

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 977 Session of 2017

INTRODUCED BY GORDNER, SCARNATI, MENSCH, VOGEL, FOLMER, WARD, STEFANO, RAFFERTY, BARTOLOTTA, RESCHENTHALER, SCAVELLO, WAGNER AND WHITE, DECEMBER 6, 2017

SENATOR CORMAN, RULES AND EXECUTIVE NOMINATIONS, AS AMENDED, JANUARY 22, 2018

AN ACT

1 Amending the act of June 25, 1982 (P.L.633, No.181), entitled
2 "An act providing for independent oversight and review of
3 regulations, creating an Independent Regulatory Review
4 Commission, providing for its powers and duties and making
5 repeals," further providing for definitions, for proposed
6 regulations and procedures for review, for final-form
7 regulations and final-omitted regulations and procedures for
8 review and for procedures for subsequent review of
9 disapproved final-form or final-omitted regulations.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 3 of the act of June 25, 1982 (P.L.633,
13 No.181), known as the Regulatory Review Act, is amended by
14 adding definitions to read:

15 Section 3. Definitions.

16 The following words and phrases when used in this act shall
17 have, unless the context clearly indicates otherwise, the
18 meanings given to them in this section:

19 * * *

20 "Committee chairperson." Any of the following:

1 (1) The Senator appointed by the President pro tempore
2 of the Senate to serve as a majority chairperson of the
3 committee.

4 (2) The Senator appointed by the Minority Leader of the
5 Senate to serve as a minority chairperson of the committee.

6 (3) The Representative appointed by the Speaker of the
7 House of Representatives to serve as a majority chairperson
8 of the committee.

9 (4) The Representative appointed by the Minority Leader
10 of the House of Representatives to serve as a minority
11 chairperson of the committee.

12 * * *

13 "Legislative day." A day when both houses of the General
14 Assembly are in voting session.

15 * * *

16 Section 2. Sections 5, 5.1(a), (e) and (j.2) and 7(d) of the
17 act are amended to read:

18 Section 5. Proposed regulations; procedures for review.

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

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

1 (1.1) A specific citation to the Federal or State
2 statutory or regulatory authority or the decision of a
3 Federal or State court under which the agency is proposing
4 the regulation, which the regulation is designed to implement
5 or which may mandate or affect compliance with the
6 regulation.

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

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

10 (4) Estimates of the direct and indirect costs to the
11 Commonwealth, to its political subdivisions and to the
12 private sector. Insofar as the proposed regulation relates to
13 costs to the Commonwealth, the agency may submit in lieu of
14 its own statement the fiscal note prepared by the Office of
15 the Budget pursuant to section 612 of the act of April 9,
16 1929 (P.L.177, No.175), known as "The Administrative Code of
17 1929."

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

24 (7) A schedule for review of the proposed regulation,
25 including the date by which the agency must receive comments;
26 the date or dates on which public hearings will be held; the
27 expected date of promulgation of the proposed regulation as a
28 final-form regulation; the expected effective date of the
29 final-form regulation; the date by which compliance with the
30 final-form regulation will be required; and the date by which

1 required permits, licenses or other approvals must be
2 obtained.

3 (9) An identification of the types of persons, small
4 businesses, businesses and organizations which would be
5 affected by the regulation.

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

12 (10.1) For any proposed regulation that may have an
13 adverse impact on small businesses, an economic impact
14 statement that includes the following:

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

17 (ii) The projected reporting, recordkeeping and
18 other administrative costs required for compliance with
19 the proposed regulation, including the type of
20 professional skills necessary for preparation of the
21 report or record.

22 (iii) A statement of the probable effect on impacted
23 small businesses.

24 (iv) A description of any less intrusive or less
25 costly alternative methods of achieving the purpose of
26 the proposed regulation.

27 (11) A description of any special provisions which have
28 been developed to meet the particular needs of affected
29 groups and persons, including minorities, the elderly, small
30 businesses and farmers.

1 (12) A description of any alternative regulatory
2 provisions which have been considered and rejected and a
3 statement that the least burdensome acceptable alternative
4 has been selected.

