

No. 2002-148

AN ACT

SB 1554

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 composition of commission, its membership and removal of commission members, for proposed regulations, procedures and criteria for review, and for final-form regulations and final-omitted regulations, procedures and criteria for review; providing for criteria for review of regulations; and further providing for procedures for disapproval of final-form and final-omitted regulations and emergency-certified regulations, for procedures for subsequent review of disapproved final-form or final-omitted regulations and for existing regulations.

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

Section 1. Section 4(b) and (h) 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), are amended to read:

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

* * *

(b) Each appointment provided for by [this act] *subsection (a)*, *except for the Governor's appointment*, shall be for a term of three years. [and such appointments shall be made in the same manner as set forth in subsection (a). From the time of initial appointment to the commission, a commissioner may not serve more than two full terms consecutively. A commissioner 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.]

* * *

(h) The commission shall meet before the period for its review of regulations under this act expires and at other times as necessary to transact the business of the commission and insure an expeditious and orderly review of regulations under this act. Meetings shall be held at times and places set by the chairperson. A meeting may be [rescheduled] *scheduled* by the commission upon the provision of at least ten days' notice to all affected agencies and the committees. A commissioner who [fails to] *does not* attend three consecutive meetings without cause [shall] *may* be removed as a commissioner by the authority appointing the commissioner.

* * *

Section 2. Sections 5 and 5.1 of the act, amended or added June 25, 1997 (P.L.252, No.24), are amended to read:

Section 5. Proposed regulations; procedures [and criteria] 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, 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, 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.

(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.

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

(b) The requirements of subsection (a) shall not diminish the requirements of section 201 of the Commonwealth Documents Law, but the information required by this section may be included in the Notice of Proposed Rulemaking published in the Pennsylvania Bulletin in lieu of the information required by paragraphs (2) and (3) of section 201 of the Commonwealth Documents Law. The agency shall hold a public comment period which shall commence with the publication of the notice of proposed rulemaking and shall continue for not less than 30 days unless section 203(1) or (2) of the Commonwealth Documents Law applies.

(c) From the date of submission of the proposed regulation, the agency shall submit to the commission and the committees, within five *business* days of receipt, a copy of comments which the agency receives relating to the proposed regulation. The agency shall also, upon request, submit to the commission and the committees copies of reports from advisory groups and other documents received from or disseminated to the public relating to the proposed regulation and public notices or announcements relating to solicitation of public comments or meetings which the agency held or will hold relating to the proposed regulation.

(d) The committees may, **[within 20 days from the closing date of the public comment period] at any time prior to the submittal of the regulation in final-form**, convey to the agency **and the commission** their comments, *recommendations* and objections to the proposed regulation and a copy of any staff reports deemed pertinent. The comments, *recommendations* and objections **[shall include the lack of statutory authority of the agency to promulgate the proposed regulation and deviation of the proposed regulation from the intention of the General Assembly in the enactment of the statute upon which the proposed regulation is based] may refer to the criteria in section 5.2.**

[(e) If the committees are prevented from completing their 20-day review because of the adjournment sine die or expiration of the legislative session in an even-numbered year, their review of the proposed regulation shall automatically be suspended until the fourth Monday in January of the next year. On that date, the agency shall resubmit the proposed regulation and all material required under this section to the committees and the commission. If either committee has not been designated by the fourth Monday in January of the next year, the agency may not deliver the proposed regulation and required

material to the committees and the commission until both committees are designated, but the agency shall deliver the proposed regulation and the required material no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency fails to deliver the proposed regulation in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the proposed regulation. In computing the remaining time for committee review, the number of days in which the committees have had the proposed regulation under review as of the adjournment sine die or expiration of the prior session shall be subtracted from the 20-day committee review period, but the committee review period in the next succeeding legislative session shall not be less than ten days.]

