

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 72 Session of 2021

INTRODUCED BY KEEFER, MILLARD, ROTHMAN, METCALFE, IRVIN,
BERNSTINE, RYAN, JONES, R. MACKENZIE, SAYLOR, MOUL, HERSHEY,
STRUZZI, GROVE, ZIMMERMAN, HAMM AND M. MACKENZIE,
JANUARY 11, 2021

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JANUARY 11, 2021

AN ACT

1 Amending the act of June 25, 1982 (P.L.633, No.181), entitled
2 "An act providing for independent oversight and review of
3 regulations, creating an Independent Regulatory Review
4 Commission, providing for its powers and duties and making
5 repeals," further providing for definitions, for proposed
6 regulations and procedures for review and for final-form
7 regulations and final-omitted regulations and procedures for
8 review; providing for regulations deemed withdrawn; further
9 providing for procedures for subsequent review of disapproved
10 final-form or final-omitted regulations by the commission;
11 and providing for concurrent resolution required for
12 economically significant regulations.

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

15 Section 1. Section 3 of the act of June 25, 1982 (P.L.633,
16 No.181), known as the Regulatory Review Act, is amended by
17 adding definitions to read:

18 Section 3. Definitions.

19 The following words and phrases when used in this act shall
20 have, unless the context clearly indicates otherwise, the
21 meanings given to them in this section:

1 * * *

2 "Economically significant regulation." A regulation that, if
3 promulgated and implemented, may reasonably be expected to
4 result in direct or indirect cost to the Commonwealth, to its
5 political subdivisions and to the private sector in excess of
6 \$1,000,000 on an annual basis.

7 * * *

8 "Legislative day." A day when both houses of the General
9 Assembly are in voting session.

10 * * *

11 Section 2. Section 5(a)(1.1) and (4) of the act are amended
12 and the section is amended by adding subsections to read:

13 Section 5. Proposed regulations; procedures for review.

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

21 * * *

22 (1.1) A specific citation to the Federal or State
23 statutory or regulatory authority or the decision of a
24 Federal or State court under which the agency is proposing
25 the regulation, which the regulation is designed to implement
26 or which may mandate or affect compliance with the
27 regulation. In the case of a citation of State statutory
28 authority, the citation must be to a provision of the statute
29 that explicitly states that the agency may promulgate
30 regulations for the specific purpose cited in the statement

1 of need for the regulation under paragraph (3).

2 * * *

3 (4) Estimates of the direct and indirect costs to the
4 Commonwealth, to its political subdivisions and to the
5 private sector. [Insofar as the proposed regulation relates
6 to costs to the Commonwealth, the agency may submit in lieu
7 of its own statement the fiscal note prepared by the Office
8 of the Budget pursuant to section 612 of the act of April 9,
9 1929 (P.L.177, No.175), known as "The Administrative Code of
10 1929."] The estimates shall be prepared by the Independent
11 Fiscal Office and submitted to the agency for inclusion in
12 the regulatory analysis form and shall include an estimate of
13 the annual costs to be used to determine whether the
14 regulation is an economically significant regulation.

15 * * *

16 (d.1) The committees shall, during the public comment
17 period, conduct a public hearing to receive comments regarding a
18 proposed economically significant regulation. The agency shall
19 appear at the hearing if requested to do so by the chair of the
20 committee.

21 * * *

22 (i) All forms required for implementation of a regulation
23 must be included with the regulatory analysis form when
24 submitted to the Legislative Reference Bureau, the committees
25 and the commission under subsection (a).

26 (j) The commission shall transmit comments regarding the
27 cost estimates required under subsection (a)(4) to the
28 Independent Fiscal Office for review.

29 Section 3. Section 5.1(e), (j.2), (j.3) and (l) of the act
30 are amended to read:

1 Section 5.1. Final-form regulations and final-omitted

2 regulations; procedures for review.

3 * * *

4 (e) The commission may have until its next scheduled meeting
5 which occurs no less than 30 days after receipt of the final-
6 form or final-omitted regulation to approve or disapprove the
7 final-form or final-omitted regulation. Notwithstanding
8 subsections (j.1) and (j.2), at any time prior to 24 hours
9 before the commission's meeting to consider a regulation, a
10 committee may notify the commission and the agency that the
11 committee disapproves or intends to further review the final-
12 form regulation. If notified by a committee that the committee
13 disapproves of a regulation, the commission may not approve or
14 disapprove the regulation for a period of 30 days or nine
15 legislative days, whichever is longer. If notified by a
16 committee that the committee intends to further review a final-
17 form regulation, the commission may not approve or disapprove
18 the regulation for a period of 14 days or six legislative days,
19 whichever is longer. The commission shall notify the agency and
20 the committees of its approval or disapproval. If the commission
21 does not disapprove the final-form or final-omitted regulation
22 within the time allotted in this subsection, the commission
23 shall be deemed to have approved the final-form or final-omitted
24 regulation.

