

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Aging

The Executive Board approved a reorganization of the Department of Aging effective September 19, 2006.

The organization chart at 36 Pa.B. 6540 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-2108. Filed for public inspection October 27, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Agriculture

The Executive Board approved a reorganization of the Department of Agriculture effective October 6, 2006.

The organization chart at 36 Pa.B. 6541 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-2109. Filed for public inspection October 27, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Banking

The Executive Board approved a reorganization of the Department of Banking effective October 6, 2006.

The organization chart at 36 Pa.B. 6542 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-2110. Filed for public inspection October 27, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Corrections

The Executive Board approved a reorganization of the Department of Corrections effective October 6, 2006.

The organization chart at 36 Pa.B. 6543 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-2111. Filed for public inspection October 27, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of General Services

The Executive Board approved a reorganization of the Department of General Services effective October 2, 2006.

The organization chart at 36 Pa.B. 6544 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-2112. Filed for public inspection October 27, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD**[4 PA. CODE CH. 9]****Reorganization of the Liquor Control Board**

The Executive Board approved a reorganization of the Liquor Control Board effective September 19, 2006.

The organization chart at 36 Pa.B. 6545 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-2113. Filed for public inspection October 27, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD**[4 PA. CODE CH. 9]****Reorganization of the Public School Employees' Retirement System**

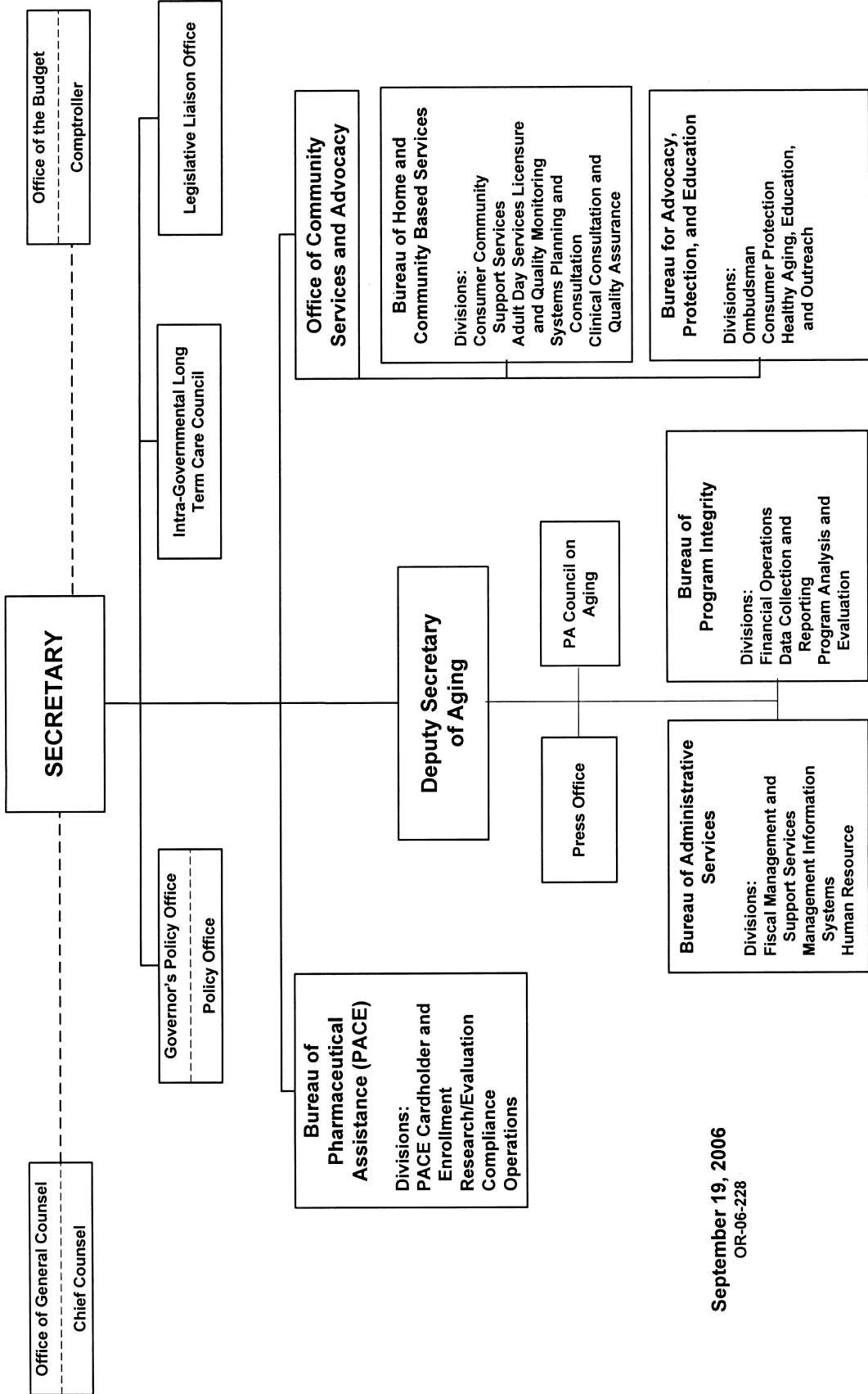
The Executive Board approved a reorganization of the Public School Employees' Retirement System effective October 6, 2006.

