

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 236 Session of
2005

INTRODUCED BY PICKETT, REED, TURZAI, BOYD, HUTCHINSON,
McILHATTAN, MUSTIO, REICHLEY, FEESE, ARGALL, ARMSTRONG,
BAKER, BALDWIN, BARRAR, BUNT, CALTAGIRONE, CAPPELLI, CLYMER,
CRAHALLA, CREIGHTON, DALEY, DALLY, ELLIS, FAIRCHILD, FLEAGLE,
GEIST, GINGRICH, GOODMAN, HARHART, HASAY, HENNESSEY, HERSHEY,
HESS, KAUFFMAN, M. KELLER, KENNEY, KILLION, MAHER, MAJOR,
MANN, MCGILL, METCALFE, MILLARD, R. MILLER, S. MILLER,
NAILOR, O'NEILL, READSHAW, ROHRER, SAINATO, SATHER, SAYLOR,
SCAVELLO, SCHRODER, SEMMEL, STERN, R. STEVENSON,
E. Z. TAYLOR, THOMAS, TIGUE, TRUE, WALKO, WASHINGTON, WATSON,
WILT, WRIGHT, YOUNGBLOOD, ZUG, BROWNE, LEH, CAUSER,
DENLINGER, RAPP, HERMAN AND NICKOL, FEBRUARY 8, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MAY 10, 2005

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

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

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

30 (c) This act is intended to improve State rulemaking by

1 creating procedures to analyze the availability of more flexible
2 regulatory approaches for small businesses in accordance with
3 the following findings:

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

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

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

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

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

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

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

28 (8) The practice of treating all regulated businesses
29 similarly may lead to inefficient use of regulatory agency
30 resources, enforcement problems and, in some cases, to

1 actions inconsistent with the legislative intent of health,
2 safety, environmental and economic welfare legislation.

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

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

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

17 (E) A SMALL BUSINESS MAY SEEK SUCH REVIEW DURING THE PERIOD <—
18 BEGINNING ON THE DATE OF FINAL AGENCY ACTION AND ENDING 18
19 MONTHS LATER.

20 ~~(e)~~ (F) This act is not intended to create a right or <—
21 benefit, substantive or procedural, enforceable at law by a
22 person against another person or against the Commonwealth, its
23 agencies or its officers.

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

26 Section 3. Definitions.

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

30 * * *

~~"Small business." As defined by the United States Small
Business Administration's Small Business Size Regulations under
13 CFR Ch. 1 Part 121 (relating to Small Business Size
Regulations).~~

"SMALL BUSINESS." A BUSINESS ENTITY, INCLUDING ITS
AFFILIATES, THAT:

(1) IS INDEPENDENTLY OWNED AND OPERATED; AND

(2) EMPLOYS FEWER THAN 100 FULL-TIME EMPLOYEES OR HAS
GROSS ANNUAL SALES OF LESS THAN \$6,000,000.

* * *

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

Section 5. Proposed regulations; procedures for review.

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

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

(1.1) A specific citation to the Federal or State
statutory or regulatory authority or the decision of a
Federal or State court under which the agency is proposing
the regulation, which the regulation is designed to implement

1 or which may mandate or affect compliance with the
2 regulation.

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

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

6 (4) Estimates of the direct and indirect costs to the
7 Commonwealth, to its political subdivisions and to the
8 private sector. Insofar as the proposed regulation relates to
9 costs to the Commonwealth, the agency may submit in lieu of
10 its own statement the fiscal note prepared by the Office of
11 the Budget pursuant to section 612 of the act of April 9,
12 1929 (P.L.177, No.175), known as "The Administrative Code of
13 1929."

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

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

29 (9) An identification of the types of persons, small
30 businesses, businesses and organizations which would be

1 affected by the regulation.

2 (10) An identification of the financial, economic and
3 social impact of the regulation on individuals, small
4 businesses, business and labor communities and other public
5 and private organizations and, when practicable, an
6 evaluation of the benefits expected as a result of the
7 regulation.

8 (10.1) For any proposed regulation that may have an
9 adverse impact on small businesses, an economic impact
10 statement that includes the following:

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

13 (ii) The projected reporting, recordkeeping and
14 other administrative costs required for compliance with
15 the proposed regulation, including the type of
16 professional skills necessary for preparation of the
17 report or record.

18 (iii) A statement of the probable effect on impacted
19 small businesses.

20 (iv) A description of any less intrusive or less
21 costly alternative methods of achieving the purpose of
22 the proposed regulation.

23 (11) A description of any special provisions which have
24 been developed to meet the particular needs of affected
25 groups and persons, including minorities, the elderly, small
26 businesses and farmers.

27 (12) A description of any alternative regulatory
28 provisions which have been considered and rejected and a
29 statement that the least burdensome acceptable alternative
30 has been selected.

1 (12.1) A regulatory flexibility analysis in which the
2 agency shall, where consistent with health, safety,
3 environmental and economic welfare, consider utilizing
4 regulatory methods that will accomplish the objectives of
5 applicable statutes while minimizing adverse impact on small
6 businesses. The agency shall consider, without limitation,
7 each of the following methods of reducing the impact of the
8 proposed regulation on small businesses:

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

11 (ii) the establishment of less stringent schedules
12 or deadlines for compliance or reporting requirements for
13 small businesses;

14 (iii) the consolidation or simplification of
15 compliance or reporting requirements for small
16 businesses;

17 (iv) the establishment of performance standards for
18 small businesses to replace design or operational
19 standards required in the proposed regulation; and

20 (v) the exemption of small businesses from all or
21 any part of the requirements contained in the proposed
22 regulation.

23 (a.1) Prior to the adoption of any proposed regulation that
24 may have an adverse impact on small businesses, each agency
25 shall notify the commission of its intent to adopt the proposed
26 regulation.

27 * * *

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