25 * * *

26 (j.2) (1) At any time during the commission's review period
27 up to 24 hours prior to the opening of the commission's
28 public meeting, a committee may notify the commission and the
29 agency that it has approved or disapproved a final-form or
30 final-omitted regulation or that it intends to review the

1 regulation.

2 (2) If the commission approves a regulation and a
3 committee has not notified the commission and the agency that
4 it has disapproved the regulation or that it intends to
5 review the regulation, the agency may promulgate the
6 regulation. If the commission approves a regulation and a
7 committee has notified the commission and the agency that it
8 has disapproved the regulation or that it intends to review
9 the regulation, the agency may not promulgate the regulation
10 for 14 days or six legislative days, whichever is longer,
11 after the committee has received the commission's approval
12 order.

13 (3) During [**this 14-day period**] the period established
14 under paragraph (2), the committee may take action on the
15 regulation pursuant to section 7(d). If at the expiration of
16 the [**14-day**] period established under paragraph (2) the
17 committee has not taken action on the regulation pursuant to
18 section 7(d), the agency may promulgate the regulation.

19 (j.3) If the committees are prevented from completing their
20 [**14-day**] review during the period established under subsection
21 (j.2)(2) because of adjournment sine die or expiration of the
22 legislative session in an even-numbered year, their review of
23 the final-form or final-omitted regulation shall automatically
24 be suspended until the fourth Monday in January of the next
25 year. On that date, the agency shall resubmit the final-form or
26 final-omitted regulation and required material to the committees
27 and the commission. If either committee has not been designated
28 by the fourth Monday in January, the agency may not deliver the
29 final-form or final-omitted regulation and required material to
30 the committees and the commission until both committees are

1 designated. If the agency does not deliver the final-form or
2 final-omitted regulation and required material to the commission
3 and the committees by the second Monday after the date by which
4 both committee designations have been published in the
5 Pennsylvania Bulletin, the agency shall be deemed to have
6 withdrawn the final-form or final-omitted regulation. In
7 determining the remaining time for committee review, the number
8 of days in which the committees have had the final-form or the
9 final-omitted regulation under review as of the adjournment sine
10 die or expiration of the prior session shall be subtracted from
11 the [14-day] committee review period established under
12 subsection (j.2)(2), but the committee review period in the next
13 succeeding legislative session shall not be less than ten days.
14 An agency may not submit a final-form or final-omitted
15 regulation to the commission or the committees for review during
16 the period from the adjournment sine die or expiration of the
17 legislative session of an even-numbered year to the date by
18 which both committees have been designated in the next
19 succeeding legislative session. This subsection shall not apply
20 to emergency-certified regulations adopted pursuant to the
21 provisions of section 6(d).

22 * * *

23 (1) Except for emergency-certified regulations adopted under
24 section 6(d), an agency may not promulgate a regulation until
25 completion of the review provided for in this act[.] and, if the
26 regulation is an economically significant regulation, the
27 General Assembly adopts a concurrent resolution under section
28 7.2.

29 Section 4. The act is amended by adding a section to read:
30 Section 5.3. Regulations deemed withdrawn.

1 A regulation shall be deemed withdrawn if there is no
2 provision of a State statute which explicitly states that the
3 agency may promulgate regulations for the specific purpose cited
4 in the statement of need for the regulation under section 5(a)
5 (3) and the regulatory analysis form submitted for the
6 regulation does not comply with the requirements of section 5(a)
7 (1.1).

8 Section 5. Section 7(d) of the act is amended to read:
9 Section 7. Procedures for subsequent review of disapproved
10 final-form or final-omitted regulations.

11 * * *

12 (d) Upon receipt of the commission's order pursuant to
13 subsection (c.1) or at the expiration of the commission's review
14 period if the commission does not act on the regulation or does
15 not deliver its order pursuant to subsection (c.1), [one] the
16 following apply:

17 (1) One or both of the committees may, within 14
18 calendar days or six legislative days, whichever is longer,
19 report to the House of Representatives or Senate a concurrent
20 resolution and notify the agency. During the [14-calendar-
21 day] period specified in this paragraph, the agency may not
22 promulgate the final-form or final-omitted regulation. If, by
23 the expiration of the [14-calendar-day] period specified in
24 this paragraph, neither committee reports a concurrent
25 resolution, the committees shall be deemed to have approved
26 the final-form or final-omitted regulation, and the agency
27 may promulgate that regulation.