(f) An agency may not submit a proposed regulation to the committees for review during the period from the end of the legislative session in an even-numbered year to the date by which both committees have been designated in the next succeeding legislative session, but an agency may submit a proposed regulation and the material required under subsection (a) to the commission and the Legislative Reference Bureau during this period in accordance with subsection (a). The public comment period shall commence with the publication of the notice of proposed rulemaking and end on the date designated by the agency under subsection (b). The agency shall submit the proposed regulation and required material to the committees [in the time prescribed by subsection (e). **If the agency fails to deliver the proposed regulation and required material to the committees in the time prescribed by subsection (e), the agency shall be deemed to have withdrawn the proposed regulation. The committees' 20-day review period shall begin on the date of receipt of the proposed regulation.] *no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency does not deliver the proposed regulation and all material required under this section in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the proposed regulation.***

(g) The commission [shall] *may*, within [ten] *thirty* days after the [expiration of the committee review period pursuant to subsection (d), (e) or (f), notify] *close of the public comment period, convey to* the agency [of] *and committees* any *comments, recommendations and* objections to the proposed regulation. The [notification] *comments, recommendations and objections* shall specify the regulatory review criterion *set forth in section 5.2* which the proposed regulation has not met. If the commission [fails to] *does not comment on, make recommendations regarding or* object to any portion of the proposed regulation within the time provided in this subsection, the commission shall be deemed to have approved that portion of the proposed regulation. Disapproval of the final-form regulation

by the commission shall relate only to *comments, recommendations and objections* raised by the commission to the proposed regulation; to changes which the agency made to the proposed regulation; or to recommendations, comments or objections which a committee conveyed to the agency or the commission.

Section 5.1. Final-form regulations and final-omitted regulations; procedures **[and criteria]** for review.

(a) The agency shall review and consider public comments and the comments of the committees and commission pursuant to this section. Within **[seven]** *five business* days of receipt of a public comment, the agency shall**[, by first class or electronic mail, whichever is applicable,]** notify the commentator of the agency's address and telephone number where the commentator may submit a request for the information concerning the final-form regulation under subsection (b). Upon completion of the agency's review of comments, the agency shall submit to the commission and the committees a copy of its response to the comments received, the names and addresses of commentators who have requested additional information relating to the final-form regulation and the text of the final-form regulation which the agency intends to adopt. If an agency **[fails to]** *does not* submit or withdraws and **[fails to]** *does not* resubmit the final-form regulation within two years of the close of the public comment period but still desires to promulgate the final-form regulation, the agency shall republish the regulation as a proposed regulation with a new public comment period in accordance with the Commonwealth Documents Law. If the agency is prevented from delivering its final-form regulation to the commission and the committees within the time period provided for in this subsection because of the adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall deliver its final-form regulation in accordance with subsection (f).

(b) On the same date that the agency submits the material required in subsection (a) to the commission and the committees, the agency shall**[, by first class or electronic mail, whichever is applicable,]** send a notice of submission and a copy of the text of the final-form regulation or a copy of all changes to the proposed regulation which are incorporated into the final-form regulation to each commentator who requested this information pursuant to subsection (a). The agency is not responsible for notifying each party whose name appears on petitions or membership lists who did not present individual comments on the regulation.

(c) The agency shall submit final-omitted regulations to the commission and the committees for review under **[subsections (d), (e) and (f)]** *this section* on the same date that the agency submits the regulations to the Attorney General for review as provided in section 204(b) of the Commonwealth Attorneys Act. The requirements of section 5, except for the requirements for holding a public comment period and for notifying commentators, are applicable to final-omitted regulations. If the agency

makes revisions pursuant to subsection (g), the agency shall deliver copies of the revisions to the Attorney General on the same date that the agency delivers the revisions to the commission and the committees.

