

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 210 Session of
2007

INTRODUCED BY PICKETT, REED, HUTCHINSON, BOYD, McILHATTAN,
MUSTIO, REICHLEY, R. STEVENSON, CAUSER, ARGALL, BAKER,
BARRAR, CALTAGIRONE, CAPPELLI, CLYMER, COX, CREIGHTON, DALLY,
FAIRCHILD, GEIST, GIBBONS, GINGRICH, GOODMAN, GRELL, HARHART,
HENNESSEY, HERSHEY, HESS, HICKERNELL, M. KELLER, KENNEY,
MACKERETH, MAJOR, MELIO, METCALFE, MILLARD, R. MILLER, MOUL,
NAILOR, O'NEILL, PHILLIPS, RAPP, READSHAW, ROAE, SCAVELLO,
SCHRODER, SIPTROTH, SONNEY, STERN, SWANGER, TRUE, WATSON AND
YOUNGBLOOD, FEBRUARY 5, 2007

REFERRED TO COMMITTEE ON COMMERCE, FEBRUARY 5, 2007

AN ACT

1 Amending the act of June 25, 1982 (P.L.633, No.181), entitled,
2 as reenacted, "An act providing for independent oversight and
3 review of regulations, creating an Independent Regulatory
4 Review Commission, providing for its powers and duties and
5 making repeals," further providing for legislative intent,
6 for definitions and for proposed regulations and procedure
7 for review.

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

10 Section 1. Section 2 of the act of June 25, 1982 (P.L.633,
11 No.181), known as the Regulatory Review Act, reenacted and
12 amended June 30, 1989 (P.L.73, No.19), and amended June 25, 1997
13 (P.L.252, No.24), is amended to read:

14 Section 2. Legislative intent.

15 (a) The General Assembly has enacted a large number of
16 statutes and has conferred on boards, commissions, departments
17 and agencies within the executive branch of government the

1 authority to adopt rules and regulations to implement those
2 statutes. The General Assembly has found that this delegation of
3 its authority has resulted in regulations being promulgated
4 without undergoing effective review concerning cost benefits,
5 duplication, inflationary impact and conformity to legislative
6 intent. The General Assembly finds that it must establish a
7 procedure for oversight and review of regulations adopted
8 pursuant to this delegation of legislative power in order to
9 curtail excessive regulation and to require the executive branch
10 to justify its exercise of the authority to regulate before
11 imposing hidden costs upon the economy of Pennsylvania. It is
12 the intent of this act to establish a method for ongoing and
13 effective legislative review and oversight in order to foster
14 executive branch accountability; to provide for primary review
15 by a commission with sufficient authority, expertise,
16 independence and time to perform that function; to provide
17 ultimate review of regulations by the General Assembly; and to
18 assist the Governor, the Attorney General and the General
19 Assembly in their supervisory and oversight functions. To the
20 greatest extent possible, this act is intended to encourage the
21 resolution of objections to a regulation and the reaching of a
22 consensus among the commission, the standing committees,
23 interested parties and the agency.

24 [(b) This act is not intended to create a right or benefit,
25 substantive or procedural, enforceable at law by a person
26 against another person or against the Commonwealth, its agencies
27 or its officers.]

28 (c) This act is intended to improve State rulemaking by
29 creating procedures to analyze the availability of more flexible
30 regulatory approaches for small businesses in accordance with

1 the following findings:

2 (1) A vibrant and growing small business sector is
3 critical to creating jobs in a dynamic economy.

4 (2) Small businesses bear a disproportionate share of
5 regulatory costs and burdens.

6 (3) Fundamental changes that are needed in the
7 regulatory and enforcement culture of agencies to make them
8 more responsive to small business can be made without
9 compromising the statutory missions of the agencies.

10 (4) When adopting regulations to protect the health,
11 safety and economic welfare of the Commonwealth, agencies
12 should seek to achieve statutory goals as effectively and
13 efficiently as possible without imposing unnecessary burdens
14 on small business.

15 (5) Uniform regulatory and reporting requirements can
16 impose unnecessary and disproportionately burdensome demands,
17 including legal, accounting and consulting costs upon small
18 businesses with limited resources.

19 (6) The failure to recognize differences in the scale
20 and resources of regulated businesses can adversely affect
21 competition in the marketplace, discourage innovation and
22 restrict improvements in productivity.

23 (7) Unnecessary regulations create entry barriers in
24 many industries and discourage potential entrepreneurs from
25 introducing beneficial products and processes.

26 (8) The practice of treating all regulated businesses
27 similarly may lead to inefficient use of regulatory agency
28 resources, enforcement problems and, in some cases, to
29 actions inconsistent with the legislative intent of health,
30 safety, environmental and economic welfare legislation.

1 (9) Alternative regulatory approaches which do not
2 conflict with the stated objective of applicable statutes may
3 be available to minimize the significant economic impact of
4 rules on small businesses.

5 (10) The process by which State regulations are
6 developed and adopted should be reformed to require agencies
7 to solicit the ideas and comments of small businesses, to
8 examine the impact of proposed and existing rules on such
9 businesses and to review the continued need for existing
10 rules.

11 (d) For any regulation subject to this act, a small business
12 that is adversely affected or aggrieved by final agency action
13 is entitled to judicial review of agency compliance with the
14 requirements of this section.