28 (2) If either committee reports a concurrent resolution
29 before the expiration of the [14-day] period specified in
30 paragraph (1), the [Senate and the House of Representatives]

1 chamber to which the concurrent resolution is reported shall
2 [each] have 30 calendar days or ten legislative days,
3 whichever is longer, from the date on which the concurrent
4 resolution has been reported, to adopt the concurrent
5 resolution[.] and transmit it to the other chamber. The other
6 chamber shall have 30 calendar days or ten legislative days,
7 whichever is longer, from the date on which the concurrent
8 resolution has been transmitted, to adopt the concurrent
9 resolution.

10 (3) If the General Assembly adopts the concurrent
11 resolution by majority vote in both the Senate and the House
12 of Representatives within 60 calendar days or 20 legislative
13 days, whichever is longer, from the date on which a
14 concurrent resolution has been reported out by a committee,
15 the concurrent resolution shall be presented to the Governor
16 in accordance with section 9 of Article III of the
17 Constitution of Pennsylvania.

18 (4) If the Governor does not return the concurrent
19 resolution to the General Assembly within ten calendar days
20 after it is presented, the Governor shall be deemed to have
21 approved the concurrent resolution.

22 (5) If the Governor vetoes the concurrent resolution,
23 the General Assembly may override that veto by a two-thirds
24 vote in each house. The Senate and the House of
25 Representatives shall each have 30 calendar days or ten
26 legislative days, whichever is longer, to override the veto.
27 If the General Assembly does not adopt the concurrent
28 resolution or override the veto in the time prescribed in
29 this [subsection] paragraph, it shall be deemed to have
30 approved the final-form or final-omitted regulation.

1 (6) Notice as to any final disposition of a concurrent
2 resolution considered in accordance with this [section]
3 subsection shall be published in the Pennsylvania Bulletin.

4 (7) The bar on promulgation of the final-form or final-
5 omitted regulation shall continue until that regulation has
6 been approved or deemed approved in accordance with this
7 subsection.

8 (8) If the General Assembly adopts the concurrent
9 resolution and the Governor approves or is deemed to have
10 approved the concurrent resolution or if the General Assembly
11 overrides the Governor's veto of the concurrent resolution,
12 the agency shall be barred from promulgating the final-form
13 or final-omitted regulation.

14 (9) If the General Assembly does not adopt the
15 concurrent resolution or if the Governor vetoes the
16 concurrent resolution and the General Assembly does not
17 override the Governor's veto, the agency may promulgate the
18 final-form or final-omitted regulation.

19 (10) The General Assembly may, at its discretion, adopt
20 a concurrent resolution disapproving the final-form or final-
21 omitted regulation to indicate the intent of the General
22 Assembly but permit the agency to promulgate that regulation.

23 Section 6. The act is amended by adding a section to read:

24 Section 7.2. Concurrent resolution required for economically
25 significant regulations.

26 (a) If the commission issues an order to approve a final-
27 form regulation or final-omitted regulation that is an
28 economically significant regulation or if the agency decides to
29 proceed with a final-form regulation or final-omitted regulation
30 that is an economically significant regulation for which the

commission issued a disapproval order, the agency shall submit a
copy of the order and, if applicable, the agency response to the
Senate and the House of Representatives and shall request a
concurrent resolution approving the regulation. The concurrent
resolution shall be referred to the applicable standing
committee of the Senate and the applicable standing committee of
the House of Representatives. A concurrent resolution that is
reported from the standing committee of the Senate shall be
placed on the Senate calendar. A concurrent resolution that is
reported from the standing committee of the House of
Representatives shall be placed on the House calendar. 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 agency requested the concurrent resolution
to consider the concurrent resolution. If the General Assembly
does not adopt the concurrent resolution in the time prescribed
in this subsection, the final-form regulation or final-omitted
regulation shall be deemed not approved and the regulation shall
not take effect.

(b) This section shall not apply to emergency-certified
regulations adopted under section 6(d).

Section 7. This act shall apply to any regulation prepared
in final form on or after the effective date of this section.

Section 8. This act shall take effect in 60 days.