(d) A committee shall, within 20 days from the date of receipt of the information required under subsection (a) or receipt of the information required under subsection (c), approve or disapprove the final-form or final-omitted regulation. The committee shall notify the commission and the agency of its approval or disapproval. If a committee fails to disapprove a final-form or final-omitted regulation, the committee shall be deemed to have approved that regulation. If the committee disapproves the final-form or final-omitted regulation, the committee shall include with a notification of disapproval a report stating the committee's objections to the final-form or final-omitted regulation and a copy of staff reports which the committee deems pertinent. Objections shall include, but not be limited to, the lack of statutory authority of the agency to promulgate the final-form or final-omitted regulation and deviation of that regulation from the intention of the General Assembly in the enactment of the statute upon which the regulation was based.]

(e) The commission [shall, within ten days after the expiration of the committee review period or at] *may have until* its next [regularly] scheduled meeting[, whichever is later,] *which occurs no less than 30 days after receipt of the final-form or final-omitted regulation* to approve or disapprove the final-form or final-omitted regulation. The commission shall notify the agency and the committees of its approval or disapproval. If the commission [fails to] *does not* disapprove the final-form or final-omitted regulation *within the time allotted in this subsection*, the commission shall be deemed to have approved the final-form or final-omitted regulation.

(f) [If the committees are prevented from completing their 20-day review because of] *An agency may not deliver a final-form or final-omitted regulation to the commission and the committees after the adjournment sine die or expiration of the legislative session in an even-numbered year[, their review of the final-form or final-omitted regulation shall automatically be suspended]. The agency may not deliver the final-form or final-omitted regulation* until the fourth Monday in January of the next year. On that date, the agency shall resubmit the final-form or final-omitted regulation and required material to the committees and the commission. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the final-form or final-omitted regulation and required material to the committees and the commission until both committees are designated. [If the agency fails to deliver the final-form or final-omitted regulation and required material to the commission and the committees by the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin, the agency shall be deemed to

have withdrawn the final-form or final-omitted regulation. In computing the remaining time for committee review, the number of days in which the committees have had the final-form or the final-omitted regulation under review as of the adjournment sine die or expiration of the prior session shall be subtracted from the 20-day committee review period, but the committee review period in the next succeeding legislative session shall not be less than ten days. An agency may not submit a final-form or final-omitted regulation to the commission or the committees for review during the period from the adjournment sine die or expiration of the legislative session of an even-numbered year to the date by which both committees have been designated in the next succeeding legislative session. This section shall not apply to emergency-certified regulations adopted pursuant to the provisions of section 6(d).]

(g) Except as provided in this subsection, the agency may not make any changes to a final-form or final-omitted regulation after the agency submits the final-form or final-omitted regulation to the commission and the committees.

(1) Prior to the expiration of the [20-day review period of the committees or to the] date on which either of the committees takes action on the final-form or final-omitted regulation[, whichever occurs first], *pursuant to subsection (j.2) or (j.3) or the expiration of the commission's review period prescribed in subsection (e), whichever occurs first*, the agency may, unless the commission shall object, toll the time for the commission's and the committees' review of the final-form or final-omitted regulation in order to allow time for the agency to consider revisions to the final-form or final-omitted regulation recommended by the commission or a committee.

(2) Tolling under paragraph (1) may last for up to 30 days. If within 30 days the agency [fails to] *does not* submit revisions to the committees and the commission or [fails to] *does not* notify the commission and the committees in writing that it will not submit revisions but wishes the commission and the committees to resume their review, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation.

(3) The committees shall have the remainder of the 20-day review period or ten days from the date of receipt of the revised final-form or final-omitted regulation or written notification under paragraph (2), whichever is longer. *to take action pursuant to subsection (j.2) or (j.3)*, and the commission [shall have ten days after expiration of the committee review period or] *may have* until its next [regularly] scheduled meeting[, whichever is longer,] *which occurs after the expiration of the committee review period but not less than 15 days after receipt of the revised final-form or final-omitted regulation or written notification under paragraph (2)* to review the final-form or final-omitted regulation. If the commission [or the committees fail to]

does not disapprove the final-form or final-omitted regulation *or a committee does not notify the commission and the agency that it has disapproved the regulation or that it intends to review the regulation pursuant to subsection (j.2)*, within the respective time periods, the regulation shall be deemed approved.

