

No. 1989-19

## AN ACT

SB 1093

Reenacting and amending the act of June 25, 1982 (P.L.633, No.181), entitled, as reenacted and amended, "An act providing for independent oversight and review of regulations, creating an Independent Regulatory Review Commission, providing for its powers and duties and making repeals," further providing for the membership of the Independent Regulatory Review Commission and for the procedure for regulatory review; changing the termination date for the commission; and making repeals.

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

Section 1. The title and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, reenacted and amended February 21, 1986 (P.L.47, No.16) and amended December 16, 1986 (P.L.1625, No.185), are reenacted and amended to read:

## AN ACT

Providing for independent oversight and review of regulations, creating an Independent Regulatory Review Commission, providing for its powers and duties and making repeals.

Section 1. Short title.

This act shall be known and may be cited as the "Regulatory Review Act."

Section 2. Legislative intent.

The General Assembly has enacted a large number of statutes conferring on boards, commissions, departments and other agencies of the executive branch of government the authority to adopt rules and regulations to supplement and implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must provide a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power to curtail excessive regulation and to establish a system of accountability so that the bureaucracy must justify its use of the regulatory authority before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for continuing and effective review, accountability and oversight. It is the further intent of this act to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that responsibility. It is the further intent of this act to provide ultimate review by the General Assembly of those regulations **[which may be contrary to the public interest]**. This act is intended to provide a method of oversight and review of regulations issued by executive agencies to assist the Governor and the General Assembly in their supervisory and oversight functions and it is

not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Commonwealth, its agencies, officers or any person.

Section 3. Definitions.

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

“Agency.” Any department, departmental administrative board or commission, independent board or commission, agency or other authority of this Commonwealth now existing or hereafter created, but shall not include the Senate or the House of Representatives, the Pennsylvania Fish Commission, the Pennsylvania Game Commission[, the **Independent Regulatory Review Commission**,] or any court, political subdivision, municipal or local authority.

“Commission.” The Independent Regulatory Review Commission.

“Designated standing committee.” A standing committee of the House of Representatives or the Senate designated by the Speaker of the House of Representatives for the House and the President pro tempore of the Senate for the Senate which designation shall prescribe the jurisdiction of each standing committee over the various State agencies for purposes of this act.

“*Final-form regulation.*” *A regulation submitted by an agency to the commission and the designated standing committees following the close of the public comment period, as provided by section 201 of the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law.*

“Regulation.” Any rule or regulation, or order in the nature of a rule or regulation, promulgated by an agency under statutory authority in the administration of any statute administered by or relating to the agency, or prescribing the practice or procedure before such agency. *The term shall also include actions of the Liquor Control Board which have an effect on the discount rate for retail licensees.* The term shall not include a proclamation, executive order, directive or similar document promulgated by the Governor, but shall include a regulation which may be promulgated by an agency, only with the approval of the Governor.

Section 4. Creation of commission; membership, compensation; vacancies; removal.

**[(a) The Independent Regulatory Review Commission shall consist of five members to be known as commissioners. One member of the commission shall be appointed by the Governor to serve at his pleasure, one by the President pro tempore of the Senate, one by the Speaker of the House of Representatives, one by the Minority Leader of the Senate and one by the Minority Leader of the House of Representatives. No member of the General Assembly or any other officer or employee of State Government shall serve as a member of the commission.**

**(b) Of the original members, the two members appointed by the Speaker of the House and the Minority Leader of the House of Representatives respectively shall serve for an initial term of two years and the two members appointed by the President pro tempore of the Senate and the Minority**

**Leader of the Senate respectively shall serve for an initial term of three years. Thereafter, except as may be provided by section 3 of this amendatory act, each appointment provided for by this act shall be for a term of three years and such appointments shall be made in the same manner as the original appointments.**

**(c) All vacancies shall be filled, for the remainder of the unexpired term, in the same manner as original appointments. Any commissioner, upon the expiration of his term, shall continue to hold office until his successor shall be appointed.**

**(d) The commissioners shall receive \$125 per day as compensation for their services. The commissioners shall also be entitled to reimbursement for travel and other necessary expenses incurred as a result of their duties as members of the commission. The expenses incurred by the commissioners, or by any employees of the commission, shall be allowed and paid on the presentation of itemized vouchers therefor, which vouchers shall be subject to the approval of the commission.**

**(e) Except as authorized pursuant to this section and except for the Governor's appointee who shall serve at his pleasure, no commissioner may be removed from office during his term. The Governor may, with the approval of two-thirds of the members of the Senate, upon a clear and convincing evidence of misfeasance or malfeasance in office or neglect of duty, remove a commissioner prior to the expiration of the term. The Governor shall provide the commissioner so removed with a detailed written statement of the reasons for his removal.**

**(f) Any member of the commission formally charged before a court of record with the commission of a felony shall immediately be suspended as a member of the commission until the charge is dismissed or a verdict of acquittal is announced. If any commission member shall be convicted of a felony, then that commissioner's membership shall become vacant automatically upon announcement of the verdict by a trial court or upon acceptance of a plea of guilty or nolo contendere. No commission member shall participate in deliberations regarding any regulation in which he, or any member of his family, has a financial interest.**

