

## Veto No. 1989-1

SB 4

June 1, 1989

To the Honorable, the Senate  
of the Commonwealth of Pennsylvania:

I return herewith, without my signature, Senate Bill 4, Printer's No.981, entitled "An act 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."

Senate Bill 4 would continue the Independent Regulatory Review Commission (IRRC) for another four years pursuant to the Sunset Act of 1981. The bill also substantially revises the process for review of agency regulations and provides for replacement of all current commissioners with new appointments. New members would be subject to more stringent conflict of interest standards.

The review process under Senate Bill 4 would be similar to the process outlined in Senate Bill 202 of the 1988 session. Senate Bill 4 retains IRRC's powers, under existing law, to determine whether a proposed regulation is contrary to the public interest or violates legislative intent and to issue orders to executive agencies barring publication unless and until changes are made.

One major difference between this bill and current law is in the timing of IRRC review in relation to the activities of the agency promulgating the regulation. Currently, IRRC review essentially coincides with the public comment period which the executive agency uses to revise its original proposal. IRRC applies its review criteria to the proposal and votes either to approve or reject it as submitted. The agency may then revise the regulation in response to public comments and IRRC action. Under Senate Bill 4, however, IRRC is not required to act or even to comment on a proposed regulation until after the executive agency has made all the changes it considers appropriate, based upon comments from the public and from legislative standing committees.

This change in the timing of IRRC review could have a seriously detrimental effect on the ability of the executive branch to implement its policies. By moving IRRC to the end of the regulatory process, special interest groups and professional lobbyists would be given several additional months to try to influence the final result for their own benefit. Even now, the review process averages some nine months from proposal to final adoption. Delay in the process of government rarely works to the benefit of the majority of people government is meant to serve.

Moreover, this change would sharply diminish the relevance of the proposed rulemaking and public comment process under the Commonwealth

Documents Law. This is so because agencies would have little incentive to expend time or effort in seriously evaluating proposals submitted at the public comment stage when faced with the certainty that every proposal would simply be resubmitted and reargued under the IRRC review process immediately following.

The regulatory review process under Senate Bill 4 contains an elaborate series of roadblocks apparently designed to force executive agencies to weaken their policy decisions. Even after the agency has revised its original regulation in response to legitimate criticisms, this bill requires the agency to submit the same regulation three more times so long as IRRC and the special interests continue to insist on further changes. It is hard to imagine a scheme more intrusive into the decisionmaking processes of the executive branch, or which more seriously compromises the authority assigned to the executive branch under the Pennsylvania Constitution.

Supporters of the current regulatory review process often cite a need for independent, objective analysis in order to assure that agency regulations are fair and not overly burdensome to those affected by them. When the process is characterized in those terms, few would even attempt to argue the point. The fact is, however, that under Senate Bill 4 IRRC is not just a benign critic of regulatory over-reaching. Rather, it would function as a governmental "superagency," independent not only from the executive branch but also from the legislative and judicial branches. IRRC would share the legislature's own regulatory oversight duties but, unlike legislators, would have no accountability to the voters for any actions they take. IRRC would also continue to exercise the judicial roles of deciding whether or not proposed regulations conform to legislative intent and issuing orders blocking regulations it finds defective. No group of individuals, which is not ultimately responsible to the voters, should be given such extensive power over the workings of government.

In lieu of the overly complicated and intrusive procedures embodied in Senate Bill 4, the Office of General Counsel has proposed reforms which would streamline the regulatory review process. Our proposal, which was originally made to the House State Government Committee during the sunset review of IRRC in May 1988, would establish a much simplified two-step regulatory review process which would provide IRRC and the General Assembly with an opportunity to review proposed regulations and public comments in sufficient time to identify any concerns and to communicate with the agency before final rules are developed.

In addition, our proposal would allow IRRC an opportunity to review final regulations in sufficient time for the legislature — acting through constitutionally acceptable procedures — to require necessary modifications or to block regulations before they become effective. In conjunction with this message, I am today submitting to the General Assembly legislation which incorporates these concepts.

Senate Bill 4, like Senate Bill 202 of the previous legislative session, represents an attempt to usurp the regulatory authority entrusted to the executive branch by the Constitution of Pennsylvania. Therefore, I am again compelled to return this legislation without my signature.

ROBERT P. CASEY