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

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

15 (ii) the establishment of less stringent schedules
16 or deadlines for compliance or reporting requirements for
17 small businesses;

18 (iii) the consolidation or simplification of
19 compliance or reporting requirements for small
20 businesses;

21 (iv) the establishment of performance standards for
22 small businesses to replace design or operational
23 standards required in the proposed regulation; and

24 (v) the exemption of small businesses from all or
25 any part of the requirements contained in the proposed
26 regulation.

27 (13) A description of the plan developed for evaluating
28 the continuing effectiveness of the regulation after its
29 implementation.

30 (14) A description of any data upon which a regulation

1 is based with a detailed explanation of how the data was
2 obtained and why the data is acceptable data. An agency
3 advocating that any data is acceptable data shall have the
4 burden of proving that the data is acceptable.

5 (a.1) The committee chairpersons shall, within five business
6 days OF RECEIPT, distribute to each committee member of the <--
7 committee chairperson's caucus a copy of the information
8 submitted to the committee chairpersons under subsection (a).
9 Committee chairpersons may distribute an electronic copy of the
10 information in lieu of a paper copy. The information required
11 under subsection (a)(3) or any other statement of purpose for
12 the regulation may be submitted to the commission and the
13 committee chairpersons, but may not be submitted to the
14 Legislative Reference Bureau for publication of notice of
15 proposed rulemaking in the Pennsylvania Bulletin.

16 (b) The requirements of subsection (a) shall not diminish
17 the requirements of section 201 of the Commonwealth Documents
18 Law, but the information required by this section may be
19 included in the Notice of Proposed Rulemaking published in the
20 Pennsylvania Bulletin in lieu of the information required by
21 paragraphs (2) and (3) of section 201 of the Commonwealth
22 Documents Law. The agency shall hold a public comment period
23 which shall commence with the publication of the notice of
24 proposed rulemaking and shall continue for not less than 30 days
25 unless section 203(1) or (2) of the Commonwealth Documents Law
26 applies.

27 (c) From the date of submission of the proposed regulation,
28 the agency shall submit to the commission and the [committees]
29 committee chairpersons, within five business days of receipt, a
30 copy of comments which the agency receives relating to the

1 proposed regulation. The agency shall also, upon request, submit
2 to the commission and the [committees] committee chairpersons
3 copies of reports from advisory groups and other documents
4 received from or disseminated to the public relating to the
5 proposed regulation and public notices or announcements relating
6 to solicitation of public comments or meetings which the agency
7 held or will hold relating to the proposed regulation. The
8 committee chairpersons shall, within five business days of
9 receipt, distribute to each committee member of the committee
10 chairperson's caucus any information received under this
11 subsection. A committee chairperson may distribute an electronic
12 copy of the information in lieu of a paper copy.

13 (d) [The] Any member of the committees may, at any time
14 prior to the submittal of the regulation in final-form, convey
15 to the agency and the commission their comments, recommendations
16 and objections to the proposed regulation and a copy of any
17 staff reports deemed pertinent. The comments, recommendations
18 and objections may refer to the criteria in section 5.2. A
19 committee member making a comment, recommendation or objection
20 to the proposed regulation shall also submit the comments to
21 each committee chairperson. The majority committee chairperson
22 may convene a meeting of the committee to adopt any comment,
23 recommendation or objection to the proposed regulations or may
24 conduct an informational hearing on the proposed regulations.
25 The majority committee chairperson shall conduct an
26 informational hearing if petitioned to do so by a majority of
27 the committee members.

28 (f) An agency may not submit a proposed regulation to the
29 committees for review during the period from the end of the
30 legislative session in an even-numbered year to the date by

1 which both committees have been designated in the next
2 succeeding legislative session, but an agency may submit a
3 proposed regulation and the material required under subsection
4 (a) to the commission and the Legislative Reference Bureau
5 during this period in accordance with subsection (a). The public
6 comment period shall commence with the publication of the notice
7 of proposed rulemaking and end on the date designated by the
8 agency under subsection (b). The agency shall submit the
9 proposed regulation and required material to the committees no
10 later than the second Monday after the date by which both
11 committee designations have been published in the Pennsylvania
12 Bulletin. If the agency does not deliver the proposed regulation
13 and all material required under this section in the time
14 prescribed in this subsection, the agency shall be deemed to
15 have withdrawn the proposed regulation.

