

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 965 Session of 2015

INTRODUCED BY GODSHALL, KILLION, TOEPEL, METZGAR, BARRAR, CAUSER, PICKETT, MILLARD, QUIGLEY, MURT AND MOUL, APRIL 14, 2015

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 24, 2015

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 definitions, for
6 proposed regulations and procedures for review, for final-
7 form regulations and final-omitted regulations and procedures
8 for review and for procedures for subsequent review of
9 disapproved final-form or final-omitted regulations by the
10 commission.

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

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

16 Section 3. Definitions.

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

20 * * *

21 "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. Section 5(a), (c), (d) and (g) of the act,
17 amended December 6, 2002 (P.L.1227, No.148) and June 29, 2012
18 (P.L.657, No.76), are amended and the section is amended by
19 adding a subsection to read:

20 Section 5. Proposed regulations; procedures for review.

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

28 (1) The title of the agency and the names, office
29 addresses and telephone numbers of the agency officials
30 responsible for responding to questions regarding the

1 regulation or for receiving comments relating to the
2 regulation.

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

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

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

12 (4) Estimates of the direct and indirect costs to the
13 Commonwealth, to its political subdivisions and to the
14 private sector. Insofar as the proposed regulation relates to
15 costs to the Commonwealth, the agency may submit in lieu of
16 its own statement the fiscal note prepared by the Office of
17 the Budget pursuant to section 612 of the act of April 9,
18 1929 (P.L.177, No.175), known as "The Administrative Code of
19 1929."

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

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

1 final-form regulation; the date by which compliance with the
2 final-form regulation will be required; and the date by which
3 required permits, licenses or other approvals must be
4 obtained.

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

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

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

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

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

24 (iii) A statement of the probable effect on impacted
25 small businesses.

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

29 (11) A description of any special provisions which have
30 been developed to meet the particular needs of affected

1 groups and persons, including minorities, the elderly, small
2 businesses and farmers.

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

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

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

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

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

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

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

29 (13) A description of the plan developed for evaluating
30 the continuing effectiveness of the regulation after its

1 implementation.

2 (14) A description of any data upon which a regulation
3 is based with a detailed explanation of how the data was
4 obtained and why the data is acceptable data. An agency
5 advocating that any data is acceptable data shall have the
6 burden of proving that the data is acceptable.

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

18 * * *

19 (c) From the date of submission of the proposed regulation,
20 the agency shall submit to the commission and the [committees]
21 committee chairpersons, within five business days of receipt, a
22 copy of comments which the agency receives relating to the
23 proposed regulation. The agency shall also, upon request, submit
24 to the commission and the [committees] committee chairpersons
25 copies of reports from advisory groups and other documents
26 received from or disseminated to the public relating to the
27 proposed regulation and public notices or announcements relating
28 to solicitation of public comments or meetings which the agency
29 held or will hold relating to the proposed regulation. The
30 committee chairpersons shall, within five business days of

1 receipt, distribute to each committee member of the committee
2 chairperson's caucus any information received pursuant to this
3 subsection. A committee chairperson may distribute an electronic
4 copy of the information in lieu of a paper copy.

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

20 * * *

21 (g) The commission may, within thirty days after the close
22 of the public comment period, convey to the agency and
23 [committees] committee chairpersons any comments,
24 recommendations and objections to the proposed regulation. The
25 committee chairpersons shall, within five business days of
26 receipt, distribute the commission's comments, recommendations
27 or objections to the proposed regulation to the committee
28 members of the committee chairperson's caucus. The comments,
29 recommendations and objections shall specify the regulatory
30 review criterion set forth in section 5.2 which the proposed

1 regulation has not met. If the commission does not comment on,
2 make recommendations regarding or object to any portion of the
3 proposed regulation within the time provided in this subsection,
4 the commission shall be deemed to have approved that portion of
5 the proposed regulation. Disapproval of the final-form
6 regulation by the commission shall relate only to comments,
7 recommendations and objections raised by the commission to the
8 proposed regulation; to changes which the agency made to the
9 proposed regulation; or to recommendations, comments or
10 objections which a committee conveyed to the agency or the
11 commission.

12 * * *

13 Section 3. Sections 5.1(a), (e) and (j.2) and 7(d) of the
14 act, amended December 6, 2002 (P.L.1227, No.148), are amended to
15 read:

16 Section 5.1. Final-form regulations and final-omitted
17 regulations; procedures for review.

18 (a) The agency shall review and consider public comments and
19 the comments of the committees and commission pursuant to this
20 section. Within five business days of receipt of a public
21 comment, the agency shall notify the commentator of the agency's
22 address and telephone number where the commentator may submit a
23 request for the information concerning the final-form regulation
24 under subsection (b). Upon completion of the agency's review of
25 comments, the agency shall submit to the commission and the
26 [committees] committee chairpersons a copy of its response to
27 the comments received, the names and addresses of commentators
28 who have requested additional information relating to the final-
29 form regulation and the text of the final-form regulation which
30 the agency intends to adopt. A committee chairperson must,

1 within five business days of receipt, distribute the information
2 required under this subsection to the committee members of the
3 committee chairperson's caucus. If an agency does not submit or
4 withdraws and does not resubmit the final-form regulation within
5 two years of the close of the public comment period but still
6 desires to promulgate the final-form regulation, the agency
7 shall republish the regulation as a proposed regulation with a
8 new public comment period in accordance with the Commonwealth
9 Documents Law. If the agency is prevented from delivering its
10 final-form regulation to the commission and the committees
11 within the time period provided for in this subsection because
12 of the adjournment sine die or expiration of the legislative
13 session in an even-numbered year, the agency shall deliver its
14 final-form regulation in accordance with subsection (f).