(4) The agency may not toll the time for review of any final-form or final-omitted regulation more than one time.

(5) *The agency may not submit revisions or notification that the regulation will not be revised after the adjournment sine die or the expiration of the legislative session in an even-numbered year.* If the committees and the commission are prevented from completing their review pursuant to this subsection because of the adjournment sine die or the expiration of the legislative session in an even-numbered year, the agency shall resubmit the final-form or final-omitted regulation and review shall proceed in accordance within subsection [f] (j.3).

[(h) In determining whether to approve or to disapprove a final-form or a final-omitted regulation, the commission shall, first and foremost, determine whether the agency has the statutory authority to promulgate the final-form or final-omitted regulation and whether that regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based. In making its determination, the commission shall consider written comments submitted by the committees and current members of the General Assembly, pertinent opinions of Pennsylvania's courts and formal opinions of the Attorney General.

(i) Upon a finding that the final-form or final-omitted 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 final-form or final-omitted regulation is in the public interest:

(1) Economic or fiscal impacts of the final-form or final-omitted regulation, 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 required reports, forms or other paperwork and the estimated cost of their preparation by individuals, businesses and organizations in the private and public sectors.

(iv) The nature and estimated cost of legal, consulting or accounting services which the private or public sector may 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 final-form or final-omitted 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.

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

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

(5) Approval or disapproval by the committees.]

(j) The commission shall accept public [or agency] comments only up to 48 hours prior to the commission's public meeting *unless the comments are submitted at the request of the commission*. The commission shall receive comments from [a committee or its] *the agency or members of the General Assembly* until [the public meeting is called to order] *the commission acts on the regulation*. The commission shall transmit [documents] *comments* received during the 48-hour period prior to the commission's public meeting to the agency [within 24 hours of] *and the committees upon* receipt. The commission shall [receive] *accept* additional public [or agency] comments only after the public meeting has been called to order.

(j.1) A committee shall have at least 20 days from receipt of the information required under subsection (a) or receipt of the information required under subsection (c) to take action pursuant to subsection (j.2). If the committees are prevented from completing their 20-day review because of the adjournment sine die or expiration of the legislative session in an even-numbered year, their review of the final-form or final-omitted regulation shall automatically be suspended until the fourth Monday in January of the next year. On that date, the agency shall resubmit the final-form or final-omitted regulation and required material to the committees and the commission. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the final-form or final-omitted regulation and required material to the commission and the committees until both committees have been designated. If the agency does not deliver the final-form or final-omitted regulation and required material to the commission and the committees by the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin, the agency shall be deemed to have withdrawn the regulation. In computing

the remaining time for committee review, the number of days in which the committees have had the final-form or the final-omitted regulation under review as of the adjournment sine die or expiration of the prior session shall be subtracted from the 20-day committee review period, but the committee review period in the next succeeding legislative session shall not be less than ten days. The commission shall not act on a regulation until the committee review period has expired. This section shall not apply to emergency-certified regulations adopted pursuant to the provisions of section 6(d).

(j.2) At any time during the commission's review period up to 24 hours prior to the opening of the commission's public meeting, a committee may notify the commission and the agency that it has approved or disapproved a final-form or final-omitted regulation or that it intends to review the regulation. If the commission approves a regulation and a committee has not notified the commission and the agency that it has disapproved the regulation or that it intends to review the regulation, the agency may promulgate the regulation. If the commission approves a regulation and a committee has notified the commission and the agency that it has disapproved the regulation or that it intends to review the regulation, the agency may not promulgate the regulation for 14 days after the committee has received the commission's approval order. During this 14-day period, the committee may take action on the regulation pursuant to section 7(d). If at the expiration of the 14-day period the committee has not taken action on the regulation pursuant to section 7(d), the agency may promulgate the regulation.