The organization chart at 36 Pa.B. 6546 (October 28, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

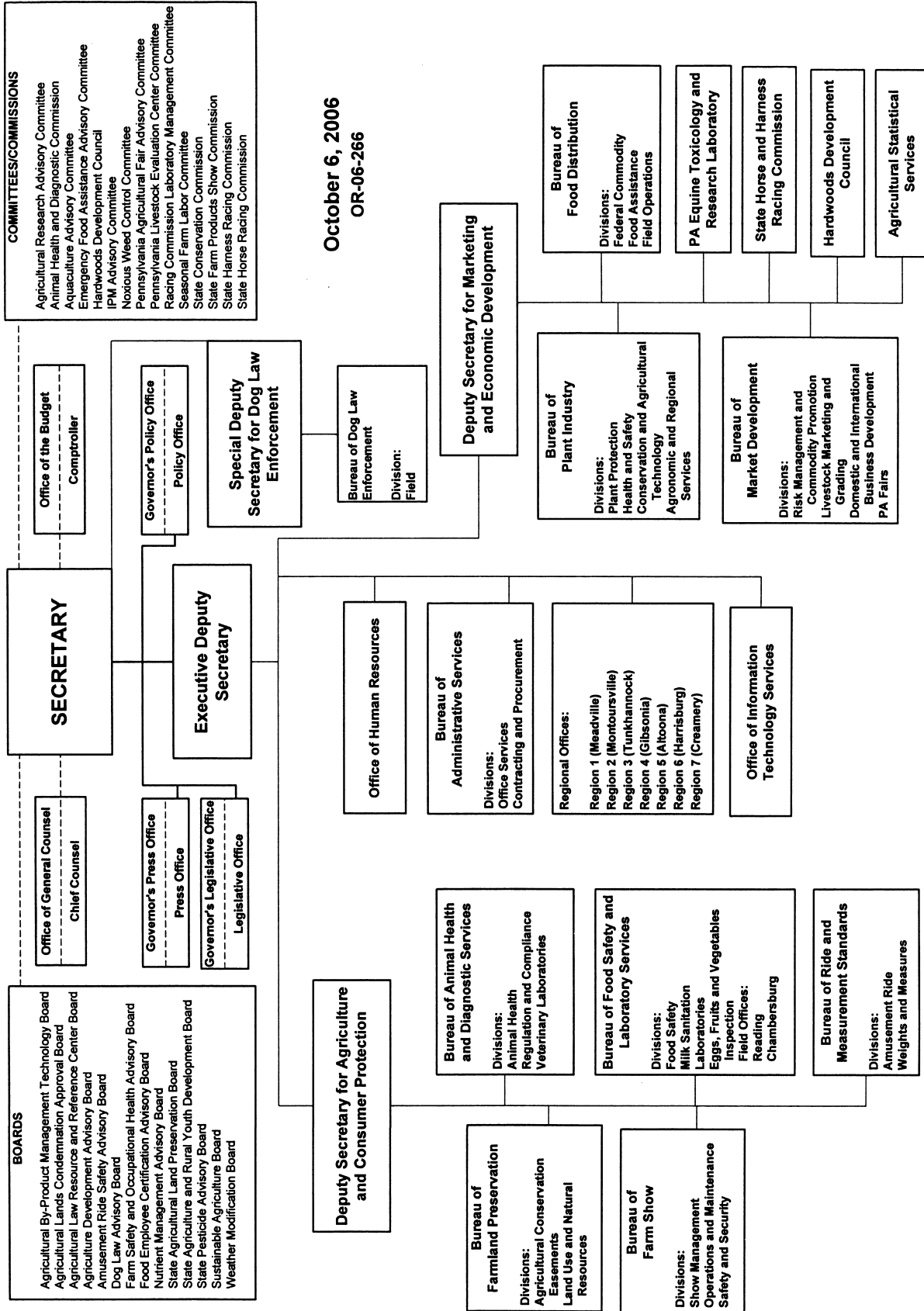
[Pa.B. Doc. No. 06-2114. Filed for public inspection October 27, 2006, 9:00 a.m.]