**(g) Within two weeks following the appointment of a quorum of the commission, the Governor shall convene an organization meeting of the commission and the Governor or his designee shall preside at such meeting until a chairman shall be elected.**

**(h) A chairman shall be elected by the commission who shall serve for a term of two years and until his successors shall be elected. The chairman shall preside at meetings of the commission and shall execute documents relating to the formal actions of the commission.**

**(i) The commission shall meet at least twice a month at such times and places as shall be set by the chairman. A commissioner who fails to attend three consecutive meetings without cause shall be removed as a commissioner by the authority appointing the commissioner.**

**(j) For purposes of conducting official business, a quorum shall consist of four members.]**

*(a) The Independent Regulatory Review Commission shall consist of five members to be known as commissioners. One member of the commission shall be appointed by the Governor to serve at his pleasure, one by the President pro tempore of the Senate, one by the Speaker of the House of Representatives, one by the Minority Leader of the Senate and one by the Minority Leader of the House of Representatives. No member of the General Assembly or any other officer or employee of State Government shall serve as a member of the commission: Provided, however, That a commission member may serve on advisory boards and commissions, or on other boards and commissions which do not promulgate any rules and regulations which may come before the commission for review pursuant to this act.*

*(b) Of the original members, the two members appointed by the Speaker of the House and the Minority Leader of the House of Representatives respectively shall serve for an initial term of two years and the two members appointed by the President pro tempore of the Senate and the Minority Leader of the Senate respectively shall serve for an initial term of three years. Thereafter, each appointment provided for by this act shall be for a term of three years and such appointments shall be made in the same manner as the original appointments. From the time of original appointment to the commission, no commissioner may serve more than two full terms consecutively. A commissioner initially appointed to serve the remainder of an unexpired term shall, in addition thereto, be eligible to be appointed to, and to serve, two full terms.*

*(c) All vacancies shall be filled, for the remainder of the unexpired term, in the same manner as original appointments. Any commissioner, upon the expiration of his term, shall continue to hold office until his successor shall be appointed.*

*(d) The commissioners shall receive \$125 per day as compensation for their services. The commissioners shall also be entitled to reimbursement for travel and other necessary expenses incurred as a result of their duties as members of the commission. The expenses incurred by the commissioners, or by any employees of the commission, shall be allowed and paid on the presentation of itemized vouchers therefor, which vouchers shall be subject to the approval of the commission.*

*(e) Except as authorized pursuant to this section and except for the Governor's appointee who shall serve at his pleasure, no commissioner may be removed from office during his term. The Governor may, with the approval of two-thirds of the members of the Senate, upon a clear and convincing evidence of misfeasance or malfeasance in office or neglect of duty, remove a commissioner prior to the expiration of the term. The Governor shall provide the commissioner so removed with a detailed written statement of the reasons for his removal.*

*(f) Any member of the commission formally charged before a court of record with the commission of a felony or with a misdemeanor as provided by 18 Pa.C.S. Pt. II Art. E (relating to offenses against public administration) shall immediately be suspended as a member of the commission until the charge is dismissed or a verdict of acquittal is announced. If any commis-*

*sion member shall be found guilty of such offense, then that commissioner's membership shall become vacant automatically upon announcement of the verdict by a trial court or upon acceptance of a plea of guilty or nolo contendere. No commission member shall participate in deliberations regarding any regulation which significantly affects the operation or activities of any organization (except a nonprofit organization certified under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) in which the commission member holds a nonsalaried position) in which he, or any member of his family, has a substantial economic interest or serves as an officer, director, trustee, partner or employee. Within 90 days of appointment, and annually thereafter, each commission member shall disclose the existence of all business affiliations and financial interests. The disclosure statement shall be filed with the executive director of the Independent Regulatory Review Commission and the Ethics Commission and shall be available for public inspection during business hours of the commission. Each disclosure statement shall remain on file as long as the commission member to which it applies remains on the commission. Prior to any vote upon any regulation upon which any member feels he or any other commissioner has a potential conflict of interest, such member shall disclose such potential conflict and request a ruling from the chairman of the commission upon the question of whether such potential conflict disqualifies the member from voting on the regulation. Any member of the commission may challenge the ruling of the chairman, and in such case the question shall be resolved by majority vote of the commission. The chairman or a majority of the commissioners may request the Ethics Commission to provide advice regarding conflicts of interest, and such advice, when given, shall be binding upon the commission. A member of the commission commits a misdemeanor of the second degree if such member knowingly and intentionally violates the provisions of this subsection. No person who acts in good faith on an opinion issued to him by the chairman or the Ethics Commission shall be subject to criminal or civil penalties levied under the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, for so acting, provided the material facts are as stated in the request for an opinion.*

*(g) A chairman shall be elected by the commission who shall serve for a term of two years and until his successors shall be elected. The chairman shall preside at meetings of the commission and shall execute documents relating to the formal actions of the commission.*

*(h) The commission shall meet at least twice a month at such times and places as shall be set by the chairman. A commissioner who fails to attend three consecutive meetings without cause shall be removed as a commissioner by the authority appointing the commissioner.*

*(i) For purposes of conducting official business, a quorum shall consist of three members. Members must be physically present to be counted toward the quorum. If the commission is unable to conduct business for lack of a quorum, the deadline for the commission to notify the agency of an objection in accordance with section 6(a) or to issue an order in accordance with*

*section 7(c) shall be postponed for 30 days or until the next meeting at which a quorum is in attendance, whichever first occurs.*

Section 5. Proposed regulation; criteria for review, existing regulations.