(j.3) If the committees are prevented from completing their 14-day review because of adjournment sine die or expiration of the legislative session in an even-numbered year, their review of the final-form or final-omitted regulation shall automatically be suspended until the fourth Monday in January of the next year. On that date, the agency shall resubmit the final-form or final-omitted regulation and required material to the committees and the commission. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the final-form or final-omitted regulation and required material to the committees and the commission until both committees are designated. If the agency does not deliver the final-form or final-omitted regulation and required material to the commission and the committees by the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation. In determining the remaining time for committee review, the number of days in which the committees have had the final-form or the final-omitted regulation under review as of the adjournment sine die or expiration of the prior session shall be subtracted from the 14-day committee review period, but the committee review period in the next succeeding legislative

session shall not be less than ten days. An agency may not submit a final-form or final-omitted regulation to the commission or the committees for review during the period from the adjournment sine die or expiration of the legislative session of an even-numbered year to the date by which both committees have been designated in the next succeeding legislative session. This subsection shall not apply to emergency-certified regulations adopted pursuant to the provisions of section 6(d).

(j.4) If the commission disapproves a final-form or final-omitted regulation, the commission, the committees and the agency will proceed in accordance with section 6.

(k) The commission shall note and shall make a part of the public record all [documents] *comments* which it receives relating to a regulation and shall retain the [documents] *comments* for four years after the promulgation of the regulation.

(l) Except for emergency-certified regulations adopted under section 6(d), an agency may not promulgate a regulation until completion of the review provided for in this act.

Section 3. The act is amended by adding a section to read:
Section 5.2. Criteria for review of regulations.

(a) In determining whether a proposed, final-form, final-omitted or existing regulation is in the public interest, the commission shall, first and foremost, determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based. In making its determination, the commission shall consider written comments submitted by the committees and current members of the General Assembly, pertinent opinions of Pennsylvania's courts and formal opinions of the Attorney General.

(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:

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

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

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

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

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

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

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

(5) *Comments, objections or recommendations of a committee.*

(6) *Compliance with the provisions of this act or the regulations of the commission in promulgating the regulation.*

Section 4. Sections 6, 7 and 8.1 of the act, amended June 25, 1997 (P.L.252, No.24), are amended to read:

Section 6. Procedures for disapproval of final-form and final-omitted regulations; emergency-certified regulations.

(a) **[If the committees and the commission do not disapprove a final-form or a final-omitted regulation by the expiration of their respective review periods under section 5.1(d), (e) or (f), the agency may promulgate the final-form or final-omitted regulation.]** If the commission disapproves a final-form or final-omitted regulation, the commission shall deliver its disapproval order to the Legislative Reference Bureau, the committees[, commentators who have requested additional information under section 5.1(a)] and the agency. *The commission shall notify commentators who have requested additional information under section 5.1(a) of the commission's vote to disapprove.* The disapproval order shall specify the regulatory review criteria which the final-form or final-omitted regulation has not met [and shall describe the documents and testimony which the commission relied on in reaching its decision]. The agency shall review the commission's order and proceed pursuant to section 7(a).

(b) The commission's order disapproving a final-form or final-omitted regulation shall bar the agency from promulgating that regulation pending subsequent review under section 7.

[(c) If a committee has notified the commission of its disapproval of a final-form or final-omitted regulation and the commission approves the final-form or final-omitted regulation, the commission shall, within two business days, deliver its approval order to the committee. If either committee is prevented from receiving the commission's order because

of the adjournment sine die or expiration of the legislative session in an even-numbered year, the commission shall deliver its order to the committee or its successor committee on the fourth Monday in January of the next year. If either committee has not been designated by the fourth Monday in January, the commission may not deliver its order to the committees until both committees have been designated, but the commission shall deliver its order no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. The committee shall have 14 days from receipt of the approval order to take action pursuant to section 7(d). During this 14-day period the agency may not promulgate the final-form or final-omitted regulation approved by the commission. If, at the expiration of the 14-day period, the committee fails to act on the final-form or final-omitted regulation pursuant to section 7(d), the agency may promulgate the final-form or final-omitted regulation.]

