the department, or similar administrative enforcement actions of another state or of the Federal Government where pollution is being abated or removed; and

(IV) the applicant has made or is making full payment of any civil or criminal penalties imposed under the environmental statutes of the Commonwealth, another state or of the Federal Government.

(2) In no event shall any person who has committed a criminal violation of any state or Federal environmental statute resulting in a conviction

of a first degree misdemeanor or a felony, within ten years prior to the effective date of this act, be given an opportunity to be considered under this act as an operator.

(3) If all applicants are found unacceptable by the secretary, the secretary shall recommend to the Governor, that the Governor, with the advice and consent of the General Assembly, shall designate an agency or authority of the Commonwealth to operate the regional facility at the site selected by the secretary in compliance with all regulations of the department.

(c) Procedure.—All proposals from potential site operator-licensee designates shall be open for public inspection and comment for at least 90 days prior to the selection of the operator by the secretary. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of wide general circulation of the availability of the proposals, and the proposals shall be available for public inspection. At least two public meetings shall be held in conjunction with the Low-Level Waste Advisory Committee to discuss the proposals. All written comments received during the comment period will be taken into consideration and become part of the public record.

(d) Contract.—The secretary shall enter into a contract with the operator-licensee designate authorizing the operator to complete the site screening process, the selection of three potentially suitable sites, the detailed evaluation of each potentially suitable site, and the license application process, and to operate and close the regional facility only if issued a license from the department under this act. The contract shall include, but not be limited to, any applicable provisions of the proposal. The contract shall contain provisions regarding funding sources to be utilized for the facility, liability agreements, the establishment of a reasonable and adequate fee structure, expenses for events which are beyond the control of the operator-licensee designate and cancellation or modification of the contract if the operator-licensee designate is not complying with the provisions of the contract or is unable or unwilling to properly carry out the site screening and evaluation process.

(e) Appeal.—Any affected person may appeal the selection of the operator-licensee to the Environmental Hearing Board based solely on the qualifications in this section of the operator-licensee designate.

Section 307. Site selection.

(a) Screening report.—The operator-licensee designate shall conduct a study screening the Commonwealth for potentially suitable sites in accordance with the siting regulations adopted pursuant to section 304 and shall prepare a screening report which documents the findings of the study. A municipality or group of municipalities may, through their duly authorized governing body or bodies, request consideration as a potentially suitable site under this section. Such offering municipality or group of municipalities shall be included in the screening study to be conducted by the operator-licensee designate, the screening report required by subsection (b) and the other applicable provisions of this section.

(b) Submission.—The operator-licensee designate shall propose three potentially suitable sites and submit those sites to the Environmental Quality Board for approval. The proposal shall be accompanied by:

(1) the site screening report;

(2) a site justification explaining the reasons for choosing the potentially suitable sites compared to other sites considered; and

(3) a study of the short-term and long-term environmental effects on the potentially suitable sites and affected areas.

(c) Social and economic impact study.—At the same time as the submission of the application for potentially suitable sites required in subsection (b), the operator shall submit to the department a study of the short- and long-term social and economic impacts of a regional facility on the municipalities surrounding the potentially suitable sites. The study shall include, but not be limited to, the impacts on tax revenue, public infrastructure, emergency management capabilities, compatibility with regional and local economic goals, other demographic characteristics, loss of resources and social service demands. The study shall propose each host municipality and affected municipalities.

(d) Evaluation.—The department shall evaluate the proposal and submit conclusions and siting recommendations to the Environmental Quality Board.

(e) Procedure.—The Environmental Quality Board shall hold at least one public information meeting and one public hearing in each of the potentially suitable areas as required in section 302(c), evaluate the three proposed potentially suitable sites and determine if they satisfy the applicable siting regulations. If any site does not satisfy the applicable siting regulations, the board shall so inform the operator-licensee designate who shall propose another potentially suitable site and submit another site justification pursuant to subsection (b), and another social and economic impact study pursuant to subsection (c). If a proposed potentially suitable site satisfies the applicable siting regulations, the board shall give preliminary site approval to allow for further site evaluation. The board shall make a determination that the screening process has identified three of the best potential locations in the host state, based on the administrative record before the board. The administrative record shall consist of the screening report, site justification report, the study of short-term and long-term environmental effects on the potentially suitable sites, the conclusions and siting recommendations of the department and the testimony presented at the board's public hearings and comments received during the comment period.

(f) Preliminary approval.—

(1) Upon the preliminary approval of the three sites by the Environmental Quality Board, the operator-licensee designate shall obtain access to those sites for further study. The operator-licensee designate shall have the right to enter provided to a condemnor under section 409 of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

(2) Property owners of any site which has received preliminary approval by the Environmental Quality Board, but which is not selected as the final site, shall have the rights of a condemnee under section 408 of the Eminent Domain Code, as are therein granted to condemnees subject to a

revocation of condemnation proceedings. When the preliminary site has been rejected by the action of the secretary in issuing a permit for another site, notice of such relinquishment shall be served upon the affected property owners in the same manner as provided for in a declaration of taking under the Eminent Domain Code. The affected property owners shall be reimbursed by the operator-licensee designate for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred because of the preliminary approval of the site by the Environmental Quality Board. Such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the affected property owners, whose award shall be subject to appeal as provided in the Eminent Domain Code.

(g) Purchase of site.—Upon receiving a license to operate the regional facility at the site, the operator shall purchase the site and transfer title to all land to the Commonwealth. If the operator-licensee designate is unable to purchase the site, the Commonwealth shall acquire the site by eminent domain and the operator-licensee designate shall reimburse the Commonwealth for all costs of acquisition.

(h) Final approval.—The issuance of a license by the secretary pursuant to section 308 shall constitute final approval of the site. The Commonwealth shall hold title to the land until at least the end of the institutional control period.

(i) Appeal.—The issuance of the license is appealable to the Environmental Hearing Board pursuant to section 1921-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. This appeal shall take precedence over other appeals pending before the board and shall be handled in an expedited manner. The decision of the board is appealable to Commonwealth Court. A citizen of this Commonwealth, a host municipality or a host county, who or which makes an appeal on his or its own behalf under this section, shall not be required to post a bond nor shall they be required to pay a fee for filing the appeal.

Section 308. Operator licensing.

(a) Regulations.—The department shall establish by regulation the procedure and requirements for licensing of the regional facility operator. The regulation shall provide, without limitation:

(1) Authority for the amendment, suspension or revocation of the license.

(2) Consent for entry into the regional facility.

(3) Requirements for the form of the application and the information to be provided.

(4) Requirements for submission of a decommissioning plan for the regional facility.

(5) Requirements that the application and all submissions be in writing and signed.

(b) Further statements and inspections.—The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as

the department deems necessary to determine whether the license should be granted, modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee.

(c) Impact analysis.—The license applicant shall prepare a written analysis of the impact of such licensed activity. The analysis shall be available to the public at least 120 days before the commencement of hearings held pursuant to subsection (d) and shall include:

(1) A detailed assessment of the radiological and nonradiological impacts to the public health and on the environment.

(2) A detailed assessment of the impact on the quality and quantity of the surface and groundwater within a five-mile radius of the site.

(3) Consideration of the short-term and long-term public health and environmental impacts from closure, decommissioning, decontamination and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination and reclamation. These impacts shall include, but not be limited to, adverse effects due to prior activities and conditions, including water and air quality problems, a health survey of cancer and other disease rates and birth defects, and prior mining.

(4) Consideration of the short- and long-term social and economic impacts of the regional facility on the host municipality and affected municipalities, to create a minimum set of items to be considered as part of the host and affected municipality benefit negotiations. At a minimum the study should include the impacts on local tax revenues, public infrastructure, emergency management capabilities and social service demands.

(5) A preoperational environmental radiation survey and a preoperational health survey of cancer and other disease rates and birth defects within five miles of the site.

(6) Justification for the choice of the proposed site over the other two potentially suitable sites.

(d) Duty of secretary.—Before approving or disapproving the license application, the secretary shall provide:

(1) The public with the opportunity to review and inspect the license application at a publicly available location in the area where the regional facility is proposed to be located.

(2) A 90-day public comment period, one public information meeting and one public hearing, not within 30 days of each other, after adequate public notice, in the area where the regional facility is proposed to be located. All written comments and comments contained in a transcript of the hearing shall be considered in the secretary's decision on the application and become part of the public record.

(3) A written determination of the action to be taken, including a response to comments, which is based upon findings included in the determination and upon evidence presented during the public comment period.

(e) Terms and conditions of license.—The terms and conditions of all licenses issued under this act shall be subject to amendment, revision or mod-

ification by regulations or orders. The department shall provide by regulation for public notice of license amendment requests and for a public participation process.

(f) Financial assurance.—No license shall be issued by the department unless the operator provides the financial assurances required by section 316.

(g) License denial, suspension, etc.—In carrying out this act, the secretary may deny, suspend, modify or revoke any license if he finds that the applicant or licensee has failed or continues to fail to comply with any provision of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of license issued by the department; or if the department finds that the applicant or licensee has shown a lack of ability or intention to comply with any provision of this act or of any acts referred to in this section, or any rule or regulation of the department or order of the department, or any condition of any license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant or licensee, the department shall deny the issuance of a license if the secretary finds that a principal of the corporation was a principal of another corporation which committed past violations of any of the above laws, unless the principal has demonstrated that the violations are not relevant to issuing the license or permit or there are other mitigating circumstances which demonstrate the applicant has the ability and intent to comply with the law.

Section 309. Out-of-compact waste.

(a) Source of waste.—No low-level waste shall be accepted for disposal at the regional facility unless the waste was generated within the Appalachian Compact states or the commission has entered into a reciprocal contingency agreement for the emergency disposal of out-of-compact low-level waste. Waste generated within the Appalachian Compact states shall not include radioactive waste shipped from outside the Compact states to a waste generator or management facility within the Compact states. For the purposes of this section, an emergency shall include the temporary shutdown of a regional or state low-level radioactive waste disposal facility for a period of time which the commission reasonably projects will extend beyond the time when the low-level radioactive waste storage at the generator's facility and the disposal facility will reach maximum capacity, and additional storage would constitute a threat to the health and safety of the public or the environment. The reciprocal contingency agreement shall provide that the regional or state low-level waste disposal facility with the emergency will accept from the Appalachian Regional Facility or from generators, brokers or carriers licensed or permitted by the department, immediately at the termination of the emergency, an amount of low-level radioactive waste equal to the volume and toxicity of the low-level radioactive waste shipped to the Appalachian Regional Facility during the emergency.

(b) Approval of certain agreements.—No agreement shall permit the disposal of out-of-compact waste for a period exceeding three months unless a continuation of the agreement is approved by the General Assembly or the Governor. The Speaker of the House of Representatives and the President pro tempore of the Senate shall cause to be placed on the calendars of the House and Senate a concurrent resolution approving the proposed continuation. If the General Assembly fails to approve or disapprove the concurrent resolution within ten legislative days or 30 calendar days, whichever occurs first, the Governor may approve the continuation of the reciprocal agreement by executive order. The commission shall notify the General Assembly and the Governor when it has determined that a continuation of the reciprocal agreement is recommended and the date on which disposal will cease.

(c) Limited permit.—The department shall review an application and shall issue a limited permit for each low-level waste generator from outside the compact that meets the criteria for use of the regional facility. The department shall only issue the permit upon a determination by the commission that an emergency exists in the state or region in which the permittee is located. The permit shall not be valid for a period exceeding three months, unless a continuation is approved by the General Assembly or the Governor as provided in subsection (b).

Section 310. Permitting of generators, brokers and carriers.

(a) Regulations.—The department shall provide by regulation for the permitting of generators, brokers and carriers for access to the regional facility. Such regulations shall establish, without limitation:

(1) Requirements for packaging, separation, waste form, routing, manifesting, financial assurance, recordkeeping, emergency planning and length of term of the permit.

(2) Limits on the types, quantities and origins of radioactive waste allowed for disposal.

(3) That each application for a permit or amendment shall be in writing and signed by the applicant.

(4) The form of the application and the information it should contain.

(5) Requirements for applicant's consent for entry to facilities, vehicles and equipment.

(6) Procedures for suspension, revocation and amendment of permits.

(7) That each generator have a plan for reduction of toxicity and volume with stated reduction goals.

(8) Any other requirements the department deems necessary or proper to implement the provisions of this act and the Radiation Protection Act.

(b) Issuance of permit.—Upon approval of the application and receipt of fees, the department shall issue a permit to the applicant as set forth in the application and further conditioned by the department as necessary.

(c) Permit denial, suspension, etc.—In carrying out this act, the department may deny, suspend, modify or revoke any permit if it finds that the applicant or permittee has failed or continues to fail to comply with any provision of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act or any other state or Federal

statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of any permit or license issued by the department; or if the department finds that the applicant or permittee has shown a lack of ability or intention to comply with any provision of this act or any act referred to in this section, or any rule or regulation of the department or order of the department, or any condition of any permit or license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant or permittee, the department shall deny the issuance of a permit if it finds that a principal of the corporation was a principal of another corporation which committed past violations of any of the above laws, unless the principal has demonstrated that the violations are not relevant to issuing the license or permit or there are other mitigating circumstances which demonstrate the applicant has the ability and intent to comply with the law.

Section 311. Decommissioning.

When the regional facility is to be closed, the department shall require that the regional facility is properly decommissioned by the operator-licensee, that all remaining property is transferred to the Commonwealth and that control is transferred to the custodial agency. The cost of decommissioning shall be borne by the operator-licensee. The department shall make a determination that the site has been properly decommissioned and that the site, along with the license responsibilities, is suitable for transfer to the custodial agency, at which time the operator license shall be terminated. A decommissioning plan shall be submitted as part of the license application, be incorporated into the license and be periodically reviewed and amended as necessary over time.

Section 312. Low-Level Waste Fund.

(a) Establishment.—There shall be established within the State Treasury a separate account to be known as the Low-Level Waste Fund.

(b) Deposits.—All fines, penalties, fees and surcharges not designated for other purposes, collected under this act shall be paid into this fund. Additionally, all funds received from the United States Department of Energy or from the Appalachian Compact Commission or Compact states for low-level radioactive waste activities shall be deposited into the fund.

(c) Appropriation and purpose.—Moneys in the fund, except those received from the United States Department of Energy, are hereby appropriated to the department on a continuing basis to be used, upon approval of the Governor, solely for the administration and enforcement of this act, for site development, for emergency operations, for any liability of the Commonwealth, and to repay the General Fund for any appropriation made to the fund.

Section 313. Long-Term Care Account.

(a) Establishment.—There shall be established within the fund an interest-bearing restricted account to be known as the Long-Term Care Account.

(b) Surcharges.—Surcharges on disposal rates shall be imposed by the department for the expected costs of activities under this account.

(c) Purpose.—The account shall be used for no other purpose than to provide for the following:

(1) The long-term care and monitoring for the duration of the institutional control period and any emergency or remedial work that might become necessary at any regional facility by the department or the custodial agency.

(2) The assumption by the department or the custodial agency for early direct responsibility for the care and monitoring at the regional facility.

(d) Appropriation.—All moneys in the account are hereby appropriated to the department on a continuing basis to carry out this section.

Section 314. Regional Facility Protection Fund.

(a) Establishment and purpose.—There shall be established within the State Treasury a separate account to be known as the Regional Facility Protection Fund. All moneys in this fund are hereby appropriated to the department on a continuing basis for the following purposes:

(1) To pay claims for personal injury and property damage against the Commonwealth, host municipality and host county arising from their responsibilities under this act.

(2) To pay claims for personal injury and property damage against the regional facility licensee made at any time after the termination of the license arising from operation of the regional facility.

(b) Administration.—The Environmental Quality Board shall promulgate regulations, prepared by the department, to administer the Regional Facility Protection Fund. Such regulations shall include, but are not limited to, scope of coverage, further limits of liability, procedures for filing claims, presumptions and burdens of proof.

(c) Deposits.—All surcharges on waste disposed of at the regional facility under section 315(c)(1)(iv) and all interest earned thereon shall be deposited in the Regional Facility Protection Fund.

(d) Appeals.—All appeals from denial of a claim shall be to the Board of Claims. The department shall represent the Regional Facility Protection Fund in any such action.

Section 315. Fees, rates and surcharges.

(a) Establishment by department.—The department shall establish reasonable fees for licensing of the operator-licensee designate and permitting of generators, brokers and carriers. In setting the fees, the department shall consider disposal costs and classification of the waste.

(b) Approval of rates charged by operators.—The department shall require that all proposed rates charged by the operator for the disposal of low-level waste in the regional facility be submitted to the department prior to their implementation. The department shall determine if the rates are consistent with the fee structure established in the contract entered into under section 306(d) and may require the operator to modify the proposed rates if the department determines that they are not consistent with the fee structure established in the contract entered into under section 306(d). The rates shall be based on actual disposal cost and waste classification. Rates shall be ade-

quate to assure protection of public health and safety and the environment, the retirement of facility debt plus an adequate return on capital invested and future site closure, and stabilization and decommissioning expenses.

(c) Surcharges.—

(1) The department shall assess surcharges on low-level radioactive waste disposed of at the regional facility as follows:

(i) A surcharge imposed adequate to return to the General Fund over a five-year period any appropriations expended by the department from the General Fund from July 1, 1987, to the date the regional facility begins operation, and shall expire when the General Fund is fully reimbursed.

(ii) A continuing surcharge imposed to be adequate to support the Commonwealth's expenses related to this act and the compact, including, but not limited to, the surveillance of packages, inspection, decontamination, decommissioning and postclosure maintenance of the regional facility, recordkeeping systems and such other activities as the department finds necessary to ensure the safe operation of the regional facility.

(iii) A surcharge imposed to be adequate to fund the Long-Term Care Account as provided in section 313.

(iv) A surcharge that shall be adequate to fund the Regional Facility Protection Fund to a level of not less than $100,000,000, indexed to increase with cost-of-living adjustments, upon the date of termination of the operator's license.

(2) These surcharges and fees shall be reviewed annually by the department to determine if they are adequate and revised accordingly. The method shall be determined by regulation.

(3) These surcharges shall be collected by the operator at no cost to the Commonwealth and shall be transmitted to the department no less frequently than monthly.

(d) Host and affected municipality benefits.—The department shall review and approve all surcharges for host and affected municipality benefits as provided in section 318.

Section 316. Financial assurance and liability.

(a) Financial assurance requirements.—The department shall establish by regulation detailed financial assurance requirements for the operator for the operation, closure, postclosure monitoring and maintenance, and emergencies related to the regional facility.

(b) Proof of coverage of all costs.—The operator shall, prior to receipt of a license, show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or a combination of the two, to cover all estimated costs of conducting all licensed activities over the planned operating life of the regional facility, including costs of construction and operation.

(c) Emergency actions, closure, etc.—The operator shall, prior to receipt of a license, provide assurance that sufficient funds are available to carry out emergency actions, site closure, decommissioning and stabilization, in accor-

dance with the financial assurance regulations established by the department.

(d) Indemnification.—

(1) Generators, brokers and carriers for which a permit is required under sections 309 and 310 shall comply with the financial assurance regulations established by the department. Each broker, carrier and generator shall hold the Commonwealth, the host municipality, host county and their agents harmless, defend and indemnify the Commonwealth, the host municipality, host county or their agents against any and all claims, actions, demands, liabilities and losses by reason of any injury or damage to person or property arising out of any handling, management, shipping, transportation or generation of low-level waste.

(2) The operator-licensee shall hold the Commonwealth, the host municipality, host county and their agents harmless, defend and indemnify the Commonwealth, host municipality and host county and their agents against any and all claims, actions, demands, liabilities and losses for personal injury or property damage at law and equity.

(e) Limitations on liability.—In any action against the operator-licensee by any person for damages, there shall be no limit to the operator-licensee's liability if it can be shown that the operator-licensee acted in a manner that was negligent, grossly negligent, willful, reckless or intentional. In all other claims and actions for damages against the operator-licensee, there shall be a total and cumulative limit of liability which shall be no more than $100,000,000, plus the amount of insurance or other financial assurance applicable to the obligation or liability as required by the department.

(f) Sovereign immunity.—No provision of this act shall constitute a waiver of sovereign immunity except as provided by 42 Pa.C.S. Ch. 85 Subch. B (relating to actions against Commonwealth parties).

(g) Insurance.—The operator shall provide evidence of commercial insurance or other financial assurance as approved by the department to compensate persons for bodily injury or property damage arising from sudden and nonsudden incidents from the operation of the facility. The department shall determine the minimum amount of insurance or financial assurance, but in no case shall the minimum amount be less than the capital cost of the regional facility. For purposes of this subsection, "capital cost" means the cost of bidding for, siting, acquiring, licensing, planning, developing, constructing, equipping and promoting the regional facility and improvements made over the operating life of the facility.

Section 317. Low-Level Waste Advisory Committee.

(a) Appointment.—The secretary shall appoint a Low-Level Waste Advisory Committee. The committee shall consist of at least 23 members, 19 of whom shall represent local government, environmental, health, engineering, business, academic and public interest groups and four members of the General Assembly, two from the Senate, one member from the majority party and one member from the minority party, or their designees, who shall be appointed by the President pro tempore, and two from the House of Representatives, one from the majority party and one from the minority party, or their designees, who shall be appointed by the Speaker of the House of

Representatives. The secretary shall designate a representative of the department who shall be a nonvoting member of the committee. Representatives of the host municipality and host county shall also be appointed as additional voting members of the committee. No member of the committee shall be employed by or hold a financial interest in the operator company or any of its subsidiaries or parent companies, and no more than three of the members of the committee shall be employed by or hold a financial interest in a company which serves as a subcontractor to the operator company or in any entity that utilizes the regional facility for disposal of its low-level radioactive wastes.

(b) Review of draft regulations, advice, etc.—The committee shall have an opportunity to review draft regulations under this act and advise the department prior to proposal. The committee shall have an opportunity to review and comment on operator selection, including the proposed standards developed by the department for the qualifications and compliance history of the operator. The committee may also advise the department regarding policies and issues related to the implementation of this act as may be submitted by the department to the committee for review.

(c) Chairman.—The committee shall elect a member to serve as chairman.

(d) Policies and procedures.—The committee shall establish policies and procedures for the conduct of business which shall include a policy regarding potential conflicts of interest of members.

(e) Meetings.—Meetings shall be held at least annually. After a site is designated, at least one meeting shall be held in the host municipality each year.

(f) Expenses and support services.—Members shall serve without salary or compensation except for reimbursement by the department for reasonable and necessary expenses incurred in connection with their duties as approved by the secretary. The department shall also provide necessary administrative support services, budget and staff to the committee for the carrying out of its responsibilities under this section.

(g) Termination.—The Low-Level Waste Advisory Committee shall cease to exist when the department's responsibility for the regulation of low-level radioactive waste is terminated.

Section 318. Host and affected municipality benefits and guarantees.

(a) Funding for evaluation of proposal.—Upon submission of the potentially suitable sites application to the Environmental Quality Board for approval, the department shall provide a reasonable amount of funds, not to exceed $100,000 per site, to the proposed host municipalities in the study under section 307(c), and, upon the request of such county, the department shall provide a reasonable amount of funds, not to exceed $100,000 per site, to the proposed host county in the study under section 307(c) to evaluate the proposal submitted by the operator-licensee. The host municipality and the host county shall present their findings to the board not more than 180 days after receipt of funds under this subsection. Strict accounting and verification of expenditures for activities related to this topic shall be provided by

the potential host municipalities to the department in accordance with their municipal codes. All unused moneys shall be returned to the department.

(b) Funding for evaluation of application.—Upon receipt of a license application from the operator-licensee designates, the department shall provide a reasonable amount of funds, not to exceed $150,000, to the potential host municipality to carry out an independent evaluation of the application, and, upon the request of such county, the department shall provide a reasonable amount of funds, not to exceed $150,000, to the potential host county to carry out an independent evaluation of the application. The potential host municipality and county, within 180 days after receipt of funds under this subsection, shall present its findings to the department for inclusion in the licensing proceedings. Strict accounting and verification of expenditures for activities related to this topic shall be provided by the host municipality to the department in accordance with its municipal code. All unused moneys shall be returned to the department.

(c) Additional members of advisory committee.—After the license application has been received, the potential host municipality and potential host county will be requested to nominate one additional member each to the department's Low-Level Waste Advisory Committee.

(d) Petition for designation as affected municipality.—After the license application has been received, a municipality may petition the department to be designated as an affected municipality. The department shall designate affected municipalities based upon, but not limited to, the contents of the petition, the results of the social and economic impact and environmental impact studies submitted as part of the potentially suitable site proposal under section 307, and the license application under section 308. This shall not preclude the department from designating a municipality as affected even though the municipality has not submitted a petition. At least 30 days prior to taking final action, the department shall publish for comment in the Pennsylvania Bulletin a notice of its intent to grant or deny designation of a municipality as an affected municipality under this act, including the reasons for its action.

(e) Designation as component of license.—The department shall designate host and affected municipalities as a part of the license.

(f) Surcharge for municipalities.—With the approval of the department, the operator shall establish a reasonable surcharge on rates charged for waste disposed at the regional facility to be paid to the host municipality, host county and affected municipalities for the following purposes:

(1) Training and equipping the first responding fire, police and ambulance services to handle anticipated emergency events at the regional facility or on the transportation routes serving the site within the host or affected municipalities.

(2) Support for affected county emergency management planning, training and central dispatch facilities as may be required to handle anticipated emergency events at the regional facility.

(3) A minimum dollar amount guaranteed annually regardless of the volume of waste received at the regional facility and any additional

amount per unit of waste (cubic foot, curie content or a combination of the two) the operator and host municipality may agree upon. These funds will go directly to the host municipality.

(4) Payment of school district and municipal property taxes for individuals whose primary residence is within two miles of the regional facility for the operational life of the facility. For purposes of this section, a primary residence is the property in which the owner resides for at least nine months of each year. Payments under this section shall be prorated based on the assessed value of property located within two miles of the facility.

(5) The hiring by the host municipality of two full-time qualified inspectors, as determined by the department, to perform inspections of all activities at the regional facility under a written agreement with the department. The inspectors shall have the right of independent access to inspect any and all records and activities at the site and to carry out joint inspections with the department. The department shall respond immediately to any emergency complaint of the host municipality inspector. The department shall respond to any written complaint of the inspector within 24 hours.

(6) The hiring, upon the request of the host county, of two full-time qualified host county inspectors, to perform inspections of all activities at the regional facility under a written agreement with the department. The inspectors shall have the same authority and responsibilities as the host municipality inspectors as outlined in paragraph (5) and section 502.

(7) The development of an educational program for host inspectors and interested parties.

(8) Funds for the expenses incurred by an Environmental Advisory Council serving the host municipality or the affected municipalities, which has been set up pursuant to the act of December 21, 1973 (P.L.425, No.148), referred to as the Municipal Environmental Advisory Council Law, for the purpose of advising government agencies, elected officials and the public on matters dealing with the protection and conservation of the environment, including the immediate area of the disposal site.

(g) Authority of municipality.—The host and affected municipalities' governing bodies shall have the exclusive power, authority and duty to determine how to utilize any funds received under this section, provided that such expenditures or utilization shall be consistent with the provisions of the prevailing municipal code in effect at the time of the expenditure.

(h) Additional duties of operator.—The operator shall also provide for the following:

(1) An independent periodic well and surface water sampling program and soil and plant sampling program which will provide analyses for radioactive and specified chemical contamination for properties within three miles of the boundary of the regional facility. Test results shall be supplied to the host or affected municipality, homeowner and the department.

(2) An independent, continuous, air, well water, surface water and soil sampling program which will provide analyses for radioactive and specified chemical contamination at the regional facility boundary. Test results shall be supplied to the host county, host municipality, affected municipality landowners, homeowners and the department.

(3) A property purchase program as follows:

(i) Any landowner will be guaranteed the sale of his property or purchase by the site operator at property values immediately prior to the time operator-licensee designate's potentially suitable site application is submitted to the department, and any subsequent improvements since that date provided that the real property and improvements thereto are located within two miles from the boundary of the regional facility.

(ii) The guarantee shall be in effect for a two-year period, this period to begin on the date of issuance of the license by the department.

(4) Prior to acceptance of waste at the regional facility, and every three years thereafter, the operator will provide updated information for the health survey related to cancer and other disease rates and birth defects of the population within a five mile radius of the facility, and shall offer without charge whole-body radioactivity measurements and other measures appropriate to assess the presence of internal radioactive emitters to all permanent residents within the host municipality or within five miles of the boundary of the regional facility. All data shall be provided to the individual with a full explanation of the results and copies made available to the host or affected municipality and the department. Tests other than the above shall also be made available, subject to the approval of the department. Results of all such tests shall be considered confidential medical records. The department shall retain copies of all records provided to it.

(i) Additional duties of department.—In addition, the department shall:

(1) Submit all final inspection reports to the host municipality and host county within five working days.

(2) Notify the host municipality and host county of all enforcement or emergency actions at the regional facility immediately.

(j) Benefit sharing.—Where there are two or more host municipalities, the benefits under this section shall be shared according to an agreement to be reached between these host municipalities. If an agreement cannot be reached, the department will decide upon a final division of the benefits, which decision shall not be reviewable.

(k) Local ordinances.—The host municipality shall have the authority to adopt reasonable ordinances, including, but not limited to, ordinances concerning the hours and days of operation of the facility and traffic. Such ordinances may be in addition to, but not less stringent than, not inconsistent with, and not in violation of any provision of this act, any regulation promulgated pursuant to this act or any license issued pursuant to this act. Such ordinances found to be inconsistent and not in substantial conformity with this act shall be superseded pursuant to section 503. Appeals under this section may be brought before a court of competent jurisdiction.

Section 319. Rebuttable presumption.

(a) Liability of operator.—It shall be presumed as a rebuttable presumption of law that the operator of a regional facility is liable and responsible for all damages and radioactive contamination within three miles of the boundary of the regional facility without proof of fault, negligence or causation.

(b) Defenses.—In order to rebut the presumption of liability, the operator must affirmatively prove by clear and convincing evidence that the operator did not contribute to the damage, or, in the case of radioactive contamination, one of the following three defenses:

(1) The radioactive contamination existed prior to any disposal operations on the site as determined by a pre-operational survey.

(2) The landowner has refused to allow the operator access to conduct a pre-operational survey.

(3) The radioactive contamination occurred as a result of some cause other than regional facility operations.

Section 320. Protection from contamination.

(a) Water supply.—The operator shall restore or replace any water supply which has been found or presumed pursuant to section 319 to be contaminated with radioactive material as a result of operations at the regional facility.

