

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2442 Session of  
2004

INTRODUCED BY PICKETT, REED, TURZAI, BOYD, DENLINGER,  
 HUTCHINSON, McILHATTAN, MUSTIO, PAYNE, REICHLLEY, ALLEN,  
 ARGALL, ARMSTRONG, BAKER, BALDWIN, BARD, BROWNE, CAPPELLI,  
 CAUSER, CRAHALLA, DALEY, DALLY, FAIRCHILD, FICHTER, FORCIER,  
 FRANKEL, GABIG, GINGRICH, GOOD, GOODMAN, HARRIS, HENNESSEY,  
 HERMAN, HERSHEY, HESS, HICKERNELL, HORSEY, KILLION, LEH,  
 MAJOR, MARSICO, METCALFE, MILLARD, S. MILLER, O'NEILL,  
 SAINATO, SCAVELLO, SCHRODER, STERN, R. STEVENSON,  
 T. STEVENSON, E. Z. TAYLOR, TIGUE, WANSACZ, WATSON, WILT,  
 YOUNGBLOOD AND ZUG, MARCH 16, 2004

AS REPORTED FROM COMMITTEE ON INTERGOVERNMENTAL AFFAIRS, HOUSE  
 OF REPRESENTATIVES, AS AMENDED, MARCH 30, 2004

## AN ACT

1 Amending the act of June 25, 1982 (P.L.633, No.181), entitled,  
 2 as reenacted, "An act providing for independent oversight and  
 3 review of regulations, creating an Independent Regulatory  
 4 Review Commission, providing for its powers and duties and  
 5 making repeals," further providing for legislative intent,  
 6 for definitions, ~~for the Independent Regulatory Review~~ <—  
 7 ~~Commission, for review criteria, for commission and agency~~  
 8 ~~review procedure, for statutory compliance, for subsequent~~  
 9 ~~review, for classification of documents, for modifying~~  
 10 ~~regulations, for existing regulations, for staff, for~~  
 11 ~~subpoena power, for administrative functions and for~~  
 12 ~~termination~~ AND FOR PROPOSED REGULATIONS AND PROCEDURE FOR <—  
 13 REVIEW.

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

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

1 Section 2. Legislative intent.

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

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

1 or its officers.]

2 (b) To improve state rulemaking by creating procedures to  
3 analyze the availability of more flexible regulatory approaches  
4 for small businesses in accordance with the following findings:

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

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

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

13 (4) When adopting regulations to protect the health,  
14 safety and economic welfare of the Commonwealth of  
15 Pennsylvania, State agencies should seek to achieve statutory  
16 goals as effectively and efficiently as possible without  
17 imposing unnecessary burdens on small ~~employers~~ BUSINESS. ←

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

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

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

29 (8) The practice of treating all regulated businesses as  
30 equivalent may lead to inefficient use of regulatory agency

1 resources, enforcement problems, and, in some cases, to  
2 actions inconsistent with the legislative intent of health,  
3 safety, environmental and economic welfare legislation.

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

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

14 (c) For any regulation subject to this act, a small business  
15 that is adversely affected or aggrieved by final agency action  
16 is entitled to judicial review of agency compliance with the  
17 requirements of this section.

18 (d) A small business may seek such review during the period  
19 beginning on the date of final agency action and ending one year  
20 later.

21 (E) THIS ACT IS NOT INTENDED TO CREATE A RIGHT OR BENEFIT, <—  
22 SUBSTANTIVE OR PROCEDURAL, ENFORCEABLE AT LAW BY A PERSON  
23 AGAINST ANOTHER PERSON OR AGAINST THE COMMONWEALTH, ITS AGENCIES  
24 OR ITS OFFICERS.

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

27 Section 3. Definitions.

28 The following words and phrases when used in this act shall  
29 have the meanings given to them in this section unless the  
30 context clearly indicates otherwise:

1 \* \* \*

2 "Small business." A business entity, including its  
3 affiliates, that:

4 (1) is independently owned and operated; and

5 (2) employs fewer than ~~five hundred~~ TWO HUNDRED FIFTY ←  
6 full-time employees or has gross annual sales of less than  
7 six million dollars.

8 \* \* \*

9 Section 3. Section 5(a) of the act, amended December 6, 2002  
10 (P.L.1227, No.148), is amended and the section is amended by  
11 adding a subsection to read:

12 Section 5. Proposed regulations; procedures for review.

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

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

25 (1.1) A specific citation to the Federal or State  
26 statutory or regulatory authority or the decision of a  
27 Federal or State court under which the agency is proposing  
28 the regulation, which the regulation is designed to implement  
29 or which may mandate or affect compliance with the  
30 regulation.

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

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

4 (4) Estimates of the direct and indirect costs to the  
5 Commonwealth, to its political subdivisions and to the  
6 private sector. Insofar as the proposed regulation relates to  
7 costs to the Commonwealth, the agency may submit in lieu of  
8 its own statement the fiscal note prepared by the Office of  
9 the Budget pursuant to section 612 of the act of April 9,  
10 1929 (P.L.177, No.175), known as "The Administrative Code of  
11 1929."

12 (5) A statement of legal, accounting or consulting  
13 procedures and additional reporting, recordkeeping or other  
14 paperwork, including copies of forms or reports, which will  
15 be required for implementation of the regulation and an  
16 explanation of measures which have been taken to minimize  
17 these requirements.

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

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

30 (10) An identification of the financial, economic and

1 social impact of the regulation on individuals, small  
2 businesses, business and labor communities and other public  
3 and private organizations and, when practicable, an  
4 evaluation of the benefits expected as a result of the  
5 regulation.

6 (10.1) Prior to the adoption of any proposed regulation  
7 that may have an adverse impact on small businesses, each  
8 agency shall prepare an economic impact statement that  
9 includes the following:

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

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

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

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

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

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

30 (12.1) Prior to the adoption of any proposed regulation

1 on and after January 1, 2004, each agency shall prepare a  
2 regulatory flexibility analysis in which the agency shall,  
3 where consistent with health, safety, environmental and  
4 economic welfare, consider utilizing regulatory methods that  
5 will accomplish the objectives of applicable statutes while  
6 minimizing adverse impact on small businesses. The agency  
7 shall consider, without limitation, each of the following  
8 methods of reducing the impact of the proposed regulation on  
9 small businesses:

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

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

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

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

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

24 (a.1) Prior to the adoption of any proposed regulation that  
25 may have an adverse impact on small businesses, each agency  
26 shall notify the Independent Regulatory Review Commission of its  
27 intent to adopt the proposed regulation. ~~The commission shall~~ <—  
28 ~~advise and assist agencies in complying with the provisions of~~  
29 ~~this section.~~

30 \* \* \*

1       ~~Section 4. Section 8.1 of the act, amended December 6, 2002~~ <—

2       ~~(P.L.1227, No.148), is amended to read:~~

3       ~~Section 8.1. Existing regulations.~~

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

17       ~~Section 5 4. This act shall take effect in 60 days.~~ <—