16 (g) The commission may, within thirty days after the close
17 of the public comment period, convey to the agency and
18 [committees] committee chairpersons any comments,
19 recommendations and objections to the proposed regulation. The
20 committee chairpersons shall, within five business days of
21 receipt, distribute the commission's comments, recommendations
22 or objections to the proposed regulation to the committee
23 members of the committee chairperson's caucus. The comments,
24 recommendations and objections shall specify the regulatory
25 review criterion set forth in section 5.2 which the proposed
26 regulation has not met. If the commission does not comment on,
27 make recommendations regarding or object to any portion of the
28 proposed regulation within the time provided in this subsection,
29 the commission shall be deemed to have approved that portion of
30 the proposed regulation. Disapproval of the final-form

1 regulation by the commission shall relate only to comments,
2 recommendations and objections raised by the commission to the
3 proposed regulation; to changes which the agency made to the
4 proposed regulation; or to recommendations, comments or
5 objections which a committee conveyed to the agency or the
6 commission.

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 5.1. Final-form regulations and final-omitted
11 regulations; procedures for review.

12 (a) The agency shall review and consider public comments and
13 the comments of the committees and commission pursuant to this
14 section. Within five business days of receipt of a public
15 comment, the agency shall notify the commentator of the agency's
16 address and telephone number where the commentator may submit a
17 request for the information concerning the final-form regulation
18 under subsection (b). Upon completion of the agency's review of
19 comments, the agency shall submit to the commission and the
20 [committees] committee chairpersons a copy of its response to
21 the comments received, the names and addresses of commentators
22 who have requested additional information relating to the final-
23 form regulation and the text of the final-form regulation which
24 the agency intends to adopt. A committee chairperson shall,
25 within five business days of receipt, distribute the information
26 required under this subsection to the committee members of the
27 committee chairperson's caucus. If an agency does not submit or
28 withdraws and does not resubmit the final-form regulation within
29 two years of the close of the public comment period but still
30 desires to promulgate the final-form regulation, the agency

1 shall republish the regulation as a proposed regulation with a
2 new public comment period in accordance with the Commonwealth
3 Documents Law. If the agency is prevented from delivering its
4 final-form regulation to the commission and the committees
5 within the time period provided for in this subsection because
6 of the adjournment sine die or expiration of the legislative
7 session in an even-numbered year, the agency shall deliver its
8 final-form regulation in accordance with subsection (f).

9 * * *

10 (e) The commission may have until its next scheduled meeting
11 which occurs no less than 30 days after receipt of the final-
12 form or final-omitted regulation to approve or disapprove the
13 final-form or final-omitted regulation. Notwithstanding
14 subsections (j.1) and (j.2), at any time prior to 24 hours
15 before the commission's meeting to consider a regulation, a
16 committee chairperson, as authorized by a majority of the
17 committee's members, may notify the commission and the agency
18 that the committee disapproves or intends to further review the
19 final-form regulation. If notified by a committee that it
20 disapproves or intends to further review a regulation, the
21 commission may not approve or disapprove the regulation for a
22 period of 30 days or until the commission's next scheduled
23 meeting, whichever is longer. The commission shall notify the
24 agency and the committees of its approval or disapproval. If the
25 commission does not disapprove the final-form or final-omitted
26 regulation within the time allotted in this subsection, the
27 commission shall be deemed to have approved the final-form or
28 final-omitted regulation.