(b) Contamination in general.—Any landowner experiencing radioactive contamination within three miles of the boundary of the regional facility may notify the department and request that an investigation be conducted. Within ten days of such notification, the department shall investigate any such claims and shall, within 60 days of the notification, make a determination. If the department finds that the radioactive contamination was caused by the operation of the regional facility or if it presumes the operator of a regional facility responsible for contamination, then it shall issue such orders to the operator as are necessary to abate the radioactive contamination and replacement of any contaminated water supply.

Section 321. Low-level waste compaction.

(a) Siting regulations.—No license or permit to construct, alter, own or operate a commercial low-level radioactive waste compactor shall be issued until the Environmental Quality Board has promulgated siting regulations for such facilities. No such license or permit shall be issued unless the applicant has demonstrated with clear and convincing evidence that the site selected for the commercial compactor satisfies the siting regulations. This subsection shall not apply to any commercial compactor facility which obtained a license from the United States Nuclear Regulatory Commission authorizing operation pursuant to the Atomic Energy Act of 1954 prior to the effective date of this act, provided that such compactor facility shall comply with all applicable Federal and State requirements relating to operations and monitoring and shall obtain all applicable State environmental permits. For purposes of this section, a commercial compactor is any compactor of low-level waste except:

(1) One which compacts waste at the site of generation, including one situated on the premises of a hospital or research laboratory.

(2) One which only compacts waste generated by the facility owner.

(3) A compactor which compacts waste at the regional facility.

(b) Nonexclusive.—Nothing in this act shall preempt or prevent any political subdivision from enacting or enforcing ordinances otherwise within its powers to enact which are adopted pursuant to the political subdivisions' powers reserved under the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, and other environmental protection statutes of this Commonwealth.

Section 322. Noncommercial low-level waste incinerators.

(a) Standards and regulations.—The department shall develop standards and siting regulations under this act for noncommercial low-level waste incinerators which shall include requirements for compliance with this act, the Atomic Energy Act of 1954, the Radiation Protection Act, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, and the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(b) Existing facilities.—Those facilities which are licensed under Federal law to incinerate low-level radioactive waste on the effective date of this act may continue to operate.

Section 323. Limitation on actions.

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this act or civil actions arising from conduct regulated under this act may be commenced at any time within a period of 20 years from the date the alleged wrongdoing is discovered.

CHAPTER 5
ENFORCEMENT AND PENALTIES

Section 501. Unlawful conduct.

It shall be unlawful for any person:

(1) To construct, alter, own or operate a low-level radioactive waste disposal facility without a license or in violation of a license or in violation of this act or the Radiation Protection Act.

(2) To ship or transport low-level radioactive waste to the regional facility without first obtaining a permit as required by the act and any rule or regulation promulgated hereunder.

(3) To generate, transport, handle, manage or dispose of low-level radioactive waste unless such person complies with this act, the Radiation Protection Act and other state and Federal statutes relating to environmental protection, radiological protection and the protection of the public health, safety and welfare, and with the regulations of the department and the terms and conditions of any applicable permit, license or order of the department or other appropriate state or Federal agency.

(4) To deposit, inject, dump, spill, leak or place low-level radioactive waste so that low-level radioactive waste or a constituent of low-level

radioactive waste enters the environment, is emitted into the air or is discharged into the waters of the Commonwealth, in violation of State or Federal statutes.

(5) To refuse, hinder, obstruct, delay or threaten any agent or employee of the department or host municipality or host county inspector in the course of performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.

(6) To cause or assist in the violation of any provision of this act, any rule, regulation, order, permit condition or license condition of the department under this act.

(7) To incinerate low-level waste at a commercial incinerator.

Section 502. Inspection.

(a) Authority.—Host municipality and host county inspectors shall have the power to enter the regional facility, and the department or its duly authorized representatives shall have the power to enter each and every facility at any time for the purpose of inspection and the power to enter at any time upon any public or private property, building, premises or place, for the purpose of determining compliance with this act, any permit or license conditions or regulations or orders issued under this act. In the conduct of any investigation, the department or its duly authorized representatives shall have the authority to conduct tests and inspections and examine any book, record, document or other evidence related to the generation, management, transportation or disposal of low-level waste. In the conduct of any investigation, the host municipality inspector shall have the authority, at the regional facility, to conduct tests and inspections and examine any book, record, document or other evidence related to the generation, management, transportation or disposal of low-level waste.

(b) Halt in operations.—The host municipality and host county inspectors, as authorized under section 318(f)(5) and (6), shall have the authority to halt operation of the facility if the inspector determines there is an immediate threat to health and safety. This halt in operations shall remain in effect until the department evaluates the situation and determines whether there is a continuing need for the halt in operations. If the department determines there is no continuing need for the halt in operations, the host municipality has the right to appeal this determination to the Environmental Hearing Board, which shall consider the matter immediately.

(c) Search warrant.—An agent or employee of the department may apply for a search warrant, to an issuing authority, for the purposes of testing, inspecting or examining any radioactive material or any public or private property, building, premises, place, book, record or other evidence related to the generation, management, transport or disposal of low-level waste. The host municipality inspector may similarly apply for a search warrant to inspect at the regional facility. It shall be sufficient probable cause to show any of the following:

(1) The test, inspection or examination is pursuant to a general administrative plan to determine compliance with this act.

(2) The agent, employee or inspector has reason to believe that a violation of this act has occurred or may occur.

(3) The agent, employee or inspector has been refused access to the low-level waste, property, building, premises, place, book, record, document or other evidence related to the generation, management, transport or disposal of low-level waste, or has been prevented from conducting tests, inspections or examinations to determine compliance with this act.

(4) The host municipality or host county inspector has made a written complaint to the department.

(5) A landowner has experienced radioactive contamination within three miles of the boundary of the regional facility and he has notified the department pursuant to section 319.

Section 503. Conflicting laws.

Ordinances, resolutions or regulations of any agency or political subdivision of this Commonwealth relating to low-level waste shall be superseded by this act if such ordinances, resolutions or regulations are not in substantial conformity with this act and any rules or regulations or license requirements issued hereunder.

Section 504. Penalties.

(a) Summary offense.—Any person who violates any provisions of this act or any regulations or order promulgated or issued hereunder commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than $100 nor more than $1,000 for each separate offense and in default thereof shall be imprisoned for a term of not more than 90 days. All summary proceedings under this act may be brought before any district justice or magistrate in the county where the offense was committed, and to that end jurisdiction is hereby conferred upon district justices and magistrates, subject to appeal by either party in the manner provided by law.

(b) Misdemeanor.—Any person who violates any provision of this act or any regulation or order promulgated or issued hereunder, within two years after having been convicted of any summary offense under this act, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $1,000 nor more than $25,000 for each separate offense or imprisonment in the county jail for a period of not more than one year, or both.

(c) Felony.—Any person who intentionally, knowingly or recklessly violates any provision of this act or any regulation or order of the department or any term or condition of any permit or license, and whose acts or omissions cause or create the possibility of a public nuisance or bodily harm to any person, commits a felony of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $2,500 nor more than $100,000 per day for each violation, or to a term of imprisonment of not less than one year nor more than ten years, or both.

(d) Separate offense for each day.—Each day of continued violation of any provisions of this act or any regulation or order promulgated or issued pursuant to this act or any term or condition of any permit or any license shall constitute a separate offense.

(e) Civil penalty.—

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of this act or a regulation or order of the department promulgated or issued hereunder, the department may assess a civil penalty upon the person for the violation. This penalty may be assessed whether or not the violation was willful or negligent. The civil penalty shall not exceed $25,000 for each violation.

(2) In determining the civil penalty, the department shall consider, where applicable, the willfulness of the violation, gravity of the violation, good faith of the person charged, history of the previous violations, danger to the public health and welfare, damage to the air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration or abatement, savings resultant to the person in consequence of the violation and any other relevant facts.

(3) The person charged with the penalty shall have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, to file within a 30-day period an appeal of the action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(4) Civil penalties shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for collection of debts. If any person liable to pay a penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person, but only after same has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit to prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed.

Section 505. Enforcement and abatement.

(a) Public nuisance.—Any violation of this act or of any regulation or order of the department or of any term or condition of any license or permit issued under this act shall constitute a public nuisance. Any person committing the violation shall be liable for the costs of abatement of the nuisance. The Environmental Hearing Board is hereby given jurisdiction over actions to recover the costs of the abatement and civil penalties.

(b) Orders.—In addition to other remedies provided under this act or any other act, to aid in the enforcement of this act, the department may issue orders to persons as it deems necessary to protect health and safety and the environment. These orders may include an order modifying or revoking licenses or permits, orders to cease unlawful activities or other acts involving low-level waste that are determined by the department to be detrimental to the public health and safety, orders prohibiting access to the regional facility and such other orders as the department deems necessary to abate public nuisances. An order issued under this subsection shall take effect upon notice,

unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not automatically act as a supersedeas unless so granted by the board. It shall be the duty of any person to comply with any order issued under this subsection unless and until a supersedeas has been obtained. Any person who fails to comply with an order lawfully issued under this subsection shall be guilty of contempt and shall be punished in an appropriate manner by the Commonwealth Court, which court is hereby granted jurisdiction, upon application by the department.

(c) Injunction.—In addition to any other remedies provided for in this act, the department may institute a suit in equity in the name of the Commonwealth for an injunction to restrain a violation of this act or the regulations or order adopted or issued under this act or to restrain the maintenance or threat of a public nuisance. In any such proceeding the court shall, upon motion by the department, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct or is engaged in conduct which is causing immediate and irreparable harm to the public or the environment. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings.

(d) Impoundment, etc.—The department shall have the authority to impound temporarily any low-level waste or to take other actions as are necessary to abate a public nuisance wherever the department believes that this action is necessary to protect the health and safety of the public and the environment.

(e) Emergency.—Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety or the environment, the department is authorized, without notice or hearing, to issue an order to any person reciting the existence of such emergency and requiring that appropriate action be taken to meet the emergency. Notwithstanding any provision of this act, such order shall be effective immediately, unless a supersedeas is granted by the Environmental Hearing Board.

Section 506. Construction of act.

The penalties and remedies prescribed by this act shall be deemed concurrent, and the existence of or exercise of any remedy shall not prevent the department or any person from exercising any other remedy at law or in equity. No provision of this act or any action taken by virtue of this act, including the granting of a permit or license, shall be construed as estopping the Commonwealth from proceeding in courts of law or equity to abate nuisances under existing law; nor shall this act in any other manner abridge or alter rights of action or remedies now or hereafter existing in equity or under the common law or statutory law, criminal or civil, exercised by the Commonwealth or any person to enforce their rights or to abate any nuisance, now or hereafter existing, in any court of competent jurisdiction.

Section 507. Right of citizen to intervene in proceedings.

Any citizen of this Commonwealth having an interest which is or may be adversely affected shall have the right on his own behalf, without posting bond, to intervene in any action brought pursuant to section 505(c).

Section 508. Citizen suits.

(a) Authority to bring civil action.—Except as provided in subsection (c), any affected person may commence a civil action on his own behalf against any person who is alleged to be in violation of this act.

(b) Jurisdiction.—The Environmental Hearing Board is hereby given jurisdiction over citizen suit actions brought under this section against the department. Actions against any other persons under this section may be taken in a court of competent jurisdiction. Such jurisdiction is in addition to any rights of action now or hereafter existing in equity, or under the common law or statutory law.

(c) Notice.—No action may be commenced under this section prior to 60 days after the plaintiff has given notice of the violation to the secretary, to the host municipality and to any alleged violator of the act, of other environmental protection acts, or of the regulation or order of the department which has allegedly been violated, or if the secretary has commenced and is diligently prosecuting an administrative action before the Environmental Hearing Board, or a civil or criminal action in a court of the United States or a state to require compliance with such permit, standard, regulation, condition, requirement, prohibition or order.

(d) Award of costs.—The Environmental Hearing Board or a court of competent jurisdiction, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the board determines such award is appropriate.

Section 509. Whistleblower provisions.

(a) Adverse action prohibited.—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing.

(b) Discrimination prohibited.—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

(c) Remedies.—The remedies, penalties and enforcement procedures for violations of this section shall be provided in the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(d) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Appropriate authority." A Federal, state or local government body, agency or organization having jurisdiction over criminal law enforcement or regulatory violations; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the department, host county, host municipality or other public agency whose functions include public health and safety.

"Employee." A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for an employer.

"Employer." An operator of a low-level waste facility, a contractor developing such a facility or a contractor developing procedures or regulations associated with the Appalachian Compact low-level nuclear waste facility.

"Good faith report." A report of conduct defined in this section as wrongdoing which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"Wrongdoing." A violation which is not of a merely technical or minimal nature of a Federal or state statute, regulation, license, permit or order relating to the operation of low-level waste facilities or relating to the preservation of the public health and safety in relation to such facilities.

CHAPTER 7
APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Section 701. Appointment and qualification of commissioners.

As an initial host state under the compact, Pennsylvania's delegation to the commission shall consist of five members. Upon passage of this act, the Governor shall immediately appoint four voting members and four alternates. Each of the members and alternates shall be appointed by and serve at the pleasure of the Governor and be confirmed by a majority vote of the members elected to the Senate. Each appointee shall be a resident and citizen of this Commonwealth at the time of his appointment and for the duration of his term. No appointee shall, for three years prior to appointment, have a financial interest in or be employed by the operator of any low-level waste disposal facility, a subsidiary of the operator, parent company of the operator, a subcontractor of the operator, or in any corporation that utilizes the facility for disposal of its wastes. No member or alternate shall accept employment from any regional facility operator, a subsidiary of the operator, parent company of the operator, a subcontractor of the operator, any corporation that utilizes the facility for disposal of its wastes, brokers or carriers during his term of office and three years after leaving office. In the event that a member or alternate resigns, the Governor shall, subject to Senate confirmation, appoint a replacement to serve. Following selection of the site of the regional facility, the Governor shall appoint a voting member and alternate who shall be residents of the host municipality. The Governor shall notify the commission in writing of the identities of the members and the alternates.

Section 702. Authority of the commission.

(a) *General rule.*—The commission is authorized:

(1) To enter into reciprocal contingency agreements with noncompact states or other regional boards for the emergency disposal of low-level waste generated outside the compact region. Any such agreement shall

include a provision that the quantity of waste for which the parties are responsible under the agreement shall be equal based on the volume of waste and/or total curie count.

(2) To establish regulations to specifically govern and define exactly what would constitute an emergency which requires the disposal of out-of-compact low-level waste at the regional facility.

(3) To determine whether an emergency exists outside the compact region and that a contingency agreement should be implemented.

(4) To request the General Assembly and the Governor to approve an extension of a reciprocal-contingency agreement, and to provide the date when out-of-compact waste disposal will cease under the agreement.

(b) Out-of-compact waste.—No agreement shall permit the disposal of out-of-compact low-level waste for a period exceeding four months, unless an extension is granted by the General Assembly or the Governor.

CHAPTER 9
MISCELLANEOUS PROVISIONS

Section 901. Annual report.

The department shall provide an annual report to the General Assembly detailing all the current activities of the Appalachian Low-Level Waste Compact, compact commissioners and facility operators. The department shall also include in the report a list of all low-level waste generators, brokers and carriers, the amounts of waste generated by each source by volume, toxicity, product and use, including curie content, hazardous life and radionuclide. A geographic breakdown shall also be included. The department shall also furnish financial statistics relating to all aspects of the Appalachian Compact and its associated facility. The department shall also furnish statistics relating to volume reduction, waste minimization, separation and related processing.

Section 902. Liberal construction.

The terms and provisions of this act are to be liberally construed so as to best achieve and effectuate the goals and purposes thereof.

Section 903. Construction with other laws.

(a) Other acts.—This act shall be construed in pari materia with the Appalachian States Low-level Radioactive Waste Compact and the Radiation Protection Act.

(b) Authority of department.—The authority given the department under this act over the regulation of low-level radioactive waste shall be construed as complementary to the department's authority over radiation sources established under the Radiation Protection Act. This act shall not be construed to limit the department's authority under the Radiation Protection Act to license the generation, management, handling or transportation of low-level waste.

Section 904. Appropriations.

(a) Initial funding of program.—It is the intent of the General Assembly to fund this program initially through annual General Fund appropriation for transfer to the Low-Level Waste Fund.

(b) Disposition of General Fund appropriation.—The funds remaining of the appropriation made to the department for the low-level radioactive waste control program under section 213 of the act of July 3, 1987 (P.L.459, No.9A), known as the General Appropriation Act of 1987, are hereby transferred to the Low-Level Waste Fund.

(c) Repayment of General Fund.—The sum appropriated under section 213 of the General Appropriation Act of 1987 for the low-level radioactive waste control program shall be repaid to the General Fund under section 315(c)(1)(i) of this act.

Section 905. Repeals.

(a) Absolute repeals.—The following acts and parts of acts are repealed:

Act of September 8, 1959 (P.L.807, No.302), entitled "An act empowering the Department of Health to regulate the burial of radioactive material and to issue permits therefor; and prescribing penalties."

Act of October 26, 1959 (P.L.1380, No.480), entitled "An act empowering the Commonwealth to acquire land and operate burial grounds for the disposal of radioactive materials."

(b) Inconsistent repeal.—The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

Act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(c) Construction of section.—This section shall not be construed to repeal jurisdiction over radioactive wastes that are also hazardous wastes under the Solid Waste Management Act, and it is hereby declared to be the legislative intent of the Solid Waste Management Act to regulate such radioactive wastes that are also listed or characteristic hazardous wastes or are mixed with hazardous waste.

Section 906. Effective date.

This act shall take effect immediately.

APPROVED—The 9th day of February, A. D. 1988.

ROBERT P. CASEY

No. 1990-67

AN ACT

HB 406

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," authorizing the Comptroller of the House of Representatives to make certain lapses; further providing for fees collected by administrative agencies; prohibiting the incarceration of civilian prisoners at military installations; requiring the Department of Transportation to do certain work on manhole covers, drains and other devices at the time a road is repaired or resurfaced at the cost of the utility, municipality or authority owner; authorizing the waiver of the realty transfer tax in certain cases by the Department of Revenue; further providing for the powers of the Department of General Services and the Department of Revenue; transferring the Pennsylvania Conservation Corps from the Department of Environmental Resources to the Department of Labor and Industry and continuing its existence; and making repeals.

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

Section 1. Section 621 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is amended by adding a subsection to read:

Section 621. Lapsing of Funds.—* * *

(n) During the first ten (10) days of the fiscal period beginning July 1, 1990, the Comptroller of the House of Representatives shall forward lapse documents to the State Treasurer for at least twenty-seven million dollars ($27,000,000) of prior year continuing appropriations of the House of Representatives. This subsection shall expire September 30, 1990.

Section 2. Section 602-A of the act is amended by adding clauses to read:

Section 602-A. Department of Agriculture.—The Department of Agriculture is authorized to charge fees for the following purposes and in the following amounts:

* * *

(11) Bakery:

(i) License..... 35.00

(12) Cold Storage:

(i) License..... 35.00
(13) Dessert:
(i) License..... 35.00
(14) Nonalcoholic drinks:
(i) License..... 100.00
(15) Inspection/registration of plants and trees:
(i) Inspection per establishment..... 40.00

Section 3. Sections 603-A and 606-A of the act, added July 1, 1981 (P.L.143, No.48), are amended to read:

Section 603-A. Department of Banking.—The Department of Banking is authorized to charge fees for the following purposes and in the following amounts:

[(1) Consumer discount companies:
(i) Initial license..... $250.00
(ii) Annual license renewal..... 250.00
(iii) Additional licenses for each business location..... 250.00
(2) Motor vehicle sales finance:
(i) License for an installment seller of motor vehicles. 50.00
(ii) License for a sales finance company..... 200.00
(iii) License for a collector-repossessor..... 200.00]
(1) Consumer discount companies:
(i) Initial license..... $500.00
(ii) Additional licenses for each business location..... 500.00
(iii) Annual license renewal..... 350.00
(2) Motor vehicle sales finance:
(i) Initial license for sales finance company..... 500.00
Annual license renewal..... 350.00
(ii) License for installment seller..... 250.00
Annual license renewal..... 250.00
(iii) Initial license collector-repossessor..... 350.00
Annual license renewal..... 250.00
(3) Pawnbroker:
(i) Initial license for pawnbroker..... 500.00
Annual license renewal..... 250.00
(4) Money transmitter:
(i) Initial license for money transmitter..... 2,000.00
Annual license renewal..... 2,000.00
(5) Secondary mortgage loan company:
(i) Initial license for principal place of business and each branch office..... 500.00
Annual license renewal..... 350.00
(6) Secondary mortgage loan broker:
(i) Initial license for principal place of business..... 500.00
Annual license renewal..... 200.00
(ii) Each branch office..... 50.00
Annual branch renewal..... 25.00

(7) First Mortgage Banker:
(i) Initial license for principal place of business and each branch office..... 500.00
Annual license renewal..... 350.00
(8) First mortgage broker:
(i) Initial license fee for principal place of business.... 500.00
Annual license renewal..... 200.00
(ii) Each branch office..... 50.00
Annual branch renewal..... 25.00

Section 606-A. Department of Education.—The Department of Education is authorized to charge fees for the following purposes and in the following amounts:

(4) Private driver training school fees:
[(i) Initial license..... 100.00
(ii) License renewals..... 100.00]
(i) Initial license..... 500.00
(ii) License renewals..... 300.00
(iii) Instructor:
(A) Initial..... 30.00
(B) Renewal..... 20.00
(6) Private driver training schools vehicle identification registrations:
(i) Initial..... 10.00
(ii) Renewal/transfer..... 5.00

Section 4. Section 607-A(1) and (2) of the act, added July 1, 1981 (P.L.143, No.48), are amended and the section is amended by adding clauses to read:

Section 607-A. Department of Environmental Resources.—The Department of Environmental Resources is authorized to charge fees for the following purposes and in the following amounts:

(1) Eating and drinking places:
(i) New establishments
[(A) New establishments that are owner operated with a seating capacity of less than 50..... $ 30.00
(B) All other new establishments..... 100.00
(ii) Renewal or change of ownership..... 30.00
(iii) Duplicate license for each additional business location..... 5.00
(iv) Temporary license..... 1.00
(2) Certification of sewage and water treatment plant operators:
(i) Initial license..... 20.00
(ii) Annual license renewal..... 3.00]
(A) New establishments that are owner operated with a seating capacity of less than 50..... $75.00
(B) All other new establishments..... 175.00

(ii) Renewal or change of ownership..... 60.00
(iii) Duplicate license for each additional business location..... 10.00
(iv) Temporary license..... 10.00
(2) Certification of sewage and water treatment plant operators:
(i) Initial license..... 20.00
(ii) Annual license renewal..... 5.00
* * *
(6) Sewage enforcement officer certification:
(i) Examination..... 25.00
(7) Planning module review fee:
(i) Minor subdivisions..... 50.00
(ii) Major subdivisions..... 250.00

Section 5. Section 609-A of the act is amended by adding a clause to read:

Section 609-A. Department of Health.—The Department of Health is authorized to charge fees for the following purposes and in the following amounts:

* * *
(5) Home health care agency:
(i) License..... 200.00

Section 6. Sections 612-A and 614-A of the act, added July 1, 1981 (P.L.143, No.48), are amended to read:

Section 612-A. Insurance Department.—The Insurance Department is authorized to charge fees for the following purposes and in the following amounts:

(1) Insurance companies, associations or exchanges:
(i) Valuation of life insurance policies based on a per thousand dollar value of such insurance..... $.01 with a minimum charge of $10.00
(ii) Filing copy of charter *or amendment* of a domestic, foreign or alien company, association or exchange..... [35.00] *150.00*
(iii) Filing annual statement or other statement of a domestic, foreign or alien company, association or exchange..... [50.00] *125.00*
(iv) License fee for a domestic, foreign or alien company, association or exchange or any duplicate license..... [15.00] *40.00*
(v) License for a rating organization..... 25.00

(vi) Examination of a domestic, foreign and alien company	Expense of examination
(vii) Filing and review of merger agreements of domestic, foreign and alien companies	[200.00] *280.00*
(viii) Filing and review of conversion plan from mutual company to stock company	[200.00] *1,200.00*
(ix) Filing and review of conversion plan from stock company to mutual company	[200.00] *1,200.00*
(x) Filing and review of proposed exchange of shares of stock	300.00
(xi) Filing and review of material in connection with a proposed acquisition or offer to acquire capital stock of a domestic insurance company or insurance holding company	[300.00] *1,200.00*
(xii) Filing and review of registration statement by an insurance member of an insurance holding company	200.00
(xiii) For each amendment to such registration statement	[50.00] *80.00*
(xiv) Issuance of a certificate of compliance, deposit or surety	10.00
(xv) Any other certificate issued by the department	10.00
(xvi) Filing and review of qualifications of an insurer to issue variable annuities	[100.00] *210.00*
(xvii) Certification of each copy of any paper filed with department	[10.00] *10.00 plus .10 per page*
(xviii) Copy of any paper filed with department on a per/page basis	.25
(xix) Copy of annual statement pages	*1.00*
(xx) Domestic company license application	*1,200.00*
(xxi) Foreign/alien license application	*1,200.00*
(xxii) Qualification of insurer to issue variable life contracts	*210.00*
(xxiii) Return of increase or decrease or stated capital	*80.00*
(xxiv) Reinsurance and assumption agreement	*150.00*
(xxv) Request to pay extraordinary dividends	*65.00*
(xxvi) Surplus line binding authority agreement	*65.00*

(xxvii) Duplicate of agency or broker record	*10.00*
(2) Agents and brokers:	
(i) Each listing for written examination of applicants for licenses as agents, brokers, public adjusters or public adjuster solicitors	10.00
(ii) For license of an applicant qualified through prior examination	5.00
(iii) For agent's license	10.00
(iv) For annual renewal of agent's license or for a replacement or duplicate of such license	10.00
(v) For each additional variable annuity power in an agent's license on a per annuity basis	5.00
(vi) Individual insurance broker license	20.00
(vii) Insurance broker license in the name of a corporation or copartnership	25.00
(viii) For each broker's license issued in the name of qualified individual active members or officers of a copartnership or corporation on a per license basis	25.00
(ix) For certification of an agent or broker license	10.00
(x) Surplus line agent:	
(A) Initial license	100.00
(B) Annual renewal	100.00
(C) Annual certificate of eligibility	10.00
(D) Examination fee	10.00
(3) Fraternal benefit societies:	
(i) Filing copy of charter of a domestic, foreign or alien society, in addition to any fee for filing such charter with the Department of State	35.00
(ii) The filing of an annual or other statement	**[50.00]** *125.00*
(iii) License to society or certified copy or duplicate thereof	**[15.00]** *40.00*
(iv) Each listing for written examination of an applicant for license as an agent	10.00
(v) Each applicant for such licenses for which an examination is not required	5.00
(vi) Agent's license for each domestic or foreign society, for life or accident and health lines, or any combination thereof, regardless of the number of powers, excepting variable annuities, for which licensed	10.00
(vii) Copy of any paper filed in the department	10.00
department, per page	.25
(viii) Any certificate required	10.00
(ix) Making examinations	Expense of examination

(x) Filing and reviewing agreements of merger of domestic, foreign and alien societies	200.00
(xi) Filing and review of a plan of conversion from a fraternal benefit society to a mutual company and for filing each amendment to registration statement.	200.00
(xii) For issuing a certificate of compliance, deposit or surety or any other certificate required to be issued by the department	10.00
(xiii) Filing and review of qualification of a society to issue variable annuities	**[100.00]** ***210.00***
(xiv) Certificate of an agent's license or for duplicate or replacement licenses	10.00
(xv) Any other certificate issued by the division of agents	10.00
(xvi) Each renewal of license as an individual agent	10.00
(xvii) Each additional variable annuity power in such license	5.00
(4) License and annual renewal for manager or exclusive general agent for domestic insurance company	200.00
(5) Motor vehicle physical damage appraiser:	
(i) Initial license	20.00
(ii) Annual renewal	10.00
(6) Professional bondsman license:	
(i) Initial license	100.00
(ii) Annual renewal	50.00
(7) Public adjustors and solicitors for companies:	
(i) Public adjustor:	
(A) Initial license	100.00
(B) Annual renewal	100.00
(ii) Public adjustor solicitor:	
(A) Initial license	50.00
(B) Annual renewal	50.00
(8) Workmen's Compensation Security Fund assessment:	
(i) Stock company, mutual carrier and reciprocal exchange	1% of annual net written premiums

Section 614-A. Liquor Control Board.—The Pennsylvania Liquor Control Board is authorized to charge fees for the following purposes and in the following amounts:

[(1) Applications for hotel, restaurant liquor licenses:	
(i) Application filing fee	**$ 30.00**
(ii) Renewal filing fee	**30.00**
(iii) License fee:	

(A) Municipalities, population less than 1,500.....	225.00
(B) Municipalities, except townships, population 1,500 - 9,999.....	275.00
(C) Municipalities, townships, population 1,500 - 11,999.....	275.00
(D) Municipalities, except townships, population 10,000 - 49,999.....	375.00
(E) Municipalities, townships, population 12,000 - 49,999.....	375.00
(F) Municipalities, population 50,000 - 99,999.....	475.00
(G) Municipalities, population 100,000 - 149,999..	575.00
(H) Municipalities, population 150,000 or more....	675.00
(iv) Transfer fee.....	45.00
(2) Malt or brewed beverages:	
(i) Application filing fee.....	30.00
(ii) Renewal filing fee.....	30.00
(iii) License fee:	
(A) Municipalities, population less than 10,000....	175.00
(B) Municipalities, population 10,000 - 49,999.....	225.00
(C) Municipalities, population 50,000 - 99,999.....	275.00
(D) Municipalities, population 100,000 - 149,999..	325.00
(E) Municipalities, population 150,000 or more....	375.00
(iv) Transfer fee.....	45.00
(3) Applications for clubs (except catering) liquor:	
(i) Application filing fee.....	30.00
(ii) Renewal filing fee.....	30.00
(iii) License fee.....	125.00
(iv) Transfer fee.....	45.00
(4) Malt beverage:	
(i) Application filing fee.....	30.00
(ii) Renewal filing fee.....	30.00
(iii) License fee.....	100.00
(iv) Transfer fee.....	45.00
(5) Registration of agents; distillery certificate broker:	
(i) Application filing fee.....	30.00
(ii) Renewal filing fee.....	30.00
(6) Amusement permit liquor:	
(i) Permit fee	1/5 annual liquor license fee, 40.00 minimum
(7) Amusement permit malt beverage:	

