

No. 1980-226

AN ACT

HB 1787

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, reenacting and amending certain provisions relating to the legal counsel and legal representation of the commission inadvertently repealed by the Commonwealth Attorneys Act and making related changes, further providing for the assessment of regulatory expenses upon public utilities, further providing for the disposition, appropriation and disbursement of assessments and fees and providing for the use of certain Federal funds.

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

Section 1. Sections 306 and 308(b) of Title 66, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, repealed in part October 15, 1980 (No.164), are reenacted and amended to read:

§ 306. Counsel.

The office of chief counsel to the Pennsylvania Public Utility Commission is hereby created. The chief counsel shall be appointed by the commission and hold office at its pleasure. The commission may also from time to time appoint such assistant counsel to the commission as may be required for the proper conduct of its work. Assistant counsel may be removed by the commission only for good cause. The compensation of the counsel shall be fixed by the commission. In accordance with the multifunction legal staff established in this part, such counsel shall attend the hearings before the commission or a commissioner, or a special agent or administrative law judge, and conduct the examination of witnesses *and shall represent the commission upon appeals and other hearings in the courts of common pleas and in the Commonwealth and Supreme Courts, or other courts of this Commonwealth, or in any Federal court or agency and in actions instituted to recover penalties and to enforce regulations and orders of the commission.* Such counsel shall [also assist the Attorney General in conducting] *conduct* all mandamus, injunction and quo warranto proceedings at law or in equity, instituted [by him] for the enforcement of the regulations and orders of the commission, and shall perform such other professional duties as may be required [of them] by the commission.

§ 308. Bureaus.

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(b) Law Bureau.—The Law Bureau shall be a multifunction legal staff, consisting of a prosecutory function and an advisory function. Prosecutory counsel shall be responsible for and shall assist in the development of, challenge of, and representation on the record of all

matters in the public's interest. *Advisory counsel shall advise the commission on any and all matters.* The counsel shall appear on behalf of the commission in all courts of record and before district magistrates. No counsel shall in the same case or a factually related case perform duties in the prosecutory and advisory functions, if such performance would represent a conflict of interest.

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Section 2. Section 503 of Title 66 is amended to read:

§ 503. Enforcement proceedings by **[Attorney General] Chief Counsel.**

The **[Attorney General] Chief Counsel**, in addition to the exercise of the powers and duties now conferred upon him by law, shall also, upon request of the commission[, or upon his own motion,] proceed in the name of the Commonwealth, by mandamus, injunction, or quo warranto, or other appropriate remedy at law or, in equity, to restrain violations of the provisions of this part, or of the regulations or orders of the commission, or the judgments, orders, or decrees of any court, or to enforce obedience thereto.

Section 3. Sections 510(a) and 511(b) of Title 66 are amended to read:

§ 510. Assessment for regulatory expenses upon public utilities.

(a) Determination of assessment.—Before **[March 1] November 1** of each year, the commission shall estimate its total expenditures in the administration of this part for the fiscal year beginning July of **[that] the following** year, which estimate shall not exceed three-tenths of 1% of the total gross intrastate operating revenues of the public utilities under its jurisdiction for the preceding calendar year. Such estimate shall be submitted to the Governor[, and to the appropriation committees of the House and Senate through their respective chairmen, for their respective approvals of such estimate in the amount submitted or such lesser amount as each of them may determine. Unless the Governor, or either committee through its chairman, shall notify the commission in writing of his or its action within 30 days after such submission, the estimate as submitted shall be deemed approved by him or by the committee. The least of the amounts so approved by the three approving authorities shall be the final estimate; and approval of such least amount shall constitute compliance with section 604] in accordance with section 610 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." The commission or its designated representatives shall be afforded an opportunity to appear before the *Governor and the* Senate and House Appropriations Committees regarding their estimates. The commission shall subtract from the final estimate:

(1) **[the] The** estimated fees to be collected pursuant to section 317 (relating to fees for services rendered by commission)[; and] *during such fiscal year.*

(2) [the] *The* estimated balance of the appropriation, specified in section 511 (relating to disposition, appropriation and disbursement of assessments and fees), to be carried over into such fiscal year from the preceding one.

The remainder so determined, herein called the total assessment, shall be allocated to, and paid by, such public utilities in the manner prescribed [in this part]. *If the General Assembly fails to approve the commission's budget for the purposes of this part, by March 15, the commission shall assess public utilities on the basis of the last approved operating budget. At such time as the General Assembly approves the proposed budget the commission shall have the authority to make an adjustment in the assessments to reflect the approved budget.*

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§ 511. Disposition, appropriation and disbursement of assessments and fees.

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(b) Use and appropriation of funds.—All such assessments and fees, having been advanced by public utilities for the purpose of defraying the cost of administering this part, shall be held in trust solely for that purpose, and shall be earmarked for the use of, and [are hereby] *annually* appropriated to, the commission for disbursement solely for that purpose.

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Section 4. Title 66 is amended by adding a section to read:

§ 511.1. *Use of Federal funds under energy program.*

(a) *General rule.*—*The commission is authorized to apply for and, subject to appropriation by the General Assembly, use Federal funds pursuant to the National Energy Act which is composed of:*

(1) *The "National Energy Conservation Policy Act," Public Law 95-619.*

(2) *The "Powerplant and Industrial Fuel Use Act of 1978," Public Law 95-620.*

(3) *The "Public Utility Regulatory Policies Act of 1978," Public Law 95-617.*

(4) *The "Natural Gas Policy Act of 1978," Public Law 95-621.*

(5) *The "Energy Tax Act of 1978," Public Law 95-618.*

(6) *The "Energy Conservation and Production Act of 1976," Public Law 94-385.*

(7) *Any future Federal legislation or amendments to the statutes listed in this subsection providing special funds for:*

(i) *Rate making research and development.*

(ii) *Energy conservation research and development.*

(iii) *Motor carrier and rail transportation safety programs.*

(iv) *Gas safety programs.*

(b) *Funds not subject to lapse.*—*Funds received by the commission pursuant to subsection (a) shall not be subject to lapsing at the end of any fiscal period.*

(c) Reimbursement to utilities prohibited.—Funds received by the commission pursuant to subsection (a) shall not be reimbursed to any public utility.

Section 5. This act shall take effect immediately, except that the amendments to 66 Pa.C.S. §§ 306, 308 and 503 shall take effect January 20, 1981.

APPROVED—The 18th day of December, A. D. 1980.

DICK THORNBURGH