

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1125

Session of
1981

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B. SMITH, NOYE, HAYES, GEIST, PHILLIPS, CLYMER, COSLETT,
EARLEY AND BLAUM, APRIL 1, 1981

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 2, 1981

AN ACT

1 Requiring a detailed analysis and review of State rules and
2 regulations delineating their impact on small businesses,
3 small organizations and individuals; providing for exemptions
4 and imposing additional duties on various State agencies.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the "Regulatory
9 Flexibility Act."

10 Section 2. Findings and purpose.

11 (a) The General Assembly finds that:

12 (1) Individuals, small businesses and small
13 organizations in the Commonwealth have been subjected to
14 regulatory and reporting requirements adopted by agencies,
15 departments and instrumentalities of the State Government

1 which have placed a proportionately greater burden on the
2 small business community than on the other segments of the
3 business community of the Commonwealth.

4 (2) Regulations intended to protect the Commonwealth's
5 health, safety and economic welfare have imposed unreasonable
6 demands and burdensome legal, accounting and consulting costs
7 on many small business people of limited resources.

8 (3) The overregulation and burdensome requirements
9 affecting small businesses are costly, reduce innovation and
10 expansion, reduce competition and threaten the existence of
11 some small businesses.

12 (4) The practice of treating all individuals, businesses
13 and organizations in a uniform manner for the purpose of
14 regulatory and reporting requirements has led to the
15 inefficient use of regulatory agency resources, enormous
16 enforcement problems, and, in some cases, actions
17 inconsistent with the legislative intent of health, safety
18 and economic welfare.

19 (5) State Government information collection has not
20 adequately weighed the costs of collection and the privacy
21 rights of individuals and enterprises against the
22 government's need for information.

23 (b) It is the purpose of this act to establish as a
24 principle of regulatory policy that regulatory and reporting
25 requirements fit the scale of those being regulated, that fewer,
26 simpler requirements be made of individuals, small organizations
27 and small businesses and that to achieve these ends agencies be
28 empowered and encouraged to issue regulations which exempt or
29 apply lower standards to individuals, small organizations and
30 small businesses than to larger entities. This act is not

1 intended to justify imposing greater burdens on larger entities
2 than would be imposed without this act.

3 Section 3. Definitions.

4 The following words and phrases when used in this act shall
5 have, unless the context clearly indicates otherwise, the
6 meanings given to them in this section:

7 "Agency" or "State agency." Each of the principal
8 departments in the Executive Branch of the State Government and
9 all bureaus, boards, divisions, commissions, councils,
10 authorities, offices or officers within any such departments now
11 existing or hereafter established and authorized by statute to
12 make, adopt or promulgate rules.

13 "Individual." Any natural person. The term individual shall
14 not include any natural person who is affected by a regulation
15 in such person's capacity as an officer or employee of an
16 organization or business which is not a small business or small
17 organization.

18 "Small business." Any ~~individually owned and operated~~ <—
19 enterprise which has less than 50 employees and has gross
20 receipts of less than \$2,000,000 annually or any other business
21 which an agency, based on this criteria, would deem to be a
22 small business.

23 "Small organization." Any unincorporated business, sheltered
24 workshop or not-for-profit enterprise which is not dominant in
25 its field and has gross receipts of less than \$4,000,000
26 annually or any other organization which an agency, based on
27 this criteria, would deem to be a small organization.

28 Section 4. Analysis of rule or regulation.

29 (a) (1) Each State agency, prior to publishing a proposed
30 rule or regulation in the Pennsylvania Bulletin, shall

1 conduct an analysis based on the amount of governmental
2 information collection the proposed rule would necessitate,
3 the approximate legal, enforcement, consulting and accounting
4 costs to the State which would be so necessitated and the
5 approximate overall cost to persons other than public
6 entities in compliance with the rule, averaged for each
7 individual, small business concern and small organization
8 affected by it, as compared with the importance of the public
9 policy achieved.

10 (2) Prior to the issuance of the rule or regulation the
11 agency shall incorporate as a part of the general statement
12 of the basis and purpose of the rule required to be published
13 in the Pennsylvania Bulletin a written analysis of whether it
14 is lawful, feasible and desirable for the agency to exempt
15 individuals, small organizations or small businesses from the
16 effect of the rule or regulation or whether the agency may
17 and should promulgate a rule or regulation which sets lower
18 standards for compliance by individuals, small organizations
19 and small businesses.

