

Providing for independent oversight and review of regulations, creating an Independent Regulatory Review Commission, providing for its powers and duties and making repeals.

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

Section 1. Short title.

This act shall be known and may be cited as the "Regulatory Review Act."

Section 2. Legislative intent.

(a) The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a

commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General Assembly; and to assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.

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

(2 amended June 25, 1997, P.L.252, No.24)

### 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 or any court, political subdivision, municipal or local authority.

"Commission." The Independent Regulatory Review Commission.

"Committee." A standing committee of the Senate or the House of Representatives designated by the President pro tempore of the Senate for the Senate or by the Speaker of the House of Representatives for the House. The designation shall prescribe the jurisdiction of each standing committee over the various State agencies for purposes of this act. The designation shall be transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

"Commonwealth Attorneys Act." The act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act."

"Commonwealth Documents Law." The act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Designated standing committee." (Def. deleted by amendment).

"Family." A parent, spouse, child, brother or sister.

"Final-form regulation." A regulation previously published as a proposed regulation pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, which an agency submits to the commission and the committees following the close of the public comment period.

"Final-omitted regulation." A regulation which an agency submits to the commission and the committees for which the agency has omitted notice of proposed rulemaking pursuant to section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Promulgate." To publish an order adopting a final-form or final-omitted regulation in accordance with the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Proposed regulation." A document intended for promulgation as a regulation which an agency submits to the commission and the committees and for which the agency gives notice of proposed rulemaking and holds a public comment period pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

"Regulation." 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 amending, revising or otherwise altering the terms and provisions of an existing regulation, or prescribing the practice or procedure before such agency. The term shall also include actions of the Liquor Control Board which have an effect on the discount rate for retail licensees. The term shall not include a proclamation, executive order, directive or similar document issued by the Governor, but shall include a regulation which may be promulgated by an agency, only with the approval of the Governor.

"Withdrawal." Removal of a proposed, final-form or final-omitted regulation by an agency

from the review process so that the commission and the committees are prevented from taking further action on the regulation.

(3 amended June 25, 1997, P.L.252, No.24)

**Compiler's Note:** The name of the Pennsylvania Fish Commission, referred to in this section, was changed to the Pennsylvania Fish and Boat Commission by the Act 39 of 1991. See 30 Pa.C.S. § 308 (relating to designation of commission).

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

(a) The Independent Regulatory Review Commission shall consist of five members to be known as commissioners. One commissioner shall be appointed by the Governor to serve at the Governor's pleasure, one by the President pro tempore of the Senate, one by the Speaker of the House of Representatives, one by the Minority Leader of the Senate and one by the Minority Leader of the House of Representatives. A member of the General Assembly or any other officer or employee of State Government may not serve as a commissioner; but a commissioner may serve on advisory boards and commissions, or on other boards and commissions which do not promulgate any rules and regulations which may come before the commission for review pursuant to this act.

(b) Each appointment provided for by subsection (a), except for the Governor's appointment, shall be for a term of three years. ((b) amended Dec. 6, 2002, P.L.1227, No.148)

(c) An appointment to fill a vacancy for the remainder of the unexpired term shall be made in the same manner as set forth in subsection (a). Upon the expiration of a commissioner's term of office, the commissioner shall continue to hold office until a successor is appointed.

(d) The commissioner who is elected to serve as the chairperson in accordance with subsection (g) shall receive \$300 per day as compensation for services rendered to the commission. Each of the other commissioners shall receive \$250 per day as compensation for services rendered to the commission. A commissioner shall also be entitled to reimbursement for travel and other necessary expenses incurred as a result of official duties. The expenses incurred by a commissioner, or by an employee of the commission, shall be paid on the presentation of itemized vouchers therefor, which vouchers shall be subject to the approval of the commission.

(e) Except as authorized pursuant to subsection (f) or (h) and except for the Governor's appointee who shall serve at the Governor's pleasure, a commissioner may not be removed during the commissioner's term of office. The Governor may, with the approval of two-thirds of the members of the Senate, upon clear and convincing evidence of misfeasance or malfeasance in office or neglect of duty, remove a commissioner prior to the expiration of the commissioner's term. The Governor shall provide the commissioner to be removed with a detailed written statement of the reasons for removal.

(f) A commissioner formally charged before a court of record with the commission of a felony or with a misdemeanor as provided by 18 Pa.C.S. Pt. II Art. E (relating to offenses against public administration) shall immediately be suspended as a commissioner until the charge is dismissed or a verdict of acquittal is announced. If a commissioner pleads guilty or nolo contendere or is found guilty of such offense, or receives probation without verdict, disposition in lieu of trial or an accelerated rehabilitative disposition for felony or misdemeanor charges in this Commonwealth or in any other jurisdiction, that commissioner shall immediately be removed from the commission upon announcement of the verdict or disposition by the court or upon the court's acceptance of a plea of guilty or nolo contendere.