(i) Permit fee	1/5 annual liquor license fee, 40.00 minimum
(8) Bailee for hire:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee (prorated quarterly)	125.00
(9) Bonded warehouse:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee (prorated quarterly)	125.00
(10) Brewery license:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee (prorated quarterly)	1,025.00
(iv) Transfer fee	45.00
(11) Distillery license:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee (prorated quarterly on volume)	2,525.00
(12) Distillery certificate broker permit:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) Permit fee	125.00
(13) Distillery of historical significance:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee (prorated quarterly)	2,525.00
(14) Importer's liquor license:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee	125.00
(iv) Transfer fee	45.00
(15) Importer's warehouse license:	
(i) Application filing fee, each warehouse	30.00
(ii) Renewal filing fee, each warehouse	30.00
(iii) License fee, each warehouse	30.00
(16) Limited winery:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee (prorated quarterly)	275.00
(17) Malt beverage distributor:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00

(iii) License fee	425.00
(iv) Transfer fee	45.00
(18) Malt beverage importing distributor:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee	925.00
(iv) Transfer fee	45.00
(19) Performing arts facility license:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee	675.00
(iv) Transfer fee	45.00
(20) Public service license liquor:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee, railroad cars, per car	30.00
(iv) License fee, steamship or vessel, per vessel	125.00
(v) License fee, per air carrier	125.00
(vi) Transfer fee, railroad car, steamship or vessel or per air carrier	45.00
(21) Public service license malt beverage:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee, railroad cars, per car	20.00
(iv) License fee, steamship or vessel, per vessel	75.00
(v) License fee, per air carrier	25.00
(vi) Transfer fee, railroad cars, steamship or vessel or per air carrier	45.00
(22) Sacramental wine license:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee	125.00
(iv) Transfer fee	45.00
(23) Sales permit; reciprocal:	
(i) Permit fee	To be set by board not to exceed 5,000.00
(24) Special occasion permit:	
(i) Permit fee, liquor or malt or brewed beverages, per day	15.00
(25) Stadium restaurant liquor license:	
(i) Application filing fee	30.00
(ii) Renewal filing fee	30.00
(iii) License fee	675.00
(26) Stadium and arena malt beverage license:	

(i) Application filing fee	**30.00**
(ii) Renewal filing fee	**30.00**
(iii) License fee	**125.00**
(27) Sunday sales liquor:	
(i) Permit fee	**200.00**
(28) Sunday sales malt beverage:	
(i) Permit fee	**200.00**
(29) Trade show and convention liquor license:	
(i) Application filing fee	**30.00**
(ii) Renewal filing fee	**30.00**
(iii) License fee	**675.00**
(iv) Transfer fee	**45.00**
(30) Transporter for hire; Class A:	
(i) Application filing fee	**30.00**
(ii) Renewal filing fee	**30.00**
(iii) License fee	**125.00**
(31) Transporter for hire; Class B:	
(i) Application filing fee	**30.00**
(ii) Renewal filing fee	**30.00**
(iii) License fee	**75.00**
(32) Vendor's permit:	
(i) Application filing fee	**30.00**
(ii) Renewal filing fee	**30.00**
(iii) Permit fee	**125.00**
(33) Winery:	
(i) Application filing fee	**30.00**
(ii) Renewal filing fee	**30.00**
(iii) License fee (prorated quarterly)	**275.00**
(34) To be credited to the State Store Fund from each of the fees collected for hotel, restaurant and club liquor licenses and retail dispensers' licenses both malt and brewed beverages	**75.00]**
(1) Hotel, restaurant liquor licenses:	
(i) Application filing fee	***$700.00***
(ii) Renewal filing fee	***30.00***
(iii) License fee:	
(A) Municipalities, population less than 1,500	***250.00***
(B) Municipalities, except townships, population 1,500 - 9,999	***300.00***
(C) Municipalities, townships, population 1,500 - 11,999	***300.00***
(D) Municipalities, except townships, population 10,000 - 49,999	***400.00***
(E) Municipalities, townships, population 12,000 - 49,999	***400.00***
(F) Municipalities, population 50,000 - 99,999	***500.00***

(G) Municipalities, population 100,000 - 149,999..	*600.00*
(H) Municipalities, population 150,000 or more....	*700.00*
(iv) Transfer fee:	
(A) Person to person.....	*650.00*
(B) Place to place.....	*550.00*
(C) Double transfer.....	*700.00*
(2) Hotel or retail dispenser - eating place malt or brewed beverage licenses:	
(i) Application filing fee.....	*700.00*
(ii) Renewal filing fee.....	*30.00*
(iii) License fee:	
(A) Municipalities, population less than 10,000....	*200.00*
(B) Municipalities, population 10,000 - 49,999.....	*250.00*
(C) Municipalities, population 50,000 - 99,999.....	*300.00*
(D) Municipalities, population 100,000 - 149,999..	*350.00*
(E) Municipalities, population 150,000 or more....	*400.00*
(iv) Transfer fee:	
(A) Person to person.....	*650.00*
(B) Place to place.....	*550.00*
(C) Double transfer.....	*700.00*
(3) Clubs (except catering) liquor licenses:	
(i) Application filing fee.....	*700.00*
(ii) Renewal filing fee.....	*30.00*
(iii) License fee.....	*150.00*
(iv) Transfer fee:	
(A) Person to person.....	*650.00*
(B) Place to place.....	*550.00*
(C) Double transfer.....	*700.00*
(4) Club malt or brewed beverage licenses:	
(i) Application filing fee.....	*700.00*
(ii) Renewal filing fee.....	*30.00*
(iii) License fee.....	*125.00*
(iv) Transfer fee:	
(A) Person to person.....	*650.00*
(B) Place to place.....	*550.00*
(C) Double transfer.....	*700.00*
(5) Registration of agents; distillery certificate broker:	
(i) Application filing fee.....	*65.00*
(ii) Renewal filing fee.....	*65.00*
(6) Amusement permit liquor:	
(i) Permit fee.....	*1/5 annual license fee*
(7) Amusement permit malt beverage:	
(i) Permit fee.....	*1/5 annual license fee*
(8) Bailee for hire:	

(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly)	*265.00*
(9) Bonded warehouse:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly)	*265.00*
(10) Brewery license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly)	*1,425.00*
(iv) Transfer fee:	
(A) Person to person	*650.00*
(B) Place to place	*550.00*
(C) Double transfer	*700.00*
(11) Distillery license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly on volume)	*5,400.00*
(12) Distillery certificate broker permit:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) Permit fee	*175.00*
(13) Distillery of historical significance:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly)	*5,400.00*
(14) Importer's liquor license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*265.00*
(iv) Transfer fee:	
(A) Person to person	*650.00*
(B) Place to place	*550.00*
(C) Double transfer	*700.00*
(15) Importer's warehouse license:	
(i) Application filing fee, each warehouse	*700.00*
(ii) Renewal filing fee, each warehouse	*30.00*
(iii) License fee, each warehouse	*65.00*
(16) Limited winery:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly)	*385.00*
(17) Malt beverage distributor:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*

(iii) License fee	*600.00*
(iv) Transfer fee:	
(A) Person to person	*650.00*
(B) Place to place	*550.00*
(C) Double transfer	*700.00*
(18) Malt beverage importing distributor:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*1,350.00*
(iv) Transfer fee:	
(A) Person to person	*650.00*
(B) Place to place	*550.00*
(C) Double transfer	*700.00*
(19) Performing arts facility license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*675.00*
(20) Public service liquor license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*40.00*
(iii) License fee, railroad cars, per car	*65.00*
(iv) License fee, steamship or vessel, per vessel	*260.00*
(v) License fee, per air carrier	*260.00*
(vi) Transfer fee, railroad car, steamship or vessel or per air carrier	*55.00*
(21) Public service license malt beverage:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*40.00*
(iii) License fee, railroad cars, per car	*40.00*
(iv) License fee, steamship or vessel, per vessel	*160.00*
(v) License fee, per air carrier	*55.00*
(vi) Transfer fee, railroad cars, steamship or vessel or per air carrier	*55.00*
(22) Sacramental wine license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*265.00*
(iv) Transfer fee	*45.00*
(23) Sales permit; reciprocal:	
(i) Permit fee	*To be set by board not to exceed 5,000.00*
(24) Special occasion permit:	
(i) Permit fee, liquor or malt or brewed beverages, per day:	

(A) No investigation	*30.00*
(B) Investigation	*85.00*
(25) Stadium restaurant liquor license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*700.00*
(26) Stadium and arena malt beverage license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*150.00*
(27) Sunday sales liquor:	
(i) Permit fee	*300.00*
(28) Sunday sales malt beverage:	
(i) Permit fee	*300.00*
(29) Trade show and convention liquor license:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*675.00*
(iv) Transfer fee:	
(A) Person to person	*650.00*
(B) Place to place	*550.00*
(C) Double transfer	*700.00*
(30) Transporter for hire; Class A and C:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*265.00*
(31) Transporter for hire; Class B:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee	*160.00*
(32) Vendor's permit:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) Permit fee	*265.00*
(33) Winery:	
(i) Application filing fee	*700.00*
(ii) Renewal filing fee	*30.00*
(iii) License fee (prorated quarterly)	*385.00*
(34) To be credited to the State Stores Fund from each of the fees collected for hotel, restaurant and club liquor licenses and retail dispensers' licenses both malt and brewed beverages	*100.00*
(35) Malt or brewed beverage brand registration:	
(i) Filing fee (per brand)	*75.00*

Section 7. Section 615-A of the act is amended by adding clauses to read:

Section 615-A. Pennsylvania Securities Commission.—The Pennsylvania Securities Commission is authorized to charge fees for the following purposes and in the following amounts:

* * *

(4) Agent application fee:	
(i) Initial, renewal, and transfer	*50.00*
(5) Broker dealer application fee:	
(i) Initial and renewal	*250.00*
(6) Section 205 - coordination filing fee:	
(i) Less than $10,000,000	*500.00*
(ii) $10,000,000 or more	*750.00*
(7) Retention fees for withdrawal of registration statement:	
(i) Under section 205	*300.00*
(8) Filing an application for exemption from registration for an offering of securities to be sold under section 203(d):	
(i) Less than $100,000	*50.00*
(ii) $100,000 or more but less than $1,000,000	*150.00*
(9) Investment advisor's application fee:	
(i) Initial and renewal	*200.00*
(10) Registration by an open-end or closed-end investment company:	
(i) Issuer seeking to raise more than $4,000,000 but less than $100,000,000	*1/20 of 1% plus 1,000.00*
(ii) Issuer seeking to raise $100,000,000 or more	*1/20 of 1% plus 1,500.00*
(11) Securities exemption fees:	
(i) Section 202(g)	*50.00*
(ii) Section 203(n)	*50.00*

Section 8. Section 616-A of the act, added July 1, 1981 (P.L.143, No.48), is amended to read:

Section 616-A. Pennsylvania State Police.—The Pennsylvania State Police are authorized to charge fees for the following purposes and in the following amounts:

(1) Accident Reports:	
(i) Certified copy of record of investigation of a vehicle accident	$8.00
(2) Private security agent lethal weapon:	
(i) Application	**[45.00]** *50.00*
(ii) Certification	**[25.00]** *30.00*
(iii) Renewal	**[25.00]** *30.00*

(3) Escort services:

(i) Escort services for spent nuclear shipments.....	*25.00/hr. + .50/mile*
(ii) Rail shipments.....	*30.00/hr. per officer*

(4) Bank alarm panel:

(i) Bank alarm connection rate.....	*300.00 per year*

(5) Fingerprint records check:

(i) Private detective licensing - fingerprint records check request from clerk of courts.....	*17.50*

(6) Firearm and name check:

(i) Noncriminal justice agencies and individuals.....	*10.00*

Section 9. The act is amended by adding sections to read:

Section 618-A. Department of State.—The Department of State is authorized to charge fees for the following purposes and in the following amounts:

(1) Bureau of Commissions, Elections and Legislation:

(i) Application fee for notary commission.....	*$40.00*
(ii) Domestic corporations for profit.	
(A) Articles of incorporation, letters patent or like instrument incorporating a corporation or association.....	*85.00*
(B) Articles of conversion or like instrument.....	*85.00*
(C) Each ancillary transaction.....	*45.00*
(iii) Foreign corporation:	
(A) Certificates of authority or like qualification to do business.....	*45.00*
(B) Amended certificate of authority or like change in qualification to do business.....	*175.00*
(C) Domestication.....	*85.00*
(iv) Individual fictitious names:	
(A) Registration.....	*30.00*
(B) Each ancillary transaction.....	*30.00*
(v) Corporate fictitious names:	
(A) Registration.....	*45.00*
(B) Each ancillary transaction.....	*45.00*
(vi) Trademarks, emblems, union labels, description of bottles and like matters:	
(A) Registration.....	*30.00*
(B) Each ancillary transaction.....	*30.00*
(vii) Uniform Commercial Code:	
(A) Financing statement.....	*10.00*
(B) Each ancillary transaction.....	*10.00*
(C) Search per debtor named.....	*10.00*
(viii) Certification fees:	

(A) For certifying copies of any document or paper on file, if the department furnished the copy..... 10.00

(B) For issuing any other certificate of the Secretary of the Commonwealth or the Department of State..... 15.00

(ix) Report of record search:

(A) For preparing and providing a written or photocopy, or both, report of a record search, the fee specified in subclause (viii)(A) hereof, if any, plus $10.00

Section 619-A. Department of Transportation.—The Department of Transportation is authorized to charge fees for the following purposes and in the following amounts:

(1) Driving record:

(i) Certified driving record..... $10.00

(2) Uncollectible check fee:

(i) Uncollectible check penalty fee..... 20.00

Section 1417. Incarceration of Civilian Prisoners Prohibited.—Civilian prisoners, either pending trial or appeal or after sentencing, shall not be incarcerated at any military reservation, base or facility within Pennsylvania, whether owned by the Federal or State Government, on a temporary or permanent basis.

Section 10. Section 2005 of the act is amended by adding a clause to read:

Section 2005. General Road Improvement.—The Department of Transportation shall have the power, and its duty shall be:

* * *

(g) To take responsibility for bringing all manhole covers, drains and other surface devices up to the grade level or other appropriate level at the time any State highway is reconstructed, repaired or resurfaced.

(1) The department shall give advance notice of the project to the utility owner and offer the owner the opportunity to undertake the improvements required under this clause. Such advance notice shall be commensurate with the nature and scope of the improvements to be performed by the utility owner within such time as may be determined by the department.

(2) If the owner does not make the improvements within such time as may be determined by the department, the department may perform or cause to be performed the work as required under such terms as may be acceptable to the department. In construing the provisions of this section, time shall be deemed to be of the essence. Costs incurred may be charged to the owner if the owner is not entitled to reimbursement under section 412 or 412.1 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law."

(3) If the owner is a municipality, the department may deduct the costs from any liquid fuel tax payments which shall become due the municipality, but only after notice to the municipality of the amount of the costs and a request for the payment of same.

(4) If the owner is a municipal authority, the department shall have the authority not to issue the municipal authority any highway occupancy permit if the costs incurred by the department for performing the work remain unpaid.

(5)(i) Nothing in this subsection shall be construed to impair, suspend, contract, enlarge, extend or affect in any manner the powers and duties of the Pennsylvania Public Utility Commission as provided in 66 Pa.C.S. §§ 2702 (relating to construction, relocation, suspension and abolition of crossings), 2703 (relating to ejectment in crossing cases) and 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings).

(ii) For purposes of this clause, the term "utility owner" or "owner" shall not include any utility regulated by the Pennsylvania Public Utility Commission.

Section 11. The act is amended by adding sections to read:

Section 2216. Pennsylvania Conservation Corps.—The Pennsylvania Conservation Corps shall be a part of the Department of Labor and Industry. The department shall have the power, and its duty shall be, to administer the act of July 2, 1984 (P.L.561, No.112), known as the "Pennsylvania Conservation Corps Act." The Pennsylvania Conservation Corps and the program under the "Pennsylvania Conservation Corps Act" shall expire June 30, 1994.

Section 2401.1a. Restrictions on Powers of the Department of General Services.—The provisions of section 2401.1(19) shall not apply to additional capital projects in the category of public improvement projects to be acquired or constructed by the Department of General Services for the program development and design of prototypical one thousand-cell facilities to be used in construction of a facility in Clearfield County and other State prison projects itemized in the act of July 1, 1990 (P.L.315, No.71), known as the "Prison Facilities Improvement Act."

Section 2504. Space on Form for Contributions.—(a) The Department of Revenue shall provide a space on the face of the individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the United States Olympic Committee, Pennsylvania Division.

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The Department of Revenue shall determine annually the total amount designated pursuant to this section, less reasonable administrative costs, and shall report such amount to the State Treasurer, who shall transfer such amount from the General Fund to the United States Olympic Committee, Pennsylvania Division.

Section 2505. Waiver of Realty Transfer Tax.—The Department of Revenue may, in the case of a transfer of real property from the Commonwealth to a nonprofit organization where that organization will utilize the

property for a drug or alcohol abuse rehabilitation program, waive the collective of the realty transfer tax imposed under Article XI-C of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

Section 12. There are transferred from the Department of Environmental Resources to the Department of Labor and Industry all of the following:

(1) The property, supplies, equipment and records being used in the administration of the act of July 2, 1984 (P.L.561, No.112), known as the Pennsylvania Conservation Corps Act.

(2) The personnel employed in the administration of the Pennsylvania Conservation Corps Act.

(3) The unexpended balances of appropriations, allocations and other funds available under the Pennsylvania Conservation Corps Act.

(4) The rights and obligations of contracts entered into under the Pennsylvania Conservation Corps Act.

Section 13. The regulations of the Department of Environmental Resources promulgated under the act of July 2, 1984 (P.L.561, No.112), known as the Pennsylvania Conservation Corps Act, shall remain valid until amended or deleted by the Department of Labor and Industry.

Section 14. Section 13 of the act of July 2, 1984 (P.L.561, No.112), known as the Pennsylvania Conservation Corps Act, is repealed.

Section 15. The following acts or parts of acts are repealed insofar as they relate to fee payments:

Section 3 of the act of May 22, 1933 (P.L.912, No.168), referred to as the Bakery Law.

Section 6 of the act of April 6, 1937 (P.L.200, No.51), known as the Pawnbrokers License Act.

Section 2 of the act of May 20, 1949 (P.L.1511, No.455), referred to as the Cold Storage Warehouse Food Law.

Section 10 of the act of January 18, 1952 (1951 P.L.2128, No.605), referred to as the Private Driver Education or Training School Act.

Section 5 of the act of August 21, 1953 (P.L.1323, No.373), known as The Notary Public Law.

Section 3 of the act of July 5, 1957 (P.L.485, No.276), entitled "An act for the protection of the public health and welfare, and the prevention of fraud and deception in the manufacture or sale of packaged non-alcoholic drinks; prohibiting the sale, offering or exposing for sale, exchange or giving away thereof unless registered; providing for licensing of places of manufacture; regulating the manufacture, compounding, labeling, sanitation and ingredients of non-alcoholic drinks, and the display of presses of fruit; prohibiting misbranding and adulteration of registered and non-registered non-alcoholic drinks; authorizing promulgation of rules, regulations and standards, and providing for penalties and for injunctions in certain cases, and the disposition of fees and fines."

Section 7 of the act of September 1, 1965 (P.L.420, No.215), known as The Frozen Dessert Law.

Section 6 and as much of section 6(a) as reads "but such revenues shall not exceed one hundred sixty thousand dollars ($160,000) for any one year" of the act of September 1, 1965 (P.L.436, No.221), known as the Pennsylvania Commercial Feed Law of 1966.

Section 6 of the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law.

The act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

The act of July 12, 1972 (P.L.769, No.182), entitled "An act relating to certain documents, prescribing the fees for the Department of State and certain public officers, permitting the filing of certain documents appropriating the exclusive right to a corporate name, repealing the excise tax on the capital stock of domestic corporations and repealing inconsistent acts."

Section 602(b) and (d) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

Section 807 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

Section 5 of the act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act.

Section 402(d)(1) of the act of July 10, 1984 (P.L.688, No.147), known as the Radiation Protection Act.

Section 5 of the act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act.

Section 16. The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

Section 12 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

Sections 2 and 3 of the act of July 2, 1984 (P.L.561, No.112), known as the Pennsylvania Conservation Corps Act.

Section 17. If this act is enacted after July 1, 1990, sections 2 (section 602-A), 3 (sections 603-A and 606-A), 4 (section 607-A(1) and (2)), 5 (section 609-A), 6 (sections 612-A and 614-A), 7 (section 615-A), 8 (section 616-A) and 9 (section 618-A) shall apply retroactively to July 1, 1990.

Section 18. The provisions of section 2504 shall apply to taxable years beginning January 1, 1990, and January 1, 1991, and shall expire thereafter unless reenacted.

Section 19. This act shall take effect immediately.

APPROVED—The 1st day of July, A. D. 1990.

ROBERT P. CASEY

No. 1990-107

AN ACT

HB 1743

Creating a fee system to cover the costs related to the establishment of a low-level radioactive waste disposal regional facility in Pennsylvania; and regulating certain low-level waste.

TABLE OF CONTENTS

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

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Low-Level Radioactive Waste Disposal Regional Facility Act.

Section 102. Legislative findings and purpose.

(a) Findings.—The General Assembly finds:

(1) That the Low-Level Radioactive Waste Policy Amendments Act of 1985 and the Appalachian States Low-Level Radioactive Waste Compact Law, adopted pursuant thereto, require the Commonwealth to timely provide a regional facility for disposal of low-level radioactive waste generated within Compact member states; that the waste generators are required, under the terms of the Appalachian States Low-Level Radioactive Waste Compact Law and the Low-Level Radioactive Waste Disposal Act, to pay the costs of developing, establishing and operating the low-level radioactive waste disposal facility; and that such costs associated with preconstruction development of the facility are estimated to be approximately $33,000,000.

(2) That those activities which generate low-level radioactive wastes requiring disposal contribute to the health and welfare of the citizens of the Compact member states, and advance payment of funds by certain waste generators will enhance the timely availability of a disposal site and reduce the costs of waste disposal.

(b) Purpose.—The General Assembly therefore establishes that the purposes of this act are as follows:

(1) To establish a low-level radioactive waste disposal regional facility siting fund which would:

(i) Require nuclear power reactor constructors and operators situated in this Commonwealth to pay to the Department of Environmental Resources funds to be utilized for reasonable and proper expenses, subject to limitations set forth herein, that are incurred by the department, its consultants and the selected regional facility operator in execution of activities required by section 307 of the Low-Level Radioactive Waste Disposal Act.

(ii) Authorize and encourage other potential users of the regional facility to make voluntary payments to the department for the purposes stated in subparagraph (i).

(2) To provide for the recovery of an equitable portion of funds advanced by persons described under paragraph (1) by allowing them credits against surcharges to be billed to all waste depositors by the department.

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:

"Appalachian States Low-Level Radioactive Waste Compact Law." The act of December 22, 1985 (P.L.539, No.120).

"Business concern." Any corporation, association, firm, partnership, trust or other form of commercial organization.

"Contractor." A person who enters into a contract with the department to implement the Low-Level Radioactive Waste Disposal Act.

"Contributor." A person who is mandated to make or who is voluntarily making contributions to the fund.

"Debt liability." An obligation to repay funds advanced for the overall operations or the acquisition or refinancing of major assets of a contractor or contributor, excluding the obligation to repay nonaffiliated suppliers of materials, equipment, supplies or inventory entered into in the ordinary course of business.

"Department." The Department of Environmental Resources of the Commonwealth.

"Disclosure statement." A statement submitted to the department by a contributor or contractor as provided for in Chapter 5.

"Fund." The Regional Facility Siting Fund created by this act.

"Key employee." Any person employed by the contractor or the contributor in a supervisory capacity or empowered to make discretionary decisions with respect to the radioactive waste operations of the business concern but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of radioactive waste.

"Low-Level Radioactive Waste Disposal Act." The act of February 9, 1988 (P.L.31, No.12).

"Low-Level Radioactive Waste Policy Amendments Act of 1985." Public Law 99-240, 99 Stat. 1842, 42 U.S.C. § 2021b et seq.

"Waste depositor." Any person disposing of low-level radioactive waste in the regional facility during the operative period of this act.

Section 104. Regulation of certain waste.

Low-level radioactive waste, as defined in the Low-Level Radioactive Waste Disposal Act, generated by any government agency or pursuant to a government contract or license, which was classified by the United States Nuclear Regulatory Commission as low-level radioactive waste as of January 1, 1989, whether or not such waste has been deregulated to below regulatory concern by the United States Nuclear Regulatory Commission or other Federal agency, shall only be disposed of at a waste facility licensed by or operated by or for a Federal Government agency or licensed by a state under an agreement with such an agency, for disposal of radioactive waste. Unless required under Federal law, the Commonwealth does not assume responsibility or ownership over these wastes by retaining jurisdiction over their storage and disposal.

CHAPTER 3
REGIONAL FACILITY SITING FUND

Section 301. Regional Facility Siting Fund.

(a) Establishment.—There shall be established within the State Treasury an interest-bearing, nonlapsing, restricted account to be known as the Regional Facility Siting Fund.

(b) Deposits.—All mandated and voluntary contributions under this act, together with actual interest earned on these contributions by the State Treasurer, shall be deposited into the fund. Separate accounting of contribu-

tions and actual interest earned thereon shall be continuously maintained for purposes of implementing sections 306 and 310.

(c) Appropriation and purpose.—Moneys in the fund are hereby appropriated and, upon authorization of the Governor, may be expended by the department on a continuing basis solely for the following purposes:

(1) Reimbursement of expenses incurred by the regional facility operator for regional facility site selection, regional facility design and land purchase activities, but not to include any profit.

(2) Fees paid by the department to consultants for the purpose of assisting the department in the implementation of the Low-Level Radioactive Waste Disposal Act.

(3) Cost of the department for its expenses incurred in the implementation of the Low-Level Radioactive Waste Disposal Act.

(d) Disbursements.—Each disbursement from the fund shall be deemed to be made from both contributions, and actual interest earned thereon, in the same proportion as each bears to the fund's total balance at the time of such disbursement.

Section 302. Fund contribution.

(a) Maximum fund contribution.—The sum of $33,000,000, exclusive of interest earned or imputed, shall be the maximum amount to be paid by mandated fund contributors. The actual amounts to be paid by mandated fund contributors shall be ratably reduced to the extent that the department determines that an amount less than $33,000,000 suffices for the purposes of this act, to the extent of voluntary contributions received or reasonably anticipated, or to the extent of actual commitment, for the purposes of this act, of financial resources by persons or organizations other than mandated or voluntary contributors. It is the intent of this section that no funds significantly in excess of those reasonably required to effectuate the purposes of this act be paid into the fund.

(b) Mandated fund contributors.—

(1) Each person who is constructing or is operating in Pennsylvania, pursuant to a construction permit or operating license issued by the United States Nuclear Regulatory Commission, one or more of the nine nuclear power reactor facilities identified in this subsection, which are expected to produce electric energy for commercial purposes and low-level radioactive waste for significant portions of the functional life of the regional facility, shall pay to the department a mandated contribution in the form of a fee for each such reactor facility in the amount and at such time as follows:

Date of required payment	Fee per reactor
Not later than the 30th day following the effective date of this act	$933,000
July 1, 1991	$1,200,000
July 1, 1992	$933,000
July 1, 1993	$597,000

(2) The provisions of this subsection shall be applicable to the following nuclear power reactor facilities, which are producing or are reasonably

anticipated to produce electric energy for commercial purposes and are generating or are reasonably anticipated to generate low-level radioactive waste throughout a significant portion of the functional life of the regional facility:

(i) Beaver Valley - No. 1
(ii) Beaver Valley - No. 2
(iii) Limerick - No. 1
(iv) Limerick - No. 2
(v) Peach Bottom - No. 2
(vi) Peach Bottom - No. 3
(vii) Susquehanna - No. 1
(viii) Susquehanna - No. 2
(ix) Three Mile Island - No. 1

(c) Voluntary fund contributors.—Any person, other than one required to make fund contributions pursuant to subsection (b), in an Appalachian States Compact member state who anticipates future use of the regional facility may, in one or more of the annual payment periods specified in subsection (b), make a voluntary contribution to the fund by payment to the department. Unless clearly stated otherwise, for the purposes of this act generally, and for the purposes of section 303 specifically, a person making such a voluntary contribution shall, to the extent of that contribution, be regarded without distinction as a mandated contributor. Such designation does not obligate or require future contributions by such persons. Voluntary contributions shall be applied by the department to reduce the fees of mandated contributors on a pro rata basis.

(d) Contributor reconciliation accounts.—At all times during the effective period of this act, the department shall maintain a reconciliation ledger consisting of a reconciliation account for each person making a contribution under this section. Contributions by such person, and the imputed interest accrued pursuant to subsection (e), shall be promptly debited to the contributor's reconciliation account. Fee payments, and imputed interest thereon, by a person who is a mandated contributor for more than one nuclear power reactor facility shall, for the purposes of this act, be merged in a single reconciliation account in the name of such person.

(e) Imputed interest.—Mandated and voluntary contributions made under this section shall accrue imputed interest. Such interest shall be computed on an annual basis for the period beginning with the time of receipt of a contribution and ending on each successive June 30th. Such interest shall be simple annual interest at a rate equal to the rate then being imposed by the Department of Revenue for unpaid State taxes due and payable to the Commonwealth. It is the intent of this subsection to properly recognize the time value of funds contributed so as to allow for inclusion of that additional imputed interest in fixing surcharges provided for by section 303. Accordingly, withdrawal from the fund and expenditure by the department of funds contributed under this section shall not be credited against, deducted from or otherwise cause to diminish the debit balance of contributors' reconciliation accounts on which imputed interest is accrued under this subsection. The

imputed interest required by this subsection is a separate and distinct calculation for the purpose of implementing section 303 and shall not, for any purpose or in any circumstance, be regarded as the actual interest on amounts in the fund which may be earned pursuant to section 301(a).

(f) Final value of contributions.—For the purposes of determining surcharges and otherwise administering the provisions of section 303, the debit balance in each contributor's reconciliation account as of June 30, 1994, together with imputed interest accrued thereon, shall be regarded as the final reconciliation account value of each contributor, and the sum of all such contributor's final reconciliation account values shall be regarded as the final reconciliation control account value. No further imputed interest shall be accrued after that date on the final reconciliation account value of each contributor's account.