(a) For proposed regulations, submitted after the effective date of this section, at the same time that proposed regulations and any changes thereto are submitted to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin as required by the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the agency proposing the regulation shall **[forward] submit** a copy of **[such proposal] the proposed regulation** to the commission and the designated standing committee of each House of the General Assembly **[and additional information including but not limited to the following:]**. *The agency proposing the regulation shall hold a public comment period of at least 30 days, beginning with publication of the notice of proposed rulemaking in the Pennsylvania Bulletin. At the same time the agency submits the proposed regulation, it shall deliver additional information to the commission and the designated standing committees, including, but not limited to, the following:*

(1) The name of the agency proposing the regulation and a statement of the statutory or other authority under which the regulation or change is proposed and if such regulation or change is proposed to implement the requirements of Federal statute or Federal regulation, such Federal statute or regulation shall be cited with specificity.

(2) A brief explanation of the proposed regulation or change.

(3) A statement of the need for the regulation or change.

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

(5) A statement of legal, accounting or consultant procedures which may be required for implementation of the regulation by those affected by it.

(6) A statement of any additional reporting, recordkeeping or other paperwork required by the proposed regulations including copies of any forms or reports which will be required in the implementation of the proposed regulation.

(7) An outline of conformance *with the public comment period* and relevant dates including dates by which comments must be received, dates of proposed public hearings, the effective date of final regulations, date by which compliance with the proposed regulations will be required, including the date by which any required permits, licenses or other approvals must be obtained.

(8) The name of the author or authors of the regulation with their office address and phone numbers included.

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

(10) Identification of any other regulations which would be affected by the regulation.

The requirements of this section shall not diminish the Notice of Proposed Rulemaking requirements of the Commonwealth Documents Law but the information required by this section may be included in the Notice of Proposed Rulemaking requirement for publication in the Pennsylvania Bulletin in lieu of the information required by paragraphs (2) and (3) of section 201 of the Commonwealth Documents Law. The commission may waive an information requirement of this section for a proposed regulation when any specific requirement is deemed by the commission to be unnecessary or inappropriate.

(b) In addition to the requirements of subsection (a), for regulations which impose *gross* fiscal impacts on *either* the public sector, *the* private sector, or both of over \$1,000,000, in any year, or which impose other major impacts as determined by the commission, the agency proposing the regulation shall forward at the request of the commission *or the designated standing committee of either House of the General Assembly* a written regulatory analysis. Such regulatory analysis shall state:

(1) the financial, economic and social impacts of the regulation on individuals, business and labor communities or other public and private organizations. When practicable, an evaluation of the benefits expected as a result of the regulation should be included;

(2) that alternative approaches have been considered and the least burdensome acceptable alternative has been selected;

(3) that, in arriving at the acceptable alternative, consideration was given to minimizing new reporting, accounting and legal requirements;

(4) that a plan for the evaluation of the effectiveness of the regulation after its issuance has been developed; and

(5) the manner in which, when it is lawful, desirable and feasible, special provisions have been developed to meet the particular needs of affected groups and persons including, but not limited to: minorities, elderly, small businesses and farmers.

*(b.1) From the date of submittal of the proposed regulation, the agency shall submit to the commission and the designated standing committee of each House of the General Assembly, within five days of receipt, a copy of any comments received by the agency which refers to or concerns the proposed regulation. Prior to or upon submission of a proposed regulation, the agency shall, upon request, submit to the commission and the designated standing committees copies of reports from advisory groups and other documents received from or disseminated to the public pertaining or referring to the proposed regulation, and public notices or announcements regarding solicitation of public comments or meetings held by the agency on the subject of the proposed regulation.*

*(b.2) The standing committee may, within 20 calendar days from the closing date of the public comment period, convey to the agency a summary*

*of their objections stating the reasons why the proposed regulation is unacceptable and a copy of any staff reports deemed pertinent. Such comments shall include, but not be limited to, deviations from the statutory authority of the agency and the intention of the General Assembly in the enactment of the statute upon which the proposed regulation was based.*

*(b.3) The commission shall, within 30 calendar days from the closing date of the public comment period, notify the agency of any objections stating the reasons why the proposed regulation is unacceptable and a copy of any staff reports deemed pertinent. Such notification shall specify the regulatory review criterion which have not been met by the proposed regulation. Failure of the commission to object to any portion of the proposed regulation within the 30 calendar days provided in this subsection shall constitute approval of that portion of the proposed regulation, and, in such cases, any subsequent disapproval by the commission shall relate only to changes made by the agency to the proposed regulation or pursuant to recommendations received from the standing committees.*