DEPARTMENT OF AGING

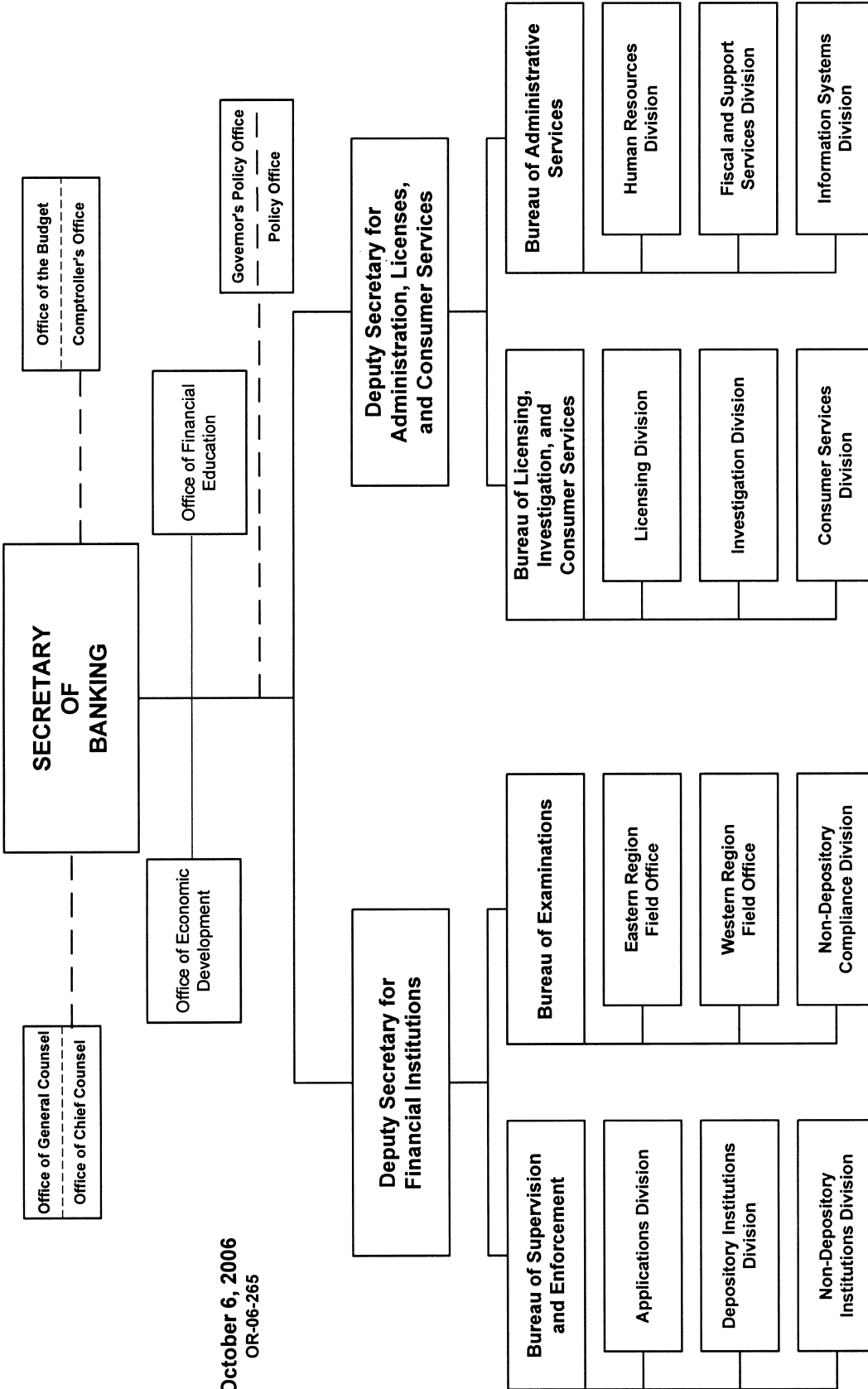


September 19, 2006
OR-06-228

DEPARTMENT OF AGRICULTURE

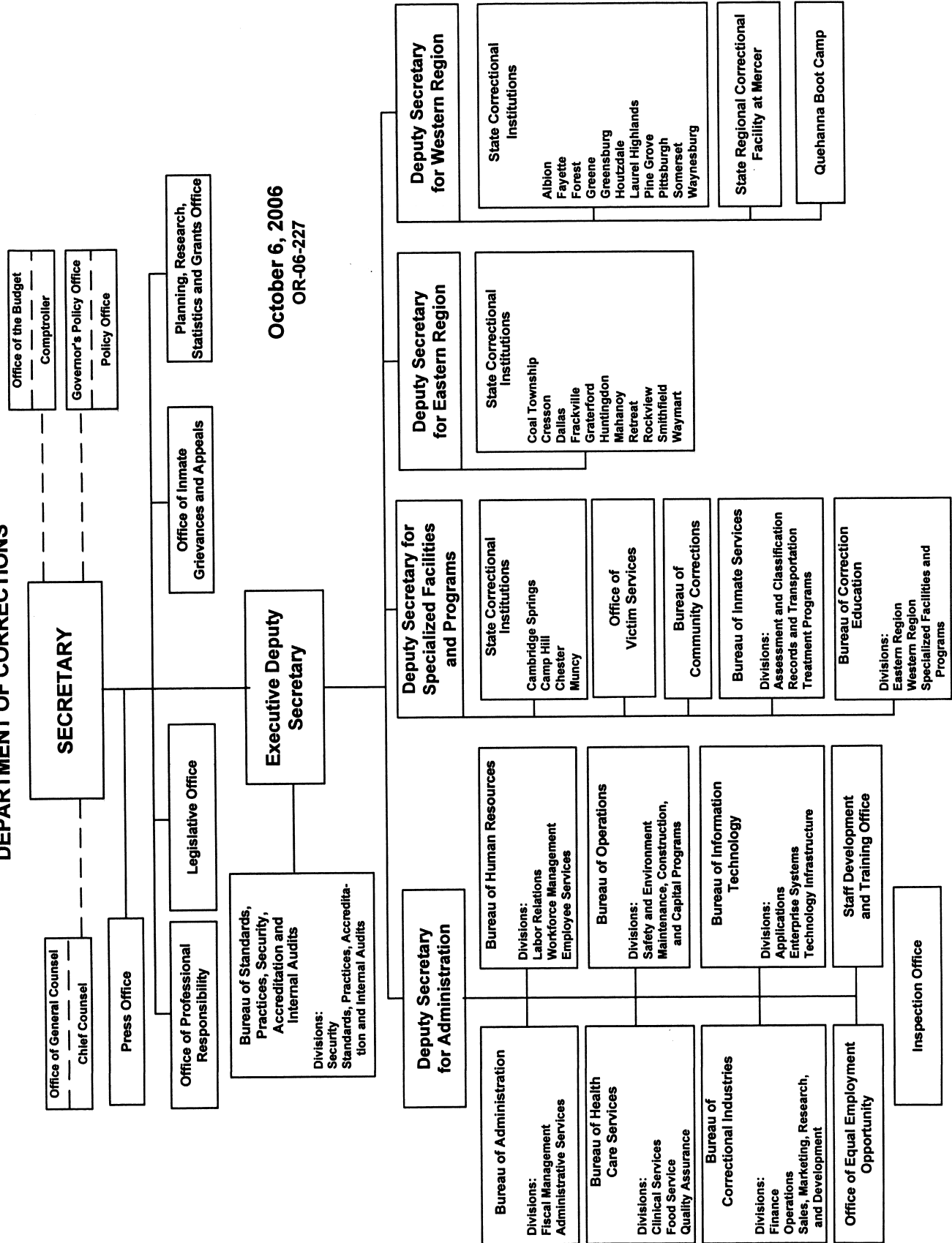


DEPARTMENT OF BANKING

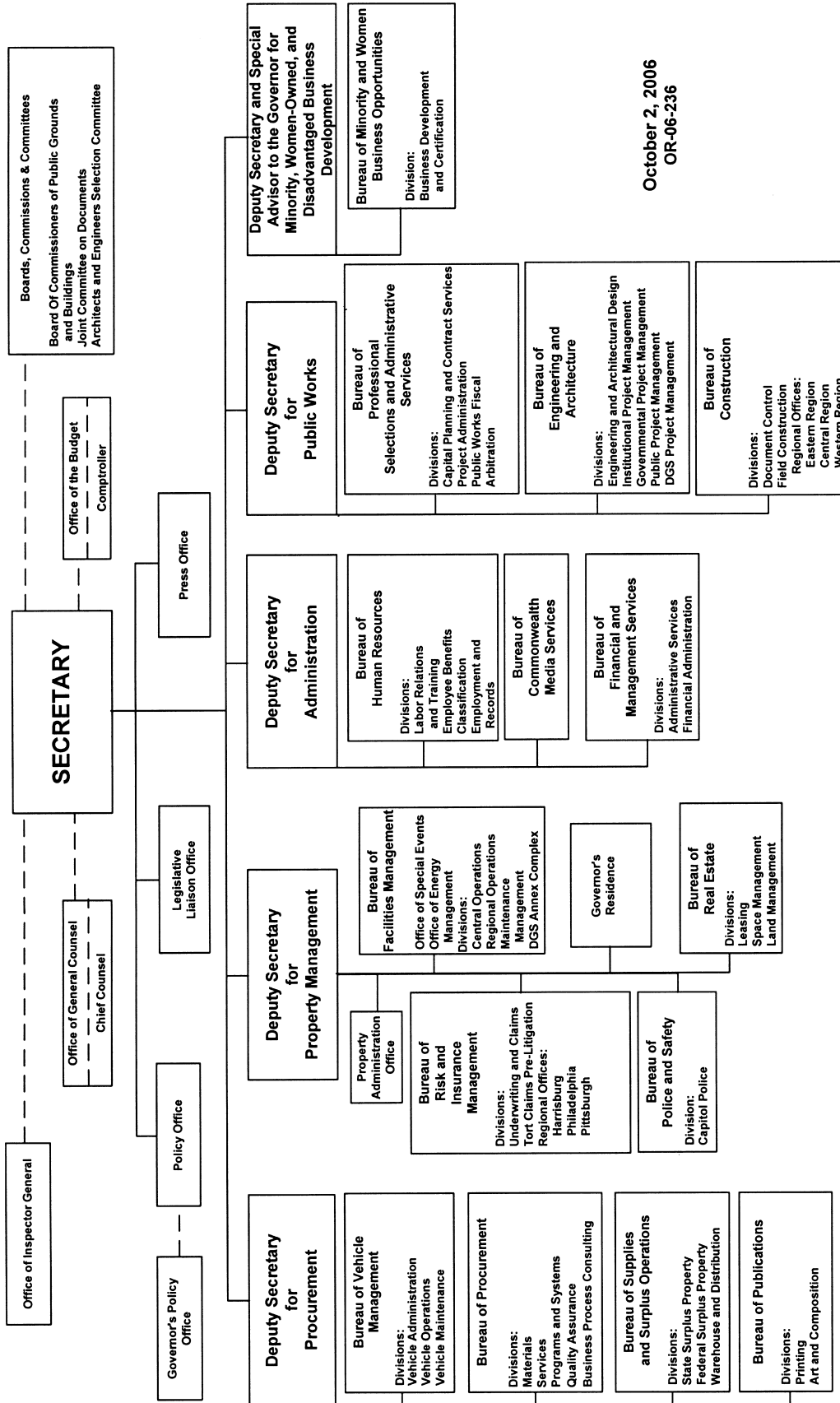


October 6, 2006
OR-06-265