(g) Host Municipality Low-Level Radioactive Waste Fund.—

(1) Each person who is constructing or is operating one or more of the nine nuclear power reactor facilities identified in subsection (b) shall pay to the host municipality of each such facility five annual payments of $36,000 for each such facility. The first such annual payment shall be paid 30 days after the first day the regional facility began operation and was capable of accepting for disposal waste from any waste depositor. Each of the remaining four annual payments shall be paid at the end of four successive 12-month periods following the date on which the first annual payment was made.

(2) For the purposes of this section only, the term "host municipality" shall mean the municipality other than the county within which one or more of the nine nuclear power reactor facilities is located. In the event that such a facility is located within more than one such host municipality, each annual payment shall be equally divided among them. A host municipality may expend money received under this subsection for any purpose for which the municipality is otherwise authorized by law to expend funds.

Section 303. Reconciliation of control account.

(a) Intent.—It is the intent of this section to provide a procedure to assure that each fund contributor be provided credits, to the extent of its final reconciliation account value, against surcharges to be imposed on all waste depositors under section 315(c) of the Low-Level Radioactive Waste Disposal Act.

(b) Reconciliation period for final reconciliation control account.—The final reconciliation account value of each contributor shall be reconciled over ten annual reconciliation periods against any surcharges on waste depositors imposed by the department under section 315(c) of the Low-Level Radioactive Waste Disposal Act. The first annual reconciliation period shall commence with the first day of the first month of the fifth calendar quarter during which waste is deposited in the regional facility.

(c) Reconciliation credits.—For each annual reconciliation period, the department shall determine the revenue required by all surcharges to be imposed under section 315(c) of the Low-Level Radioactive Waste Disposal Act and add to such requirement an additional amount equal to one-tenth of

the final reconciliation control account value, the sum to be termed the annual reconciliation period revenue. An annual reconciliation period surcharge rate applicable to current reconciliation period disposal operations shall be then determined by dividing the annual reconciliation period revenue by the total volume and waste classification of waste deposited in the regional facility by all waste depositors during the preceding 12 months. The annual surcharge rate thus determined shall be multiplied by the volume and waste classification of waste deposited at the regional facility in the current reconciliation period by each waste depositor and the resulting surcharge assessed upon each such waste depositor. The surcharge assessment of such a waste depositor who is a fund contributor shall be credited in an amount up to one-tenth of its final reconciliation account value. If, in any reconciliation period, the applicable surcharge assessment shall be less than one-tenth of the fund contributor's final reconciliation account value, the difference may be carried over and usable as additional credit against applicable surcharges in the next reconciliation period or alternatively applied to any permit fee imposed under section 315(a) of the Low-Level Radioactive Waste Disposal Act.

Section 304. Records and audits.

(a) Records.—In addition to the particular records and accounts specified elsewhere in this act, the department, at all times during the effective period of this act, shall maintain such additional records and accounts in such form and manner as will allow detailed review, examination and audit, by the Auditor General, of all monetary transactions pursuant to this act.

(b) Fiscal audits.—Within 120 days following June 30 of each of the fiscal years 1990 through 1994 and the fiscal year in which the facility begins licensed operations, the department shall furnish to each fund contributor three copies of a financial audit performed in accordance with generally accepted auditing standards compatible with the most intensive current practices of the Department of the Auditor General. Such audit shall be performed by the Department of the Auditor General.

(c) Expenses.—The department may withdraw from the fund such amounts as are reasonably necessary and proper for reimbursement of audit costs.

Section 305. Default.

(a) Default.—For the purposes of this act, a default shall be deemed to be a material failure to timely make available for waste deposition a functioning regional facility conforming in all material respects to applicable law. In addition to any other such circumstance or set of circumstances, any of the following shall be deemed to be a default:

(1) Termination of the contract to be entered into by the department on or about May 1, 1990, with a regional facility operator, prior to submittal to the department or the appropriate Federal agency of a license application for such a facility.

(2) Failure by the regional facility operator to commence physical construction of a regional facility by January 1, 1996, at a site having final approval of the Secretary of Environmental Resources.

(3) Failure by the department to move forward to site approval and to operate a site where there has been a default by the regional facility operator.

(b) Declaration of default.—The Appalachian States Compact Commission may declare a default when a majority of both mandatory and voluntary fund contributors request such, setting forth in a written declaration the circumstances constituting the default.

(c) Special rights and remedies.—

(1) Upon the declaration of default, the rights and remedies specified in this subsection shall be available to fund contributors, and duties specified by this subsection shall be imposed on the department.

(2) Each fund contributor shall, within 60 days of declaration of default, be refunded a pro rata amount of unexpended contributions, including actual interest earned thereon, remaining in the fund in the proportion that each contributor's contributions to the date bears to the total contributions of all contributors to that date. Contributions in transit or received by the department on or after that date shall not be deposited in the fund, but shall be returned to the sender.

(3) The department shall refund to fund contributors all moneys, including the portion thereof attributable to actual interest earned thereon, previously released to the facility operator to the extent that the department has or will receive any or all of such moneys as a result of the default. From time to time, upon recovery of reasonable amounts of such moneys, the department shall refund these moneys to each fund contributor in the same pro rata proportion stated in paragraph (2).

(d) Remedies preserved.—Nothing in this section shall be in any way construed to limit the rights and remedies available to a fund contributor at law or equity. In no event shall the department or the Commonwealth be liable for unrecovered expended portions of the fund.

Section 306. Withdrawal from Compact.

In the event that a Compact member state withdraws from the Compact before June 30, 1994, any person in such Compact member state who has made voluntary contributions shall be entitled to a refund of such contributions, not to include any actual interest earned on such contributions. The department may, pursuant to section 303, impose additional fees on mandated contributors sufficient to provide the amount to be refunded. This refund shall be paid when such additional fees become available to the department.

Section 307. Participation in regulatory proceedings.

(a) Department.—Upon request of any admitted party to a regulatory proceeding, including a contributor that is a public utility, the department may agree to appear in proceedings before or present appropriate submittals to that contributor's public utility regulatory body regarding the contributor's contribution to the fund. A contributor making such request shall compensate the department for its actual costs for travel, lodging and other out-of-pocket or administrative expenses incurred in compliance with this request.

(b) Affidavit.—If the department does not appear, it may submit an affidavit providing information relative to such contributions and surcharges relating to the fund and made or imposed under this act.

Section 308. Retention of records.

The department shall retain, in a reasonably accessible form and place, all records pertaining to contributions, surcharges and reconciliations made under this act for a period of seven years beyond its termination. The department shall permit access to all records pertaining to contributions, surcharges and reconciliations made under this act.

Section 309. Construction.

This act shall be construed in pari materia with the Appalachian States Low-Level Radioactive Waste Compact Law and the Low-Level Radioactive Waste Disposal Act.

Section 310. Expiration of fund.

The fund shall expire one year following the last day of the tenth annual reconciliation period pursuant to section 303. Unexpended amounts then remaining in the fund attributable to actual contributions, and exclusive of actual interest earned on such contributions, shall be refunded to each contributor in the proportion that each contributor's contributions to the fund bears to the total of all such contributions. Unexpended amounts then remaining in the fund attributable to actual interest earned on contributions shall be transferred to the Low-Level Waste Fund, as established under the Low-Level Radioactive Waste Disposal Act.

CHAPTER 5
DISCLOSURE STATEMENTS

Section 501. Requirements.

In addition to any procedure, condition or information requirement of the Low-Level Radioactive Waste Disposal Act, every contractor or contributor shall file the disclosure statement required under this chapter with the Attorney General.

Section 502. Content.

The disclosure statement shall include the following:

(1) The full name, business address and Federal tax identification number of a contractor or contributor or, if the contractor or contributor is a business concern, the full name, business address and Social Security number of all officers, directors, partners or key employees thereof and every person holding any equity in or debt liability of that business concern. If such business concern or its parent organization is a publicly traded corporation or the business concern is a subsidiary of a publicly traded corporation, the disclosure statement, with respect to the identity of its equity or debt holders, need only identify the beneficial owners of more than 5% of the equity in or debt liability of such business concern, except that:

(i) where the debt liability of such business concern or its parent organization or subsidiary is held by a chartered lending institution, the contractor or contributor need only supply the name and business address of the lending institution; or

(ii) where a class of equity securities of such business concern or its parent organization or subsidiary is registered on a national securities exchange, the contractor or contributor will be deemed in compliance with all the provisions of this section requiring the disclosure of its equity and debt liabilities of itself, its parent organization and subsidiaries, if the business concern supplies copies of any filings received by it, its parent organization and subsidiaries, of Schedule 13-D or Schedule 13-G pursuant to the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78m(g)(1)).

(2) The full name, business address and Social Security number of all officers, directors or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or debt liability of any business concern so disclosed. If such business concern or its parent organization is a publicly traded corporation or if the business concern is a subsidiary of a publicly traded corporation, the disclosure statement, with respect to the identity of the business concern's equity or debt holders, need only identify the beneficial owners of more than 5% of the equity in or debt liability of such business concern, except that:

(i) where the debt liability of such business concern or its parent organization or subsidiary is held by a chartered lending institution, the contractor or contributor need only supply the name and business address of the lending institution; or

(ii) where a class of equity securities of such business concern or its parent organization or subsidiary is registered on a national securities exchange, the contractor or contributor will be deemed in compliance with all the provisions of this section requiring the disclosure of its equity and debt liabilities of itself, its parent organization and subsidiaries, if the business concern supplies copies of any filings received by it, its parent organization and subsidiaries, of Schedule 13-D or Schedule 13-G pursuant to the Securities Exchange Act of 1934.

(3) The full name and business address of any company which collects, transports, treats, stores or disposes of radioactive waste and in which the contractor or contributor holds an equity interest.

(4) A description of experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage or disposal of radioactive waste possessed by the contractor or contributor, or, if the contractor or contributor is a business concern, by the key employees, officers, directors or partners thereof.

(5) A listing and explanation of any civil judgment or judgment of sentence which was rendered within the previous ten years, pursuant to any Federal or State statute, or against any person required to be listed on the disclosure form, except for any violation of 75 Pa.C.S. (relating to vehicles) or offense committed prior to the age of 18 for a natural person unless the natural person was tried as an adult, for the following offenses:

(i) Murder.

(ii) Kidnapping.
(iii) Gambling.
(iv) Robbery.
(v) Bribery.
(vi) Extortion.
(vii) Criminal usury.
(viii) Arson.
(ix) Burglary.
(x) Theft and related crimes.
(xi) Forgery and fraudulent practices.
(xii) Fraud in the offering, sale or purchase of securities.
(xiii) Alteration of motor vehicle identification numbers.
(xiv) Unlawful manufacture, purchase, use or transfer of firearms.
(xv) Unlawful possession or use of destructive devices or explosives.
(xvi) Violation of Federal or State laws governing the sale or distribution of controlled substances.
(xvii) Violations of this act.
(xviii) Perjury, false swearing or related offenses.
(xix) Violations of 18 Pa.C.S. § 911 (relating to corrupt organizations).
(xx) Violation of 18 U.S.C. Ch. 96 (relating to racketeer influenced and corrupt organizations).
(xxi) Failure to pay Federal or State taxes.
(xxii) Violation of the act of October 28, 1983 (P.L.176, No.45), known as the Antibid-Rigging Act.
(xxiii) Violation of Federal or State antitrust statutes by the contractor or contributor or its officers or members of the board of directors.

(6) With the exception of agencies of this Commonwealth, a listing of any agency, Federal or State, that has had or has regulatory responsibility over the contractor or contributor in connection with its collection, transportation, treatment, storage or disposal of low-level radioactive waste.

(7) Any other information the Attorney General may require that relates to the criminal record, competency, reliability or character of the contractor or contributor.

Section 503. Procedure.

(a) Investigative report.—The Attorney General shall, within 120 days of the receipt of the disclosure statement from the contractor or contributor, prepare and transmit to the department an investigative report on the contractor or contributor, based in part upon the disclosure statement, except that this deadline may be extended for a reasonable period of time, for good cause, by the Attorney General. The investigative report prepared by the Attorney General shall be evaluated by the department pursuant to sections 308(g) and 310(c) of the Low-Level Radioactive Waste Disposal Act under the continuing obligation of the department to evaluate the compliance history of the contractor and contributors covered by this act. In pre-

paring this report, the Attorney General may request and receive criminal history information from the Federal Bureau of Investigation and the Pennsylvania State Police.

(b) Duty of contractors and contributors.—All contractors and contributors shall have the continuing duty to provide any assistance or information requested by the Attorney General and to cooperate in any inquiry or investigation conducted by the Attorney General and in any inquiry, investigation or hearing conducted by the department. If, upon issuance of a formal request to answer any inquiry or produce information, evidence or testimony, any contractor or contributor refuses to comply, the agreement or contract with that person may be revoked by the department.

(c) Fee.—The Attorney General may charge and collect, in accordance with a fee schedule adopted by regulation, such fees from contractors and contributors as may be necessary to cover the costs of enforcing this act. The fee shall be calculated on the basis of $100 per each individual required to be listed in the disclosure statement or shown to have a beneficial interest other than an equity interest or debt liability in the business of the contractor or the contributor. The Attorney General may revise the fee by regulation.

(d) Disclosure statement changes.—The contractor or contributor shall provide to the Attorney General, in writing, any changes to information in the disclosure statement or any supplemental information within 30 days of any change in information contained in the disclosure statement or receipt of the supplemental information. If a class of equity securities of the contractor or contributor, or its parent organization or a subsidiary of a publicly traded corporation, is registered on a national securities exchange, the contractor or contributor will be deemed in compliance with the requirements of this subsection, as to revised and supplemental disclosure of holders of its equity and debt liabilities, if it supplies to the Attorney General, within 30 days of the receipt thereof, copies of any relevant Schedule 13-D or Schedule 13-G received by the contractor or contributor, or its parent organization or a subsidiary of a publicly traded corporation.

(e) Enforcement.—

(1) All contractors, contributors and persons required by section 502(2) to be listed on the disclosure form have a duty to cooperate in providing testimony, books, papers, correspondence, memoranda, agreements or any other documents or testimony needed to comply with this chapter.

(2) The Attorney General, for the purpose of any investigation under this chapter, believing that a person or entity may be in possession, custody or control of documentary evidence or may have information relevant to the subject matter of this chapter, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or any other documents or records which the Attorney General deems relevant to the inquiry.

(3) A request for information shall state the subject matter of the investigation, and shall describe the material to be produced with reason-

able particularity so as to fairly identify the documents demanded, provide a return date within which the material is to be produced and identify the member of the Attorney General to whom the material should be given.

(4) The Attorney General may invoke the aid of a court of record of the Commonwealth for failure to obey a subpoena of a witness appearing before the Attorney General or his representative, and the court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce the books, records, accounts, papers, documents or files relative to the matter in question. Failure to obey an order may be punished by the court as a contempt. Any motion to challenge a subpoena shall be filed with the court of record. Any appeal of the decision of the issuing authority shall be to the appropriate court of record.

(5) If a contractor or contributor, after a diligent effort, cannot obtain the cooperation of persons required by section 502(2) to be listed on the disclosure form to provide the information required by this chapter and the information is not available from other sources accessible to the public, the contractor or contributor shall provide the name or names of such persons to the Attorney General. The contractor or contributor shall provide an explanation of the information requested, the steps taken to obtain the information and the response of the person being asked to provide the information. The Attorney General may use the authority contained in this section to obtain the information required to be included on the disclosure form.

Section 504. Rules and regulations.

The Environmental Quality Board, for the department, and the Attorney General shall have the authority to promulgate any rules or regulations necessary to implement the responsibilities given each of these agencies under this chapter.

CHAPTER 11
MISCELLANEOUS PROVISIONS

Section 1101. Effective date.

This act shall take effect immediately.

APPROVED—The 11th day of July, A. D. 1990.

ROBERT P. CASEY

No. 1992-180

AN ACT

HB 2216

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," providing for the submission to the General Assembly of information relating to tax expenditures; transferring certain powers, duties, personnel, appropriations, equipment and other materials from the Secretary of Revenue to the State Treasurer; imposing fees on certain nuclear facilities; further providing for powers of the Secretary of General Services, for certain contracts by the Secretary of Transportation, for machinery, equipment, lands and buildings relating to airports, for the sale of certain land by the Department of Transportation and for exemption for certain conveyances; providing for Department of Corrections capital projects; providing for storage and handling of propane gas and for voluntary contributions to the United States Olympic Committee; further providing for the utilization of the Capitol Annex; and making repeals.

It is the intent of section 624 of the act to provide a mechanism which will enable the General Assembly to better determine those programs, activities and groups which are receiving public support subsidies as a result of tax expenditures. The General Assembly recognizes that the present budgeting system fails to accurately and totally reflect the true level of budgetary support for such programs due to such tax expenditures and that, as a result, undetermined amounts of indirect expenditures are escaping public or legislative scrutiny. The loss of potential revenue also causes a narrowing of tax bases which in turn forces higher tax rates on the remaining taxpayers.

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

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

Section 624. Tax Expenditures.—(a) As used in this section, "tax expenditure" shall mean a reduction in revenue that would otherwise be collected by the Commonwealth as the result of an exemption, reduction, deduction, limitation, exclusion, tax deferral, discount, commission, credit, preferential rate or preferential treatment under any of the following:

(1) Sales tax imposed by Article II of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

(2) Personal income tax imposed by Article III of the "Tax Reform Code of 1971."

(3) Corporate net income tax imposed by Article IV of the "Tax Reform Code of 1971."

(4) Capital stock/franchise tax imposed by Article VI of the "Tax Reform Code of 1971."

(5) Bank shares tax imposed by Article VII of the "Tax Reform Code of 1971."

(6) Title insurance and trust companies shares tax imposed by Article VIII of the "Tax Reform Code of 1971."

(7) Insurance premiums tax imposed by Article IX of the "Tax Reform Code of 1971."

(8) Utility gross receipts tax imposed by Article XI of the "Tax Reform Code of 1971."

(9) Liquid fuels and fuel use taxes.

(10) Realty transfer tax imposed by Article XI-C of the "Tax Reform Code of 1971."

(11) Cigarette tax imposed by Article XII of the "Tax Reform Code of 1971."

(12) Mutual thrift institutions tax imposed by Article XV of the "Tax Reform Code of 1971."

(13) Oil company franchise tax imposed by 75 Pa.C.S. Ch. 95 (relating to taxes for highway maintenance and construction).

(14) Motor carriers road tax imposed by 75 Pa.C.S. Ch. 96 (relating to motor carriers road tax).

(15) Inheritance tax imposed by Article XXI of the "Tax Reform Code of 1971."

(16) Unemployment compensation contributions imposed by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law."

(17) Utility realty tax imposed by Article XI-A of the "Tax Reform Code of 1971."

(18) Gross receipts tax on motor carriers imposed by the act of June 22, 1931 (P.L.694, No.255), referred to as the Motor Carriers Gross Receipts Tax Act.

(19) Marine insurance underwriting profits tax imposed by the act of May 13, 1927 (P.L.998, No.486), entitled "An act imposing a tax for State purposes on marine insurance underwriting profits, and providing for the collection of such tax."

(20) Co-operative agricultural association corporate net income tax imposed pursuant to the act of May 23, 1945 (P.L.893, No.360), known as the "Co-operative Agricultural Association Corporate Net Income Tax Act."

(21) Electric co-operative corporation tax imposed by the act of June 21, 1937 (P.L.1969, No.389), known as the "Electric Cooperative Corporation Act."

(22) Malt beverage tax imposed by Article XX of the "Tax Reform Code of 1971."

(23) Spirituous and vinous liquors tax imposed by the act of December 5, 1933 (Sp.Sess., P.L.38, No.6), known as the "Spirituous and Vinous Liquor Tax Law."

(24) Vehicle registration fees imposed pursuant to 75 Pa.C.S. (relating to vehicles).

(25) Motorbus road tax imposed by 75 Pa.C.S. Ch. 98 (relating to motorbus road tax).

(26) General exemptions:

(i) The exemptions granted pursuant to section 15 of the act of March 31, 1949 (P.L.372, No.34), known as "The General State Authority Act of one thousand nine hundred forty-nine."

(ii) The exemption granted pursuant to 40 Pa.C.S. § 6307(b) (relating to exemptions applicable to certificated professional health care service corporations).

(iii) The exemptions granted pursuant to section 23 of the act of May 28, 1937 (P.L.955, No.265), known as the "Housing Authorities Law."

(iv) The exemptions granted pursuant to section 15 of the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945."

(v) The exemptions granted pursuant to section 15 of the act of June 5, 1947 (P.L.458, No.208), known as the "Parking Authority Law."

(vi) The exemptions granted pursuant to section 17 of the act of April 18, 1949 (P.L.604, No.128), known as the "State Highway and Bridge Authority Act."

(vii) The exemptions granted pursuant to section 14 of the act of July 5, 1947 (P.L.1217, No.498), known as the "State Public School Building Authority Act."

(27) Statutory exemptions, reductions, deductions, limitations, exclusions, tax deferrals, discounts, commissions, credits, preferential rates or preferential treatments established after the effective date of this section.

(b) The term shall not include any statutory exemption, reduction, deduction, limitation, exclusion, tax deferral, discount, commission, credit, preferential rate or preferential treatment for local tax purposes.

(c) At the time required for the submission of the budget to the General Assembly under section 613, the Governor shall also submit to the General Assembly a tax expenditure plan for not less than the prior fiscal year, the current fiscal year, this budget year and the four (4) succeeding fiscal years, which plan shall include the following information:

(1) The actual or estimated revenue loss to the Commonwealth caused by each tax expenditure in each fiscal year covered by the plan.

(2) The actual or estimated cost of administering and implementing each tax expenditure for each fiscal year covered by the plan.

(3) The actual or estimated number and description, in reasonable detail, of taxpayers benefiting from each tax expenditure in each fiscal year covered by the plan.

(4) The purpose of each tax expenditure in terms of desired accomplishments.

(d) The Governor may also submit to the General Assembly an assessment of each tax expenditure based on whether or not each tax expenditure has been successful in meeting the purpose for which it was enacted and on whether each tax expenditure is the most fiscally effective means of achieving its purpose.

(e) Contents of the tax expenditure plan shall be as follows:

(1) For the first fiscal year in which a tax expenditure plan is required, the plan need only provide the required information for tax expenditures itemized in subsection (a)(1), (5), (6), (7), (12), (16) and (19).

(2) For the second year in which a tax expenditure plan is required, the plan need only provide the required information for the tax expenditures itemized in subsection (a)(1), (3), (4), (5), (6), (7), (8), (12), (16), (17), (19), (20) and (21).

(3) For the third year in which a tax expenditure plan is required, the plan need only provide the required information for the tax expenditures itemized in subsection (a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (12), (13), (14), (16), (17), (18), (19), (20), (21) and (24).

(4) For the fourth year in which a tax expenditure plan is required, the plan shall provide the required information for all tax expenditures itemized in subsection (a).

(f) All data in the tax expenditure plan outlined in subsection (c) shall be revised and updated every two years.

(g) The Secretary of the Budget may obtain the information required for compliance with this section from all State agencies in like manner as provided for budget information under this article.

(h) The Secretary of the Budget is hereby authorized to obtain such data as may be needed for compliance with this section from the appropriate local government officials.

(i) The General Assembly recognizes that the exemption from taxation accorded religious institutions is founded on principles of church-state separation, and nothing in this section is intended to express or imply that tax exemption constitutes subsidization of the religious activities of such institutions, nor shall this section be construed to authorize the imposition of any additional requirements on such institutions relating to tax exemption.

(j) The initial two (2) tax expenditure plans required under this section shall be deemed in compliance with this section if the tax expenditure plan consists, at a minimum, of the tax expenditures reported by the Governor to the General Assembly for fiscal year 1992-1993.

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

Section 1105. Transfer of Powers and Duties Relating to Abandoned and Unclaimed Property from the Secretary of Revenue.—The powers and duties of the Secretary of Revenue under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," are hereby transferred to the State Treasurer.

Section 1106. Transfer of Personnel, Appropriations, Records, Equipment and Other Materials Involved with Abandoned and Unclaimed Property.—(a) All personnel which the State Treasurer deems necessary, allocations, equipment, other than the mainframe computer and computer terminals which shall be subject to negotiations between the State Treasurer and the Secretary of Revenue regarding transfer, files, records, contracts, agreements, obligations and other materials which are used, employed or expended in connection with the powers, duties or functions of the Secretary of Revenue under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," and which are transferred by section 1105 to the State Treasurer are hereby transferred from the Secretary of Revenue with the same force and effect as if the appropriations had been made to the State Treasurer, the materials had been the property of the State Treasurer in the first instance and as if the contracts, agreements and obligations had been incurred or entered into by the State Treasurer.

(b) The personnel, appropriations, equipment and other items and materials transferred by this section shall include an appropriate portion of the general administrative, overhead and supporting personnel, appropriations, equipment and other materials of the Secretary of Revenue and shall also include, where applicable, Federal grants and funds and other benefits from any Federal program.

(c) All personnel transferred pursuant to this section shall retain ~~any civil~~ service employment status assigned to them.

Section 1904-A.2. Nuclear Facility Fees.—(a) Each person who has received from the Nuclear Regulatory Commission a nuclear power reactor facility construction permit or operating license for nuclear facilities located in this Commonwealth shall pay to the Department of Environmental Resources within one hundred twenty (120) days of the effective date of this section, for the fiscal year 1992-1993, a fee of one hundred thousand dollars ($100,000) and by July 1, 1993, for the 1993-1994 fiscal year and by July 1 of each succeeding fiscal year thereafter, a fee of four hundred thousand dollars ($400,000) for each nuclear power plant site, regardless of the number of nuclear power reactors, to continue existing programs or establish new programs relating to the licensing, construction, surveillance, monitoring, emergency planning and response, operation or decommissioning of nuclear power reactor facilities and the general administrative costs for these activities, as provided for in the act of July 10, 1984 (P.L.688, No.147), known as the "Radiation Protection Act."

(b) A person licensed by the Nuclear Regulatory Commission to possess but not operate the following nuclear power reactors shall be exempt from the nuclear facility fee requirements of subsection (a): Saxton Nuclear Experimental Power Station, Peach Bottom Atomic Power Station, Unit 1 and Three Mile Island Nuclear Generating Station, Unit 2.

(c) Any person in violation of the nuclear facility fee requirements of this section shall be subject to the penalties and enforcement provisions of sections 308 and 309 of the "Radiation Protection Act."

(d) Fees and penalties received under this section shall be deposited in the Radiation Protection Fund established under section 403(a) of the "Radiation Protection Act" and are hereby appropriated to the Department of Environmental Resources on a continuing nonlapsing basis solely for the purpose of carrying out its powers and duties under the "Radiation Protection Act" relating to licensing, construction, surveillance, monitoring, emergency planning and response, operation or decommissioning of nuclear power reactor facilities and the general administrative costs for these activities.

(e) In addition to the particular records and accounts specified in the "Radiation Protection Act," the Department of Environmental Resources shall, at all times, maintain additional records and accounts in such form and manner as will allow detailed review, examination and audit, by appropriate, qualified Department of Environmental Resources personnel or by the Auditor General, of all monetary transactions involving the Radiation Protection Fund created under section 403(a) of the "Radiation Protection Act."

(f) Within one hundred twenty (120) days following June 30 of the fiscal year 1992-1993 and each fiscal year thereafter, the Department of Environmental Resources shall make available to each person who has paid fees and penalties into the Radiation Protection Fund, during such fiscal year, a report of the results of a financial audit of all monetary transactions within the Radiation Protection Fund during the preceding fiscal year. The auditing shall be performed in accordance with Federally accepted auditing standards compatible with the most intensive practices of the Department of the Auditor General. These audits may be performed by the Department of the Auditor General in lieu of being performed by the Department of Environmental Resources. The report shall be in sufficient form and detail as to demonstrate and verify that fees and penalties deposited into the Radiation Protection Fund have been expended in accordance with the limitations contained in this section.

(g) For the purposes of this section only, a nuclear power plant site shall be deemed to be the location of one or more nuclear power reactors per site which have not been officially decommissioned and dismantled pursuant to applicable Federal law.

Section 3. Section 2001.1 of the act, added May 6, 1970 (P.L.356, No.120), is amended to read:

Section 2001.1. Certain Contracts by the Secretary.—The secretary shall enter into all necessary contracts and agreements with the proper agencies of any government, Federal, State and/or political subdivision and/or any private agency and shall do all other things necessary and proper in order to obtain any benefits afforded under the provisions of any act of the United States Congress, the General Assembly of the Commonwealth of Pennsylvania and/or any governing body of any political subdivision of the Commonwealth of Pennsylvania, and also the governing body of any private agency for any purpose connected in any way with the Department of Transportation of the Commonwealth of Pennsylvania. *The secretary is autho-*

rized to hold the Federal Government harmless from damages due to construction, operation and maintenance of emergency streambank protection projects under section 103(j) of the Water Resources Development Act of 1986 (Public Law 99-662, 33 U.S.C. § 2213(j)), except for damages due to the fault or negligence of the Federal Government or its contractors.