*(b.4) The agency shall review and consider public comments and the comments of the standing committees and commission, if any, pursuant to this section. Upon completion of the agency's review of comments, the agency shall submit to the commission and the designated standing committee of each House of the General Assembly a copy of the agency's response to the comments received and the text of the final-form regulation which the agency intends to adopt. If an agency fails to submit the final-form regulation within two years of the close of the public comment period but still desires to proceed with the rulemaking, the agency must republish the regulation as a new rulemaking with a new public comment period in accordance with section 201 of the Commonwealth Documents Law.*

*(b.5) At the same time that the agency submits such material to the commission and the designated standing committees, it shall transmit by first class mail a notice of submittal consisting of a copy of the text of the final-form regulation or a copy of all changes incorporated into the final-form regulation from what was initially published to each party that submitted comments on the regulation during the public comment period following publication of the proposed regulation in the Pennsylvania Bulletin. The agency shall not be responsible for notifying each party whose name appears on petitions or membership lists who did not present individual comments on the regulation. No changes to a regulation shall be accepted, except as provided in section 7, after the submission of the regulation to the commission and the designated standing committee.*

*(c) The standing committee shall, within 20 calendar days from the date [the proposed regulation is published in the Pennsylvania Bulletin] of receipt of the information required under subsection (b.4), approve or disapprove the [proposed] final-form regulation. The standing committee shall notify the commission of approval or disapproval. Failure of [both] a standing [committees] committee to disapprove a regulation within the 20 calendar days shall constitute approval thereof. Along with a notification of approval or disapproval the committee shall convey to the commission and the agency a report which includes:*



(1) **A copy of the proposed regulation.**

(2) **A] a** summary of the objections of the committee, if any, stating the reasons why the committee has found the proposed regulation unacceptable, and a copy of any staff reports deemed pertinent by the committee. Such reasons shall include, but not be limited to, deviations from the statutory authority of the agency and the intention of the General Assembly in the enactment of the statute upon which the proposed regulation was based.

In the event the standing committees are prevented from completing their 20-day review because of expiration of the legislative session in even-numbered years, consideration of the **[proposed] final-form** regulation shall be automatically suspended until the fourth Monday in January of the next succeeding session of the General Assembly. On that date, the agency shall resubmit the **[proposed] final-form** regulation to the designated standing committee of each chamber, or its successor committee, and to the commission. The standing committees, or their successor committees, shall have 20 calendar days and the commission shall have 30 calendar days from **[the date the proposed] receipt of the final-form** regulation **[is published in the Pennsylvania Bulletin] and the information required under subsection (b.4) is received** to review such regulation. In computing the 20-day committee review period and the 30-day commission review period, the number of days in which the **[proposed] final-form** regulation had been under review by the standing committees and by the commission as of the expiration of the prior session shall be subtracted from the 20-day committee and the 30-day commission review periods, respectively. Failure of the agency to resubmit the **[proposed] final-form** regulation on the fourth Monday in January of the next succeeding session shall constitute withdrawal thereof. No **[proposed regulation] final-form regulation** shall be submitted to the commission or the standing committees for review during the period from the end of the legislative session of even-numbered years to the **[first day] fourth Monday in January** of the next succeeding legislative session, but emergency regulations may be adopted pursuant to the provisions of section 6(b).

(d) In determining whether a **[proposed] final-form** regulation is in the public interest, the commission shall, first and foremost, make a determination that the **[proposed] final-form** regulation is not contrary to the statutory authority of the agency and intention of the General Assembly in the enactment of the statute upon which the **[proposed] final-form** regulation is based. *In formulating its determination, the commission shall consider written comments submitted by the designated standing committees of each House of the General Assembly and current members of the General Assembly and any pertinent opinions of Pennsylvania's courts.*

(e) Upon a finding that the **final-form** regulation is not contrary to the statutory authority of the agency and to the intention of the General Assembly in the enactment of the statute upon which the **[proposed] final-form** regulation is based, the commission shall further consider the following in ascertaining whether the **[proposed] final-form** regulation is in the public interest:

**[(1) Possible adverse effects on prices of goods and services, productivity or competition.**

**(2) Whether the regulation represents a policy decision of such substantial nature that it requires a legislative review.**

**(3) Direct cost to the Commonwealth, direct and indirect cost to political subdivisions and indirect cost to the private sector.**

**(4) Reasonableness of requirements, implementation procedure and timetable for the public and private sectors.**

**(5) The nature of any reports, forms or other paperwork and the estimated cost of their preparation by individuals, businesses and organizations in the private and public sector where such reports would be required.**

**(6) Possible conflict with or duplication of statutes or other existing regulations.**

**(7) The nature and estimated cost of any legal, consulting or accounting services which the private or public sector would incur.**

**(8) The impact on the public interest of exempting or setting lesser standards of compliance for individuals or small businesses when it is lawful, desirable and feasible to do so.**

**(9) Clarity and lack of ambiguity.**

**(10) Need for the rule or regulation.**

**(11) Approval or disapproval by the designated standing committee of the House of Representatives or the Senate.]**

***(1) Economic or fiscal impacts of the regulation or rule which include the following:***

***(i) Direct and indirect costs to the Commonwealth, to political subdivisions and to the private sector.***

***(ii) Adverse effects on prices of goods and services, productivity or competition.***

***(iii) The nature of any reports, forms or other paperwork and the estimated cost of their preparation by individuals, businesses and organizations in the private and public sectors where such reports, forms or other paperwork would be required.***

