

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1349 Session of  
2011

INTRODUCED BY PICKETT, BAKER, BLOOM, BOBACK, CAUSER, CREIGHTON, DELOZIER, DENLINGER, EVERETT, FLECK, GABLER, GEIST, GINGRICH, GRELL, HARRIS, HESS, HICKERNELL, HUTCHINSON, KAUFFMAN, F. KELLER, M. K. KELLER, KNOWLES, MAJOR, MARSHALL, MASSER, METCALFE, MILLARD, MUSTIO, OBERLANDER, PAYNE, PEIFER, PYLE, QUIGLEY, RAPP, REICHLEY, ROAE, SCAVELLO, STEVENSON, TALLMAN, TOOHL, VULAKOVICH, BENNINGHOFF, COX, MILNE, MILLER, GROVE, CLYMER, GILLEN, FARRY, TRUITT, SWANGER, BROOKS, R. BROWN, GODSHALL, YOUNGBLOOD, SAYLOR, DALEY AND SONNEY,  
APRIL 13, 2011

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 18, 2012

## 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 procedures  
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

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

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

29 (c) This act is intended to improve State rulemaking by  
30 creating procedures to analyze the availability of more flexible

1 regulatory approaches for small businesses in accordance with  
2 the following findings:

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

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

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

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

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

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

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

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

1 safety, environmental and economic welfare legislation.

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

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

12 ~~(d) For any regulation subject to this act, a small business~~ ←  
13 ~~that is adversely affected or aggrieved by final agency action~~  
14 ~~is entitled to judicial review of agency compliance with the~~  
15 ~~requirements of this section. A small business may seek such~~  
16 ~~review during the period beginning on the date of final agency~~  
17 ~~action and ending 18 months later.~~

18 ~~(e) (D) This act is not intended to create a right or~~ ←  
19 ~~benefit, substantive or procedural, enforceable at law by a~~  
20 ~~person against another person or against the Commonwealth, its~~  
21 ~~agencies 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." As defined IN ACCORDANCE WITH THE SIZE ←  
30 STANDARDS DESCRIBED by the United States Small Business

1 Administration's Small Business Size Regulations under 13 CFR  
2 Ch. 1 Part 121 (relating to Small Business Size Regulations) OR ←  
3 ITS SUCCESSOR REGULATION.

4 \* \* \*

5 Section 3. Section 5(a) of the act, amended OR ADDED ←  
6 December 6, 2002 (P.L.1227, No.148) AND JULY 7, 2011 (P.L.277, ←  
7 NO.60), is amended and the section is amended by adding a ←  
8 ~~subsection~~ SUBSECTIONS A SUBSECTION to read: ←

9 Section 5. Proposed regulations; procedures for review.

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

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

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

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

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

1 (4) Estimates of the direct and indirect costs to the  
2 Commonwealth, to its political subdivisions and to the  
3 private sector. Insofar as the proposed regulation relates to  
4 costs to the Commonwealth, the agency may submit in lieu of  
5 its own statement the fiscal note prepared by the Office of  
6 the Budget pursuant to section 612 of the act of April 9,  
7 1929 (P.L.177, No.175), known as "The Administrative Code of  
8 1929."

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

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

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

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

1 evaluation of the benefits expected as a result of the  
2 regulation.

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

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

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

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

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

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

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

26 (12.1) A regulatory flexibility analysis in which the  
27 agency shall, where consistent with health, safety,  
28 environmental and economic welfare, consider utilizing  
29 regulatory methods that will accomplish the objectives of  
30 applicable statutes while minimizing adverse impact on small

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

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

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

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

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

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

18 \* \* \*

19 (13) A DESCRIPTION OF THE PLAN DEVELOPED FOR EVALUATING  
20 THE CONTINUING EFFECTIVENESS OF THE REGULATION AFTER ITS  
21 IMPLEMENTATION.

22 (14) A DESCRIPTION OF ANY DATA UPON WHICH A REGULATION  
23 IS BASED WITH A DETAILED EXPLANATION OF HOW THE DATA WAS  
24 OBTAINED AND WHY THE DATA IS ACCEPTABLE DATA. AN AGENCY  
25 ADVOCATING THAT ANY DATA IS ACCEPTABLE DATA SHALL HAVE THE  
26 BURDEN OF PROVING THAT THE DATA IS ACCEPTABLE.

27 ~~(A.1) THE COMMISSION MAY NOT APPROVE A PROPOSED REGULATION~~  
28 ~~ON SMALL BUSINESS THAT DOES NOT EVALUATE THE IMPACT OF THE~~  
29 ~~REGULATION ON SMALL BUSINESS AND THAT HAS NOT INCLUDED A REVIEW~~  
30 ~~OF LESS COSTLY OR LESS INTRUSIVE ALTERNATIVE METHODS OF~~

1 ~~ACHIEVING THE GOAL OF THE REGULATION.~~

2 ~~(a.1) (A.2) Prior to the adoption of any proposed regulation~~ ←  
3 ~~that may have an adverse impact on small businesses, each agency~~  
4 ~~shall notify the commission of its intent to adopt the proposed~~  
5 ~~regulation.~~

6 \* \* \*

7 (H) THE COMMISSION SHALL PROVIDE COMMENTS TO THE AGENCY IF ←  
8 THE REQUIRED SUBMISSIONS UNDER SUBSECTION (A) (9), (10), (10.1)  
9 AND (12.1) DEMONSTRATE AN ADVERSE IMPACT ON SMALL BUSINESSES.

10 SECTION 4. SECTION 5.2 (B) OF THE ACT IS AMENDED BY ADDING A  
11 PARAGRAPH TO READ:

12 SECTION 5.2. CRITERIA FOR REVIEW OF REGULATIONS.

13 \* \* \*

14 (B) UPON A FINDING THAT THE REGULATION IS CONSISTENT WITH  
15 THE STATUTORY AUTHORITY OF THE AGENCY AND WITH THE INTENTION OF  
16 THE GENERAL ASSEMBLY IN THE ENACTMENT OF THE STATUTE UPON WHICH  
17 THE REGULATION IS BASED, THE COMMISSION SHALL CONSIDER THE  
18 FOLLOWING IN DETERMINING WHETHER THE REGULATION IS IN THE PUBLIC  
19 INTEREST:

20 \* \* \*

21 (8) WHETHER A LESS COSTLY OR LESS INTRUSIVE ALTERNATIVE  
22 METHOD OF ACHIEVING THE GOAL OF THE REGULATION HAS BEEN  
23 CONSIDERED FOR REGULATIONS IMPACTING SMALL BUSINESS.

24 SECTION 5. THIS ACT SHALL APPLY TO REGULATIONS SUBMITTED ON  
25 OR AFTER THE EFFECTIVE DATE OF THIS ACT TO THE LEGISLATIVE  
26 REFERENCE BUREAU FOR PUBLICATION OF NOTICE OF PROPOSED  
27 RULEMAKING IN THE PENNSYLVANIA BULLETIN AS REQUIRED BY THE ACT  
28 OF JULY 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE  
29 COMMONWEALTH DOCUMENTS LAW.

30 Section 4 6. This act shall take effect in 60 days. ←