Section 4. Section 2003(e)(1) and (7) of the act, amended December 7, 1979 (P.L.478, No.100), are amended to read:

Section 2003. Machinery, Equipment, Lands and Buildings.—The Department of Transportation in accord with appropriations made by the General Assembly, and grants of funds from Federal, State, regional, local or private agencies, shall have the power, and its duty shall be:

* * *

(e) (1) To acquire, by gift, purchase, condemnation or otherwise, land in fee simple or such lesser estate or interest as it shall determine, in the name of the Commonwealth, for all transportation purposes, including marking, rebuilding, relocating, widening, reconstructing, repairing and maintaining State designated highways and other transportation facilities, and to erect on the land thus acquired such structures and facilities, including garages, storage sheds or other buildings, as shall be required for transportation purposes. **[Land]** ***Except for acquisitions for airport and airport-related purposes, land*** shall not be acquired for any capital project unless the project is itemized in an approved capital budget. Notwithstanding any other provision of this or any other act, when the department seeks to take by appropriation real property or an interest in real property which the department intends to use for other than operating right-of-way for facilities such as maintenance buildings and construction facilities and such real property or ~~interest therein~~ belongs to a railroad, the department shall show by clear and convincing evidence that the activity contemplated on the site proposed to be appropriated could not have been conducted economically at an alternate location. ***Notwithstanding anything to the contrary contained in this or any other act, the term "transportation purposes" as used herein shall include acquisitions for all airport and airport-related purposes, and the procedures of this act shall apply to all such acquisitions.***

* * *

(7) Any other provisions of this act to the contrary notwithstanding, the department may sell at public sale any land acquired by the department if the secretary determines that the land is not needed for present or future transportation purposes:

(i) Improved ***land shall first be offered at its fair market value as determined by the department to other public agencies which demonstrate a public purpose for the land unless the land is located in a county of the second class A not governed under a home rule charter. If not transferred to a public agency or if located in a county of the second class A not governed under a home rule charter, the improved*** land occupied by a tenant of the department shall **[first]** ***then*** be offered to the tenant at its fair market value as determined by the department, except that if the tenant is the person from whom the department acquired the land, it shall be offered to the tenant at

the acquisition price, less costs, expenses and reasonable attorneys' fees incurred by the person as a result of the acquisition of the land by the department. If there is no tenant and the person from whom the department acquired the land did not receive a replacement housing payment under section 602-A of the "Eminent Domain Code," or under former section 304.3 of the act of June 1, 1945 (P.L.1242, No.428), known as the "State Highway Law," the land to be sold shall first be offered to such person at the acquisition price, less costs, expenses and reasonable attorneys' fees incurred by the person as a result of the acquisition of the land by the department. ***As used in this subclause and subclause (ii), the term "public agency" shall include authorities and political subdivisions.***

(ii) Unimproved ***land shall first be offered at its fair market value as determined by the department to other public agencies which demonstrate a public purpose for the land unless the land is located in a county of the second class A not governed under a home rule charter. If not transferred to a public agency or if located in a county of the second class A not governed under a home rule charter, the unimproved*** land shall **[first]** ***then*** be offered to the person from whom it was acquired at its acquisition price, less costs, expenses and reasonable attorneys' fees incurred by the person as a result of the acquisition of the land by the department, if the person still retains title to land abutting the land to be sold. If the land abutting the land to be sold has been conveyed to another person, the land to be sold shall first be offered to that person at its fair market value as determined by the department.

(iii) Notice of the offer described in either subclause (i) or (ii) shall be sent by certified mail, or, if notice cannot be so made, in the manner required for "in rem" proceedings. The offeree shall have one hundred twenty (120) days after receipt of notice to accept the offer in writing.

(iv) Revenue from any sale of land acquired with motor license funds shall be deposited in the Motor License Fund.

* * *

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

Section 2217. Above-Ground Refrigerated Low-Pressure Storage and Handling of Propane.—The Department of Labor and Industry shall make, promulgate and enforce regulations setting forth minimum general standards for the design, installation and construction of above-ground refrigerated low-pressure storage facilities for propane. Said regulations issued under the authority of this act and the act of December 27, 1951 (P.L.1793, No.475), referred to as the Liquefied Petroleum Gas Act, shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

Section 6. Section 2401.1 of the act is amended by adding a paragraph to read:

Section 2401.1. Specific Powers of the Department of General Services.—In addition to all other powers and duties set forth in this act, the Department of General Services shall have the power, and its duty shall be:

* * *

(21) To delegate at the discretion of the Secretary of General Services to a State-related institution in the Commonwealth system of higher education the performance on behalf of the Commonwealth of some or all of the powers and duties to plan, design, construct, administer and manage any public improvement project which has been statutorily authorized by the Commonwealth for such institution and the furnishing and equipping thereof, subject to such reasonable, necessary and appropriate conditions as may be mutually agreed upon between the department and such institution.

Section 7. Section 2401.1a of the act, added July 1, 1990 (P.L.277, No.67), is amended to read:

Section 2401.1a. Restrictions on Powers of the Department of General Services.—*(a)* The provisions of section 2401.1(19) shall not apply to additional capital projects in the category of public improvement projects to be acquired or constructed by the Department of General Services for the program development and design of prototypical one thousand-cell facilities to be used in construction of a facility in Clearfield County and other State prison projects itemized in the act of July 1, 1990 (P.L.315, No.71), known as the "Prison Facilities Improvement Act."

(b) Capital projects in the category of public improvement projects specifically itemized for the Department of Corrections in section 3(1) of the act of December 20, 1990 (P.L.1472, No.223), known as the "Capital Budget Project Itemization Act for 1990-1991," are hereby authorized to be acquired, constructed or used by the Department of General Services, its successor or assigns, notwithstanding any provision of law providing for or regulating zoning or land use planning or any zoning ordinance, land use ordinance, building code or other regulation adopted or enacted by a political subdivision under the authority of any statute or under the authority of any home rule charter authorized and adopted under any statute or the Constitution of Pennsylvania.

Section 8. The act is amended by adding a section to read:

Section 2402.1. Utilization of Capitol Annex.—(a) The Department of General Services shall hereby grant exclusive use of the Capitol Annex Building, also known as the Old Museum Building, to the House of Representatives.

(b) The Speaker of the House of Representatives shall allocate the space in the Capitol Annex Building, also known as the Old Museum Building, for such legislative purposes as he deems necessary.

(c) Notwithstanding any other provision of law to the contrary, the Capitol Annex Building, also known as the Old Museum Building, shall be used for the legislative purposes of the House of Representatives and not for administrative offices.

(d) The Department of General Services shall commence and complete the repair and renovation of the Capitol Annex Building, also known as the Old Museum Building, on an expedited basis.

Section 9. Section 2409-A of the act, added February 25, 1982 (P.L.92, No.34), is amended to read:

Section 2409-A. Exemption for Certain Conveyances.—*(a)* This article shall not apply to a conveyance by The General State Authority where a resolution authorizing such conveyance was adopted by the board of directors of the authority on or before July 1, 1981.

(b) Notwithstanding the provisions of this act, including without limitation this article or any other act to the contrary, the Department of General Services is authorized to convey, with the approval of the Governor, any project within the meaning of the act of March 31, 1949 (P.L.372, No.34), known as "The General State Authority Act of one thousand nine hundred forty-nine," which was conveyed and transferred by resolution of The General State Authority and under the authority of the act of July 22, 1975 (P.L.75, No.45), entitled "An act amending the act of April 9, 1929 (P.L.177, No.175), entitled 'An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,' creating the Department of General Services and defining its functions, powers and duties; and transferring certain functions, records, equipment, personnel and appropriations from the Department of Property and Supplies and The General State Authority to such department," to the Department of General Services, provided that:

(1) The grantee is an institution of higher education located in this Commonwealth.

(2) The project was constructed by The General State Authority on behalf of the grantee.

(3) The consideration for each conveyance shall be based upon either the outstanding principle and interest indebtedness of the project or the total cost of the project adjusted to its present value as determined by the Department of General Services in consultation with the Secretary of the Budget.

(4) All costs of the transaction are borne by the grantee.

(5) No part of the consideration or transaction costs are paid with General Fund moneys or Capital Facilities Fund moneys.

(6) No conveyance shall be made under the authority of this subsection to an institution of the State System of Higher Education.

(c) Notwithstanding the provisions of this act, including without limitation this article or any other act to the contrary, the Department of General

Services is authorized to convey, with the approval of the Governor, to The Pennsylvania State University, the University of Pittsburgh, Temple University or Lincoln University any project which The General State Authority or the Department of General Services constructed on behalf of the grantee, provided that:

(1) All outstanding principal and interest indebtedness of the project has been retired.

(2) All costs of the transaction are borne by the university.

(3) The university shall pay one dollar ($1.00) for each project transferred.

(4) No part of the transaction costs is paid with General Fund moneys or Capital Facilities Fund moneys.

(5) The deed of conveyance shall contain a clause that the property conveyed shall be used for educational purposes by the grantee, and, if at any time the grantee or its successor in function conveys the property or permits the property to be used for any purpose other than those specified in this section, the title to the property shall immediately revert to and revest in the Commonwealth of Pennsylvania.

Section 10. Section 2504 of the act is repealed.

Section 11. The act is amended by adding a section to read:

Section 2506. Space on Form for Contributions.—(a) The Department of Revenue shall provide a space on the face of the individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the United States Olympic Committee, Pennsylvania Division.

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The Department of Revenue shall determine annually the total amount designated pursuant to this section, less reasonable administrative costs, and shall report such amount to the State Treasurer, who shall transfer such amount from the General Fund to the United States Olympic Committee, Pennsylvania Division.

(d) This section shall expire December 31, 1995.

Section 12. The provisions of section 2506 of the act shall apply to taxable years beginning January 1, 1993, through and including January 1, 1995.

Section 13. All moneys from the conveyances authorized by this act shall be deposited into the Capital Debt Fund.

Section 14. The conveyances authorized by this act shall be exempt from all taxes, imposts, fees and costs relating to such conveyances which are levied, imposed or chargeable by any taxing authority as long as the documents necessary to effect such conveyances are recorded prior to January 1, 1994.

Section 15. Section 624 of the act shall apply to the budget submitted for the fiscal year next commencing after one year from the effective date of this act and to each fiscal year thereafter.

Section 16. The transfer of personnel, appropriations, records, equipment and other materials under section 1106 of the act shall be completed no later than 180 days after the effective date of this act.

Section 17. (a) Section 402(b) of the act of July 10, 1984 (P.L.688, No.147), known as the Radiation Protection Act, is repealed.

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

Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed insofar as it is inconsistent with this act.

Section 315 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is repealed as obsolete.

The provisions of the act of July 10, 1984 (P.L.688, No.147), known as the Radiation Protection Act, (except section 402(b) which is repealed absolutely) are repealed insofar as they are inconsistent with this section.

Section 18. This act shall take effect immediately.

APPROVED—The 18th day of December, A. D. 1992.

ROBERT P. CASEY

DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE

DOCUMENT NUMBER: 012-0820-001

TITLE: Development, Approval and Availability of Regulations

AUTHORITY: The Administrative Code of 1929 (1929 P.L. 177, No. 175), Regulatory Review Act (71 P.S. §745.1-745.15), Commonwealth Documents Law, and the Commonwealth Attorneys Act (71 P.S. §732.101-506).

POLICY: The Department of Environmental Protection (DEP) will follow a department wide, standard process for developing, approving and distributing regulations.

PURPOSE: To establish criteria for the content of regulations and to create a uniform process for
developing these documents, consistent with 4 *Pennsylvania Code*, 1.371-1.382, relating to Regulatory Review and Promulgation. This guidance also explains the process DEP follows to promulgate regulations in the Commonwealth, as well as the process followed to distribute regulations to the Environmental Quality Board (EQB), the Coal and Clay Mine Subsidence Insurance Board, and the public.

APPLICABILITY: This policy applies to the development, approval and dissemination of proposed and final regulations under the authority of DEP.

DISCLAIMER: The policies and procedures outlined in this guidance document are intended to supplement existing requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. The policies and procedures merely announce the policy that DEP intends to apply in the future development and approval of its regulations. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: __ pages, including attachments.

LOCATION: Volume 1, Tab 2

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I. REGULATORY DEVELOPMENT PRIORITIES

When non-regulatory alternatives do not exist to address or meet an environmental objective, the Department may initiate a rulemaking. Rulemakings can be initiated in response to state or federal law, new or revised state or federal regulations, to clarify an existing regulation, or in response to a rulemaking petition submitted to the Environmental Quality Board (EQB).

All department rulemakings, regardless of their specific objective, must reflect the Department's overall priority of achieving measurable improvement in human health and safety and environmental protection in every program. (See Priority Statement Attachment __) They should also strive to achieve the mutually compatible goals of increased environmental protection and improved human quality of life.

In addition, all department rulemakings, to the extent possible and appropriate, should further the following specific priorities:

- Sustainable energy production and use.
- Watershed protection
- Community revitalization and development.
- Mine Safety
- Fiscal Responsibility

II. REGULATORY DEVELOPMENT CRITERION:

Specific Commonwealth laws and administration directives prescribe certain principles and criteria that must be followed when drafting and promulgating new regulations and amendments to current regulations. These criteria must be used by Department staff in drafting new regulations and amendments to existing regulations.

Administration Priorities:

Department regulations shall be developed to address and reflect the Department's overall priorities of increased environmental protection and improved human quality of life. Specific priorities include: Sustainable Energy Production and Use; Watershed Protection; Community Revitalization and Development; Mine Safety; and Fiscal Responsibility. Appendix A contains an explanation of these priorities and a checklist to assist in developing regulations that are reflective of the Administration's priorities.

Regulatory Drafting and Promulgation Procedures:

In 1996, regulatory drafting and promulgation procedures were established and codified at 4 *Pa Code*, 1.371 for the development of new regulations and the review of existing regulations. These procedures and principles must be adhered to by Department staff when drafting new regulations and amendments to existing regulations. Appendix B contains a list and explanation of these drafting principles.

III. STEPS IN THE REGULATORY DEVELOPMENT PROCESS

Standard Process:

1. Request to Initiate a Proposed Rulemaking - This step begins with the bureau director requesting the Secretary's approval to initiate development of a regulation. It includes the submission of a memo to the Secretary (see Appendix C). No action should be taken to develop the proposed regulations until the Secretary through the Regulatory Coordinator grants formal approval.

2. Development of Proposed Rulemaking – This step includes discussion with appropriate advisory committees, preparing a proposed rulemaking package, obtaining necessary approvals within established timeframes, Environmental Quality Board (EQB) consideration and approval. The proposed rule is then published for public review and comment.

3. Development of Final Rulemakings - This step includes discussion with appropriate advisory committees, preparing a final rulemaking package, obtaining necessary approvals within established timeframes, EQB consideration and approval. The final rule is then published and becomes effective.

Other Processes Available (See Appendix __ for details):

1. Advance Notice of Proposed Rulemaking (ANPR) Procedure - This is an **optional** procedure established for the Department to formally publish and solicit comments on draft regulations prior to presenting a proposed rulemaking to the EQB. An ANPR should be used when input from a specific regulated community is needed to provide direction in drafting new regulatory requirements, if a relevant advisory committee does not exist or does not have that specific representation. The comments DEP receives on draft regulations, as a result of publishing an ANPR, are summarized in the Preamble of the rulemaking and submitted to the EQB as part of the proposed rulemaking. To use this procedure, Department staff must submit a memo to the Secretary requesting approval to proceed with the ANPR (see Appendix D).

2. Advance Notice of Final Rulemaking (ANFR) Procedure - This **optional** procedure was established to solicit comments on draft final regulations prior to presenting a final rulemaking to the EQB, and should be used when significant changes are made to a proposed rulemaking. Comments the Department receives on draft final regulations as a result of publishing an ANFR are summarized in the preamble and in a separate comment/response document that are submitted to the EQB as part of the final rulemaking. The Secretary's approval to use this procedure is required. (See Appendix F)

3. Final-omitted Rulemaking Procedure – This **optional** procedure enables an agency to submit to the Independent Regulatory Review Commission (IRRC) and the Standing Legislative Committees a regulation for which the Department has omitted notice of proposed rulemaking, pursuant to Section 204 of the Commonwealth Documents Law. Under a final-omitted rulemaking, there is no formal opportunity for comment from the public, IRRC or the Standing Legislative Committees. A final-omitted regulation can only be pursued under three limited circumstances, which include the following:

- Comments from the public are not appropriate, necessary or beneficial.
- All persons subject to the regulation are named or given personal notice.
- Notice is impracticable, unnecessary or contrary to the public interest.

IV. PROCEDURES FOR DEVELOPMENT AND APPROVAL OF PROPOSED RULEMAKINGS - *Standard Process*

A. Requesting Secretary's Approval to Begin Development of a Regulation:

Before initiating the development of any departmental regulation, the Bureau Director must request and receive approval from the Secretary. To initiate this process, the Bureau Director must submit a written request to the Secretary, through the Deputy Secretary and the Regulatory Coordinator, requesting approval to begin development of a regulation. The memo must summarize the proposed regulation and address compelling questions about the rulemaking, including its intended purpose, the statutory authority for the proposal, costs/benefits, the intended regulatory schedule for the rulemaking, programmatic impacts of the proposed regulation, and the anticipated public involvement procedures that will be followed by the Department to solicit input on the proposed rulemaking (see Appendix C for the memo to be used for this step). In addition, a draft concept paper intended for distribution and discussion with the Agricultural Advisory Board, Citizens Advisory Council and appropriate advisory committee should be attached. Program staff is encouraged to work directly with the Department Economist to accurately describe the potential impact of the proposed regulation.

If the proposed regulation has already been approved for development as part of the regulatory initiative, the Bureau Director need not submit a detailed memo (although they are encouraged to do so) but must submit the concept paper for review and approval prior to distribution.

Following approval of the request by the Secretary, the Regulatory Coordinator will notify the Bureau Director of the approval, with copies to the Deputy Secretary, the Deputy Secretary for Field Operations (except for mining regulations), the Chief Counsel, and program and legal staff. The proposal will be added to the Regulatory Agenda. The Regulatory Agenda is available electronically on DEP's web site under the Public Participation Center and is updated on a continuing basis. In addition, the Six-Month Regulatory Agenda is published semiannually by the Governor's Office of Policy in the *Pennsylvania Bulletin* in February and July of each calendar year.

B. Preparing a Proposed Rulemaking Package:

Following the Secretary's approval to begin development of a regulation, program staff should prepare a concept paper for distribution to the Citizen's Advisory Council and the appropriate advisory committee. Approval should be obtained from the Deputy Secretary before distribution or discussion of the concept paper. Utilizing input from the advisory committee(s), program staff should develop the proposed rulemaking package with the assistance of the program's lead attorney from the Bureau of Regulatory Counsel and with input from the lead Regional Director.

Using the team approach in the development of regulations is strongly encouraged. Appropriate central and regional program, legal and policy staff should be involved early in the development of regulations so that each office has had the opportunity for input prior to when the proposal goes through senior management review.

The appropriate advisory committee, and in some cases the Agricultural Advisory Board and the Citizens Advisory Board must be consulted in the development of the regulation. The Policy Office, Regulatory Counsel and the Secretary must approve drafts of the proposed regulation before being submitted to an advisory committee for review. **The advisory committee's report or recommendations must accompany the proposed rulemaking packet when it is submitted to the Policy Office for EQB consideration.** Draft regulations submitted to advisory committees for review are available to the public when they are mailed to the advisory committee. Regulations are also posted to the DEP web site at that time under the appropriate advisory committee in the Public Participation Center.

Proposed regulations that regulate agriculture **must** be presented to the Agricultural Advisory Board at least 120 days prior to EQB action. Proposed regulations that affect, but do not regulate, agriculture must also be presented to this Board in advance of EQB consideration. If there is any question if a regulation should be presented to the Agricultural Advisory Board, the Deputy Chief Counsel should be consulted. (Add reference to statute here.)

In addition, Section 7.6. (Advice to Department) of the Air Pollution Control Act requires the department to consult with the Citizens Advisory Council, as appropriate, in the consideration of state implementation plans and regulations developed by the department and needed for the implementation of the Clean Air Act. The timing and extent of this consultation is fluid and generally initiated by the CAC Executive Director. Regardless, it is the responsibility of the program to identify these particular regulations and following appropriate internal review, provide them to CAC for discussion in adequate time for meaningful input.

C. Contents of a Proposed Rulemaking Package:

1. **Cover Memorandum** - The cover memorandum serves as the official document to receive senior management approval of the proposed rulemaking before the regulatory package is submitted to the Secretary. The cover memorandum should include the information and follow the form outlined in Appendix G.

2. **Executive Summary** – The executive summary is a one or two page summary of the regulatory proposal prepared for the members of the EQB that identifies the following:

    - Title of the regulation.
    - Specify whether the regulation is new or an amendment to existing regulations.
    - Summary of the proposal.
    - Purpose of the proposal. (If companion federal regulations exist, note whether this proposal will be more stringent than the federal requirements.)

- Specify who will be affected by the regulation.
- If applicable, a description of the involvement of an advisory committee that was involved in the development of the regulation (i.e. specify when the committee met to review the draft regulation, the comments or recommendations offered by the committee, etc.). **A letter from the appropriate advisory committee, the Agricultural Advisory Committee, and the Citizens Advisory Council indicating its recommendation(s) must be attached to the Executive Summary.**
- The deadline for adoption of the regulation, if applicable, including an explanation of the mandated deadline.
- The length of the recommended public comment period (minimum 30 days), and the number of public meetings or hearings that should be scheduled, if applicable.

3. **Preamble** - Each regulation submitted for review shall contain a brief preamble, written in clear and concise language, which describes in nontechnical terms the compelling public need the regulation is designed to address, what the regulation requires in legal and practical terms and whom the regulation is likely to affect. The preamble, which is published in the *Pennsylvania Bulletin,* should be used by the Department to articulate how the proposed regulation will improve environmental quality in the Commonwealth, including the improvement of public health, safety and welfare of the state's citizens. It should include the following sections:

   - Effective Date.
   - Contact Persons.
   - Statutory Authority: If the proposed regulations contain standards or requirements more stringent than imposed by federal law, the Department shall include a statement in the Preamble that describes the standards or requirements that exceed the requirements imposed by federal law and the basis for those requirements in state law. Included with this statement should be an analysis comparing the state requirements to the federal requirements, including the appropriate citations to the federal law or regulations. Department staff shall also include in the Preamble a discussion of the policy or technical reasons for imposing a regulation that exceeds the federal requirements, and an explanation of the economic analysis of their decision to impose the stricter requirements. A statement about how the state standard or requirement to be imposed is achievable under current or reasonably available technology shall also be included, as well as how DEP will involve and inform the public of the purpose, requirements, costs, and consequences of adopting the regulation.
   - Background and Purpose: The preamble shall contain a provision that clearly describes how the agency will identify the environmental objective to be achieved and measure whether the rule is achieving the desired result.
   - Summary of Regulatory Requirements.

- Benefits, Costs and Compliance. (Guidelines for completing this section are included as Appendix H): The preamble shall contain a summary of the compliance assistance plan addressing possible types of financial assistance, as well as technical and educational assistance. Educational and informational materials on the new regulation should clearly identify new regulatory requirements. In addition, the following language must be included for any regulations with jurisdiction over fees. "Costs to the Commonwealth - Within one year of adoption of the final rulemaking and every three years thereafter, the Department will evaluate the effectiveness of the regulation, including direct and indirect costs to the Commonwealth, and recommend any changes to the Board."
- Pollution Prevention (if applicable).
- Sunset Review.
- Regulatory Review.
- Public Comments.
- Public Hearings (if applicable).

4. **Annex A – Regulation:** This is the actual text of the proposed regulation showing additions (bolded and underlined) and deletions (bolded and bracketed). The text of the regulation is printed in the *Pennsylvania Bulletin* as Annex A. Program staff must use current *Pennsylvania Code* text as the basis when drafting proposed regulations. This text is available electronically at www.pacode.com. It is important to include as much regulatory text in Annex A as necessary to provide the EQB members with a clear understanding of the amendments. This may include "lead-ins" to incomplete sentences or sections that are not being proposed for change. Text that is not being amended will not be published in the *Pennsylvania Bulletin*.

   As regulations are being drafted, be aware that the Legislative Reference Bureau (LRB) has certain style standards that they will enforce before they will publish proposed or final regulations in the Pennsylvania Bulletin. A copy of the LRB Style Manual is posted at the Policy Office IntraDEP Website (scroll down to "Guidance" and select Pennsylvania Code & Bulletin Style Manual) http://intradep/OPC/opchome.htm

   Adherence to the LRB style Manual should avoid any reason for the LRB to make edits prior to publication. In addition, the LRB has offered to review draft documents and offer numbering and formatting suggestions early in the drafting process. Upon request by program staff, the Regulatory Coordinator will send a copy of draft documents to LRB for review.

   Refer to the guidelines in Appendix I for the correct format of Annex A.

5. **Regulatory Analysis Form** (RAF)- This form includes 31 questions about the proposal and is included as Appendix J. The form is not submitted to the EQB, but is a public document and is used by the Independent Regulatory Review Commission (IRRC),

the Standing Committees of the House and Senate, the Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office during their respective reviews of the regulation. To accurately describe the potential impact of the proposed regulation, development of the RAF with the assistance of the Department Economist is strongly encouraged.

6. Fee Report Form - (required only when a regulation establishes or revises a fee charged by the Commonwealth). The fee report form is used to justify new or revised fees. This form, including instructions, is included as Appendix K.

7. Stream Reports – (required only when a proposed regulation is developed pursuant to a stream redesignation petition).

D. Submission of Proposed Rulemaking Package to the Policy Office

When a regulation is formally submitted to the Policy Office for EQB consideration, it ceases to be a public document as it undergoes internal review until it is released to the EQB two weeks prior to the meeting at which it will be considered. If requests from the public are received during this time period, the advisory committee draft as posted on the advisory committee website should be provided.

Deadlines for submitting regulations to the Policy Office, with approval from the Deputy Secretary, are a minimum of 16 weeks prior to the meeting in which the EQB will consider the rulemaking package. These deadlines are established to enable required reviews as follows: Policy Office (3 weeks), Office of Chief Counsel (3 weeks), Special Deputy Secretary and briefing the Secretary (4 weeks), the Governor's Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office (4 weeks), Corrections/Copying and Preparation for EQB Mailing (2 weeks). All EQB meeting agenda materials are posted on the EQB website and mailed to EQB members at least 2 weeks prior to the EQB meeting.

Three copies (one original and two copies) of the regulatory package must be received by the Policy Office, signed by the Deputy Secretary. Paper copies of regulations submitted to the Policy Office must be accompanied by an electronic version of each document in the regulatory package. Each regulatory document must be saved separately on a 3 ½" diskette or CD. A specific font is not required for the regulatory package; however, 12 pitch is recommended. Tables instead of tabs or indentations should also be used in each regulatory document.

E. Review by the Policy Office

The Policy Office reviews the proposed regulations for conformity with the Administration's priorities and for conformity with the regulatory drafting and promulgation procedures established at 4 *Pa Code*, 1.371. In addition to this analysis, the Policy Office also reviews the regulatory package for completeness, format, clarity and substance. If significant changes are necessary, the regulatory package is returned to the Bureau Director and is rescheduled for the following month's meeting to allow time for revisions. If the Policy Office recommends no revisions or minor

revisions, the review process continues and the regulatory package is forwarded to the Office of Chief Counsel. Programs are encouraged to forward advance drafts of proposed rulemakings to the Regulatory Coordinator for advance review. In the event significant changes are necessary, the program will be notified and the significant changes can be addressed before the package moves further in the review process. The Policy Office will solicit input from by the Department Economist.

F. Review by the Office of Chief Counsel

The Office of Chief Counsel has a three-week period within which to review, approve, and return the regulation package to the Policy Office. The Chief Counsel must approve the regulatory package following any revisions necessary as a result of the legal review. The regulatory package, when returned to the Policy Office, must be accompanied by a legal and policy memo addressed to the Secretary outlining any legal and/or policy issues associated with the regulation. Following Chief Counsel's approval of the regulatory package, the Special Deputy Secretary reviews the proposed regulation.

G. Approval by the Special Deputy Secretary and Secretary

Following the Special Deputy Secretary's review and approval of the proposed regulation, the Regulatory Coordinator schedules a Regulatory Briefing with the Secretary to obtain the Secretary's approval of the regulation. The Regulatory Coordinator, Special Deputy Secretary, Policy Director, EQB Legal Counsel, Deputy Secretary, Bureau Director, and lead program staff are required to attend this briefing. Representatives from the Governor's Policy Office are also invited to attend this briefing.

H. Review by the Governor's Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office

After the Secretary approves the regulation, the Regulatory Coordinator forwards the proposed rulemaking package to the Office of General Counsel, the Governor's Policy Office, and the Governor's Budget Office for preliminary review. These oversight agencies may contact the Policy Office to seek clarification or request changes. The Policy Office will work with program and legal staff to resolve any concerns. The Bureau of Regulatory Counsel must respond to legal concerns raised by the Office of General Counsel. The Office of General Counsel and the Governor's Policy Office will notify the Policy Office when preliminary approval of the proposed rulemaking is obtained. The Office of General Counsel will grant formal approval following EQB action, provided that the Department identifies all significant changes made to the rulemaking since preliminary approval was granted.

I. EQB Legislative Briefing

As the regulatory package is concurrently reviewed by the Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office, the Regulatory Coordinator will schedule a Legislative Briefing on the regulatory proposal with the legislative members of the

EQB. The Regulatory Coordinator, EQB Legal Counsel, Bureau Director, and lead program and legal staff are required to attend this briefing. In addition, the Department's Legislative Director is also invited to attend this briefing. The purpose of this briefing is to provide the EQB legislative members with an overview of the regulation and for Department staff to answer any questions posed by the EQB legislative members. All materials provided for this briefing are to be marked as draft documents.

J. Review by the Environmental Quality Board

The EQB meets the third Tuesday of each month when there are a sufficient number of agenda items to consider. Regulatory packages are mailed and sent electronically to the EQB members and alternates at least two weeks prior to each meeting. (Please note, the bureau director cover memo to the Secretary and the Regulatory Analysis Form are not included in the Regulatory Package that is distributed to the EQB). In addition to these distribution steps, the Regulatory Package is also posted on the Department's Public Participation Center website at http://www.dep.state.pa.us, at least two weeks prior to the EQB meeting.

At the EQB meeting, the Deputy Secretary presents the proposed rulemaking with the assistance of the Bureau Director and program counsel and responds to any concerns EQB members may have. The EQB takes formal action on each rulemaking. The length of the public comment period and any public meetings and/or hearings are incorporated into approval motions for each rulemaking considered. Although DEP can recommend the length of the public comment period and/or the number of public meeting or hearings to be held, the EQB has the ultimate discretion to determine and approve these details. After the EQB meeting, the program must provide a copy of the Deputy's EQB presentation slides so that they can be added to the EQB website.

K. Review by the Office of Attorney General

After the EQB approves a proposed regulation, the Regulatory Coordinator transmits the regulation to the Office of General Counsel for formal approval, which, in turn, forwards the regulation to the Office of Attorney General. The Office of Attorney General ~~must issue~~ generally issues an opinion as to form and legality of the regulation within 30 days ~~or the regulation is deemed approved~~. If the Office of Attorney General finds that the regulation is outside the promulgating agency's statutory authority, or is otherwise not in conformity with law, it conveys its concerns to the Office of General Counsel within the 30-day review period in a tolling memo. Issuance of a tolling memo suspends the 30-day review period until the Department satisfactorily responds to the concerns. The Policy Office coordinates the response to a tolling memo with the Bureau of Regulatory Counsel.