***(iv) The nature and estimated cost of any legal, consulting or accounting services which the private or public sector would incur.***

***(v) The impact on the public interest of exempting, or setting lesser standards of compliance for, individuals or small businesses when it is lawful, desirable and feasible to do so.***

***(2) The protection of the public health, safety and welfare, and the effect on this Commonwealth's natural resources.***

***(3) The clarity, feasibility and reasonableness of the regulation to be determined by considering the following:***

***(i) Possible conflict with or duplication of statutes or existing regulations.***

***(ii) Clarity and lack of ambiguity.***

***(iii) Need for the regulation or rule.***

*(iv) Reasonableness of requirements, implementation procedures and timetables for the public and private sectors.*

*(4) Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.*

*(5) Approval or disapproval by the designated standing committee of the House of Representatives or the Senate.*

(f) Regulations for which notice of proposed rulemaking is omitted pursuant to section 204 of the Commonwealth Documents Law shall be submitted to the commission and the designated standing committees for review [in the same fashion as proposed regulations] under subsection (c) at the same time that the regulations are submitted to the Attorney General for review as provided in the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act." *The public comment period and the information requirements as provided for in subsection (b.1) are not applicable to these regulations. [No] Except for regulations adopted under section 6(b), no final order adopting such regulation shall be published until completion of review pursuant to this act.*

[(g) The agency which proposes the regulation shall forward to the commission within two days of receipt, a copy of any comments received by the agency which refers to the proposed regulation.]

*(g.1) The commission shall only accept public or agency comments, except those comments under subsection (c), up to 72 hours prior to the commission's public meeting. All documents, phone calls and personal visits discussing a regulation shall be noted by the commission and staff and made part of the public commission record. Any additional public or agency comments shall only be received by the commission, after the public meeting has been called to order.*

[(h) The commission, either on its motion or on the request of any individual, agency, corporation, member of the General Assembly or any other entity which may be affected by a regulation, may also review any existing regulation or administrative procedure. Whenever a committee of the Senate or the House of Representatives shall request a review of a regulation, the commission shall make such review and shall assign it high priority. The commission may submit recommendations to any agency recommending changes in existing regulations where it finds the existing regulations or administrative procedure to be contrary to the public interest under the criteria established in this section. The commission may also make recommendations to the General Assembly and the Governor for statutory changes whenever it finds that any existing regulation or procedure may be contrary to the public interest.]

Section 6. Procedures for commission consideration and agency review.

(a) [Whenever the commission shall find that a proposed regulation submitted to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin or that a regulation for which notice of proposed rulemaking is omitted pursuant to section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, or a regulation which submitted to the Attorney General for

review prior to publication may be contrary to the public interest under the criteria set forth in section 5, the commission shall notify the agency promulgating such regulation of its finding. Such notification shall set forth the commission's objections in reasonable detail. The agency shall review the commission's finding and not later than two weeks following the notification unless the commission grants extended time to comment shall respond to the commission as to whether or not the proposed regulation will be withdrawn, revised or returned in its original form with added justification or documentation by the agency.] *Whenever the commission shall find that a final-form regulation submitted to the commission pursuant to section 5(b.4) or that a regulation for which notice of proposed rulemaking is omitted pursuant to section 204 of the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law, may be contrary to the public interest under the criteria set forth in section 5, the commission shall notify the Legislative Reference Bureau, the standing committees, members of the public entitled to the notice set forth in section 5(b.5) and the agency promulgating such regulation of its finding. Such notification shall specify the regulatory review criteria which has not been met by the final-form regulation, as well as a description of the documents and testimony relied on by the commission in reaching its decision. The agency shall review the commission's finding and proceed pursuant to section 7(a).* If the commission does not notify the agency of any objection within 30 days of [publication] *the date the commission received the information required in section 5(b.4), in the case of [proposed rulemaking] a final-form regulation, or within 30 days of receipt, in the case of omission of proposed rulemaking, the agency may proceed to promulgate the regulation as provided in the Commonwealth Documents Law.*

(b) The commission may, when notifying an agency of its objections pursuant to subsection (a) or at any time following such notification but prior to publication of a final order adopting a regulation, issue an order barring the publication of a final order adopting a regulation pending subsequent review of the regulation in the manner provided in section 7. The commission may not however issue an order against a proposed regulation to the extent that the Attorney General certifies that proposed regulation is required pursuant to the decree of any court or to implement the provisions of a statute of the United States or regulations issued thereunder by a Federal agency nor shall the commission issue an order against a proposed regulation when such regulation is transmitted with the certification of the Governor that it is required to meet an emergency which shall include but not be limited to conditions which may *threaten the public health, safety or welfare* or cause a [significant] budget deficit or create need for supplemental or deficiency appropriations of *greater than \$1,000,000*. In such case, the regulation can take effect *immediately and may remain in effect* for up to 120 days but after that time may be suspended by the commission *with a statement of disapproval* unless it has been approved by the General Assembly under the procedures contained in section 7[(b)](d). *If the commission issues a statement of disapproval after 120 days, the emergency regulation must comply with section 7.*