15 * * *

16 (e) The commission may have until its next scheduled meeting
17 which occurs no less than 30 days after receipt of the final-
18 form or final-omitted regulation to approve or disapprove the
19 final-form or final-omitted regulation. Notwithstanding
20 subsections (j.1) and (j.2), at any time prior to 24 hours
21 before the commission's meeting to consider a regulation, a
22 committee may notify the commission and the agency that the
23 committee disapproves or intends to further review the final-
24 form regulation. If notified by a committee that it disapproves
25 of a regulation, the commission may not approve or disapprove
26 the regulation for a period of 30 days or 9 legislative days,
27 whichever is longer. If notified by a committee that the
28 committee intends to further review a final-form regulation, the
29 commission may not approve or disapprove the regulation for a
30 period of 14 days or 6 legislative days, whichever is longer.

1 The commission shall notify the agency and the committees of its
2 approval or disapproval. If the commission does not disapprove
3 the final-form or final-omitted regulation within the time
4 allotted in this subsection, the commission shall be deemed to
5 have approved the final-form or final-omitted regulation.

6 * * *

7 (j.2) At any time during the commission's review period up
8 to 24 hours prior to the opening of the commission's public
9 meeting, a committee may notify the commission and the agency
10 that it has approved or disapproved a final-form or final-
11 omitted regulation or that it intends to review the regulation.
12 [If the commission approves a regulation and a committee has not
13 notified the commission and the agency that it has disapproved
14 the regulation or that it intends to review the regulation, the
15 agency may promulgate the regulation.] If the commission
16 approves a regulation and a committee has notified the
17 commission and the agency that it has disapproved the regulation
18 or that it intends to review the regulation, the agency may not
19 promulgate the regulation for 14 days or 6 legislative days,
20 whichever is longer, after the committee has received the
21 commission's approval order. During this [14-day] period, the <--
22 committee may take action on the regulation pursuant to section
23 7(d). If at the expiration of [the 14-day] THIS period the <--
24 committee has not taken action on the regulation pursuant to
25 section 7(d), the agency may promulgate the regulation.

26 * * *

27 Section 7. Procedures for subsequent review of disapproved
28 final-form or final-omitted regulations.

29 * * *

30 (d) Upon receipt of the commission's order pursuant to

1 subsection (c.1) or at the expiration of the commission's review
2 period if the commission does not act on the regulation or does
3 not deliver its order pursuant to subsection (c.1), one or both
4 of the committees may, within 14 calendar days or 6 legislative
5 days, whichever is longer, report to the House of
6 Representatives or Senate a concurrent resolution and notify the
7 agency. During the 14-calendar-day or 6-legislative-day period,
8 the agency may not promulgate the final-form or final-omitted
9 regulation. If, by the expiration of the 14-calendar-day or 6-
10 legislative-day period, neither committee reports a concurrent
11 resolution, the committees shall be deemed to have approved the
12 final-form or final-omitted regulation, and the agency may
13 promulgate that regulation. If either committee reports a
14 concurrent resolution before the expiration of the [14-day] 14-
15 calendar-day or 6-legislative-day period, the Senate [and] or
16 the House of Representatives shall each have 30 calendar days or
17 ten legislative days, whichever is longer, from the date on
18 which the concurrent resolution has been reported, to adopt the
19 concurrent resolution. If the General Assembly adopts the
20 concurrent resolution by majority vote in both the Senate and
21 the House of Representatives within 60 calendar days or 15
22 legislative days, whichever is longer, from the date on which a
23 concurrent resolution has been reported out by a committee, the
24 concurrent resolution shall be presented to the Governor in
25 accordance with section 9 of Article III of the Constitution of
26 Pennsylvania. If the Governor does not return the concurrent
27 resolution to the General Assembly within ten calendar days
28 after it is presented, the Governor shall be deemed to have
29 approved the concurrent resolution. If the Governor vetoes the
30 concurrent resolution, the General Assembly may override that

1 veto by a two-thirds vote in each house. The Senate and the
2 House of Representatives shall each have 30 calendar days or ten
3 legislative days, whichever is longer, to override the veto. If
4 the General Assembly does not adopt the concurrent resolution or
5 override the veto in the time prescribed in this subsection, it
6 shall be deemed to have approved the final-form or final-omitted
7 regulation. Notice as to any final disposition of a concurrent
8 resolution considered in accordance with this section shall be
9 published in the Pennsylvania Bulletin. The bar on promulgation
10 of the final-form or final-omitted regulation shall continue
11 until that regulation has been approved or deemed approved in
12 accordance with this subsection. If the General Assembly adopts
13 the concurrent resolution and the Governor approves or is deemed
14 to have approved the concurrent resolution or if the General
15 Assembly overrides the Governor's veto of the concurrent
16 resolution, the agency shall be barred from promulgating the
17 final-form or final-omitted regulation. If the General Assembly
18 does not adopt the concurrent resolution or if the Governor
19 vetoes the concurrent resolution and the General Assembly does
20 not override the Governor's veto, the agency may promulgate the
21 final-form or final-omitted regulation. The General Assembly
22 may, at its discretion, adopt a concurrent resolution
23 disapproving the final-form or final-omitted regulation to
24 indicate the intent of the General Assembly but permit the
25 agency to promulgate that regulation.

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