

The second clause of the first sentence of former Art. 101, § 71(b)(1), which provided for the superintendent and assistant superintendent to “receive such salary as may be provided for in the budget”, is deleted as unnecessary in light of § 10-120(b)(1) of this subtitle and as incomplete as to other staff. This deletion also avoids potential confusion with the State budget.

Former Art. 101, § 71(b)(2)(i), which provided that “present technical and professional personnel, as determined by the Commissioners... shall be transferred to the agency created and retain their rights and status under the classified service until July 1, 1991”, is transferred to the Session Laws. This provision was enacted as part of Ch. 71, Acts of 1990, altering the status of certain employees of the Fund effective July 1, 1991. Similarly, former Art. 101, § 71(b)(5), also enacted as part of Ch. 71, Acts of 1990, is transferred to the Session Laws. This latter provision protected, until July 1, 1991, the status of technical and professional employees of the Fund who elected not to be unclassified and required the Fund to provide a retraining and placement program for these employees. See Ch. _____, § _____, Acts of 1991.

The first sentence of former Art. 101, § 71(b)(7), which provided an exception to Art. 64A, § 35 for unclassified employees, is revised in Art. 64A, § 35 of the Code.

The Labor and Employment Article Review Committee notes, for consideration by the General Assembly, the absence of specific authority for the Board to subdelegate its statutory functions to the staff. Although former Art. 101, § 71(b)(1) enabled the “commissioners [Board]” to appoint an assistant superintendent “to assist him in his duties”, the antecedent of “him” and “his” clearly is “superintendent”. Absent statutory authority, a unit generally has authority to subdelegate administrative duties of a ministerial nature and, if the unit gives preliminary instructions and, when appropriate, reviews the action, discretionary administrative functions. See, e.g., 61 Op. Att’y Gen. 734, 736 (1976).

The Committee also notes that former Art. 101, §§ 76(b) and 77(a) specifically enabled the “commissioners [Board] or superintendent or assistant superintendent” to cancel a policy in certain situations. These grants of authority arguably allow the superintendent and assistant superintendent to act independently of the Board, and of each other, in situations that would require the concurrence of 4 members of the Board to act. See § 10-112(a) of this subtitle. On the other hand, former Art. 101, §§ 76(b) and 77(a) may have been intended only to enable the superintendent or assistant superintendent to act for the Board, after it decides to cancel a policy.

The General Assembly may wish to clarify the authority of the Board to subdelegate its functions and the scope of authority of the superintendent and assistant superintendent.

Defined terms: “Board” § 10-101

“Fund” § 10-101