(c) Whenever a designated standing committee of the House of Representatives or the Senate has notified the commission of its disapproval and the commission approves the proposed regulation, the commission shall, *within two business days*, notify the said designated standing committee of such approval. *The committee shall have 14 days from receipt of such notice to take action pursuant to section 7(d). During this 14-day period the agency shall not be permitted to promulgate the regulation approved by the commission. If, at the expiration of the 14-day period, the designated standing committee fails to act on the regulation pursuant to section 7(d), the agency may proceed to promulgate the regulation as provided in the Commonwealth Documents Law. If the commission is prevented from transmitting the notice required under this subsection because of recess or adjournment of either or both Houses of the General Assembly, the commission shall transmit the notice on the first subsequent session day.*

*Section 6.1. Agency action pursuant to statute.*

*Final form regulations shall be promulgated by a proposing agency pursuant to statute.*

**[Section 7. Procedures and subsequent review.**

(a) If the commission determines after reviewing an agency's response that the agency still intends to implement such regulation, the commission shall, within seven days of receipt of an agency's response to its objections, either approve the regulations or, if the commission believes that said regulation would be contrary to the public interest as determined under section 5, notify the Governor, who shall within 45 days review the proposed regulation and the commission findings. Failure of the commission to notify the Governor of its continued objections to a proposed regulation within seven days shall constitute approval thereof. Within seven days of an agency's response, the commission may continue an order barring publication of a final order adopting a regulation, issue such an order if none was previously issued, or withdraw its order.

(b) If the Governor and the agency determine that it is desirable to implement the proposed regulation without revisions, the Governor shall submit a report to the General Assembly containing the findings of the commission, the response of the initiating agency and his own recommendations regarding the regulation. At the time of the submission of the report by the Governor, the commission shall, within 14 days of submission of the report, either approve the regulation or transmit the proposed regulation to the General Assembly for consideration in accord with the procedures set forth in the act of April 7, 1955 (P.L.23, No.8), known as the "Reorganization Act of 1955." Failure of the commission to transmit a regulation to the General Assembly for consideration within 14 days of submission of the Governor's report shall constitute approval of the proposed regulation. However, if the commission is prevented from transmitting the regulation to the General Assembly within 14 days because of recess or adjournment, it may transmit the regulation on the first subsequent session day. Failure to submit a proposed regulation on the first subsequent session day shall constitute approval thereof. Pending the review of a regulation by the General Assembly, the

commission may continue an order barring publication of a final order adopting a regulation, issue such an order if none was previously issued, or withdraw its order. If the General Assembly disapproves a regulation, the disapproval shall constitute a permanent order barring publication, or shall rescind a regulation for which a final order was published pending review of the regulation by the commission or the General Assembly. The General Assembly may at its discretion, however, disapprove a regulation to indicate the intent of the General Assembly, but permit publication of a final order adopting a regulation.

(c) Whenever a designated standing committee has received the notice required under section 6(c), the designated standing committee may within ten days report to the House of Representatives or Senate a concurrent resolution and notify the affected agency which shall be the official notice to the agency. A final order adopting the regulation shall not be published for 30 calendar days or ten legislative days, whichever is longer, from date of reporting the concurrent resolution. If both the House of Representatives and the Senate agree to the concurrent resolution within the allotted time period, the adoption of the concurrent resolution shall constitute a permanent order barring publication, or shall act as an order rescinding a regulation for which a final order was published pending review of the regulation. Failure of the House of Representatives and the Senate to act on the concurrent resolution within the allotted time period shall constitute approval of the regulation. In addition, notice as to any final disposition of any concurrent resolution considered in accordance with this act shall be published in the *Pennsylvania Bulletin*. The General Assembly may, at its discretion, adopt a concurrent resolution disapproving the regulation to indicate the intent of the General Assembly, but permit publication of a final order adopting a regulation.]

*Section 7. Procedures for subsequent review.*

(a) *Within seven days of receipt of a notice of disapproval from the commission issued pursuant to section 6(a), the agency shall notify the Governor, the designated standing committees of the House of Representatives and the Senate, and the commission of its intentions to proceed pursuant to subsection (b) or (c) or to withdraw the regulation. Failure to submit the notification required by this subsection shall constitute withdrawal of the regulation.*

(b) *If the agency determines that it is desirable to implement the final-form regulation without revisions or further modifications, the agency shall submit a report to the designated standing committee of each House of the General Assembly and the commission within 40 days of the agency's receipt of the commission's disapproval order. The agency's report shall contain the final-form regulation, the findings of the commission, and the response and recommendations of the agency regarding the final-form regulation. If the agency is prevented from submitting its report because of recess or adjournment of either or both Houses of the General Assembly, the agency shall transmit its report on the first subsequent session day. Upon receipt of the agency's report, a designated standing committee may proceed pursuant to*

*subsection (d). Failure of the agency to submit a report within the time period provided by this subsection or on the first subsequent session day shall constitute withdrawal of the final-form regulation.*