(d) The commission may not issue an order barring an agency from promulgating a final-form or final-omitted regulation if the Attorney General certifies that the final-form or final-omitted 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 or if the Governor certifies that the final-form or final-omitted regulation is required to meet an emergency which includes conditions which may threaten the public health, safety or welfare; cause a budget deficit; or create the need for supplemental or deficiency appropriations of greater than \$1,000,000. In those cases, the final-form or final-omitted regulation may take effect on the date of publication or on a later date specified in the order adopting the final-form or final-omitted regulation. The commission and the committees shall review the final-form or final-omitted regulation pursuant to the procedures provided for in this act. If the final-form or final-omitted regulation is disapproved pursuant to those procedures, that regulation shall be rescinded after 120 days or upon final disapproval, whichever occurs later.

Section 7. Procedures for subsequent review of disapproved final-form or final-omitted regulations.

(a) [Within seven days after the agency has received an order from the commission disapproving and barring promulgation of a final-form or final-omitted regulation issued pursuant to section 6(a), the agency shall notify the Governor, the committees and the commission of its selection of one of the following options:] *An agency may select one of the following options for proceeding with a regulation which has been disapproved by the commission:*

- (1) To proceed further with the final-form or final-omitted regulation pursuant to subsection (b).
- (2) To proceed further with the final-form or final-omitted regulation pursuant to subsection (c).

(3) To withdraw the final-form or final-omitted regulation.

[(a.1) If the committees are prevented from receiving the notice required in this section because of the adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall deliver the notice to the Governor, the commission and the committees on the fourth Monday in January of the next year. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the notice to the commission and the committees until both committees are designated, but the agency shall deliver the notice to the committees and the commission no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency fails to deliver the notice to the commission and the committees in the time prescribed in this subsection, the agency shall be deemed to have withdrawn that regulation.]

(b) If the agency decides to adopt the final-form or final-omitted regulation without revisions or further modifications, the agency shall submit a report to the committees 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 or final-omitted regulation, the commission's disapproval order and the agency's response and recommendations regarding the final-form or final-omitted regulation. If the committees are prevented from receiving the report because of adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall submit its report to the commission and the committees on the fourth Monday in January of the next year. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the report to the committees and the commission until both committees are designated, but the agency shall deliver its report to the commission and the committees no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency **[fails to] *does not*** deliver the report to the committees and the commission in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation. **[Upon receipt of the agency's report, the committees may proceed pursuant to subsection (d).]**

(c) If the agency decides to revise or modify the final-form or final-omitted regulation in order to respond to objections raised by the commission and adopt that regulation with revisions or modifications, the agency shall submit a report to the committees 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 or final-omitted regulation, the findings of the commission, and the agency's response and recommendations regarding the revised final-form or final-omitted regulation. If the committees are prevented from receiving the report

because of adjournment sine die or expiration of the legislative session in an even-numbered year, the agency shall submit the report to the commission and the committees on the fourth Monday in January of the next year. If either committee has not been designated by the fourth Monday in January, the agency may not deliver the report to the committees and the commission until both committees are designated, but the agency shall deliver its report to the commission and the committees no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the agency ~~[fails to]~~ *does not* deliver its report to the commission and the committees in the time prescribed in this subsection, the agency shall be deemed to have withdrawn the final-form or final-omitted regulation. **[Upon receipt of the agency's report, a committee shall have ten days to approve or disapprove the report and to notify the commission and the agency of its approval or disapproval. If a committee fails to notify the commission and the agency of its disapproval within ten days, the committee shall be deemed to have approved the agency's report.]**