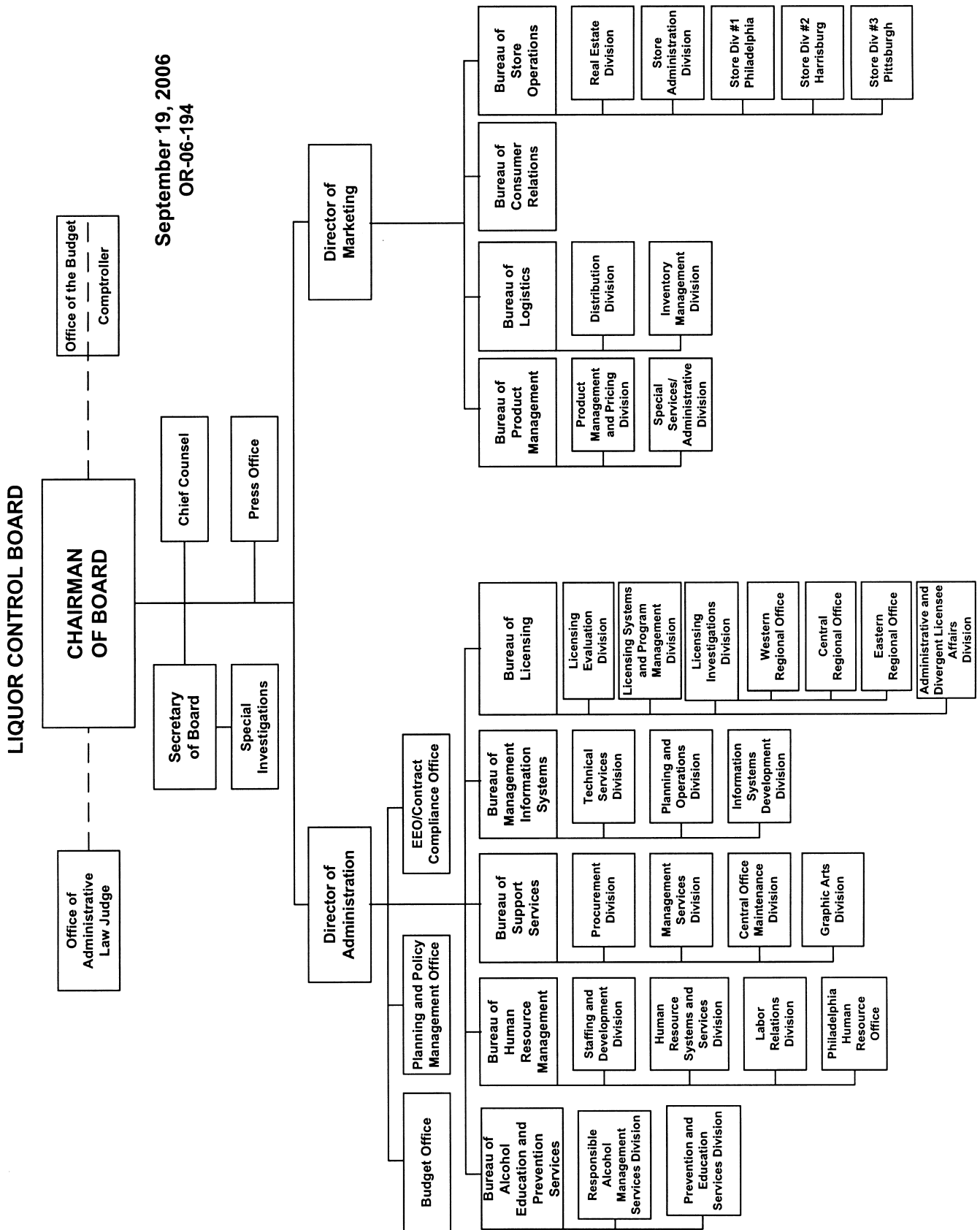
DEPARTMENT OF CORRECTIONS



DEPARTMENT OF GENERAL SERVICES

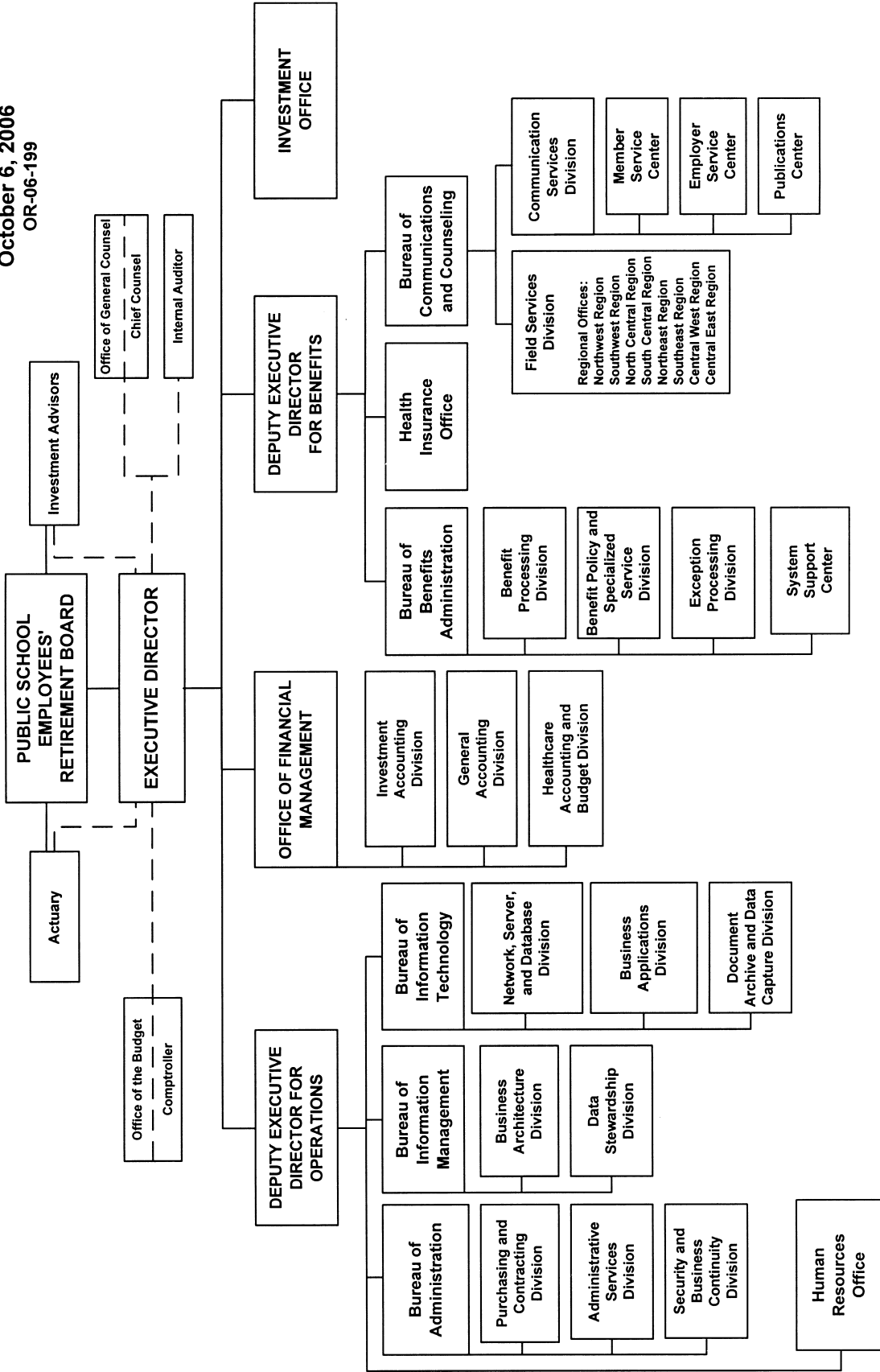


October 2, 2006
OR-06-236



PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

October 6, 2006
OR-06-199



Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 231]

Minimum Wage Increase and Training Wage

The Department of Labor and Industry (Department), through its Bureau of Labor Law Compliance (Bureau), adds §§ 231.101—231.103 (relating to minimum wage increase; small business; and training wage) to read as set forth in Annex A. The statement of policy is added under sections 4(a)(6)—(8) and (e) and 5(c) of The Minimum Wage Act of 1968 (act) (43 P. S. §§ 333.104(a)(6)—(8) and (e) and 333.105(c)), added by the act of July 9, 2006 (P. L. 1077, No. 112) (Act 112).