*(c) If the agency determines that it is desirable to implement the final-form regulation with further revisions or modifications, the agency shall submit a report to the designated standing committees of the House of Representatives and the Senate and the commission within 40 days of the agency's receipt of the commission's disapproval order. The agency's report shall contain the revised final-form regulation, the findings of the commission, and the response and recommendations of the agency regarding the revised final-form regulation. Failure of the agency to submit a report within the time period provided by this subsection shall constitute withdrawal of the final-form regulation. Upon receipt of the agency's report, the designated standing committees shall have ten days to notify the commission of their approval or disapproval of the agency's report. Failure of a designated standing committee to notify the commission of its disapproval within ten days shall constitute its approval of the agency's report. The commission shall have seven days or until its next regularly scheduled meeting, whichever is longer, from the completion of the designated standing committees' ten-day review period in which to approve the agency's report or to continue its bar upon final publication of the regulation and transmit notice of disapproval and the agency's report to the designated standing committees for consideration by the General Assembly pursuant to subsection (d). However, if the commission is prevented from transmitting notice and the report to the General Assembly within the time period provided for in this subsection because of recess or adjournment, it may transmit notice and the report on the first subsequent session day. Failure of the commission to transmit the agency's report within the time period provided by this subsection or on the first subsequent session day shall constitute approval of the revised final-form regulation.*

*(d) Whenever the designated standing committees of both Houses of the General Assembly have received the report of an agency pursuant to subsection (b), or the notice and the agency's report pursuant to subsection (c), or the notice pursuant to section 6(c), one or both of the designated standing committees may within 14 days report to the House of Representatives or Senate a concurrent resolution and notify the affected agency which shall be the official notice to the agency. During the 14-day period, the agency shall not be permitted to promulgate the regulation. If, at the expiration of the 14-day period, both of the designated standing committees fail to act on the agency's report, then the regulation is deemed approved and the agency may proceed to promulgate the regulation as provided in the act of July 31, 1968 (P.L. 769, No.240), referred to as the Commonwealth Documents Law. A final order adopting the regulation shall not be published for 30 calendar days or ten legislative days, whichever is longer, from date of reporting the concurrent resolution. If both the House of Representatives and the Senate agree to the concurrent resolution within the allotted time period, which is 30 calendar days or ten legislative days, whichever is longer, from the date of*

*reporting of the concurrent resolution, then the adoption of the concurrent resolution shall constitute a bar to publication until presentment to the Governor and final disposition of the regulation. The resolution shall be presented to the Governor in accordance with section 9 of Article III of the Constitution of Pennsylvania. If the Governor does not return the resolution to the General Assembly within ten calendar days after it is presented to him, it shall constitute approval of the resolution. If the Governor vetoes the action of the General Assembly, the General Assembly may, within 30 calendar days or ten legislative days, whichever is longer, override that veto by a two-thirds vote in each house; and that override shall constitute a permanent bar to publication. Failure of the House of Representatives and the Senate to act on the concurrent resolution or veto within the allotted time periods shall constitute approval of the final-form regulation. In addition, notice as to any final disposition of any concurrent resolution considered in accordance with this act shall be published in the Pennsylvania Bulletin. The General Assembly may, at its discretion, adopt a concurrent resolution disapproving the regulation to indicate the intent of the General Assembly, but permit publication of a final order adopting a regulation.*

**Section 7.1. Classification of documents.**

*If the commission or a designated standing committee alleges that a published or unpublished document should be promulgated as an agency regulation, the commission or standing committee of either house may present the matter to the Joint Committee on Documents, which shall determine whether the document should be promulgated as an agency regulation and may order an agency either to promulgate the document as a regulation within 180 days or to desist from the use of the document in the business of the agency.*

**Section 8. Changes in final-form regulations.**

*No changes shall be made by an agency to a final-form regulation after that regulation has been approved or has been deemed approved by the commission except changes made at the direction of the Office of Attorney General pursuant to its review under section 204(b) of the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act."*

**Section 8.1. Existing regulations.**

*The commission, either on its motion or on the request of any individual, agency, corporation, member of the General Assembly or any other entity which may be affected by a regulation, may also review any existing regulation or administrative procedure. Whenever a committee of the Senate or the House of Representatives shall request a review of a regulation or administrative procedure, the commission shall make such review and shall assign it high priority. The commission may submit recommendations to any agency recommending changes in existing regulations where it finds the existing regulations or administrative procedure to be contrary to the public interest under the criteria established in this section. The commission may also make recommendations to the General Assembly and the Governor for statutory changes whenever it finds that any existing regulation or procedure may be contrary to the public interest.*



**Section 9. Commission staff.**

The commission shall appoint and fix the compensation of an executive director, who shall devote his full time to the general supervision of all the affairs of the commission. In addition, the commission shall appoint a chief counsel who shall not be subject to the supervision of the Attorney General or the General Counsel and it may appoint and fix the compensation of such other employees as the commission may from time to time find necessary for the proper performance of the functions of the commission. In determining the necessity for such additional staff, the commission shall consider the fact that the General Assembly is required under this act to participate in the review process and its staff will be providing assistance to the commission through the legislative review provisions of this act.

