

No. 1982-181

AN ACT

SB 1

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

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

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 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 a rule, which rule shall prescribe the jurisdiction of each standing committee over the various State agencies for purposes of this act.

“Regulation.” Any regulation, proposed or adopted by an agency. 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 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 one month 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.

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 Attorney General for review as to legality as provided by the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," the agency proposing the regulation shall forward a copy of such proposal to the commission and the designated standing committee of each House of the General Assembly and upon request of the commission any additional information 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 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 Rule Making requirements of the Commonwealth Documents Law but the information required by this section may be included in the

Notice of Proposed Rule Making 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 fiscal impacts on the public sector, 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 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.

(c) The standing committee shall, within 30 calendar days or ten legislative days, whichever is longer, from the day it receives the proposed regulation, approve or recommend disapproval to the commission. Failure of both standing committees to recommend disapproval of any such regulation within the 30 calendar days or ten legislative days, whichever is longer, shall constitute approval thereof. Along with a notification of approval or disapproval the committee shall convey a report which includes:

(1) A copy of the proposed regulation.

(2) A summary of the objections of the committee, stating the reasons why the committee has found the proposed regulation unacceptable, and a copy of any staff reports deemed pertinent by the committee.

(d) In order to ascertain whether a proposed regulation is in the public interest, the commission shall consider the following criteria in the review of any proposed regulation:

(1) Conformity to the statutory authority of the agency.

(2) Consistency with the legislative intent of the act which the regulation is designed to implement.

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

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

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

(6) Reasonableness of requirements, implementation procedures and timetable for the public and private sectors.

(7) 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.

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

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

(10) 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.

(11) Clarity and lack of ambiguity.

(12) Need for the rule or regulation.

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

(e) Regulations for which notice of proposed making is omitted pursuant to section 204 of the Commonwealth Documents Law shall be submitted to the commission for review under this section in the same fashion as proposed regulations.

(f) 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) 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 Attorney General for review prior to final adoption 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 or revised. If the commission does not notify the agency of any objection within 30 days, 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.

(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 issue an order barring the final publication of a proposed 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. In such case, the regulation can take effect for up to 120 days but after that time may be suspended by the commission unless it has been approved by the General Assembly under the procedures contained in section 7(b).

(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 notify the said designated standing committee of such approval. 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 and if the commission believes that said regulation would be contrary to the public interest as determined under section 5, the commission shall notify the Governor, who shall within 45 days review the proposed regulation and the commission findings.

(b) If the agency still wishes 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 proposed regulation shall be transmitted to the General Assembly and shall be considered 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."

(c) Whenever a designated standing committee has received the notice required under section 6(c), the designated standing committee

may immediately report to the House of Representatives or Senate a concurrent resolution and immediately notify the affected agency which shall be the official notice to the agency. The affected agency shall thereupon suspend consideration of the regulation for 30 calendar days or ten legislative days, whichever is longer, from date of notification of disapproval. If both the House of Representatives and the Senate agree to the concurrent resolution within the allotted time period, the agency shall not adopt 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.

Section 8. Regulatory budget.

The commission shall review the feasibility of establishing for the Commonwealth procedures for the annual adoption of a regulatory budget or regulatory calendar which would include direct government cost ceilings, indirect cost ceilings for new regulation, private sector regulatory activity required under existing regulations and private sector regulatory activity for proposed new regulations. The commission will be required to submit its findings and recommendations to the General Assembly along with draft legislation if appropriate, within two years of its original organization meeting.

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 general 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 provide for notification of filings of proposed regulations to parties likely to be affected by the proposed regulations.

(b) On or before April 1, 1984 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 13. Appropriation.

The sum of \$400,000, or as much thereof as may be necessary, is hereby appropriated to the commission for the purposes of carrying out this act for the fiscal period ending June 30, 1983.

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. Effective date.

Except for the provisions of sections 3, 4, 9, 11 and 13, which shall take effect in 30 days, this act shall take effect on January 1, 1983. This act shall expire on December 31, 1985 unless it is sooner reenacted by the General Assembly.

APPROVED—The 25th day of June, A. D. 1982.

DICK THORNBURGH