

No. 1977-15

AN ACT

SB 513

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," granting the power to the Public Utility Commission to levy limited assessments against public utilities for funding the Consumer Advocate.

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 904-A.1. Assessment Upon Public Utilities, Disposition, Appropriation and Disbursement of such Assessments.—(a) Before July 1 of each year, the Office of Consumer Advocate shall estimate its total expenditures in the administration of this act insofar as it relates to public utilities for the fiscal year beginning that date, which estimate shall not exceed seven per centum (7%) of the public utility's assessment by the Pennsylvania Public Utility Commission 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: Provided, That if the Governor or either committee, through its chairman, shall fail to notify the Office of Consumer Advocate in writing of his or its action within thirty (30) days after such submission, the estimate as submitted shall be deemed approved by him or by such committee, as the case may be. The least of the amounts so approved by the three (3) approving authorities shall be the final estimate, and approval of such least amount shall constitute compliance with section 604. The Office of Consumer Advocate shall subtract from the final estimate the estimated balance of the appropriation 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 hereafter

prescribed. The Office of Consumer Advocate or its designated representative shall be afforded an opportunity to appear before the Senate and the House Appropriation Committees regarding its estimate.

(b) For the fiscal year 1977-1978, the allocation shall be made as described in subsection (c) but for each fiscal year thereafter the allocation shall be made as follows:

(1) The Office of Consumer Advocate shall determine for the preceding calendar year the amount of its expenditures directly attributable, or in its judgement properly allocable, to its activities in connection with each group of utilities furnishing the same kind of service and debit the amount so determined to such group.

(2) The Office of Consumer Advocate shall then allocate the total assessment prescribed by subsection (a) to each group in the proportion which the sum of the debits made to it bears to the sum of the debits made to all groups. The Office of Consumer Advocate shall transmit to the Pennsylvania Public Utility Commission the result of the aforesaid allocation.

(c) The Pennsylvania Public Utility Commission shall thereafter complete the assessment procedure and collect the assessments as follows: each public utility within a group shall then be assessed for and shall pay to the Pennsylvania Public Utility Commission such proportion of the amount allocated to its group as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of its group for that year, but for the fiscal year 1977-1978 every public utility shall be assessed for and shall pay to the commission such proportion of the total assessment as the gross intrastate operating revenues of the public utility for the preceding calendar year bear to the total gross intrastate operating revenues of all public utilities that are assessed. The Pennsylvania Public Utility Commission shall give notice by registered or certified mail to each public utility of the amount lawfully charged against it under the provisions of this section, which amount shall be paid by the public utility within thirty (30) days of receipt of such notice, unless the commission specifies on the notices sent to all public utilities an installment plan of payment, in which case each public utility shall pay each installment on or before the date specified therefor by the commission. Within fifteen (15) days after receipt of such notice, the public utility against which such assessment has been made may file with the commission objections setting out in detail the grounds upon which the objector regards such assessment to be excessive, erroneous, unlawful or invalid. The commission, after notice to the objector, shall hold a hearing upon such objections. After such hearing, the commission shall record upon its minutes its findings on the objections and shall transmit to the objector, by registered or certified mail, notice of the amount, if any, charged against it in accordance with such findings, which amount, or any installment thereof, then due shall be paid by the objector within ten (10) days after

receipt of notice of the findings of the commission with respect to such objections. If any payment prescribed by this subsection is not made as aforesaid, the commission may suspend or revoke certificates of public convenience, certify automobile registrations to the Secretary of Transportation for suspension or revocation or, through the Department of Justice, may institute an appropriate action at law for the amount lawfully assessed, together with any additional cost incurred by the commission or the Department of Justice by virtue of such failure to pay.

(d) No suit or proceeding shall be maintained in any court for the purpose of restraining or in anywise delaying the collection or payment of any assessment made under subsections (a), (b) and (c), but every public utility against which an assessment is made shall pay the same as provided in subsection (c). Any public utility making any such payment may, at any time within two (2) years from the date of payment, sue the Commonwealth in an action at law to recover the amount paid, or any part thereof, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid, in whole or in part, provided objections, as hereinbefore provided, were filed with the commission, and payment of the assessment was made under protest either as to all or part thereof. In any action for recovery of any payments made under this section, the claimant shall be entitled to raise every relevant issue of law, but the findings of fact made by the commission, pursuant to this section, shall be prima facie evidence of the facts therein stated. Any records, books, data, documents, and memoranda relating to the expenses of the Office of Consumer Advocate shall be admissible in evidence in any court and shall be prima facie evidence of the truth of their contents. If it is finally determined in any such action that all or any part of the assessment for which payment was made under protest was excessive, erroneous, unlawful, or invalid, the Office of Consumer Advocate shall make a refund to the claimant out of the appropriation specified herein as directed by the court.

(e) The procedure in this section providing for the determination of the lawfulness of assessments and the recovery back of payments made pursuant to such assessments shall be exclusive of all other remedies and procedures.

(f) It is the intent and purpose of this section that each public utility shall advance to the Office of Consumer Advocate its reasonable share of the cost of administering this act. The Office of Consumer Advocate shall keep records of the costs incurred in connection with the administration and enforcement of this act or any other act. The Office of Consumer Advocate and the Pennsylvania Public Utility Commission shall also keep a record of the manner in which it shall have computed the amount assessed against every public utility. Such records shall be open to inspection by all interested parties. The determination of such costs and assessments by the Office of Consumer Advocate and the Pennsylvania Public Utility Commission, and the records and data upon which the same are made,

shall be considered prima facie correct. In any proceeding instituted to challenge the reasonableness or correctness of any assessment under this section, the party challenging the same shall have the burden of proof.

(g) All assessments received, collected, or recovered under this act shall be paid by the commission into the General Fund of the State Treasury through the Department of Revenue.

(h) All such assessments, having been advanced by public utilities for the purpose of defraying the cost of the administration and performance of the duties of the Office of Consumer Advocate relating to proceedings before the Pennsylvania Public Utility Commission, related judicial proceedings, and other such matters within the jurisdiction of the Office of Consumer Advocate, shall be held in trust solely for that purpose and shall be earmarked for the use of, and are hereby appropriated to, the Office of Consumer Advocate for disbursement solely for that purpose.

(i) All requisitions upon such appropriation shall be signed by the Consumer Advocate or such deputies as he may designate in writing to the State Treasurer and shall be presented to the State Treasurer and dealt with by him and the Treasury Department in the manner prescribed by the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 2. This act shall take effect immediately and be retroactive to July 1, 1977.

APPROVED—The 21st day of June, A. D. 1977.

MILTON J. SHAPP