**Section 10. Subpoena power.**

The commission may require the attendance and testimony of witnesses and the production of documentary evidence relative to any investigation or hearing which the commission may conduct in accordance with the powers granted it under this act. Such subpoena shall be signed by the chairman or the executive director and it shall be served by any person authorized to serve subpoenas under the law of the Commonwealth.

**Section 11. Rules; annual reports; hearings and advisory group meetings.**

(a) The commission shall compile and publish rules for the conduct of meetings and public hearings and for the conduct of business under this act. Such rules shall be promulgated in accordance with the procedures established in the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. Such rules **[may] shall** provide for notification of filings of **[proposed] final-form** regulations to parties likely to be affected by the **[proposed] final-form** regulations *through publication in the Pennsylvania Bulletin. Prior to the rules taking effect, however, the appropriate standing committees and the Joint Committee on Documents shall have 20 days and 30 days, respectively, from the date of receipt of the information required under section 5(b.4) of this act to notify the commission of their approval or disapproval of a final-form regulation or of a regulation for which notice of proposed rulemaking is omitted under section 204 of the Commonwealth Documents Law. Final disposition of a disapproved final-form regulation shall be in accordance with this act; however, the responsibilities assigned to the commission shall be exercised by the Joint Committee on Documents, and the commission may exercise the rights provided to an agency.*

(b) On or before April 1, **[1986] 1989** and each year thereafter, the commission shall file a report of its activities for the prior calendar year with the Governor and the General Assembly.

(c) The commission may hold public hearings on any matter before the commission. The commission may also hold informal hearings and may convene and meet with advisory groups regarding matters before the commission.

**Section 12. Clearinghouse.**

(a) The commission shall act as a clearinghouse for complaints, comments and other input from members of the General Assembly and from the public regarding regulations, proposed regulations and administrative procedures. The commission shall maintain accurate records regarding complaints and comments it receives and shall maintain such records by departmental and subject matter categories. When the commission files its annual report as provided by section 11, the commission shall include within it a summary of public complaint and comment along with any recommendations the commission may offer for statutory change as the result of public complaint and comment.

(b) The commission may also compile information on regulations issued by the United States Government which come to the attention of the commission which are found by the commission to be excessive. The commission shall include a summary on such regulations in its annual report and shall take such other action as may be appropriate. The section of the annual report relating to excessiveness of Federal regulations shall be submitted to the President of the United States and to the members of the United States Senate and the United States House of Representatives from Pennsylvania. Nothing herein shall be construed as requiring the commission to undertake a review of Federal regulations.

**Section 12.1. Gubernatorial review.**

*The Governor may institute procedures for the review and approval of regulations promulgated by executive agencies prior to their submittal for review under this act, including, but not limited to, the establishment of a task force or committee, by executive order. The Governor may also establish procedures for the effective coordination of the review of regulations under the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," and sections 612 and 2203-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."*

**Section 14. Repeals.**

(a) The following acts or parts of acts are repealed absolutely:

Section 812.2, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Second, third and fourth sentences of subsection (n) of section 4, act of May 23, 1945 (P.L.913, No.367), known as the "Professional Engineers Registration Law."

Second and third sentences of section 1410, act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

Subsection (c) of section 11, act of November 30, 1976 (P.L.1207, No.265), known as the "Emergency Medical Services Systems Act."

Subsections (c) and (d) of section 224, act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."

Subsections (c) and (d) of section 601, act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act."

Third and fourth sentences of subsection (a) and subsection (b) of section 404, act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing and Registration Act."

Section 107, act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act."

Section 6103(b) of Title 75 of the Pennsylvania Consolidated Statutes (relating to promulgation of rules and regulations by department).

(b) All other acts or parts of acts are repealed insofar as they provide for consideration by the General Assembly or its committees of proposed regulations.

Section 15. Termination date.

The commission shall be treated as a statutory agency created after January 1, 1981, for purposes of the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act." The commission is scheduled for termination on December 31, [1988] 1993.

Section 2. This act, with respect to the Independent Regulatory Review Commission, constitutes the legislation required to reestablish an agency under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 3. Each rule and regulation of the Independent Regulatory Review Commission in effect on December 31, 1988, shall remain in effect after such date until repealed or amended by the commission or until it terminates in accordance with its own terms.

Section 4. The terms of the members of the Independent Regulatory Review Commission appointed prior to the effective date of this act shall terminate on the effective date of this act. Any commissioner terminated on the effective date of this act shall continue to hold office until his successor shall be appointed. The appointing authorities shall name new members to the commission under the provisions of section 4 of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. Notwithstanding section 4(b) of the Regulatory Review Act, any commissioner terminated on the effective date of this act shall be eligible to be appointed to, and to serve, two full terms.

Section 5. This act shall apply to regulations submitted to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin in accordance with section 201 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and to regulations for which notice of proposed rulemaking is omitted pursuant to section 204 of the Commonwealth Documents Law which are submitted to the Attorney General for review as provided by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, on or after June 1, 1989. Regulations submitted prior to June 1, 1989, shall be considered under the procedures contained in the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, prior to the enactment of this act.

Section 6. Except for section 4 of this amendatory act, this act shall be retroactive to December 31, 1988.

Section 7. This act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1989.

ROBERT P. CASEY