A. Effective Date

This statement of policy will be effective immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

The contact person for this statement of policy is James A. Holzman, Deputy Chief Counsel, Bureau of Labor Law Compliance, 10th Floor Labor and Industry Building, 7th and Forster Streets, Harrisburg, PA 17120, (717) 787-4186, fax: (717) 783-5027, jholzman@state.pa.us.

C. Statutory Authority

On July 9, 2006, amendments to sections 4(a)(6)—(8) and (e) and 5(c) of the act were approved which, among other things, raised the minimum wage, addressed the minimum wage for small business and provided a training wage for workers under 20 years of age. This statement of policy is published under the authority of section 9 of the act (43 P. S. § 333.109), which authorizes the Secretary of the Department to enforce the act and to draft and revise regulations that are deemed appropriate to carry out the act's provisions.

D. Purpose of the Statement of Policy

This statement of policy contains an interpretation of the amendments to the act without enumerating further requirements.

Section 231.101 contains the required minimum wage for most employers and the effective dates. The tipped credit is not changed by the amendments, with the exception that an employer must pay the difference of the \$2.83 per hour credit and the new minimum wage. See section 3(d) of the act (43 P. S. § 333.103(d)) and the definitions of "tipped employee" and "tips" in § 231.1(b) (relating to definitions).

Section 231.102 contains the interpretation of the amendments to section 5(c) of the act pertaining to new minimum wage requirements for employers that have an employee complement of the equivalent of ten or less full-time employees based on a 40-hour workweek. Subsection (a) contains the minimum wage increase schedule for these employers.

Subsection (b) enumerates that the equivalent of ten or less full-time employees is calculated on a 40-hour workweek. A workweek is a period of 7 consecutive days starting on any day selected by the employer. See § 231.42 (relating to workweek).

Subsection (c) contains information on calculations based on the amendment. If the total number of hours worked by all employees exceeds 400 hours, the employer is not eligible for this minimum wage (10 employees × 40 hours). See section 5(c)(1) of the act. See also section 4(c) of the act and § 231.41 (relating to rate). However, some employers may be ineligible for this minimum wage if the total hours worked is less than 40 hours per workweek if the employer classifies an employee as a full-time employee and the employee works less than 40 hours per workweek according to the employer's customary and regular practices. *Watkins v. Unemployment Compensation Bd. of Review*, 491 A.2d 935 (Pa. Cmwlth. 1985); *Murray, et al. v. Stuckey's Inc. and Pet Inc.*, 50 F.3d 564 (8th Cir. 1995); *Goldman v. RadioShack Corp.*, _____ F. Supp. _____, Civil Action No. 03-0032 (E.D. Pa. May 16, 2005).

Subsection (d) contains clarification that an owner is not considered as an employee under this section. An employee includes a manager, a supervisor, an officer and an individual employed by the employer. See section 3(f) and (h) of the act.

Under subsection (e), an employer is an individual, partnership, association, corporation, business trust or person or groups of persons acting directly or indirectly in the interest of an employer in relation to any employee. See section 3(g) of the act.

Section 231.103 pertains to new section 4(e) of the act, when an employer may pay a 60-day training wage to an employee under 20 years of age. This wage is based upon the Federal minimum wage of \$5.15 an hour under section 6(a) of the Fair Labor Standards Act (29 U.S.C.A. § 206(a)). A similar Federal training wage provision is in section 6(g) of the Fair Labor Standards Act (29 U.S.C.A. § 206(g)). Interpretations of this Federal law were utilized accordingly (www.dol.gov/esa, Fact Sheet #32).

Under subsection (b), an employer may pay an employee the training wage up to the day before the employee's 20th birthday. Subsequently, the employer shall increase the employee's pay to the minimum wage under section 4(a) of the act and § 231.101.

Subsection (c) contains guidance for calculating the time period. The 60-day period starts on the first day of work. The 60-day period runs consecutively as calendar days. The time period does not include days worked or business days. A break in employment does not affect the calculation of the 60-day eligibility period and does not allow the employer to restart the 60-day period. An employee under 20 years of age may be paid the training wage for up to 60 consecutive calendar days after initial employment with any employer and not just the first employer who hired the employee. An employee eligible for the training wage may be employed at the same time by more than one separate employer if the employers are separate and distinct. Under the training wage, an employee may be initially employed only once by any one employer even if there are breaks in employment.

Under subsection (d), an employer shall notify an employee at the time of hire of the training wage under this section and the right to receive the Pennsylvania minimum wage in § 231.101 after 60 calendar days if the employer utilizes this training wage. This reflects the requirement in section 4(e) of the act and section 4 of the Wage Payment and Collection Law (43 P. S. § 260.4) governing notification to employees.

Subsection (e) enumerates the limitations in section 4(e) of the act. An employer may not displace or partially displace an employee, reduce an employee's hours or reduce an employee's wages or employment benefits to allow hiring of persons eligible for the training wage under this section.