L. Publication and Public Comment

a) Publication in the *Pennsylvania Bulletin* - Following approval by the Office of Attorney General, the Policy Office submits the proposed rulemaking to the Standing Committees and IRRC and to the Legislative Reference Bureau (LRB) for publication

in the *Pennsylvania Bulletin.* Prior to publication of the rulemaking, the LRB will provide a copy of the draft publication for review and comment by DEP staff. The Regulatory Coordinator will inform the lead program contact and program attorney when the draft is expected to be received and when edits must be provided to be included in the final publication. The Regulatory Coordinator will communicate any revisions to the LRB. Program staff may request "overruns" of the Pennsylvania Bulletin for public distribution by calling the Policy Office at least one week in advance of the publication date of the rulemaking. No minimum order is required; however, the per-copy cost of orders of less than 1,000 copies is considerably more expensive. Overruns are especially useful as handouts at public meetings and hearings if they are scheduled in conjunction with the proposal. Programs should also provide copies of regulations to their advisory committee members and encourage comment on proposed regulations.

b) Public Comment Period and Commentator List - The official public comment period commences with publication of the proposed rulemaking in the *Pennsylvania Bulletin.* When proposed regulations are published in the *Pennsylvania Bulletin*, the *Pennsylvania Bulletin* version of the document is linked to the Department's Public Participation Center website under Proposals Open for Comment. All proposed rulemakings are subject to a comment period of at least 30 days. Comments on proposed regulations must be filed with the EQB as noted in the "Public Comments" section of the preamble. The Policy Office acknowledges receipt of the comments, transmits copies to the Committees and IRRC (in accordance with the five-day requirement in the Regulatory Review Act), and forwards copies to the program contact and program attorney. The Policy Office also prepares a list of the names and addresses of all individuals who submitted comments during the public comment period and those presenting testimony at hearings. This list, referred to as the commentator list, is the basis for preparing the comment and response document to the final rulemaking and is sent to the Bureau Director following the close of the public comment period. The commentator list also indicates those commentators that submitted a one-page summary of their comments. As referenced in Section J of the proposed preamble (see Appendix M for an example of a proposed preamble), one-page commentary summaries submitted to the EQB during the public comment period are provided to the EQB as part of the final rulemaking package. The commentator list indicates those commentators, if any, which request a copy of the final rulemaking following EQB action. All commentators will receive a copy of the final rule when it is distributed to EQB. The Regulatory Review Act requires agencies to submit to IRRC and the Committees the names and addresses of commentators who have requested the text of the final-form regulation, which the agency intends to submit.

c) Public Meetings and Hearings – During the public comment period, public information meetings and/or public hearings may be held on proposed rulemakings. The Department conducts public information meetings for the purpose of explaining the proposed rulemaking and responding to questions. No formal record is made of these meetings. Public hearings are conducted by the EQB to accept comments on a proposed rulemaking. An EQB member or alternate chairs each hearing. An official

record of the hearing is prepared by an independent stenographic reporting service. The Policy Office schedules these public meetings and EQB hearings, as well as the reporter. The program proposing the regulations is responsible for paying all expenses associated with public meetings and hearings, including locational costs, newspaper publication costs, stenographic services, etc.

d) Review by the Standing Committees and IRRC – Within 30 calendar days after the close of the public comment period, IRRC may submit formal comments, recommendations or objections on the proposed rulemaking. Typically, during their review period, IRRC will provide questions to the Regulatory Coordinator to gain clarification concerning the rulemaking. The Regulatory Coordinator will share these questions with the relevant program and regulatory counsel and work with them to provide a response to IRRC, including coordinating any meetings with IRRC and program staff, if necessary, concerning the rulemaking. The Senate and House Environmental Resources and Energy Committees have until the Department submits the final rulemaking to the Committees and IRRC to comment on proposed rulemakings to the Department. As with IRRC, if the Standing Committees provide questions to the Department or request a meeting to discuss the rulemaking, the Regulatory Coordinator will coordinate the Department's response. If IRRC and/or the Standing Committees submit formal comments to the Department on the rulemaking, they must be listed on the Commentator List and their comments must be addressed in the Comment and Response Document and the final Order.

VI. PROCEDURES FOR DEVELOPMENT AND APPROVAL OF FINAL RULEMAKINGS - *Standard Process*

A. Scheduling a Final Rulemaking for EQB Consideration

To add a final regulation to the EQB regulatory calendar, the Bureau Director must submit a written request to the Secretary through the Deputy Secretary and the Regulatory Coordinator requesting that the final regulation be added to the regulatory calendar. This request must be submitted to the Secretary at the conclusion of the public comment period. All final regulations should be submitted to the EQB within six months of the close of the public comment period. The request should include the information contained in Appendix E.

Following approval of the request by the Secretary, the Regulatory Coordinator will notify the Bureau Director, the Deputy Secretary, the Deputy Secretary for Field Operations (except for mining regulations), and the Bureau of Regulatory Counsel of the approval, and the final regulation will be added to the Regulatory Agenda. The Regulatory Agenda is available electronically on DEP's web site under the Public Participation Center and is updated on a continuing basis. In addition, the Six-Month Regulatory Agenda is published semiannually by the Governor's Office of Policy in February and July.

The Regulatory Review Act requires agencies to submit the final form of a regulation within two years of the close of the public comment period, or the regulation is considered to be withdrawn and would need to be re-proposed with a new public comment period.

B. Preparing a Final Rulemaking Package

Following the Secretary's approval to begin development of a regulation, program staff should prepare a concept paper for distribution to the Citizen's Advisory Council and the appropriate advisory committee. Approval should be obtained from the Deputy Secretary before distribution or discussion of the concept paper. Utilizing input from the advisory committee(s), program staff should develop the final rulemaking package with the assistance of the program's lead attorney from the Bureau of Regulatory Counsel and with input from the lead Regional Director.

Using the team approach in the development of regulations is strongly encouraged. Appropriate central and regional program, legal and policy staff should be involved early in the development of the final regulations so that each office has had the opportunity for input prior to when the package is submitted for senior management review. This early involvement will minimize review time, particularly for legal and policy staff. This procedure will ensure that all appropriate senior management reviews of regulations are completed before the final rulemaking is submitted to the EQB. **The appropriate advisory committee, or Citizens Advisory Counsel should be given the opportunity to review the draft final rulemaking and the draft comment and response document prior to EQB consideration.** The advisory committee's report or recommendations must accompany the final rulemaking when it is submitted to the Policy Office. RICK – would you double-check for me that the Ag. Board sees proposed regs only, not final. Thanks.

C. Contents of a Final Rulemaking Package

A final rulemaking package consists of the following documents:

1. **Cover Memorandum** – The cover memorandum serves as the official sign-off document for the final rulemaking to ensure that all senior management approvals are obtained before submittal to the Secretary. The cover memorandum should include the information and follow the form outlined in Appendix O.
2. **Executive Summary** – The executive summary is a one- or two-page summary of the final rulemaking prepared for the members of the EQB that identifies the following:

    - Title of the regulation.
    - Specify whether the regulation is new or an amendment to existing regulations.
    - Summary of the regulation.
    - Purpose of the regulation. (If companion federal regulations exist, note whether this proposal will be more stringent than the federal requirements.)

- Who will be affected by this regulation?
- If applicable, a description of the involvement of an advisory committee, Agricultural Advisory Committee or Citizens Advisory Committee that was involved in the development of the regulation (i.e. specify when the committee met to review the draft regulation, the comments or recommendations offered by the committee, etc.). **A letter from the advisory committee indicating its recommendation(s) must be attached to the Executive Summary).**
- The deadline for adoption of the regulation, if applicable, including an explanation of the mandated deadline.
- Specify when the proposed regulation was published in the *Pennsylvania Bulletin,* the length of the public comment period, and if any public meetings or hearings were held.

3. **Order** - The Order (referred to as the Preamble in a proposed rulemaking) is published in the *Pennsylvania Bulletin* as an explanation and justification for the regulation. The Order should be written in clear and concise language and describe in nontechnical terms the compelling public need the regulation is designed to address, what the regulation requires in legal and practical terms and who the regulation is likely to affect. The Order should be used by the Department to articulate how the regulation will improve environmental quality in the Commonwealth, including the improvement of public health, safety and welfare of the state's citizens. It should include the following sections:

- Effective Date.
- Contact Persons.
- Statutory Authority.
- Background of the Amendments.
- * Summary of Changes to the Proposed Rulemaking.
- * Summary of Comments and Responses on the Proposed Rulemaking. Please note, summaries of comments provided by IRRC, the Standing Committees, and significant public comments received by the EQB should be provided only. Summaries for *every* comment should not be included in the Order.
- Benefits, Costs and Compliance. (Appendix H includes guidelines for completing this section.) . In addition, the following language must be included for any regulations with jurisdiction over fees. "Costs to the Commonwealth - Within one year of adoption of the final rulemaking and every three years thereafter, the Department will evaluate the effectiveness of the regulation, including direct and indirect costs to the Commonwealth, and recommend any changes to the Board."
- Pollution Prevention (if applicable).
- Sunset Review.
- Regulatory Review.

- Findings of the Board.
- Order of the Board.

* Note that these sections can be combined if the majority of changes at final rulemaking are based on public comments.

The format for a final Order, including boilerplate language, is contained in Appendix P.

4. **Annex A - Regulation** - This is the actual text of the proposed regulation as it appeared in the *Pennsylvania Bulletin,* and includes changes made at final rulemaking. In addition, the annex should include the full text of all sections that are amended at both the proposed and final rulemaking stages since the LRB is required to publish the full text of these sections in the *Pennsylvania Bulletin.* Program staff must use the *Pennsylvania Bulletin* version of the proposed rulemaking as the basis when drafting the final rulemaking. This is necessary because editorial changes are made by the LRB when the proposed rulemaking is published, and these changes must be incorporated into the final rulemaking. *Pennsylvania Bulletin* text is available electronically at www.pabulletin.com. To include the full text of amended sections that were not included in the proposed rulemaking, program staff should access the *Pennsylvania Code* at www.pacode.com. Guidelines for the correct format of Annex A are listed in Appendix I.

5. **Comment and Response Document** - This document lists the commentators who submitted comments, both written and oral (at public hearings), during the official public comment period. Comments submitted by the Senate and House Environmental Resources and Energy Committees and IRRC, following the close of the public comment period and during their respective review periods, should also be included in this document. The document should summarize, not paraphrase, the comments and provide DEP (not EQB) responses. Paraphrasing should be avoided to minimize the potential for misinterpretation of the comments. All comments must be addressed and responded to. The comment and response document should consist of the following:

   a. A cover page with the title of the regulation.
   b. A list of the commentators and their addresses using the format of the commentator list prepared by the Policy Office. The Standing Committees and IRRC should be added at the end of the list if they submitted any comments. The commentator list is available electronically from the Policy Office.
   c. A summary of the comments and DEP responses categorized by subject matter (i.e., comments on the same issue should be grouped together). Miscellaneous comments should follow the specific issues. Following each summarized comment, include the number of the commentator who submitted the comment, not the commentator by name or organization.

d. A copy of all one-page summaries that were submitted during the public comment period. These summaries are noted on the list of commentators prepared by the Policy Office.

The format of a comment and response document is included in Appendix Q.

6. **Regulatory Analysis Form** - This form includes 31 questions about the regulation and is included as Appendix J. This form is not submitted to the EQB, but is a public document and used by IRRC, the Standing Committees, the Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office during their respective reviews of the regulation. The regulatory analysis form prepared for the proposed rulemaking must be updated and included in the final rulemaking package. In particular, questions 6, 16, and 27 must be revised. All questions and answers should be reviewed if significant changes were made to the proposed rulemaking. This form is available electronically from the Policy Office. To accurately describe the potential impact of the proposed regulation, development of the RAF with the assistance of the Department Economist is strongly encouraged.

7. **Fee Report Form** - (required only when a regulation establishes or revises a fee charged by the Commonwealth). The fee report form is used to justify new or revised fees. This form is included as Appendix K.

8. **Stream Reports** – (required only when a final regulation is developed pursuant to a stream redesignation petition).

D. Submission of Final Rulemaking Package to the Policy Office

Deadlines for submitting regulations to the Policy Office, with approval from the Deputy Secretary, are a minimum of 16 weeks prior to the meeting in which the EQB will consider the rulemaking package. These deadlines are established to enable required reviews as follows: Policy Office (3 weeks), Office of Chief Counsel (3 weeks), Special Deputy Secretary and briefing the Secretary (4 weeks), the Governor's Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office (4 weeks), and Corrections/Copying and Preparation for EQB Mailing (2 weeks). Further, all EQB meeting agenda materials are posted on the EQB website and mailed to EQB members at least 2 weeks prior to the EQB meeting.

Three copies (one original and two copies) of the regulatory package must be received by the Policy Office, signed by the Deputy Secretary, by the deadline to be included on the agenda for a specific EQB meeting. Paper copies of regulations submitted to the Policy Office must be accompanied by an electronic version of each document in the regulatory package. Each regulatory document must be saved separately on a 3 ½" diskette or CD. A specific font is not required for the regulatory package; however, 12 pitch is recommended. Tables instead of tabs or indentations should also be used in each regulatory document.

E. Review by the Policy Office

The Policy Office reviews the final regulations for completeness, format, and substance. If significant changes are necessary, the regulatory package is returned to the Bureau Director for revisions. If the Policy Office recommends no revisions or minor revisions, the review process continues and the regulatory package is forwarded to the Office of Chief Counsel. Programs are encouraged to forward drafts of final rulemakings to the Regulatory Coordinator for review prior to the deadline to avoid delays in the event significant changes are necessary.

F. Review by the Office of Chief Counsel

The Office of Chief Counsel has a three-week period within which to review, approve and return the regulation package to the Policy Office. The Chief Counsel must approve the regulatory package following any revisions necessary as a result of the legal review. The regulatory package, when returned to the Policy Office, must be accompanied by a legal and policy memo addressed to the Secretary outlining any legal and/or policy issues associated with the regulation. Following Chief Counsel's approval, the Special Deputy Secretary reviews the final rulemaking.

G. Approval by Special Deputy and the Secretary

Following the Special Deputy Secretary's review and approval of the final rulemaking, the Regulatory Coordinator schedules a Regulatory Briefing with the Secretary to obtain the Secretary's approval of the regulation. The Regulatory Coordinator, Special Deputy Secretary, Policy Director, EQB Legal Counsel, Deputy Secretary, Bureau Director, and lead program staff are required to attend this briefing. Representatives from the Governor's Policy Office are also invited to attend this briefing.

H. Review by the Governor's Office of General Counsel, the Governor's Policy Office, and the Governor's Budget Office

After the Secretary approves the regulation, the Regulatory Coordinator forwards the final rulemaking package to the Office of General Counsel, the Governor's Policy Office, and the Governor's Budget Office for preliminary review. These oversight agencies may contact the Policy Office to seek clarification or request changes. The Policy Office will work with program and legal staff to resolve any concerns. The Bureau of Regulatory Counsel must respond to legal concerns raised by the Office of General Counsel. The Office of General Counsel and the Governor's Policy Office will notify the Policy Office when preliminary approval of the final rulemaking is obtained. The Office of General Counsel will grant formal approval following EQB action.

I. EQB Legislative Briefing

As the regulatory package is concurrently reviewed by the Office of General Counsel, the Governor's Policy Office and the Governor's Budget Office, the Regulatory Coordinator will

schedule a Legislative Briefing on the final rulemaking package with the legislative members of the EQB. The Regulatory Coordinator, EQB Legal Counsel, Bureau Director, and lead program and legal staff are required to attend this briefing. The Department's Legislative Director is also invited to attend the briefing. The purpose of this briefing is to provide the EQB legislative members with an overview of the regulation and for Department staff to answer any questions posed by the EQB legislative members. All materials provided are marked as draft documents.

J. Review by the Environmental Quality Board and Notification to Commentators

Regulatory packages are mailed and sent electronically to the EQB members and alternates at least two weeks prior to each meeting. (Please note, the Cover Memo to the Secretary and the Regulatory Analysis Form are not included in the Regulatory Package that is distributed to the EQB). In addition to these distribution steps, the Regulatory Package is also posted on the Department's Public Participation Center website at http://www.dep.state.pa.us at least two weeks prior to the EQB meeting.

As with proposed rulemakings, the Deputy Secretary presents the final rulemaking to the EQB with the assistance of the Bureau Director and program counsel and responds to any concerns EQB members may have. The EQB takes formal action on each rulemaking. After the EQB meeting, the program must provide a copy of the Deputy's EQB presentation slides so that they can be added to the EQB website.

There are two steps that programs must follow in providing notification to commentators. The first step is to send a copy of the EQB meeting agenda and final rulemaking (specifically the Order, Annex A and comment/response document) to all commentators on the same day that the package is mailed to the EQB members for consideration. This step satisfies the Department's commitment to provide all commentators with a response as indicated in its policy on Public Participation in the Development of Regulations and Technical Guidance (012-1920-001).

The second step is a requirement of the Regulatory Review Act and occurs after EQB adoption of a final rulemaking. This step requires that agencies send a copy of the final-form rulemaking only to those commentators who request it at the time of submittal to the Committees and IRRC. The Policy Office maintains this information and records it on the commentator list. Since there is no deadline for commentators to make such requests, program staff should verify the accuracy of the commentator list with the Policy Office when finalizing the comment and response document. The Regulatory Review Act also requires that the comment and response document list those individuals who have made this request. A separate column indicating these individuals must appear in the commentator list attached to the comment and response document to satisfy this requirement.

K. Review by the Standing Committees and the Independent Regulatory Review Commission (IRRC)

Following approval by the EQB and formal approval by the Governor's Office of General Counsel, the Policy Office transmits the final rulemaking to IRRC and the Standing Committees. IRRC has no less than 30 days to take official action at a public meeting to either approve or disapprove the final rulemaking. The Standing Committees have at least 20 days from receipt of the final-form rulemaking, and up to 24 hours prior to the start of IRRC's public meeting, to convey to DEP and IRRC its approval, disapproval, or intent to review the rulemaking. The Policy Office coordinates any meetings IRRC or Committee staff may request concerning the final rulemaking.

L. Review by the Office of Attorney General

After IRRC approves the final rulemaking, the Policy Office submits it to the Office of Attorney General as the last step in the review process. The Office of Attorney General ~~must~~ generally issues an opinion as to form and legality of the regulation within 30 days ~~or the regulation is deemed approved~~. If the Office of Attorney General finds that the regulation is outside the promulgating agency's statutory authority, or is otherwise not in conformity with law, it conveys its concerns to the Office of General Counsel within the 30-day review period in a tolling memo. Issuance of a tolling memo suspends the 30-day review period until the Department satisfactorily responds to the concerns. The Policy Office coordinates the response to a tolling memo with the Bureau of Regulatory Counsel.

M. Publication in the *Pennsylvania Bulletin*

Following the Office of Attorney General's approval of the final regulation, the Governor's Office of General Counsel transmits it to the Legislative Reference Bureau (LRB) for publication in the *Pennsylvania Bulletin*. The LRB coordinates the publication date with the Policy Office, which provides the electronic version of the document to the LRB for publishing. Prior to publication of the rulemaking, the LRB will provide a copy of the draft publication for review and comment by DEP staff. The Regulatory Coordinator will inform the lead program contact and program attorney when the draft is expected to be received and when edits must be provided to be included in the final publication. The Regulatory Coordinator will communicate any revisions to the LRB.

The final regulation becomes effective upon publication in the *Pennsylvania Bulletin*, unless otherwise noted in the Order. Final regulations, when published in the *Pennsylvania Bulleti*n, are linked to the Department's Public Participation Center website, under "*Regulations Recently Finalized*".

Approximately eight weeks following *Pennsylvania Bulletin* publication, the regulation will be codified in the *Pennsylvania Code.* The *Pennsylvania Bulletin* version of the rulemaking is the official version of the rulemaking until it is codified in the *Pennsylvania Code.* When regulations are codified, programs may purchase *Pennsylvania Code* pamphlets. These

pamphlets contain official *Pennsylvania Code* text and may be ordered by chapter by contacting the Policy Office. The cost of the pamphlets is to be covered by the program. Programs may order single pamphlets that contain related chapters; however, approval must be obtained by the program that has jurisdiction over the related chapters before the Policy Office will accommodate these requests. No minimum order is required, and the per-copy cost per pamphlet is the same regardless of the number of copies ordered. Single copies of pamphlets should be distributed free of charge to the public upon request.

VII - *Other Processes Available: (See Appendix __)* ALL THE TEXT FOR THESE PROCESSES WILL BE MOVED TO AN APPENDIX

- Advance Notice of Proposed Rulemaking
- Advance Notice of Final Rulemaking
- Final-Omitted Rulemaking

THE REGULATORY REVIEW PROCESS IN PENNSYLVANIA

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Mission Statement

To promote the most effective and least intrusive regulations possible while maintaining independence and full compliance with the Regulatory Review Act.

This booklet is published by the Independent Regulatory Review Commission and is available on our website at www.irrc.state.pa.us. Please feel free to copy or distribute all or parts of this publication.

Preface

The General Assembly passed the Regulatory Review Act (RRA) in 1982. The RRA established the Independent Regulatory Review Commission (Commission or IRRC). The Commission first met and began operations in 1983. There have been several amendments to the RRA over the years. The most recent changes were enacted as Act 148 of 2002 (a summary of these changes can be found in **Appendix A** on **page 20**).

Two primary goals of the Commission as stated in Section 2(a) of the RRA are:

- "…to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions"; and
- "…to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency."

The RRA accomplishes these goals through a two-stage review process:

First, an agency publishes a proposed regulation in the *Pennsylvania Bulletin* for review and comment by the public, the General Assembly and this Commission. The agency reviews the comments and develops a final version, with or without revisions.

Second, the agency gives commentators, the General Assembly and this Commission an opportunity to review the final regulation before publishing it as a final rule with the full force and effect of law.

As a result of this two-stage process, all final regulations reviewed by the Commission were ultimately approved under the RRA since 1998. Clearly, the review process works.

The second crucial factor in this success is our five Commissioners. The four caucus leaders of the Senate and House of Representatives each appoint one Commissioner. They serve three-year terms and can be reappointed. The Governor appoints the fifth Commissioner, who serves at the Governor's pleasure.

The Commission is charged with reviewing all regulations that Commonwealth agencies propose for promulgation except those of the Pennsylvania Game Commission and Pennsylvania Fish and Boat Commission. The regulatory review criteria set forth in the RRA include two primary considerations: whether the promulgating agency has the statutory authority to enact the regulation; and whether the regulation is consistent with legislative intent. The Commission then considers a list of other criteria such as economic impact, public health and safety, reasonableness, and clarity.

This booklet is devoted to discussion of the RRA, related laws, and how the Commission and others involved in the review process conduct their business. It provides a discussion of each step in the regulation review process. For each step, there is also a corresponding flow chart. In addition, a master flow chart displaying the entire process is located on the middle pages of this booklet. If you remove it, you can follow the process on the chart as you read the booklet. The numbers, inside the boxes of the individual flow charts, correspond to the numbers on the master flow chart. The blue numbers, embedded in the text of this booklet, correspond to the box numbers of all the charts. The page numbers in the boxes of the master flow chart correspond to the page number of the descriptive text for that step in the process within the booklet.

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TABLE OF CHARTS

THE PROMULGATION OF REGULATIONS

Commonwealth agencies have the authority, discretion and responsibility to promulgate regulations. An agency may have to:

1. Add, amend or repeal a regulation to implement legislation;
2. Ensure that existing regulations do not conflict with a recently enacted or amended federal or state regulation or statute;
3. Comply with a decision of a state or federal court; or
4. Clarify an existing regulation.

The catalyst for change does not always have to be external, however. An agency has wide discretion in determining the need to update an existing regulatory scheme in order to improve the way it operates under its enabling legislation.

Agencies sometimes provide a draft of a regulation prior to its publication in the *Pennsylvania Bulletin* to citizen advisory panels or other interest groups. Some agencies are required by statute to take this step; others do so voluntarily. Typically, the agency will invite interested parties and stakeholder groups to review and comment on the proposal before it is published.

Pennsylvania has four statutes that simultaneously govern the regulatory review process. They are the:

1. Commonwealth Documents Law (CDL) (45 PS §§ 1201 – 1208), which prescribes procedural steps in the preparation of a regulation;
2. Administrative Code (71 P.S. § 232), which requires the Office of Budget to prepare a fiscal note for proposed regulations;
3. Commonwealth Attorneys Act (71 PS §§ 732-101 – 732-506), which provides for review and approval for form and legality by the Offices of General Counsel and Attorney General; and
4. Regulatory Review Act (RRA) (71 PS §§ 745.1 – 745.15), which provides for oversight and review by the Commission and the General Assembly.

Most of this booklet is dedicated to explaining the two-stage review process of the RRA. The two stages include a review and comment period for proposed versions of regulations, and a period for review and action on the final version of regulations. Both stages are addressed in detail starting on **page 4** of this booklet.

COMMONWEALTH DOCUMENTS LAW

The Commonwealth Documents Law (CDL), enacted in 1968, establishes the basic framework for the rulemaking process. It lists the steps through which a proposed regulation must proceed before it may be finally adopted.

The CDL requires an agency to publish notice of its intention to promulgate, repeal or amend a regulation in the *Pennsylvania Bulletin*. This notice must include:

1. The text of the proposed regulation, indicating changes in the language of the existing regulation;
2. The agency's statutory authority to propose the regulation; and
3. A request for comments.

As a result of input received during the proposed stage, the agency may modify the text of the final-form regulation.

Modifications may not enlarge the scope of the regulation as proposed. However, Pennsylvania's courts have interpreted the phrase "enlarge the scope" very broadly. Generally, the courts have found that the scope has not been enlarged as long as the final-form regulation deals with the same subject matter as the proposed. This is true even if the methodologies and requirements set forth in the regulation have been drastically revised from proposed to final-form.

ADMINISTRATIVE CODE – FISCAL NOTES

A section of the Administrative Code entitled "Fiscal notes" directs the Office of Budget to prepare a fiscal note for regulatory actions of the administrative departments, boards, commissions or authorities, receiving money from the State Treasury. The fiscal note must state the costs of the proposed action for programs of the Commonwealth or local governments. The fiscal note is published in the *Pennsylvania Bulletin* at the same time as the proposal.

The fiscal note is required to contain the following information:

1. The fund or appropriation source providing the expenditures for the proposal;
2. The probable cost of implementing the proposal in its first fiscal year, and a projected cost estimate for each of next five fiscal years;
3. The fiscal history of the program expenditures;
4. The probable loss of revenue for the fiscal year of its implementation, and the projected loss of revenue for each of the next five fiscal years; and
5. The recommendation, if any, of the Secretary of the Budget.

COMMONWEALTH ATTORNEYS ACT

The Commonwealth Attorneys Act provides for the review of a regulation as to form and legality. Before publication in the *Pennsylvania Bulletin*, a regulation must pass legal muster. The Offices of General Counsel and Attorney General both perform this function, but do so independently of each other. They both review regulations first as proposed, and then again in final-form.

Proposed and final-form regulations can be prepared by an executive or independent agency[1]. They are initially reviewed for form and legality by the agency's legal office. Independent agencies submit their regulations directly to the Attorney General. Executive agencies must have the General Counsel's approval before submitting their regulations to the Attorney General.

General Counsel Review

The General Counsel is responsible for advising the Governor and providing legal services to executive agencies. Therefore, the General Counsel may question every aspect of an executive agency's proposed or final-form regulation, either as a matter of policy or as a matter of law. A regulation is reviewed to determine if:

1. It is clearly drafted;
2. The preamble satisfactorily explains the purpose of, need for, and statutory basis of the regulation; and
3. The Regulatory Analysis Form is completed correctly.

There are no time restrictions on the General Counsel's review.

Attorney General Review

The Attorney General reviews all proposed regulations from executive and independent agencies. This review must be completed in 30 days. If the Attorney General takes no action within 30 days, the regulation is deemed approved. Upon approval, the regulation proceeds through the remaining channels of review, pursuant to the RRA.

During the 30-day period, the Attorney General must convey any legal concerns related to the regulation to the General Counsel or the independent agency counsel. Once legal issues are raised, the time for Attorney General review is put on hold or "tolled." During this hiatus, the agency is expected to cooperate with the Attorney General to reach a consensus or resolution. Independent agencies usually respond directly to the Attorney General. Executive agencies generally work through the Office of General Counsel in preparing a response.

There are two separate points in the process where the Attorney General reviews the regulation. The Attorney General reviews proposed regulations before the regulatory review process begins under the RRA. At the final-form stage, this sequence is reversed. The Attorney General's review takes place following final action by the Commission. This is because only the Attorney General may direct an agency to make changes in a final-form regulation approved under the RRA. The Commission cannot direct an agency to make changes.

If the issues raised are not resolved, the Attorney General may disapprove the regulation. Upon disapproval, the Attorney General must notify the General Counsel or independent agency, the Secretary of the Senate and the Chief Clerk of the House of Representatives of the reasons for the disapproval. A disapproved regulation may be published with or without revisions. However, if the

[1]An independent agency is generally governed by a board or commission not under the direction of the Governor. An executive agency is headed by a cabinet officer or other official appointed by the Governor.

agency chooses to publish the regulation without revisions, it must also publish the Attorney General's objections.

REGULATORY REVIEW ACT

The RRA was enacted in 1982 to address a concern by the legislature regarding the promulgation of regulations. The intent of the RRA is clearly defined in Section 2(a) of the RRA. It can be summarized in the following five points:

1. Establish a method for ongoing and effective legislative review and oversight to foster executive branch accountability;
2. Provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function;
3. Provide ultimate review of regulations by the General Assembly;
4. Assist the Governor, Attorney General and General Assembly in their supervisory and oversight functions; and
5. Encourage the resolution of objections to a regulation and the reaching of a consensus among the agency, the Committees, interested parties and the Commission. (Text of Section 2(a) is provided in **Appendix C** on **page 22**.)

Based upon the requirements of the RRA, the agency, the Committees of the Senate and House of Representatives and the Commission share a common interest - to create the most effective, clear, reasonable, and least restrictive regulations possible. The two top criteria used to evaluate every regulation are **legislative intent** and **statutory authority**. Once the Commission makes a finding that a regulation satisfies these two criteria, it must apply the remaining six criteria to determine if a regulation is "in the public interest." The review criteria can be found in **Appendix D** on **page 23** of this booklet.

The RRA applies to every department, departmental administrative board or commission, independent board or commission, agency or other authority of this Commonwealth but does not include the Senate or the House of Representatives, the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission or any court, political subdivision, municipal or local authority.

