

No. 2012-76

AN ACT

HB 1349

Amending the act of June 25, 1982 (P.L.633, No.181), entitled, as reenacted, "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 legislative intent, for definitions and for proposed regulations and procedures for review.

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

Section 1. Section 2 of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, reenacted and amended June 30, 1989 (P.L.73, No.19) and amended June 25, 1997 (P.L.252, No.24), is amended to read:

Section 2. Legislative intent.

(a) The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General Assembly; and to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.

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

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

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

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

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

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

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

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

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

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

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.

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

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

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

* * *

"Small business." As defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation.

* * *

Section 3. Section 5(a) of the act, amended or added December 6, 2002 (P.L.1227, No.148) and July 7, 2011 (P.L.277, No.60), is amended and the section is amended by adding a subsection to read:

Section 5. Proposed regulations; procedures for review.

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

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

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

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

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

(4) Estimates of the direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector. Insofar as the proposed regulation relates to costs 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 consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

(h) The commission shall provide comments to the agency if the required submissions under subsection (a)(9), (10), (10.1) and (12.1) demonstrate an adverse impact on small businesses.

Section 4. Section 5.2(b) of the act is amended by adding a paragraph to read:

Section 5.2. Criteria for review of regulations.

* * *

(b) Upon a finding that the regulation is consistent with the statutory authority of the agency and with the intention of the General Assembly in the enactment of the statute upon which the regulation is based, the

commission shall consider the following in determining whether the regulation is in the public interest:

* * *

(8) Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business.

Section 5. This act shall apply to regulations submitted on or after the effective date of this act 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.

Section 6. This act shall take effect in 60 days.

APPROVED—The 29th day of June, A.D. 2012

TOM CORBETT