



Testimony of Sarah Miller
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and Fisheries Committee/Environmental Resources and
Energy Committee
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Good afternoon, my name is Sarah Miller, and I am the Regulatory Specialist for the Pennsylvania Builders Association (PBA). Prior to my service with PBA, I served for 14 years as a Regulatory Analyst, and subsequently, Communications Manager with the Independent Regulatory Review Commission (IRRC).

PBA strongly supports a fair, open, and standardized process for the listing of threatened or endangered species in Pennsylvania and as such, we are fully supportive of House Bill 1576. We believe requiring the Fish and Boat Commission, the Game Commission, and DCNR to promulgate regulations in compliance with the criteria of the Regulatory Review Act (RRA), as evaluated by IRRC, will result in better administrative law as it pertains to endangered species listings.

Currently, and under the provisions of HB 1576, all DEP permitting applications for residential site development also require a Pennsylvania Natural Diversity Inventory (PNDI) review to determine if the project will impact plant or animal species, rare natural habitats, or unique geologic features. If, in the course of review, a permitting authority identifies potential impacts to threatened or endangered plant or animal species due to the proposed earth disturbance activities at the site, a qualified consultant must be hired to review the project area to determine if the species of concern is present. HB 1576 will not change the limitations placed on residential builders with regards to the protection of endangered or threatened species. This bill will simply hold agencies accountable to the General Assembly for their current level of regulatory authority.

Historically, misconceptions and misunderstandings about the IRRC process have been able to overshadow the benefits associated with an independent review of regulations. In an effort to add clarity to the process of regulatory review I would like to address those misconceptions as they relate to HB 1576.

This bill will not take away the statutory authority vested in the Fish and Boat Commission, the Game Commission, or DCNR to list or delist endangered species by regulation. Agencies required to promulgate regulations under the RRA maintain primacy over regulatory matters. IRRC cannot force an agency to promulgate a regulation, bar a regulation from promulgation, or usurp regulatory authority from other state agencies. The RRA requires action from the General Assembly to bar a regulation from promulgation.

Second, IRRC is an independent state agency, charged with providing a thorough and objective review of regulations based on specific statutory criteria. To comply with the criteria in the RAA, agencies must disclose the data upon which the regulation is based and explain why the data is valid, consider utilizing methods that will minimize adverse impacts on small businesses, identify the financial, economic and social impacts of regulatory provisions, describe how the regulation will protect the public health, safety and welfare, and respond to all public comments they receive.

Additionally, there are no statutory timelines contained in the RRA that require a two-year promulgation process; agencies control their own promulgation timelines. Statutory timelines contained in the RRA set a 30-day period after the close of the public comment period for IRRC to issue its formal comments. Currently the Fish and Boat Commission must follow the requirements set forth in the Commonwealth Documents Law, the Commonwealth Attorney's Act, and the Administrative Code to promulgate regulations. Under HB 1576, the addition of IRRC review would only add 30 calendar days to the total timeline of a proposed Fish and Boat Commission regulation. PBA could not support any proposal that added an unreasonable extension and delay to the rulemaking process. Efficiency and expediency are at the heart of the construction process and as such, advocating for additional delays would cause our members to lose thousands of dollars every day as projects sit idle.

It is our opinion that the regulatory review process creates an open, accountable process in which regulations are critically examined. The process allows the regulated community, the General Assembly, and IRRC to become integrally involved in the development and oversight of regulations. We believe IRRC's involvement helps to insure agency accountability and judicious use of regulatory authority prior to the imposition of unforeseen costs on small businesses.

On behalf of the Pennsylvania Builders Association and the more than 255,000 members and employees it represents, I thank you again for the opportunity to testify today, and would be happy to take your questions.