(c.1) The commission ~~[shall have seven]~~ *may have until its next scheduled meeting which occurs no less than 15 days from [the expiration of the committee's ten-day review period or until its next regularly scheduled meeting, whichever is later, to]* receipt of the agency's report to approve or disapprove the agency's report. **[If the commission and the committee approve the agency's report, the agency may promulgate the final-form or final-omitted regulation. If the commission disapproves the agency report, the agency shall be barred from promulgating that regulation until the review provided for in this subsection and in subsection (d) is completed. If a committee disapproves an agency's report and the commission approves it or if the commission disapproves an agency report, the]** *The* commission shall deliver its *approval or disapproval* order to the committees for consideration by the General Assembly pursuant to subsection (d). If the commission is prevented from delivering its order to the committees within the time period provided for in this subsection because of the adjournment sine die or expiration of the legislative session in an even-numbered year, the commission shall deliver its order on the fourth Monday of January of the next year. If either committee has not been designated by the fourth Monday in January, the commission may not deliver its order to the committees until both committees are designated, but the commission shall deliver its order no later than the second Monday after the date by which both committee designations have been published in the Pennsylvania Bulletin. If the commission ~~[fails to]~~ *does not* deliver its order disapproving the agency's report and revised final-form or final-omitted regulation in the time prescribed by this subsection, the commission shall be deemed to have approved the agency's report and the revised final-form or final-omitted regulation.

(d) Upon receipt of the [report of an agency pursuant to subsection (b), of the agency's report and the] commission's order pursuant to subsection [(c) or of the commission's order pursuant to section 6(c)] *(c.1)* or at the expiration of the commission's review period if the commission does not act on the regulation or does not deliver its order pursuant to subsection *(c.1)*, one or both of the committees may, within 14 calendar days, report to the House of Representatives or Senate a concurrent resolution and notify the agency. During the 14-calendar-day period, the agency may not promulgate the final-form or final-omitted regulation. If, by the expiration of the 14-calendar-day period, neither committee reports a concurrent resolution, the committees shall be deemed to have approved the final-form or final-omitted regulation, and the agency may promulgate that regulation. If either committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, from the date on which the concurrent resolution has been reported, to adopt the concurrent resolution. If the General Assembly adopts the concurrent resolution by majority vote in both the Senate and the House of Representatives, the concurrent 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 concurrent resolution to the General Assembly within ten calendar days after it is presented, the Governor shall be deemed to have approved the concurrent resolution. If the Governor vetoes the concurrent resolution, the General Assembly may override that veto by a two-thirds vote in each house. The Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, to override the veto. If the General Assembly [fails to] *does not* adopt the concurrent resolution or override the veto in the time prescribed in this subsection, it shall be deemed to have approved the final-form or final-omitted regulation. Notice as to any final disposition of a concurrent resolution considered in accordance with this section shall be published in the Pennsylvania Bulletin. The bar on promulgation of the final-form or final-omitted regulation shall continue until that regulation has been approved or deemed approved in accordance with this subsection. If the General Assembly adopts the concurrent resolution and the Governor approves or is deemed to have approved the concurrent resolution or if the General Assembly overrides the Governor's veto of the concurrent resolution, the agency shall be barred from promulgating the final-form or final-omitted regulation. If the General Assembly [fails to] *does not* adopt the concurrent resolution or if the Governor vetoes the concurrent resolution and the General Assembly [fails to] *does not* override the Governor's veto, the agency may promulgate the final-form or final-omitted regulation. The General Assembly may, at its discretion, adopt a concurrent resolution disapproving the final-form or final-omitted regulation to indicate the intent

of the General Assembly but permit the agency to promulgate that regulation.
Section 8.1. Existing regulations.

The commission, on its motion or at the request of any person or member of the General Assembly, may review any existing regulation which has been in effect for at least three years. If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority. The commission may submit recommendations to an agency recommending changes in existing regulations if it finds the existing regulations to be contrary to the public interest under the criteria established in [this] section 5.2. The commission may also make recommendations to the General Assembly and the Governor for statutory changes if the commission finds that any existing regulation may be contrary to the public interest.

Section 5. This act shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of this act to the Independent Regulatory Review Commission and to "committees" as defined in section 3 of the act.

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

APPROVED—The 6th day of December, A.D. 2002.

MARK S. SCHWEIKER