

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, TOOHIL AND VULAKOVICH, APRIL 13, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 13, 2011

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
 17 and agencies within the executive branch of government the
 18 authority to adopt rules and regulations to implement those

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

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

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

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

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

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

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

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

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

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

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

30 (9) Alternative regulatory approaches which do not

1 conflict with the stated objective of applicable statutes may
2 be available to minimize the significant economic impact of
3 rules on small businesses.

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

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

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

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

22 Section 3. Definitions.

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

26 * * *

27 "Small business." As defined by the United States Small
28 Business Administration's Small Business Size Regulations under
29 13 CFR Ch. 1 Part 121 (relating to Small Business Size
30 Regulations).

1 * * *

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

5 Section 5. Proposed regulations; procedures for review.

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

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

18 (1.1) A specific citation to the Federal or State
19 statutory or regulatory authority or the decision of a
20 Federal or State court under which the agency is proposing
21 the regulation, which the regulation is designed to implement
22 or which may mandate or affect compliance with the
23 regulation.

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

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

27 (4) Estimates of the direct and indirect costs to the
28 Commonwealth, to its political subdivisions and to the
29 private sector. Insofar as the proposed regulation relates to
30 costs to the Commonwealth, the agency may submit in lieu of

1 its own statement the fiscal note prepared by the Office of
2 the Budget pursuant to section 612 of the act of April 9,
3 1929 (P.L.177, No.175), known as "The Administrative Code of
4 1929."

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

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

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

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

29 (10.1) For any proposed regulation that may have an
30 adverse impact on small businesses, an economic impact

1 statement that includes the following:

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

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

9 (iii) A statement of the probable effect on impacted
10 small businesses.

11 (iv) A description of any less intrusive or less
12 costly alternative methods of achieving the purpose of
13 the proposed regulation.

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

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

22 (12.1) A regulatory flexibility analysis in which the
23 agency shall, where consistent with health, safety,
24 environmental and economic welfare, consider utilizing
25 regulatory methods that will accomplish the objectives of
26 applicable statutes while minimizing adverse impact on small
27 businesses. The agency shall consider, without limitation,
28 each of the following methods of reducing the impact of the
29 proposed regulation on small businesses:

30 (i) the establishment of less stringent compliance

1 or reporting requirements for small businesses;

2 (ii) the establishment of less stringent schedules
3 or deadlines for compliance or reporting requirements for
4 small businesses;

5 (iii) the consolidation or simplification of
6 compliance or reporting requirements for small
7 businesses;

8 (iv) the establishment of performance standards for
9 small businesses to replace design or operational
10 standards required in the proposed regulation; and

11 (v) the exemption of small businesses from all or
12 any part of the requirements contained in the proposed
13 regulation.

14 * * *

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

19 * * *

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