Subsection (f) prohibits an employer from utilizing the exclusions and exemptions in the act and the minimum wage regulations if the employer is paying an employee the training wage. An employer may not utilize the exclusions and exemptions in the act and the regulations for an employee when the 60-day training period has concluded or when the employee is ineligible for the training wage under this section. The employer shall pay the employee the minimum wage required under § 231.101 when the 60-day training period concludes or when the employee is ineligible for the training wage.

Subsection (g) states that the act does not require an employer to provide training to an employee as a condition of paying the training wage.

STEPHEN M. SCHMERIN,
Secretary

(Editor's Note: Title 34 of the Pa. Code is amended by adding a statement of policy in §§ 231.101—231.103 to read as set forth in Annex A.)

Fiscal Note: 12-79. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR STANDARDS

CHAPTER 231. MINIMUM WAGE

MINIMUM WAGE INCREASE AND TRAINING WAGE—STATEMENT OF POLICY

§ 231.101. Minimum wage increase.

(a) Under section 4(a) of the act (43 P. S. § 104(a)), an employer shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$6.25 an hour.
- (3) Beginning July 1, 2007, \$7.15 an hour.

(b) The minimum wage credit for tipped employees is \$2.83 per hour under section 3(d) of the act (43 P. S. § 333.103(d)) with all of the following conditions:

(1) An employer shall pay the difference when the employee's tips plus the credit for tipped employees does not meet the Pennsylvania minimum wage contained in subsection (a).

(2) The tip credit applies only if an employee received over \$30 in tips for a month.

§ 231.102. Small business.

(a) Under section 5(c) of the act (43 P. S. § 333.105(c)), an employer who has an employee complement comprised of the equivalent of ten or less full-time employees shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in this act and in this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$5.65 an hour.
- (3) Beginning July 1, 2007, \$6.65 an hour.
- (4) Beginning July 1, 2008, \$7.15 an hour.

(b) The equivalent of ten or less full-time employees is calculated on a 40-hour workweek. A workweek is a period of 7 consecutive days starting on any day selected by the employer.

(c) If the total number of hours worked by all employees in a workweek exceeds 400 hours, the employer may not utilize the minimum wage contained in subsection (a). All of the following also applies:

(1) An employer may be ineligible for the minimum wage contained in subsection (a) if the total hours worked is less than 400 hours per workweek if the employer classifies employees as full-time and the employees work less than 40 hours per week according to the employer's customary and regular practices.

(2) An employer's customary and regular practice is the employer's normal practice over time for scheduling and payment of employees.

(d) An owner is not considered an employee under this section. An employee includes all of the following:

- (1) A manager.
- (2) A supervisor.
- (3) An officer.
- (4) An individual employed by the employer.

(e) An employer is any individual, partnership, association, corporation, business trust or any person or groups of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.

§ 231.103. Training wage.

(a) Under section 4(e) of the act (43 P. S. § 333.104(e)), an employer may pay a 60-day training wage to an employee under 20 years of age based upon the minimum wage of \$5.15 an hour required under section 6(a) of the Fair Labor Standards Act (29 U.S.C.A. § 206(a)).

(b) An employer may pay an employee the training wage up to the day before the employee's 20th birthday. On and after an employee's 20th birthday, the employer shall increase the employee's pay to the minimum wage required under § 231.101 (relating to minimum wage increase) even if the 60-day period has not expired.

(c) The 60-day period is calculated as follows:

- (1) The 60-day period starts on the first day of work.
- (2) The 60-day period is counted as consecutive calendar days and not as days worked or business days.

(3) A break in employment does not affect the calculation of the 60-day period of eligibility and does not allow the employer to restart the 60-day period.

(4) An employee under 20 years old may be paid the training wage for up to 60 consecutive calendar days after initial employment with any employer and not just the first employer who hired the employee.

(5) An employee eligible for the training wage may be employed at the same time by more than one employer if the employers are separate and distinct.

(6) An employee may be initially employed only once by any one employer even if there are breaks in employment.

(d) An employer shall notify an employee at the time of hire of the training wage under this section and the right to receive the Pennsylvania minimum wage contained in § 231.101 after 60 calendar days or at the employee's 20th birthday if the employer utilizes this training wage.

(e) An employer may not take any action to displace or partially displace an existing employee to allow hiring of persons eligible for the training wage under this section. This includes any of the following:

(1) Reducing an employee's hours.

(2) Reducing an employee's wages or employment benefits.

(f) An employer may not do any of the following:

(1) Utilize the exclusions and exemptions contained in the act and this chapter if the employer is paying an employee the training wage under this section.

(2) Utilize the wage payment exclusions and exemptions of the act and this chapter for an employee when the 60-day training period has concluded or when the employee is ineligible for the training wage under this section. The employer shall pay the employee the minimum wage required under § 231.101 when the 60-day training period concludes or when the employee is ineligible for the training wage.

(g) An employer is not required to provide training to an employee paid the training wage under this section.

[Pa.B. Doc. No. 06-2115. Filed for public inspection October 27, 2006, 9:00 a.m.]