15 (e) A small business may seek such review during the period
16 beginning on the date of final agency action and ending 18
17 months later.

18 (f) This act is not intended to create a right or benefit,
19 substantive or procedural, enforceable at law by a person
20 against another person or against the Commonwealth, its agencies
21 or its officers.

22 Section 2. Section 3 of the act is amended by adding a
23 definition to read:

24 Section 3. Definitions.

25 The following words and phrases when used in this act shall
26 have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 * * *

29 "Small business." A business entity, including its
30 affiliates, that:

1 (1) is independently owned and operated; and

2 (2) employs fewer than 100 full-time employees or has
3 gross annual sales of less than \$6,000,000.

4 * * *

5 Section 3. Section 5(a) of the act, amended December 6, 2002
6 (P.L.1227, No.148), is amended and the section is amended by
7 adding a subsection to read:

8 Section 5. Proposed regulations; procedures for review.

9 (a) On the same date that an agency submits a proposed
10 regulation to the Legislative Reference Bureau for publication
11 of notice of proposed rulemaking in the Pennsylvania Bulletin as
12 required by the Commonwealth Documents Law, the agency shall
13 submit to the commission and the committees a copy of the
14 proposed regulation and a regulatory analysis form which
15 includes the following:

16 (1) The title of the agency and the names, office
17 addresses and telephone numbers of the agency officials
18 responsible for responding to questions regarding the
19 regulation or for receiving comments relating to the
20 regulation.

21 (1.1) A specific citation to the Federal or State
22 statutory or regulatory authority or the decision of a
23 Federal or State court under which the agency is proposing
24 the regulation, which the regulation is designed to implement
25 or which may mandate or affect compliance with the
26 regulation.

27 (2) A concise and, when possible, nontechnical
28 explanation of the proposed regulation.

29 (3) A statement of the need for the regulation.

30 (4) Estimates of the direct and indirect costs to the

1 Commonwealth, to its political subdivisions and to the
2 private sector. Insofar as the proposed regulation relates to
3 costs to the Commonwealth, the agency may submit in lieu of
4 its own statement the fiscal note prepared by the Office of
5 the Budget pursuant to section 612 of the act of April 9,
6 1929 (P.L.177, No.175), known as "The Administrative Code of
7 1929."

8 (5) A statement of legal, accounting or consulting
9 procedures and additional reporting, recordkeeping or other
10 paperwork, including copies of forms or reports, which will
11 be required for implementation of the regulation and an
12 explanation of measures which have been taken to minimize
13 these requirements.

14 (7) A schedule for review of the proposed regulation,
15 including the date by which the agency must receive comments;
16 the date or dates on which public hearings will be held; the
17 expected date of promulgation of the proposed regulation as a
18 final-form regulation; the expected effective date of the
19 final-form regulation; the date by which compliance with the
20 final-form regulation will be required; and the date by which
21 required permits, licenses or other approvals must be
22 obtained.

23 (9) An identification of the types of persons, small
24 businesses, businesses and organizations which would be
25 affected by the regulation.

26 (10) An identification of the financial, economic and
27 social impact of the regulation on individuals, small
28 businesses, business and labor communities and other public
29 and private organizations and, when practicable, an
30 evaluation of the benefits expected as a result of the

1 regulation.

2 (10.1) For any proposed regulation that may have an
3 adverse impact on small businesses, an economic impact
4 statement that includes the following:

5 (i) An identification and estimate of the number of
6 the small businesses subject to the proposed regulation.

7 (ii) The projected reporting, recordkeeping and
8 other administrative costs required for compliance with
9 the proposed regulation, including the type of
10 professional skills necessary for preparation of the
11 report or record.

12 (iii) A statement of the probable effect on impacted
13 small businesses.

14 (iv) A description of any less intrusive or less
15 costly alternative methods of achieving the purpose of
16 the proposed regulation.

17 (11) A description of any special provisions which have
18 been developed to meet the particular needs of affected
19 groups and persons, including minorities, the elderly, small
20 businesses and farmers.

21 (12) A description of any alternative regulatory
22 provisions which have been considered and rejected and a
23 statement that the least burdensome acceptable alternative
24 has been selected.

25 (12.1) A regulatory flexibility analysis in which the
26 agency shall, where consistent with health, safety,
27 environmental and economic welfare, consider utilizing
28 regulatory methods that will accomplish the objectives of
29 applicable statutes while minimizing adverse impact on small
30 businesses. The agency shall consider, without limitation,

1 each of the following methods of reducing the impact of the
2 proposed regulation on small businesses:

3 (i) the establishment of less stringent compliance
4 or reporting requirements for small businesses;

5 (ii) the establishment of less stringent schedules
6 or deadlines for compliance or reporting requirements for
7 small businesses;

8 (iii) the consolidation or simplification of
9 compliance or reporting requirements for small
10 businesses;

11 (iv) the establishment of performance standards for
12 small businesses to replace design or operational
13 standards required in the proposed regulation; and

14 (v) the exemption of small businesses from all or
15 any part of the requirements contained in the proposed
16 regulation.

17 (a.1) Prior to the adoption of any proposed regulation that
18 may have an adverse impact on small businesses, each agency
19 shall notify the commission of its intent to adopt the proposed
20 regulation.

21 * * *

22 Section 4. This act shall take effect in 60 days.