(f.1) A commissioner may not participate in deliberations regarding any regulation which significantly affects the operation or activities of any organization (except a nonprofit organization certified under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) in which the commissioner holds a nonsalaried position) in which the commissioner, or any member of the commissioner's family, owns shares of stock in excess of 5% of the total issue of the stock, has an ownership interest in excess of 5% of the total ownership or serves as an officer, director, trustee, partner or employee. Within 90 days of appointment, and annually thereafter, each commissioner shall disclose all business affiliations and financial interests. The disclosure statement shall be filed with the executive director of the commission and the Ethics Commission and shall be available for public inspection during business hours of the commission. Each commissioner's disclosure statement shall remain on file as long as the commissioner remains on the commission. If a commissioner has or may

have a conflict of interest or feels another commissioner has or may have a conflict of interest in deliberating on a regulation, the commissioner shall, prior to the vote on the regulation, disclose the conflict or potential conflict. The commissioner may request a ruling from the chairperson of the commission upon the question of whether the conflict or potential conflict disqualifies the commissioner from voting on the regulation. A commissioner may challenge the ruling of the chairperson, and, in that case, the question shall be resolved by majority vote of the commission. The chairperson or a majority of the commissioners may request the Ethics Commission to provide advice regarding conflicts of interest, and the advice, when given, shall be binding upon the commission. A commissioner commits a misdemeanor of the second degree by knowingly and intentionally violating the provisions of this subsection. The commission or its employees when acting in good faith on an opinion issued to a commissioner by the chairperson or the Ethics Commission shall not be subject to criminal or civil penalties levied under the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, for so acting, provided the material facts are as stated in the request for an opinion. In addition to the requirements of this act, a commissioner is subject to the Public Official and Employee Ethics Law.

(g) The commission shall elect a chairperson, who shall serve for a term of two years and until a successor is elected. The chairperson shall preside at meetings of the commission and shall execute documents relating to the formal actions of the commission.

(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 scheduled by the commission upon the provision of at least ten days' notice to all affected agencies and the committees. A commissioner who does not attend three consecutive meetings without cause may be removed as a commissioner by the authority appointing the commissioner. ((h) amended Dec. 6, 2002, P.L.1227, No.148)

(i) For purposes of conducting official business, a quorum consists of three commissioners. A commissioner must be physically present to be counted toward the quorum. If the commission is unable to conduct business for lack of a quorum, the deadline for the commission to take action on a regulation in accordance with this act shall be postponed for 30 days or until the next meeting at which a quorum is in attendance, whichever first occurs.

(4 amended June 25, 1997, P.L.252, No.24)

#### Section 5. Proposed regulations; procedures 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, 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 may refer to the criteria in section 5.2.

(e) ((e) deleted by amendment)

(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 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 may, within thirty days after the close of the public comment period, convey to the agency and committees any comments, recommendations and objections to the proposed regulation. The 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 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.

(5 amended Dec. 6, 2002, P.L.1227, No.148)

Compiler's Note: Section 5 of Act 148 of 2002, which amended section 5, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

Section 5.1. Final-form regulations and final-omitted regulations; procedures for review.

(a) The agency shall review and consider public comments and the comments of the committees and commission pursuant to this section. Within five business days of receipt of a public comment, the agency shall 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 does not submit or withdraws and 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 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 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) ((d) deleted by amendment)

(e) The commission may have until its next scheduled meeting 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 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) 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. 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.

(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 date on which either of the committees takes action on the final-form or final-omitted regulation, 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 does not submit revisions to the committees and the commission or 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 may have until its next scheduled meeting 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 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 (j.3).

(h) ((h) deleted by amendment)

(i) ((i) deleted by amendment)

(j) The commission shall accept public 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 the agency or members of the General Assembly until the commission acts on the regulation. The commission shall transmit comments received during the 48-hour period prior to the commission's public meeting to the agency and the committees upon receipt. The commission shall accept additional public 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 comments which it receives relating to a regulation and shall retain the 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.

(5.1 amended Dec. 6, 2002, P.L.1227, No.148)

Compiler's Note: Section 5 of Act 148 of 2002, which amended section 5.1, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

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.
- (5.2 added Dec. 6, 2002, P.L.1227, No.148)

Compiler's Note: Section 5 of Act 148 of 2002, which added section 5.2, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

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

(a) 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 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. 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) ((c) deleted by amendment)

(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.

(6 amended Dec. 6, 2002, P.L.1227, No.148)

Compiler's Note: Section 5 of Act 148 of 2002, which amended section 6, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

Section 6.1. Agency action pursuant to statute. (6.1 deleted by amendment June 25, 1997, P.L.252, No.24).

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

(a) 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) ((a.1) deleted by amendment)

(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 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.

(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 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.

(c.1) The commission may have until its next scheduled meeting which occurs no less than 15 days from receipt of the agency's report to approve or disapprove the agency's report. 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 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 commission's order pursuant to subsection (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 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 does not adopt the concurrent resolution or if the Governor vetoes the concurrent resolution and the General Assembly 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.

(7 amended Dec. 6, 2002, P.L.1227, No.148)

Compiler's Note: Section 5 of Act 148 of 2002, which amended section 7, provided that Act 148 shall apply to proposed, final-form and final-omitted regulations which an agency submits on or after the effective date of Act 148 to the Independent Regulatory Review Commission and to "committees" as defined in section 3.