20 (b) The required analysis shall include the following
21 factors:

22 (1) The nature of any reports and the estimated cost of
23 their preparation by individuals, small organizations and
24 small businesses which would be required to comply with the
25 new rule.

26 (2) The nature and estimated costs of other measures or
27 investments that would be required by individuals, small
28 organizations and small businesses in complying with the new
29 rule.

30 (3) The nature and estimated cost of any legal,

1 consulting and accounting services which individuals, small
2 organizations and small businesses would incur in complying
3 with the new rule.

4 (4) The ability of individuals, small organizations and
5 small businesses to absorb the costs estimated under
6 paragraphs (1), (2) and (3) without suffering economic harm
7 and without adversely affecting competition in the
8 marketplace.

9 (5) The additional cost, if any, to the agency of
10 administering or enforcing a rule which exempts or sets lower
11 standards for compliance by individuals, small organizations
12 or small businesses.

13 (6) The impact on the public interest of exempting or
14 setting lesser standards of compliance for individuals, small
15 organizations or small businesses.

16 Section 5. Transmission and comments.

17 The agency prescribing such rule shall:

18 (1) Transmit such rule to and obtain the comments, if
19 any, of the appropriate standing committees of the General
20 Assembly with oversight responsibilities for that agency with
21 respect to the impact on individuals, small organizations and
22 small businesses resulting from implementation of such rule.

23 (2) Include such comments of the appropriate standing
24 committees of the General Assembly with oversight
25 responsibilities for that agency in the record made in
26 connection with consideration of such rule.

27 (3) Incorporate a summary of such comments of the
28 appropriate standing committees of the General Assembly with
29 oversight responsibilities for that agency with the general
30 statement of the basis and purpose of the rule.

1 Section 6. Procedure when exemption applies.

2 Whenever the results of such analysis by an agency indicate
3 that it is lawful, desirable and feasible to exempt individuals,
4 small organizations or small businesses or to set lower
5 standards of compliance by individuals, small organizations or
6 small businesses, the agency shall issue a rule or regulation
7 containing an appropriate exemption for such individuals, small
8 organizations or small businesses or setting lower standards for
9 compliance by individuals, small organizations or small
10 businesses.

11 Section 7. Procedure when agency defines either small business
12 or small organization.

13 Whenever an agency establishes by rule or regulation the
14 meaning of small business or small organization in accordance
15 with section 3, such rule or regulation may apply to either a
16 single rule or regulation, a set of rules and regulations or
17 every rule and regulation issued by the agency. The rule or
18 regulation establishing the meaning of small business or small
19 organization shall be published in the Pennsylvania Bulletin at
20 least 30 days prior to the effective date of the rule or
21 regulation. The size or segment standards established by such
22 rule or regulation shall be objective, and, to the maximum
23 extent feasible, uniform with size or segment standards
24 previously established by rule or regulation.

25 Section 8. Standing to appeal.

26 In any action to review the compliance of an agency with this
27 act no order shall be entered by a court to enjoin enforcement
28 of such rule with respect to anyone or any concern that is not
29 an individual, small organization or small business. No one
30 other than an individual, small organization or small business,

1 as defined in section 3, shall have standing to review the
2 compliance of an agency.

3 Section 9. Review of past rules and regulations.

4 Each agency shall, during the five-year period beginning with
5 the date of enactment of this act review agency rules which were
6 published for comment, issued, or in effect prior to such date
7 and make the determination required by this act.

8 Section 10. Cooperation.

9 Every agency of State Government is authorized and required
10 to furnish upon request, advice and assistance to any other
11 agency making determinations pursuant to this act.

12 Section 11. Rules and regulations must comply.

13 Except as otherwise provided by statute, no agency may issue
14 a rule or regulation, however denominated or described, which
15 does not comply with the provisions of this act.

16 Section 12. No further personnel required.

17 No agency shall employ additional personnel in order to
18 comply with this act.

19 Section 13. Effective date.

20 This act shall take effect in 90 days.