29 * * *

30 (j.2) At any time during the commission's review period up

1 to 24 hours prior to the opening of the commission's public
2 meeting, a committee may notify the commission and the agency
3 that it has approved or disapproved a final-form or final-
4 omitted regulation or that it intends to review the regulation
5 in accordance with subsection (e). [If the commission approves a
6 regulation and a committee has not notified the commission and
7 the agency that it has disapproved the regulation or that it
8 intends to review the regulation, the agency may promulgate the
9 regulation.] If the commission approves a regulation and a
10 committee has notified the commission and the agency that it has
11 disapproved the regulation or that it intends to review the
12 regulation, the agency may not promulgate the regulation for 14
13 days or six legislative days, whichever is longer, after the
14 committee has received the commission's approval order. During
15 this 14-day [period] or six-legislative-day period, whichever is
16 longer, the committee may take action on the regulation pursuant
17 to section 7(d). If at the expiration of the 14-day [period] or
18 six-legislative-day period, whichever is longer, the committee
19 has not taken action on the regulation pursuant to section 7(d),
20 the agency may promulgate the regulation.

21 * * *

22 Section 7. Procedures for subsequent review of disapproved
23 final-form or final-omitted regulations.

24 * * *

25 (d) Upon receipt of the commission's order pursuant to
26 subsection (c.1) or at the expiration of the commission's review
27 period if the commission does not act on the regulation or does
28 not deliver its order pursuant to subsection (c.1), [one] the
29 following apply:

30 (1) One or both of the committees may, within 14 calendar

1 days or six legislative days, whichever is longer, report to the
2 House of Representatives or Senate a concurrent resolution and
3 notify the agency. During the [14-calendar-day] period specified
4 in this paragraph, the agency may not promulgate the final-form
5 or final-omitted regulation. If, by the expiration of the [14-
6 calendar-day] period specified in this paragraph, neither
7 committee reports a concurrent resolution, the committees shall
8 be deemed to have approved the final-form or final-omitted
9 regulation, and the agency may promulgate that regulation.

10 (2) If either committee reports a concurrent resolution
11 before the expiration of the [14-day] period specified in
12 paragraph (1), the Senate and the House of Representatives shall
13 each have 30 calendar days or ten legislative days, whichever is
14 longer, from the date on which the concurrent resolution has
15 been reported from either the standing committee in the Senate
16 or House of Representatives, to adopt the concurrent resolution.

17 (3) If the General Assembly adopts the concurrent resolution
18 by majority vote in both the Senate and the House of
19 Representatives within the period specified in paragraph (2),
20 the concurrent resolution shall be presented to the Governor in
21 accordance with section 9 of Article III of the Constitution of
22 Pennsylvania.

23 (4) If the Governor does not return the concurrent
24 resolution to the General Assembly within ten calendar days
25 after it is presented, the Governor shall be deemed to have
26 approved the concurrent resolution.

27 (5) If the Governor vetoes the concurrent resolution, the
28 General Assembly may override that veto by a two-thirds vote in
29 each house. The Senate and the House of Representatives shall
30 each have 30 calendar days or ten legislative days, whichever is

1 longer, to override the veto. If the General Assembly does not
2 adopt the concurrent resolution or override the veto in the time
3 prescribed in this [subsection] paragraph, it shall be deemed to
4 have approved the final-form or final-omitted regulation.

5 (6) Notice as to any final disposition of a concurrent
6 resolution considered in accordance with this [section]
7 subsection shall be published in the Pennsylvania Bulletin.

8 (7) The bar on promulgation of the final-form or final-
9 omitted regulation shall continue until that regulation has been
10 approved or deemed approved in accordance with this subsection.

11 (8) If the General Assembly adopts the concurrent resolution
12 and the Governor approves or is deemed to have approved the
13 concurrent resolution or if the General Assembly overrides the
14 Governor's veto of the concurrent resolution, the agency shall
15 be barred from promulgating the final-form or final-omitted
16 regulation.

17 (9) If the General Assembly does not adopt the concurrent
18 resolution or if the Governor vetoes the concurrent resolution
19 and the General Assembly does not override the Governor's veto,
20 the agency may promulgate the final-form or final-omitted
21 regulation.

22 (10) The General Assembly may, at its discretion, adopt a
23 concurrent resolution disapproving the final-form or final-
24 omitted regulation to indicate the intent of the General
25 Assembly but permit the agency to promulgate that regulation.

26 Section 3. This act shall take effect in 60 days.