

No. 1982-238

AN ACT

HB 27

Amending the act of June 25, 1982 (P.L.633, No.181), entitled "An act 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," revising provisions relating to regulations, changing certain time periods and making repeals.

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

Section 1. The definitions of "agency," "designated standing committee" and "regulation" in section 3, subsection (g) of section 4 and sections 5, 6, 7, 9 and 15, act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act," are amended 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:

"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.

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"Designated standing committee." A standing committee of the House of Representatives or the Senate designated by [a rule, which rule] *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.*

"Regulation." [Any regulation, proposed or adopted by an agency.] *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 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.

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(g) Within **[one month]** *60 days* 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.

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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,"]** *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 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] 20** 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] 20** 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, *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.

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 regulation shall be automatically suspended until the first day of the next succeeding session of the General Assembly. On that date, the agency shall resubmit the proposed 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 receipt of the regulation 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 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 regulation on the first day of the next succeeding session shall constitute withdrawal thereof. No proposed 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 of the next succeeding legislative session, but emergency regulations may be adopted pursuant to the provisions of section 6(b).

(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 *and the designated standing committees* for review **[under this section]** in the same fashion as proposed regulations *at the same time that the regulations are submitted to the Attorney General for review as provided in the Commonwealth Attorneys Act. No final order adopting such regulation shall be published until completion of review pursuant to this act.*

(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]** *Legislative Reference Bureau for publication of notice of proposed rule making in the Pennsylvania Bulletin or submitted to the Attorney General for review prior to publication without notice pursuant to section 204 of the Commonwealth Documents Law*, 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 of receipt under section 5, 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 of a final order adopting a regulation, issue an order barring the [final] publication of a [proposed] 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 cause a significant budget deficit or create need for supplemental or deficiency appropriations*. 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], *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, [the commission shall] 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 [still wishes to] *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 [shall be transmitted] to the General Assem-

bly **[and shall be considered]** 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 **[immediately]** within ten days 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]** *A final order adopting the regulation shall not be published for 30 calendar days or ten legislative days, whichever is longer, from date of [notification of disapproval] reporting the concurrent resolution.* 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.]** *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 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]** chief counsel who shall not be subject to the supervi-

sion 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 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] March 1, 1983**. This act shall expire on December 31, 1985 unless it is sooner reenacted by the General Assembly.

Section 2. The following parts of acts are repealed:

The second, third, fourth and fifth sentences of clause (9) of section 4, act of January 24, 1966 (1965 P.L.1527, No.535), known as the "Landscape Architects' Registration Law."

The second, third, fourth and fifth sentences of subsection (b) of section 5, act of June 15, 1982 (P.L.502, No.140), known as the "Occupational Therapy Practice Act."

Section 3. This act shall take effect immediately.

APPROVED—The 9th day of December, A. D. 1982.

DICK THORNBURGH