
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2442 Session of
2004

INTRODUCED BY PICKETT, REED, TURZAI, BOYD, DENLINGER,
HUTCHINSON, McILHATTAN, MUSTIO, PAYNE, REICHLEY, ALLEN,
ARGALL, ARMSTRONG, BAKER, BALDWIN, BARD, BROWNE, CAPPELLI,
CAUSER, CRAHALLA, DALEY, DALLY, FAIRCHILD, FICHTER, FORCIER,
FRANKEL, GABIG, GINGRICH, GOOD, GOODMAN, HARRIS, HENNESSEY,
HERMAN, HERSHEY, HESS, HICKERNELL, HORSEY, KILLION, LEH,
MAJOR, MARSICO, METCALFE, MILLARD, S. MILLER, O'NEILL,
SAINATO, SCAVELLO, SCHRODER, STERN, R. STEVENSON,
T. STEVENSON, E. Z. TAYLOR, TIGUE, WANSACZ, WATSON, WILT,
YOUNGBLOOD AND ZUG, MARCH 16, 2004

REFERRED TO COMMITTEE ON INTERGOVERNMENTAL AFFAIRS,
MARCH 16, 2004

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, for the Independent Regulatory Review
7 Commission, for review criteria, for commission and agency
8 review procedure, for statutory compliance, for subsequent
9 review, for classification of documents, for modifying
10 regulations, for existing regulations, for staff, for
11 subpoena power, for administrative functions and for
12 termination.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

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

1 Section 2. Legislative intent.

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

28 [(b) This act is not intended to create a right or benefit,
29 substantive or procedural, enforceable at law by a person
30 against another person or against the Commonwealth, its agencies

1 or its officers.]

2 (b) To improve state rulemaking by creating procedures to
3 analyze the availability of more flexible regulatory approaches
4 for small businesses in accordance with the following findings:

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

7 (2) Small businesses bear a disproportionate share of
8 regulatory costs and burdens.

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

13 (4) When adopting regulations to protect the health,
14 safety and economic welfare of the Commonwealth of
15 Pennsylvania, State agencies should seek to achieve statutory
16 goals as effectively and efficiently as possible without
17 imposing unnecessary burdens on small employers.

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

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

26 (7) Unnecessary regulations create entry barriers in
27 many industries and discourage potential entrepreneurs from
28 introducing beneficial products and processes.

29 (8) The practice of treating all regulated businesses as
30 equivalent may lead to inefficient use of regulatory agency

1 resources, enforcement problems, and, in some cases, to
2 actions inconsistent with the legislative intent of health,
3 safety, environmental and economic welfare legislation.

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

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

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

18 (d) A small business may seek such review during the period
19 beginning on the date of final agency action and ending one year
20 later.

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

23 Section 3. Definitions.

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

27 * * *

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

30 (1) is independently owned and operated; and

1 (2) employs fewer than five hundred full-time employees
2 or has gross annual sales of less than six million dollars.

3 * * *

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

7 Section 5. Proposed regulations; procedures for review.

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

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

20 (1.1) A specific citation to the Federal or State
21 statutory or regulatory authority or the decision of a
22 Federal or State court under which the agency is proposing
23 the regulation, which the regulation is designed to implement
24 or which may mandate or affect compliance with the
25 regulation.

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

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

29 (4) Estimates of the direct and indirect costs to the
30 Commonwealth, to its political subdivisions and to the

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

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

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

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

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

1 (10.1) Prior to the adoption of any proposed regulation
2 that may have an adverse impact on small businesses, each
3 agency shall prepare an economic impact statement that
4 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) Prior to the adoption of any proposed regulation
26 on and after January 1, 2004, each agency shall prepare a
27 regulatory flexibility analysis in which the agency shall,
28 where consistent with health, safety, environmental and
29 economic welfare, consider utilizing regulatory methods that
30 will accomplish the objectives of applicable statutes while

1 minimizing adverse impact on small businesses. The agency
2 shall consider, without limitation, each of the following
3 methods of reducing the impact of the proposed regulation on
4 small businesses:

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

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

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

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

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

19 (a.1) Prior to the adoption of any proposed regulation that
20 may have an adverse impact on small businesses, each agency
21 shall notify the Independent Regulatory Review Commission of its
22 intent to adopt the proposed regulation. The commission shall
23 advise and assist agencies in complying with the provisions of
24 this section.

25 * * *

26 Section 4. Section 8.1 of the act, amended December 6, 2002
27 (P.L.1227, No.148), is amended to read:

28 Section 8.1. Existing regulations.

29 The commission, on its motion or at the request of any person
30 or member of the General Assembly, [may] must review any

1 existing regulation which has been in effect for at least
2 [three] five years. If a committee of the Senate or the House of
3 Representatives requests a review of an existing regulation, the
4 commission shall perform the review and shall assign it high
5 priority. The commission may submit recommendations to an agency
6 recommending changes in existing regulations if it finds the
7 existing regulations to be contrary to the public interest under
8 the criteria established in section 5.2. The commission may also
9 make recommendations to the General Assembly and the Governor
10 for statutory changes if the commission finds that any existing
11 regulation may be contrary to the public interest.
12 Section 5. This act shall take effect in 60 days.