The promulgating agency has broad discretion to determine the scope of a regulation and when to introduce a regulation into the process. However, once a regulation is in the process, it is subject to the specific timelines described in this booklet. The RRA is the only act that guides the legislative oversight process for regulations. Although the other acts described earlier in this booklet affect the process, it is the RRA that actually controls the time line for review and promulgation of a regulation.

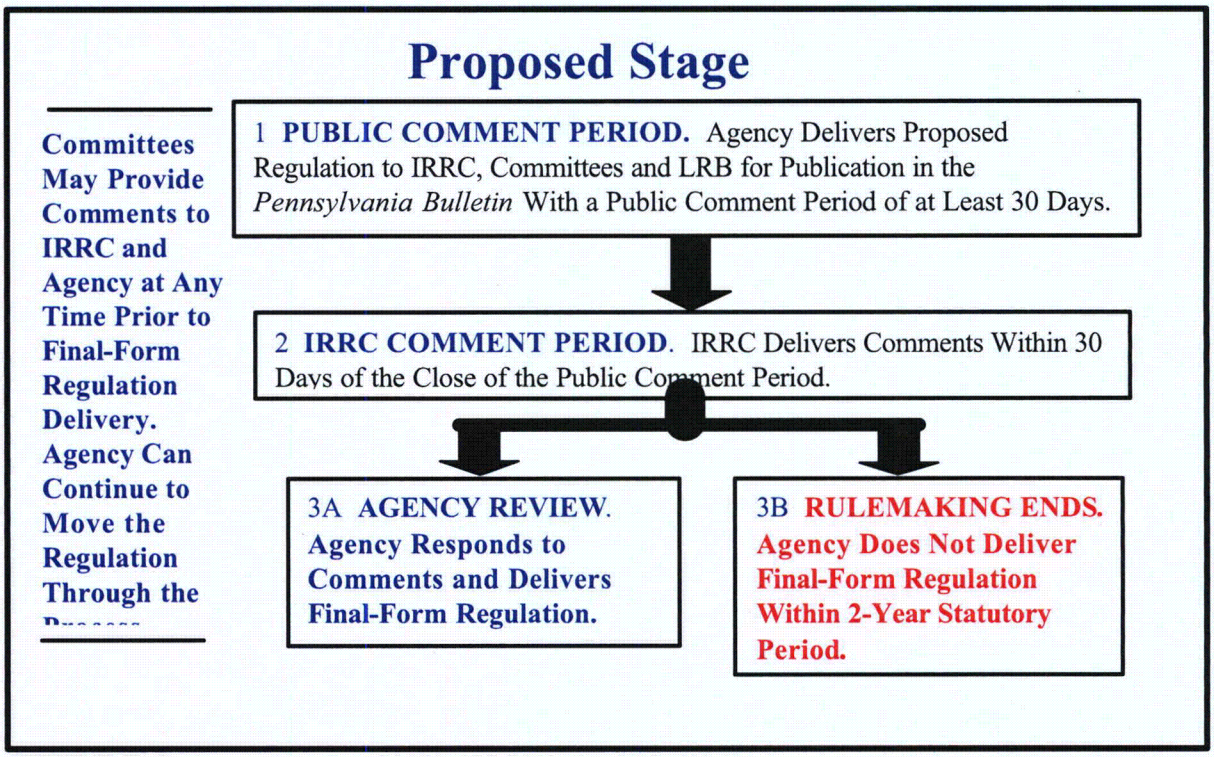
THE PROPOSED STAGE

Review of proposed regulations, under the RRA, begins after the Attorney General's approval. As the chart on **page 5** indicates, the agency delivers its proposed regulation, to the

Committees,[2] Legislative Reference Bureau (LRB) and Commission **on the same day (1)**. A preamble and Regulatory Analysis Form (RAF) must accompany the regulation.

The LRB publishes the regulation, including the preamble, in the *Pennsylvania Bulletin*. The preamble contains the deadline for submittal of comments by the public. **Public comment periods** are generally 30 days. However, they may be shorter if exigent circumstances exist, or longer, when required. Agencies may also schedule public hearings or information sessions to explain the regulation and promote dialogue.

The RAF is not published in the *Pennsylvania Bulletin*. However, it is available for inspection and copying at the agency or Commission. The information contained in the RAF can be found in **APPENDIX B** on **page 21** of this booklet.



Public Comment Period

Anyone may submit comments to the agency during the public comment period. The RRA requires the agency to forward copies of all comments it receives to the Committees and Commission within five business days of receipt. In addition, within five business days of receipt, the agency must notify all commentators of the procedure for requesting additional information on the final-form regulation, including notice of when the final-form regulation is delivered to the Committees and Commission for a final review.

[2] The Senate and House Committees designated by the Senate President Pro Tempore and the House Speaker to review the regulations of state agencies (see Appendix E, Glossary, on page 24).

Individuals, businesses and professionals affected by regulations should review proposed regulations and carefully consider the need to submit comments. Concerned citizens and experts in related fields may also want to submit comments supporting proposed regulations or offering suggestions for improvement. Written comments may contain useful information that agency staff can use to refine regulations to implement better and more efficient methods for attaining their policy objectives.

Persons interested in a regulation are encouraged to file comments with both the Commission and the agency. During its review, the Commission conducts independent outreach to solicit input from groups and individuals that might be impacted by a proposed regulation. If the Commission receives comments that haven't been submitted to the agency, the Commission will provide the agency with a copy. Comments can be sent to the Commission by mail, by facsimile to 717-783-2664 or by e-mail to ***irrc@irrc.state.pa.us***. **All comments received are made part of the Commission's public record file.** This file is available for public review at the Commission's office during normal working hours.

Opportunity for Committee Review

Committees may submit comments, recommendations and objections to the agency and the Commission at any time prior to the submittal of the regulation in final-form. The comments, recommendations and objections may refer to any of the criteria established by Section 5.2 of the RRA, which are listed in **APPENDIX D** on **page 23**. Filing comments is optional for the Committees. Unlike the Commission, the Committees do not forfeit their ability to disapprove a final-form regulation by failing to comment on the proposed regulation.

Commission Review and Timeline for Comments

The Commission must submit its comments, recommendations and objections within 30 days of the close of the public comment period **(2)**. Commission comments, recommendations and objections are also based on the criteria contained in Section 5.2 of the RRA.

The Commission must first and foremost determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intent of the General Assembly.

To determine whether a regulation meets statutory authority and legislative intent, the Commission examines:

1. Language used in the authorizing statute;
2. Comments of the Committees and Members of the General Assembly;
3. Comments in the Legislative Journal;
4. Pertinent legal precedents; and

5. Attorney General Opinions.

Following a determination that the regulation meets the statutory authority and legislative intent, the Commission considers the remaining criteria that include:

- Economic or fiscal impact;
- Protection of the public health, safety and welfare, and effect on the Commonwealth's natural resources;
- Feasibility, clarity and reasonableness;
- Substantive need for legislative review;
- Comments, objections or recommendations of a Committee; and
- Compliance with the RRA and the Commission's regulations.

All these criteria are used to determine if the regulation is "in the public interest."

To determine whether the regulation satisfies the remaining criteria, the Commission:

1. Analyzes comments from the Senate, House of Representatives and public;
2. Conducts independent research and outreach to the public and affected parties; and
3. Discusses issues with the agency and Committees.

The Commission must convey all its comments, recommendations, objections, concerns or questions regarding any provision in a proposed regulation in its Comments. A comprehensive review is necessary. The RRA states if the Commission does not comment on any portion of the proposed regulation and that portion is unchanged when the regulation is submitted in its final-form, the Commission shall be deemed to have approved that portion.

Following its review, the Commission will deliver its formal Comments to the agency, Committees and LRB. These Comments are also posted on the Commission's website (**www.irrc.state.pa.us**). The RRA requires the agency to **consider and respond** to every comment it has received on the proposed regulation from the public, Committees and Commission as it prepares the final-form regulation **(3A)**.

THE FINAL STAGE

The final stage begins when a final-form or final-omitted regulation is delivered to the Committees and Commission. For almost all regulations, this stage ends with review and approval at a single meeting of the Commission **(4, 5C and 16B)**. This is the last stop for a regulation under the RRA. After a final review by the Attorney General, the agency may publish the regulation in the *Pennsylvania Bulletin* with the full force and effect of law.

The chart on **page 9** illustrates the sequence for review of final-form and final-omitted regulations. A final-form regulation is published as proposed, with the opportunity for comment from the public, Commission and Committees. Preparing a final-form regulation may take an agency anywhere from a few weeks to the maximum two years allowed by statute. The time required

depends upon the complexity of the issues involved and the agency resources available. During this period, the agency may meet with the Committees, interested parties and Commission to discuss concerns raised during the proposed stage.

In contrast, a final-omitted regulation is not published as a proposed rulemaking nor offered for public comment. The preamble must include a justification for omission of the public comment period. The final-omitted regulation enters the process at the final rulemaking stage (3C). Page 18 discusses the specific circumstances under which final-omitted regulations may be promulgated. The procedures for review of a final-omitted regulation under the RRA are exactly the same as those for final-form regulations.

Delivery of the Final-Form or Final-Omitted Regulation

On the same date, the agency must deliver the final-form regulation and its response to all the comments received, or the final-omitted regulation, to the Committees and Commission (3A). The agency must also provide to the Committees and Commission the names and addresses of commentators who requested notice of the final-form regulation.

The agency's notice to commentators must include a copy of the final-form regulation or a summary of the changes made to the proposed regulation. The agency must send the notice and required information to the commentators on the same date of delivery to the Committees and Commission. **If an agency does not deliver a final-form regulation within the two-year period, the regulation is deemed withdrawn and the rulemaking ends (3B).**

Agency Option to Withdraw Before Commission Action

After delivery, an agency may withdraw a final-form or final-omitted regulation. In this case, the agency must notify the Committees and Commission that it is withdrawing the final regulation. The agency may deliver the final regulation at a later date to the Committees and Commission as long as final-form regulations are delivered within the remainder of the two-year period. There is no time limit for final-omitted regulations. In effect, the final review process would start anew. The agency would also need to send the appropriate notice to commentators who requested it on final-form regulations. **If the agency does not deliver a final-form regulation within the two-year period, the rulemaking ends.**

Time Period for Review

A final-form or final-omitted regulation must be delivered to the Committees and the Commission on the same date (3A and 3C). Following delivery, the Commission cannot act for at least 20 days. This assures the Committees an opportunity to review the regulation. The Commission may have until its next scheduled meeting, which occurs no less than 30 days after delivery of the regulation, to approve or disapprove the regulation (4). **If the Commission does not act, it is deemed to have approved the regulation (5C).**

Committees can take action on a final-form or final-omitted regulation at any time up to 24 hours before the Commission's public meeting. A Committee can approve, disapprove or notify the agency and Commission of its intent to review the regulation **(5A)**. If a Committee disapproves or notifies the Commission and the agency of its intent to review the regulation, the Committee will have 14 days after it receives the Commission's Order to take action **(8)**. Even if the Commission approves the regulation, a Committee can still delay promulgation by reporting a concurrent resolution disapproving the regulation. If the Committee does not act during its 14-day review period, the agency may proceed with the promulgation of the regulation **(9B)**.

48-Hour Blackout Period

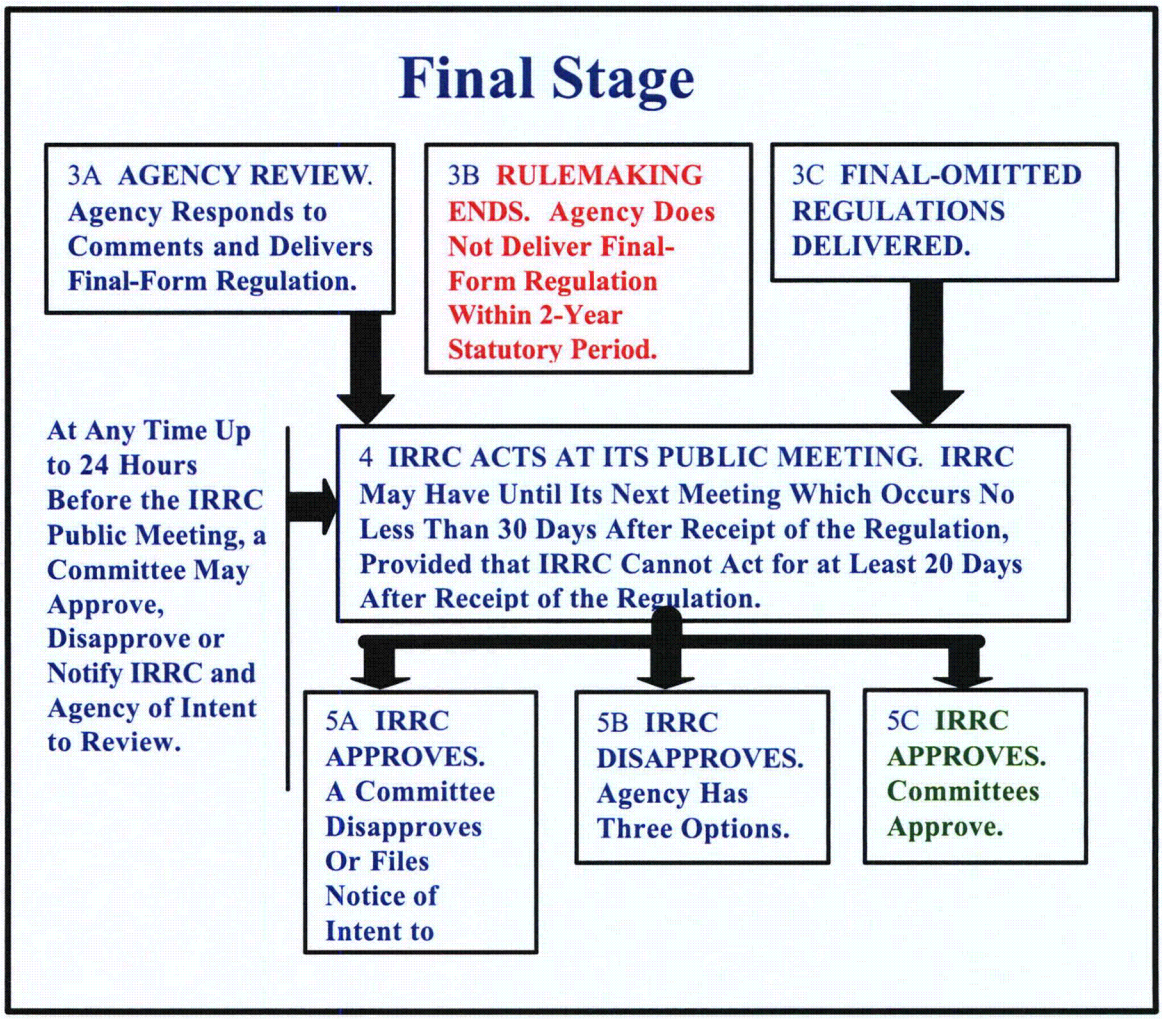
The RRA provides for a blackout period before the Commission's public meeting. Unsolicited comments relating to the substance of a regulation on the Commission's current public meeting agenda will be embargoed during the 48 hours before the start of the meeting. The blackout does not apply to communication between the Commission and agency staff or Members of the General Assembly and legislative staff. The Commission may also request information from outside sources.

At the start of the public meeting, embargoed material is distributed to the Commissioners. The Commission is required to keep the agency and Committees apprised of any communications it receives during the blackout. The Commission must transmit comments received during the blackout period to the agency and Committees upon receipt.

Commission Public Meetings

Generally, the Commission holds public meetings twice a month, on Thursdays. These meetings are structured, but informal, and may be rescheduled at the Commission's discretion to accommodate workload. However, the Commission is required to give ten days notice of rescheduled meetings to the Committees and agencies whose regulations are scheduled for action.

At the public meeting, the Commission reviews each regulation on its agenda. Then, a Commissioner makes a motion for approval or disapproval. The Chair invites the promulgating agency to respond to questions or make remarks. Legislators or their staff and interested members of the public are also invited to discuss their concerns with the Commissioners. During the discourse, the Commissioners may ask questions or voice concerns. This discussion enables the Commissioners to resolve any unanswered questions concerning the agency's intent or the



regulation's impact on the regulated community.

Finally, the Commissioners vote to approve or disapprove the regulation in its entirety. An Order is issued and delivered to the agency, Committees and LRB, and is posted on the Commission's website (**www.irrc.state.pa.us**). The Commission determines whether a regulation is "in the public interest" according to the criteria contained in **APPENDIX D** on **page 23**. In addition, the RRA places other limits on the scope of the Commission's review of a final-form regulation. The review of final-form regulations can relate only to the following areas:

- Comments, recommendations or objections raised by the Commission to the proposed version of the regulation;
- Amendments, additions, revisions or deletions to the proposed version; or
- Recommendations, comments or objections conveyed by a Committee to the agency or Commission.

The Commission may find the regulation is in the public interest and approve it. Regulations may be approved by formal action or operation of law, commonly referred to as "deemed approved." The Commission is deemed to have approved a regulation when the Commission has not filed comments on the proposed regulation and the agency has not made any changes to the regulation from proposed to final-form. Similarly, if the Commission takes no action, or there is a tie vote, the regulation is deemed approved.

Commission Approval With Committee Approval

If the Commission approves the regulation and the Committees approve the regulation, the review process under the RRA is concluded (**5C**). If neither Committee disapproves or conveys notice of its intent to review and the Commission approves, the RRA allows the agency to submit the regulation to the Attorney General for final review. **Upon the Attorney General's review for form and legality, the regulation is published in the *Pennsylvania Bulletin* (16B).** The regulation becomes effective on the date of publication or on a later date specified by the agency in its order adopting the regulation. See chart on **Page 11**. As stated at the beginning of this section, this is the last stop under the RRA for most regulations. During the past five years, the Commission approved about 99 percent of the final regulations that it considered.

Summary of the Regulatory Review Process Under Act 148

Blue - Highlights Actions; Green - Agency Proceeds with Final Publication; Red - Represents End of Process

1 PUBLIC COMMENT PERIOD. Agency Delivers Proposed Regulation to IRRC, Committees and LRB for Publication in the *Pennsylvania Bulletin* With a Public Comment Period of at Least 30 Days. **(Pg. 5)**

Committees May Provide Comments to IRRC and Agency at Any Time Prior to Final-Form Regulation Delivery. Agency Can Continue to Move the Regulation Through the Process. (Pg. 6)

2 IRRC COMMENT PERIOD. IRRC Delivers Comments Within 30 Days of the Close of the Public Comment Period. **(Pg. 6)**

Statutory Period – 2 Years From the Close of the Public Comment Period. Agency May Deliver a Final-Form Regulation.

3A AGENCY REVIEW. Agency Responds to Comments and Delivers Final-Form Regulation. (Pg.

3B RULEMAKING ENDS. Agency Does Not Deliver Final-Form Regulation Within 2-Year Statutory Period. (Pg. 8)

3C FINAL-OMITTED REGULATION DELIVERED. (Pg. 8)

4 IRRC ACTS AT ITS PUBLIC MEETING. IRRC May Have Until Its Next Meeting Which Occurs No Less Than 30 Days After Receipt of the Regulation, Provided that IRRC Cannot Act for at Least 20 Days After Receipt of the Regulation. (Pg. 10)

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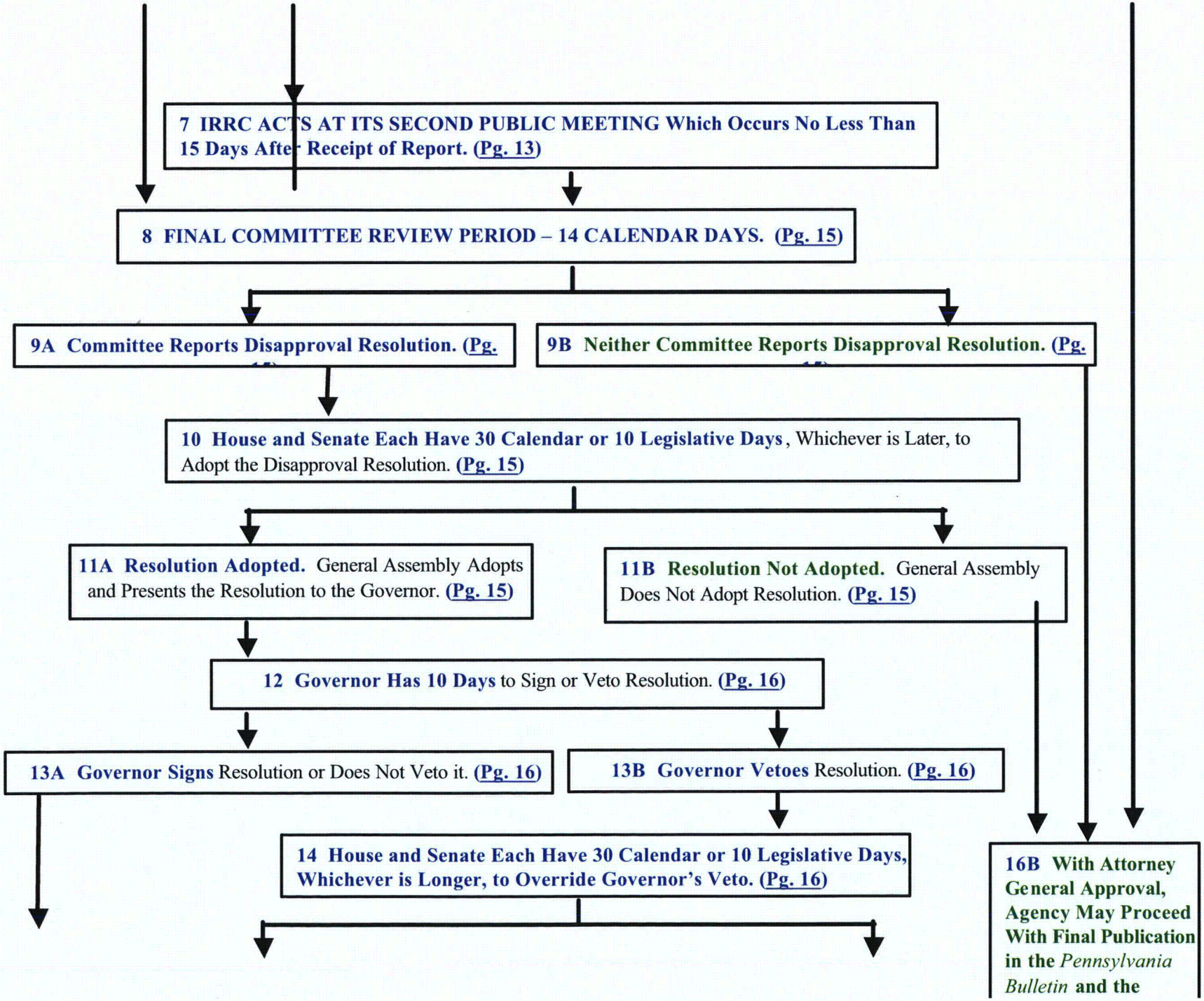
6C TAKE NO ACTION WITHIN 40 DAYS; Regulation Deemed Withdrawn.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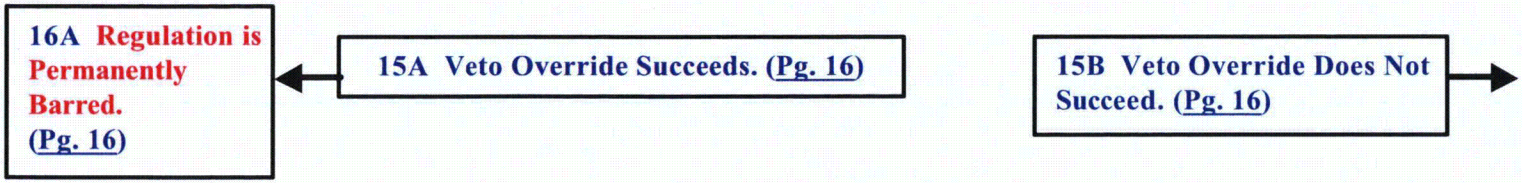
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OPPORTUNITIES FOR BUILDING CONSENSUS IN THE FINAL STAGE

On a small number of regulations, additional work is sometimes necessary before the final stage is complete and the regulations are approved. Fortunately, the RRA offers a degree of flexibility for the agency, Committees and Commission to consider and make changes necessary to achieve consensus. The basic rule in the RRA is that a final-form or final-omitted regulation cannot be amended after its delivery to the Committees and Commission. However, there are opportunities for agencies to modify regulations. Depending on the circumstances, consensus can be achieved before or after the Commission's first meeting on a particular regulation. This section describes the steps that may be used to resolve remaining concerns or questions related to final regulations.

Tolling the Time for Review

The intent of tolling is to allow an agency to make recommended changes to a final regulation before the Commission takes action on a regulation. Tolling provides a "time-out" in the review process to allow the agency to make corrections. The option to toll the time for review is limited, as illustrated in the chart on **page 12**.

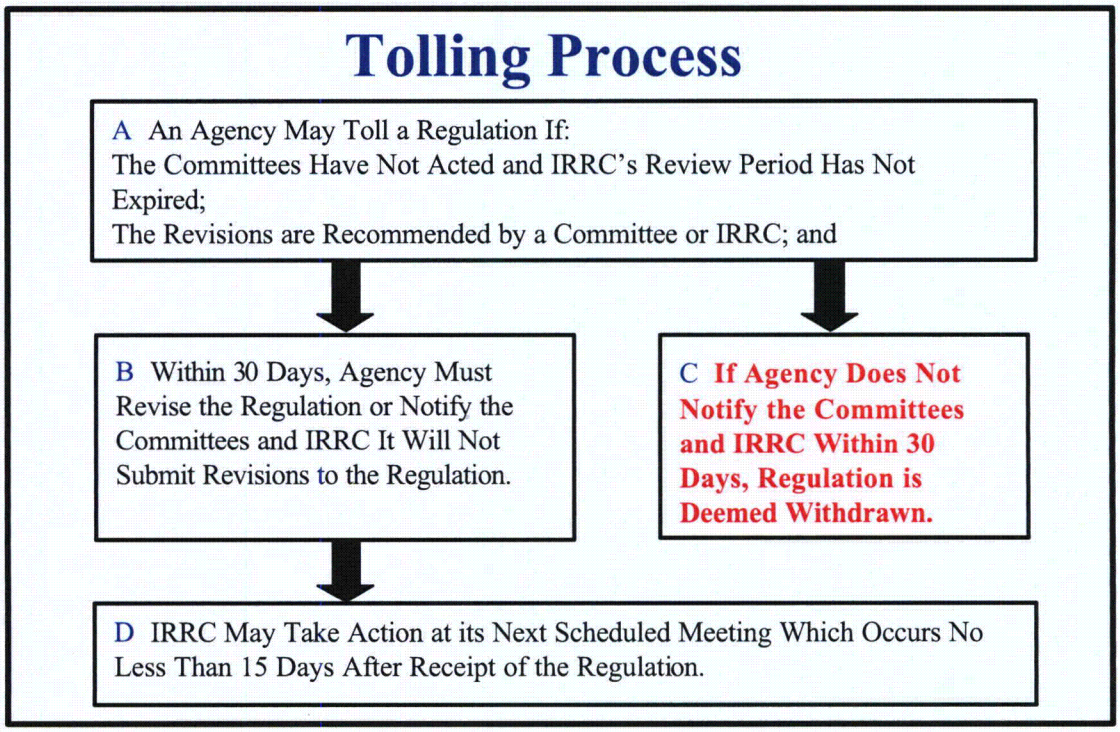
First, the opportunity to toll the review period exists only until **either** one of the Committees act or the Commission's review period expires, whichever occurs first. This ensures that both Committees and the Commission act on the exact same version of the regulation.

Second, tolling allows the agency to consider only those revisions recommended by a Committee or the Commission. The intent of tolling is to allow an agency time to make recommended changes to a final regulation.

Third, tolling is only permitted if the Commission does not object. If the Commission objects, review of the regulation continues and tolling cannot occur.

Last, the final review period may be tolled only once. Within 30 days from the beginning of the tolling period, the agency must deliver the revised regulation, or a statement that it will not make revisions to the regulation, to the Commission and the Committees (B). **If the agency does not meet the 30-day deadline, it is deemed to have withdrawn the regulation (C).**

Upon receipt of the revised regulation or notice that the regulation will not be revised, the Commission and Committee review resumes. The Commission may take action at its next scheduled meeting, which occurs no less than 15 days after delivery of the regulation.



Agency May Withdraw a Regulation

A second option available to an agency is to voluntarily withdraw the regulation to address related concerns. An agency may notify the Committees and Commission that it is withdrawing a regulation before the Commission's public meeting or at any time in the review process.

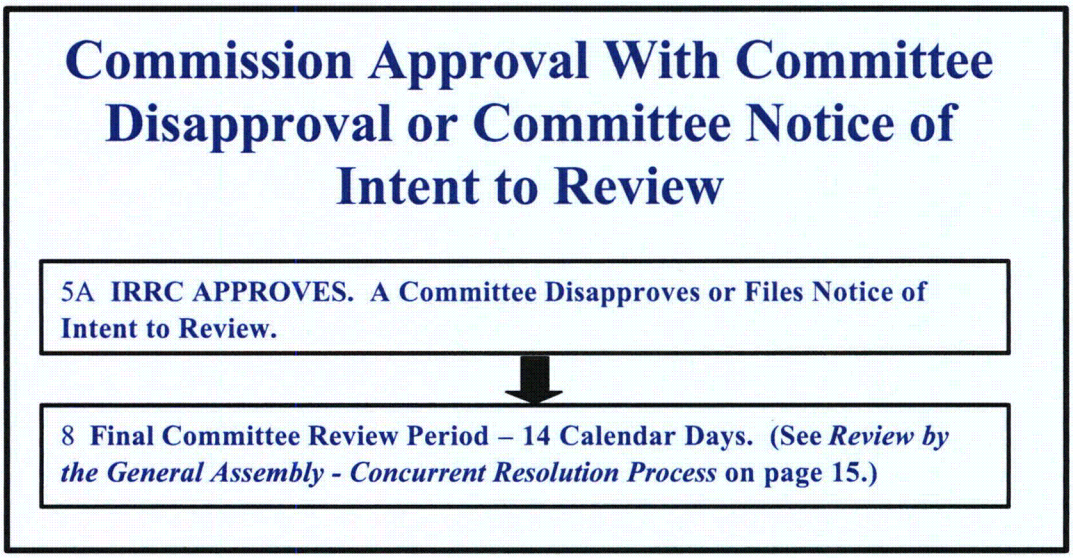
If the agency opts to withdraw a final-omitted regulation, it may submit that regulation again as a final-omitted at any time. Final-form regulations may also be withdrawn and submitted again at a later date. However, final-form regulations must be resubmitted within two years of the close of the public comment period, and the agency must again provide each commentator who requested notice with a copy of the final-form regulation or a summary of the changes made.

