

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1273 Session of 2011

INTRODUCED BY McILHINNEY, ARGALL, GREENLEAF, ERICKSON, RAFFERTY, ALLOWAY, GORDNER, FOLMER, ORIE, KASUNIC, WAUGH, DINNIMAN, BRUBAKER, BROWNE, CORMAN, STACK, WOZNIAK, BAKER, SCARNATI, WARD, ROBBINS, D. WHITE, PIPPY, YAW, TOMLINSON, WASHINGTON, M. WHITE AND BOSCOLA, OCTOBER 4, 2011

REFERRED TO STATE GOVERNMENT, OCTOBER 4, 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  
19 statutes. The General Assembly has found that this delegation of

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

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

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

30 (1) A vibrant and growing small business sector is

1 critical to creating jobs in a dynamic economy.

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

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

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

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

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

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

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

29 (9) Alternative regulatory approaches which do not  
30 conflict with the stated objective of applicable statutes may

1 be available to minimize the significant economic impact of  
2 rules on small businesses.

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

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

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

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

21 Section 3. Definitions.

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

25 \* \* \*

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

30 \* \* \*

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

4 Section 5. Proposed regulations; procedures for review.

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

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

17 (1.1) A specific citation to the Federal or State  
18 statutory or regulatory authority or the decision of a  
19 Federal or State court under which the agency is proposing  
20 the regulation, which the regulation is designed to implement  
21 or which may mandate or affect compliance with the  
22 regulation.

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

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

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

1 the Budget pursuant to section 612 of the act of April 9,  
2 1929 (P.L.177, No.175), known as "The Administrative Code of  
3 1929."

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

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

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

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

28 (10.1) For any proposed regulation that may have an  
29 adverse impact on small businesses, an economic impact  
30 statement that includes the following:

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

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

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

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

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

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

21          (12.1) A regulatory flexibility analysis in which the  
22          agency shall, where consistent with health, safety,  
23          environmental and economic welfare, consider utilizing  
24          regulatory methods that will accomplish the objectives of  
25          applicable statutes while minimizing adverse impact on small  
26          businesses. The agency shall consider, without limitation,  
27          each of the following methods of reducing the impact of the  
28          proposed regulation on small businesses:

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

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

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

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

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

13          \* \* \*

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

18          \* \* \*

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