The withdrawal of a regulation is at the discretion of the agency. In addition, the reason or purpose of the withdrawal is also in the hands of the agency. It may want to reexamine the

regulation. The withdrawal may also serve the same purpose as a tolling and provide the agency with another opportunity to consider revisions to a regulation.

Commission Approval With Committee Disapproval or Notice of Intent to Review

If the Commission approves the regulation and either one or both of the Committees disapprove the regulation or notify the Commission and the agency of their intent to review the regulation **(5A)**, the agency may not promulgate the regulation for 14 days after the Committee(s) receive the Commission's Order. During the 14-day review period, the Committee(s) that took action may report a concurrent resolution disapproving the regulation **(8)** (see ***Concurrent Resolution Process*** on **page 15**). If the Committee does not take action within 14 days, the regulation goes to the Attorney General for review **(9B)**. **Upon the Attorney General's review for form and legality, the regulation is published in the *Pennsylvania Bulletin.*** The regulation becomes effective on the date of publication or on a later date specified by the agency in



its order adopting the regulation **(16B)**.

Commission Disapproval

If the Commission acts to disapprove a regulation, it issues an Order specifying which criteria have not been satisfied **(5B)**. The Order is delivered to the Committees, agency and LRB. The Commission also notifies commentators who requested notice related to the final-form regulation of the Commission's vote to disapprove.

Options for Attaining Consensus After Commission Disapproval

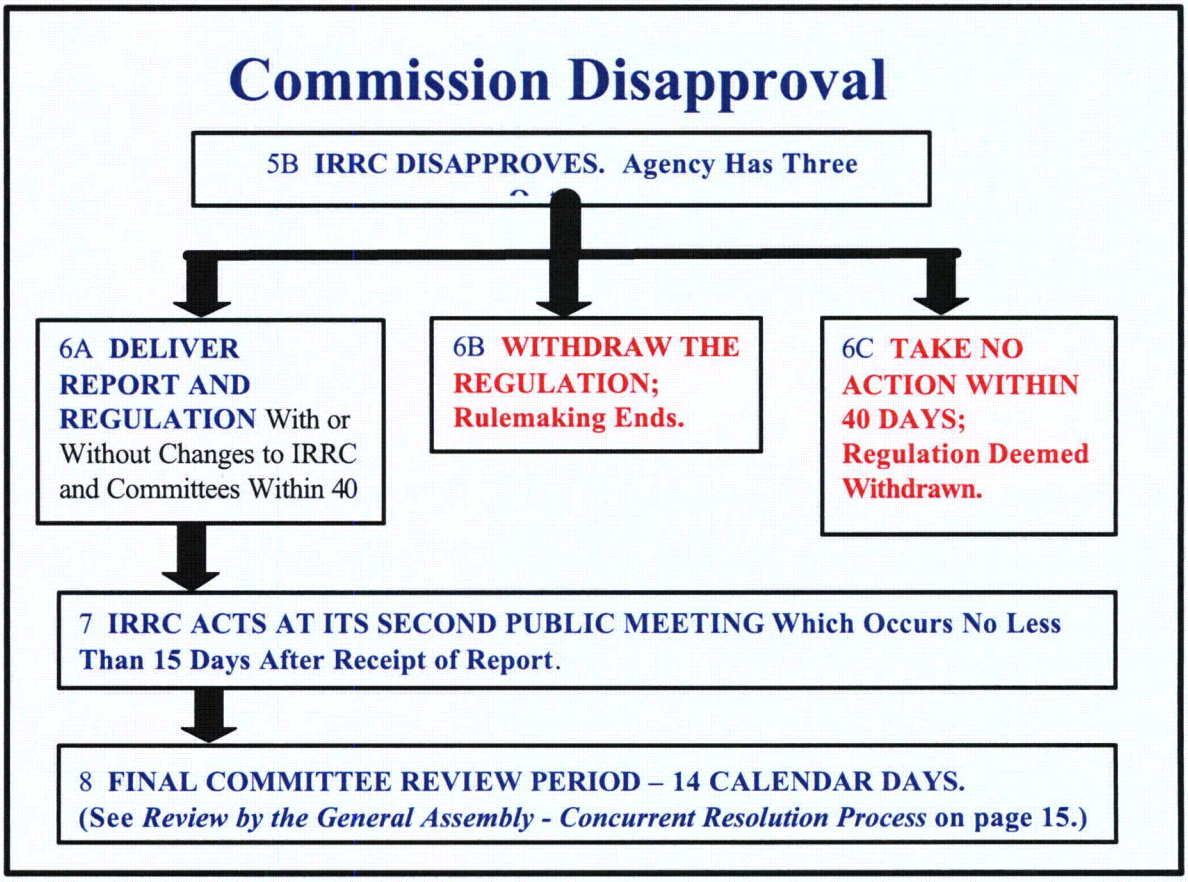
Resubmit With or Without Revisions

The agency may resubmit the regulation with or without modifications (6A). In either case, the agency must submit a report to the Committees and Commission within 40 days of receipt of the disapproval Order. The report must contain the final-form regulation or the revised final-form regulation and the Commission's disapproval Order. If the regulation is submitted without revisions, it must contain responses to the concerns raised in the Commission's Order. If the regulation was revised, the agency must submit a detailed explanation of how the revisions respond to the Commission's concerns.

When an agency resubmits the regulation, it must deliver the report and either the unchanged or revised regulation to the Committees and Commission (6A). The Commission may act at its public meeting, which occurs no less than 15 days after receipt of the resubmitted regulation. A regulation can be approved, deemed approved or disapproved by the Commission. The Commission must notify the Committees of the final disposition of the regulation (7). The regulation is then subject to Committee review for 14 days (See ***Final Review Period for Committees*** on **page 15**).

Withdrawing After Commission Disapproval

An agency may withdraw a disapproved regulation (6B). **A voluntary withdrawal concludes the review process.** If the agency wants to proceed with the rulemaking after withdrawal, it must submit a new final-form regulation to the Committees and Commission.



However, the agency must do so within two years of the close of the public comment period. If two-year deadline expires, the agency must restart the entire process.

Take No Action

An agency can opt to take no action **(6C)**. If the agency does not deliver a report to the Committees and the Commission within 40 days of the agency's receipt of the disapproval order, the regulation is deemed withdrawn. **A deemed withdrawal concludes the review process. As noted above, an agency may resubmit a regulation within two years of the close of the public comment period. If that deadline expires, the agency must restart the entire process.**

Final Review Period for Committees

The final review by either committee can be triggered by three events:

1. A Committee acts to notify the Commission of its intent to review the regulation at any time up to 24 hours before the Commission's first public meeting **(5A)**;

2. A Committee disapproves a regulation **(5A)**; or

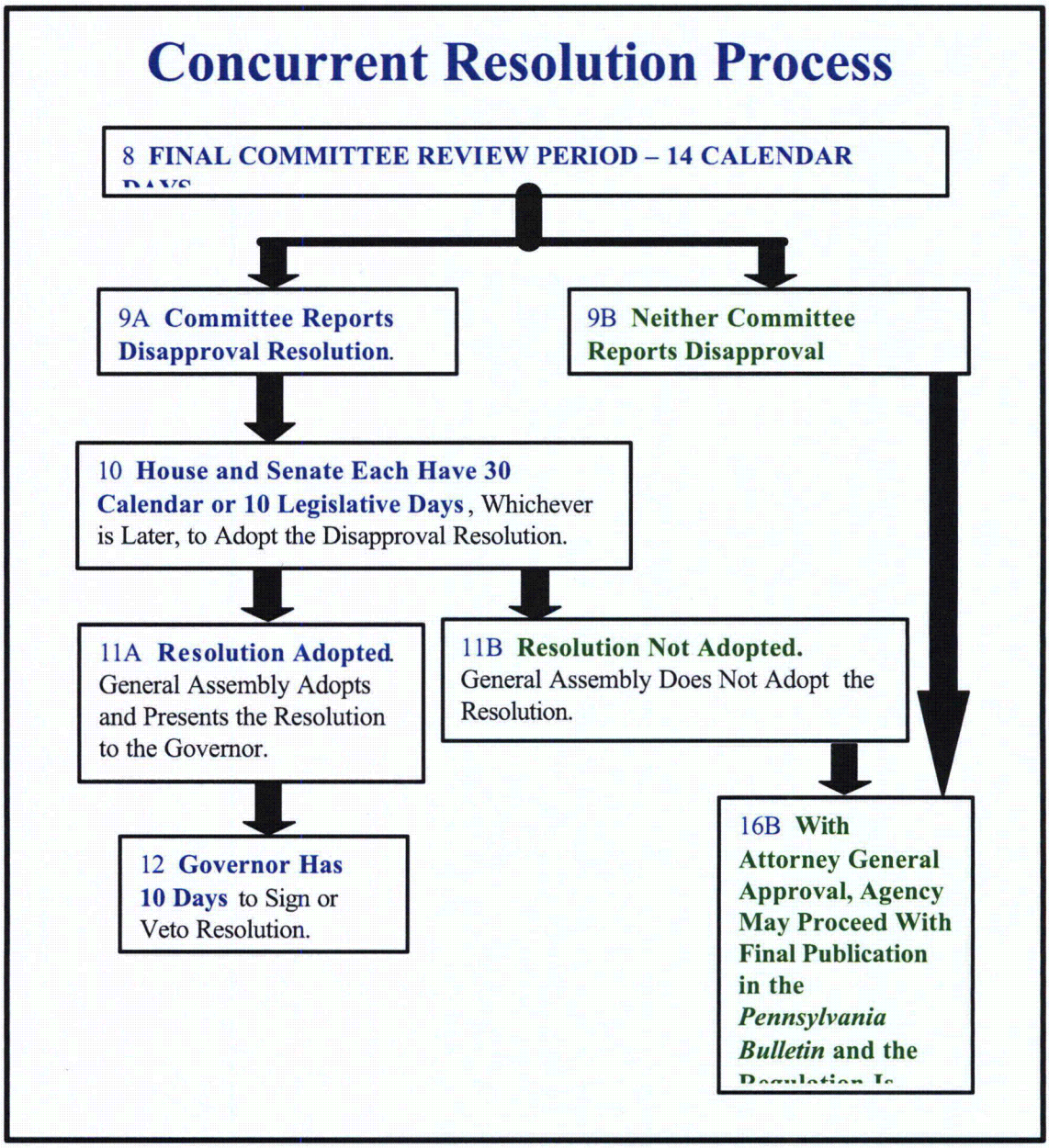
3. The Commission disapproves a regulation at its public meeting. The agency resubmits the regulation, with or without revisions, to the Committees and Commission. After the Commission reviews the regulation, it notifies the Committees of the disposition of the regulation **(7)**.

If a Committee takes one of the actions described in the first or second event, then that Committee has 14 calendar days to report a concurrent resolution **(8)**. In the third scenario, both Committees have 14 calendar days to report a concurrent resolution.

The 14-calendar day period begins on the day that the Commission delivers its Order to the appropriate Committees. **If the Committees do not report out a concurrent resolution within the 14 days, the agency may proceed with final promulgation (9B)**. However, if a Committee reports a concurrent resolution disapproving the regulation **(9A)**, the promulgation is suspended until the legislative review process described in the next section is completed.

Review by the General Assembly – The Concurrent Resolution Review Process

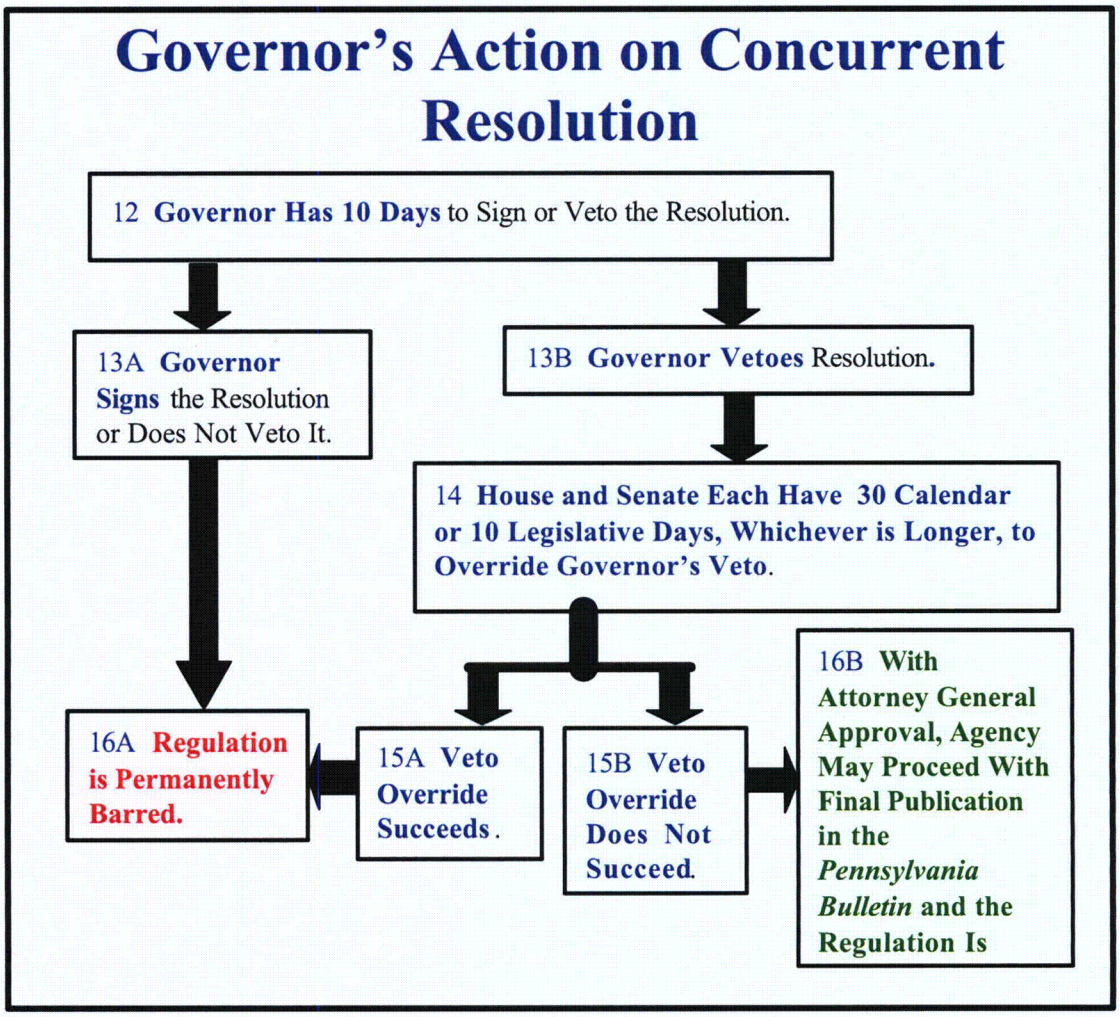
The concurrent resolution review process begins when either a House or Senate Committee reports out a concurrent resolution disapproving the regulation **(8)**. From the date on which the concurrent resolution, disapproving the regulation, is reported **(9A)**, the Senate and the House of Representatives each have 30 calendar days, or ten legislative days, whichever is longer, to adopt it **(10)**.



Both chambers must adopt the concurrent resolution by majority vote to continue the bar on the promulgation of the regulation. After adoption by both chambers, the concurrent resolution is presented to the Governor for consideration (11A). If one of the chambers does not adopt the resolution within the time period described in the above paragraph, the General Assembly is deemed to have approved the regulation (11B).

Governor Action on Concurrent Resolution

The Governor has ten calendar days to act on the concurrent resolution (12). If the Governor **signs** the resolution, or if the Governor **does not veto the resolution** within ten days, **the resolution is approved and the regulation is permanently barred** (13A & 16A).



If the Governor **vetoes** the resolution **(13B)**, the Senate and the House of Representatives may override the veto. A veto override requires a **two-thirds** majority vote **in each chamber**, and must be passed within 30 calendar or ten legislative days, whichever is longer **(14)**. **A successful veto override will permanently bar the regulation (15A & 16A)**. However, if either chamber takes no action, or does not override the Governor's veto, **the General Assembly is deemed to have approved the regulation (15B & 16B)**.

Summary of Concurrent Resolution Process

To summarize, the agency is permanently barred from promulgating a regulation if the Senate and the House of Representatives pass a resolution disapproving the regulation and **either** of the following events occur:

1. The Governor approves the concurrent resolution or does not veto it within ten days **(13A)**; or
2. The Governor vetoes the resolution and the Senate and the House of Representatives override the Governor's veto **(13B & 15A)**.

The agency may proceed with promulgation if **either** of the following events occurs:

1. The Senate or the House of Representatives does not adopt the concurrent resolution by majority vote **(11B)**; or
2. The Governor vetoes the concurrent resolution and the Senate and House of Representatives do not override the Governor's veto by a two-thirds majority vote in each chamber **(13B & 15B)**.

Limits on Final-Omitted Regulations

A final-omitted regulation is a regulation promulgated by an agency without prior publication in the *Pennsylvania Bulletin* of a notice of proposed rulemaking. There is no formal opportunity for public, Committee and Commission comments. Under the RRA, the procedure for review of final-omitted regulations is exactly the same as it is for final-form regulations.

The CDL establishes three very limited circumstances under which an agency is permitted to promulgate a final-omitted regulation. These occur when:

1. **Comments from the public are not appropriate, necessary or beneficial.** Regulations in this category generally relate to military affairs, agency management, organization or personnel, agency procedure or practice, Commonwealth property, loans, grants, benefits or contracts, or the interpretation of a self-executing statute.
2. **All persons subject to the regulation are named or given personal notice.** Examples of regulations in this category are those setting fees for licensing examinations. For these fees, licensure applicants are individually notified of the amount of the fee.
3. **Notice is impracticable, unnecessary or contrary to the public interest.** Regulations which have a significant and an immediate fiscal impact, and regulations which respond to emergencies fall under the categories of "impracticable" and "contrary to the public interest." Prior notice is generally found "unnecessary" when the agency is rescinding regulations for which the enabling statute has been repealed or amended.

In the review of a final-omitted regulation, eliminating the proposed stage saves approximately 60 days of review. Review periods under the Commonwealth Attorneys Act and RRA are also shortened to conserve time. The regulation is submitted, on the same day, to the Attorney General, Commission and Committees. This saves an additional 30 days because the Attorney General's review occurs **concurrently** with the Commission's and Committees' review. It does not have to follow Commission and Committee action as it does with final-form regulations.

Emergency Certified Regulations

The RRA allows an agency to immediately implement a final-form or final-omitted regulation when the Governor or Attorney General certifies that it is necessary to respond to an emergency. An emergency certified regulation takes effect upon publication in the *Pennsylvania Bulletin*, or on the date specified in the agency's adoption order. Although the Commission and Committees review the regulation in the same manner as they review all other final-form and final-omitted regulations, the regulation takes effect prior to the completion of the review process. If the regulation is approved, it is permanently effective. If it is disapproved by the Commission or a Committee, it remains effective

for 120 days or until finally disapproved under the concurrent resolution process, whichever occurs later.

The conditions under which the Governor or the Attorney General may certify a regulation as "emergency" are very limited. The Attorney General may certify that a regulation is necessary to satisfy the order of a state or federal court, or to implement the provisions of a federal statute or regulation. The Governor may certify that a regulation is required to avoid an emergency which may threaten the public health, safety or welfare, cause a budget deficit, or create the need for supplemental or deficiency appropriations of at least $1,000,000.

Existing Regulations

The Commission may review any existing regulation that has been in effect for at least three years. This review **may** be undertaken either at the Commission's own initiative or at the request of any person. If a member of the Senate or House of Representatives requests the review, the Commission must assign it high priority.

The Commission performs an advisory role in the review of an existing regulation. If the Commission finds that the regulation is contrary to the public interest because it does not satisfy the regulatory review criteria outlined in **APPENDIX D** on **page 23**, it may recommend changes to the agency. The Commission may also recommend legislative amendments to the Governor and General Assembly.

Published and Unpublished Documents

The Commission may review published and unpublished documents to determine whether they should be published as regulations. Such documents include statements of policy, guidelines, bulletins and other types of directives. If the Commission finds that the agency is enforcing such directives as regulations, it may present the matter to the Joint Committee on Documents (Joint Committee).

The Joint Committee will decide if the documents are regulatory in nature. If it concludes that they are, the Joint Committee may order the agency either to promulgate the document as a regulation within 180 days, or desist from using it.

Subpoena Power

The Commission may issue subpoenas to require the production of documents or the attendance of persons, if necessary to perform its functions. Either the Chairman or Executive Director may sign subpoenas. Subpoenas may be served in any manner authorized under Pennsylvania Law. If attendance or production of documents is not forthcoming, the Commission may apply to the Commonwealth Court for enforcement of its subpoena.

The Annual Report

By April 1 of each year, the Commission must file an annual report with the General Assembly and the Governor. The Commission's annual report provides information about the Commission and lists all of the proposed and final regulations reviewed during the preceding year.

The Commission sends copies of its annual report to the Governor, Members of the General Assembly and anyone who requests one. The annual report is also available on the Commission's website at **www.irrc.state.pa.us**.

APPENDIX A
SUMMARY OF CHANGES TO
THE REGULATORY REVIEW ACT
(ACT 148 of 2002)

Proposed stage: *At any time* before a regulation is submitted in final form, a Committee may submit comments to the agency and Commission.

- The 20-day limit on the Committee comment period has been eliminated.
- Committees have the opportunity to review the Commission's comments before deciding whether to submit comments.

Final stage: Committees have more time to act.

- The 20-day deadline for Committee action is eliminated.
- To provide Committees with adequate opportunity to review the regulation, the Commission must refrain from action for *at least* 20 days after delivery.
- Until 24 hours before the Commission acts on a final regulation, a Committee may approve, disapprove, or notify the Commission and agency that it intends to review the regulation after the Commission's final action. (If the Committees and Commission take no action, the regulation is deemed approved.)
- The Commission may have until its next scheduled meeting which occurs no less than 30 days after receipt of the final-form or final-omitted regulation, to approve or disapprove the regulation, provided that the Commission cannot act for at least 20 days after receipt of the regulation.

Some additional changes include:

- The 48-hour blackout period immediately preceding the Commission's public meeting *no longer applies* to communications between the Commission and the agency or Members of the General Assembly.
- A language revision clarifies that the review criteria of the Regulatory Review Act apply to all regulations subject to the Act. This provision applies to proposed, final-form, final-omitted, emergency certified, and existing regulations.
- A new review criterion is an agency's compliance with the Act and the regulations of the Commission.
- If a Committee notifies the agency and Commission of intent to review or disapproves, or if the Commission disapproves a final-form or final-omitted regulation, it will be subject to a final review by the Committees.

APPENDIX B

REGULATORY ANALYSIS FORM REQUIREMENTS

1. The title of the regulation, the name of the agency, and the names and telephone numbers of agency officials responsible for responding to questions and receiving comments.

2. A concise, non-technical explanation of the regulation.

3. A citation to the Federal or State statute or regulation, or the decision of a Federal or State Court, authorizing or affecting the regulation.

4. An explanation of the compelling public interest that justifies the regulation.

5. A statement of the public health, safety, and environmental or general welfare risks associated with non-regulation.

6. An identification of the types of person, businesses and organizations who will need to comply with the regulation and who will benefit or be adversely affected.

7. Estimates of the direct and indirect costs to the regulated community, the Commonwealth and its political subdivisions.

8. A description of required legal, accounting or consulting procedures, additional reporting, record keeping or other paperwork and measures taken to minimize these requirements.

9. A listing of provisions that are more stringent than federal standards and the compelling Pennsylvania interest that demands stronger regulation.

10. A description of how the regulation compares to regulations in other states and whether the regulation will put Pennsylvania at a competitive disadvantage.

11. A description of alternatives which have been considered and rejected, and a statement that the regulation is the least burdensome alternative.

12. A description of the input solicited during the development of the regulation, a schedule of any hearings, and the anticipated effective date.

13. A description of special provisions developed to meet the needs of affected persons, including minorities, elderly, small businesses and farmers.

14. A description of the plan developed for evaluating the continuing effectiveness of the regulation after its implementation.

APPENDIX C

LEGISLATIVE INTENT OF THE REGULATORY REVIEW ACT

(71 PS § 745.2(a))

The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General Assembly; and to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.

APPENDIX D

REGULATORY REVIEW ACT CRITERIA

(Section 5.2 of Act 148 of 2002)

- Whether the agency has the statutory authority to promulgate the regulation.
- Whether the regulation is consistent with the intent of the General Assembly.
- Whether the regulation is in the public interest. To determine whether the regulation satisfies these criteria, the Commission considers:

1. Economic or fiscal impact of the regulation which include the following:
    i. Direct and indirect costs to the Commonwealth, political subdivisions and private sector;
    ii. Adverse effects on prices, productivity or competition;
    iii. The extent to which reports, forms or other paperwork are required and the estimated preparation cost incurred by individuals, businesses and organizations in the private and public sectors;
    iv. The nature and estimated costs of legal, consulting or accounting services which the private or public sector may incur; and
    v. The legality, desirability and feasibility of exempting or setting lesser standards of compliance for individuals or small businesses.
2. The protection of the public health, safety and welfare, and the effect on the Commonwealth's natural resources.
3. The clarity, feasibility and reasonableness of the regulation to be determined by considering the following:
    i. Possible conflict with or duplication of statutes or existing regulations;
    ii. Clarity and lack of ambiguity;
    iii. Need for the regulation; and
    iv. Reasonableness of the requirements, implementation procedures and timetables for compliance by the public and private sector.
4. Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.
5. Comments, objections or recommendations of a Committee.

6. Compliance with the provisions of this act or the regulations of the Commission in promulgating the regulation.

APPENDIX E

GLOSSARY

Agency — Any department, departmental administrative board or commission, independent board or commission, agency or other authority of this Commonwealth now existing or hereafter created, but shall not include the Senate or the House of Representatives, the Pennsylvania Fish Commission, the Pennsylvania Game Commission or any court, political subdivision, municipal or local authority. (71 P.S. § 745.3)

Comment and Response Document — A document accompanying a final-form regulation that contains the agency's response to each comment it received on the proposed rulemaking from the public, Committees and Commission.

Commission — Independent Regulatory Review Commission.

Commission Comments — Statements relating to a proposed regulation issued by the Commission in accordance with Section 5(g) of the RRA (71 P.S. § 745.5(g)).

Commission Order — A public document containing the Commission's findings and reasons for approval or disapproval of a final-form or final-omitted.

Commission Public Meeting — The public session at which the Commission staff briefs the Commissioners on the regulations scheduled for action at the Commission's public meeting and the Commission takes formal action on regulations.

Committee — A standing committee of the Senate or the House of Representatives designated by the President pro tempore of the Senate for the Senate or by the Speaker of the House of Representatives for the House. Designation shall prescribe the jurisdiction of each standing committee over the various state agencies for purposes of the RRA. The designation shall be transmitted to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. (71 P.S. § 745.3)

Committee Action — Approval or disapproval of a regulation, or notice that the committee intends to review the regulation pursuant to Section 5.1(j.2) of the RRA. (71 P.S. § 745.5a(j.2)).

Concurrent Resolution — A resolution initiated by a Committee to bar final promulgation of a regulation disapproved by the Commission or a Committee.

Deemed Approved by the Commission	The approval of a regulation by the Commission by operation of law when the Commission has not approved or disapproved the regulation or agency report submitted in accordance with the RRA.
Embargoed Materials	Unsolicited documents pertaining to a regulation on the agenda for the Commission's public meeting delivered during the blackout period by any party other than the agency or Members of the General Assembly and their staffs.
Emergency Certified Regulation	A regulation certified by the Attorney General or the Governor pursuant to Section 6(d) the RRA as necessary for compliance with a court order or statutory mandate, or to respond to an emergency.
Executive Agency	An agency under the jurisdiction of the Governor.
Existing Regulation	An enforceable regulation contained in the *Pennsylvania Code.*
Final-Form Regulation	A regulation previously published as a proposed regulation pursuant to the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law, which an agency submits to the Commission and the Committees following the close of the public comment period. (71 P.S. § 745.3)
Final-Omitted Regulation	A regulation which an agency submits to the Commission and the Committees for which the agency has omitted notice of proposed rulemaking pursuant to Section 204 of the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law. (71 P.S. § 745.3)
Independent Agency	An agency that does not fall under the Governor's jurisdiction, such as the Pennsylvania Public Utility Commission, Treasury Department and Pennsylvania Labor Relations Board.
LRB	Legislative Reference Bureau.
Pennsylvania Bulletin	The official gazette of the Commonwealth of Pennsylvania which is published every Saturday by the LRB and is available online at www.pabulletin.com.
Pennsylvania Code	The official codification of Pennsylvania's administrative rules and regulations and is available online at www.pacode.com.

Proposed Regulation	A document intended for promulgation as a regulation which an agency submits to the Commission and the Committees and for which the agency gives notice of proposed rulemaking and holds a public comment period pursuant to the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law. (71 P.S. § 745.3)
Public Comment Period	The period of following the publication of a proposed regulation in the *Pennsylvania Bulletin*, during which the public may submit recommendations or objections to the agency.
Regulation	Any rule or regulation, or order in the nature of a rule or regulation, promulgated by an agency under statutory authority in the administration of any statute administered by or relating to the agency or amending, revising or otherwise altering the terms and provisions of an existing regulation, or prescribing a practice or procedure before such agency. (71 P.S. § 745.3)
Regulatory Analysis Form (RAF)	A form containing information about a regulation, including the agency's statutory authority, title of the regulation, a description of the regulation, a cost/benefit analysis, an impact analysis and the timeframe for the adoption of the regulation.
Regulatory Review Criteria	The requirements contained in Section 5.2(a) and (b) of the RRA that a regulation must satisfy in order for the Commission to determine that the regulation is in the public interest.
Sine Die	The final adjournment of the Senate and the House of Representatives by November 30 of even numbered years.
Statement of Policy	An announcement to the public of the policy that an agency intends to implement in a future rulemaking or adjudication. The announcement provides guidance to regulated entities as to the factors an agency will consider in deciding matters over which it has jurisdiction, but does not constitute a binding norm.
48-Hour Blackout Period	The 48-hour period immediately preceding the call to order of the Commission's public meeting that applies to embargoed material. (71 P.S. § 745a(j))