SECTION 7.1. CLASSIFICATION OF DOCUMENTS.

If the commission or a committee finds that a published or unpublished document should be promulgated as a regulation, the commission or committee may present the matter to the Joint Committee on Documents. The Joint Committee on Documents shall determine whether the document should be promulgated as a regulation and may order an agency either to promulgate the document as a regulation within 180 days or to desist from the use of the document in the business of the agency.

(7.1 amended June 25, 1997, P.L.252, No.24)

Section 8. Changes in final-form and final-omitted regulations.

(a) Except as provided in subsection (b), an agency may not make changes to a final-form or final-omitted regulation after that regulation has been approved or has been deemed approved by the committees or the commission pursuant to this act.

(b) Subsection (a) does not apply to changes made at the direction of the Office of Attorney General pursuant to its review under section 204(b) of the Commonwealth Attorneys Act.

(8 amended June 25, 1997, P.L.252, No.24)

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 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.

(8.1 amended Dec. 6, 2002, P.L.1227, No.148)

Section 9. Commission staff.

(a) The commission shall appoint and fix the compensation of a full-time executive director, who shall be responsible for the general supervision of all the affairs of the commission and for performing any administrative function or duty which the commission may delegate to the executive director. The commission shall appoint and fix the compensation of such other employees as the commission may find necessary for the proper operation of the commission.

(b) The commission shall appoint and fix the compensation of a full-time chief counsel, who shall not be subject to the supervision of the Attorney General or the General Counsel. The chief counsel shall supervise, coordinate and administer the legal services provided to the commission.

(9 amended June 25, 1997, P.L.252, No.24)

Section 10. Subpoena power.

The commission has the authority to issue subpoenas for the purpose of requiring the attendance of persons and the production of documents relating to any function which the commission or its staff is authorized to perform pursuant to this act. The chairperson or the executive director may sign a subpoena. The subpoena may be served in any manner authorized under the laws of this Commonwealth. The commission is authorized to apply to the Commonwealth Court to enforce its subpoenas.

(10 amended June 25, 1997, P.L.252, No.24)

Section 11. Regulations; annual reports; hearings and advisory group meetings.

(a) The commission, in the performance of its functions under this act, has the power to promulgate and enforce regulations necessary to carry out the purposes of this act. Regulations must be promulgated in accordance with the procedures established in the Commonwealth Documents Law. The regulations shall provide for the commission's notification of filings of final-form and final-omitted regulations to parties likely to be affected by the final-form and final-omitted regulations through publication of a notice in the Pennsylvania Bulletin. Prior to the regulations taking effect, the requirements of this act must be satisfied. For the purposes of reviewing the regulations of the commission and otherwise satisfying the requirements of this act, the Joint Committee on Documents shall exercise the rights and perform the functions of

the commission, and the commission shall exercise the rights and perform the functions of an agency under this act.

(b) On or before April 1, the commission shall file an annual report of its activities for the prior calendar year with the Governor and the General Assembly.

(c) The commission may hold public hearings on any matter before the commission and may meet with advisory groups regarding matters before the commission.

(11 amended June 25, 1997, P.L.252, No.24)

#### Section 12. Clearinghouse.

The commission shall act as a clearinghouse for complaints, comments and other input from members of the General Assembly and from the public regarding existing, proposed, final-form and final-omitted regulations. The commission shall maintain accurate records regarding complaints and comments it receives and shall maintain such records by departmental and subject matter categories for four years after the date of receipt by the commission. When the commission files its annual report as provided by section 11, the commission shall include within it a summary of public complaint and comment along with any recommendations the commission may offer for statutory change.

(12 amended June 25, 1997, P.L.252, No.24)

#### Section 12.1. Gubernatorial review.

The Governor may institute procedures for the review and approval of regulations promulgated by executive agencies prior to their submittal for review under this act, including, but not limited to, the establishment of a task force or committee, by executive order. The Governor may also establish procedures for the effective coordination of the review of regulations under the act of October 15, 1980 (P.L.950, No.164), known as the "Commonwealth Attorneys Act," and sections 612 and 2203-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Section 13. Appropriation. (Deleted by amendment Feb. 21, 1986, P.L.47, No.16)

#### Section 14. Repeals.

(a) The following acts or parts of acts are repealed absolutely:

Section 812.2, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

Second, third and fourth sentences of subsection (n) of section 4, act of May 23, 1945 (P.L.913, No.367), known as the "Professional Engineers Registration Law."

Second and third sentences of section 1410, act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

Subsection (c) of section 11, act of November 30, 1976 (P.L.1207, No.265), known as the "Emergency Medical Services Systems Act."

Subsections (c) and (d) of section 224, act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."

Subsections (c) and (d) of section 601, act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act."

Third and fourth sentences of subsection (a) and subsection (b) of section 404, act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing and Registration Act."

Section 107, act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act."

Section 6103(b) of Title 75 of the Pennsylvania Consolidated Statutes (relating to promulgation of rules and regulations by department).

(b) All other acts or parts of acts are repealed insofar as they provide for consideration by the General Assembly or its committees of proposed regulations.

Section 15. Termination date (15 deleted by amendment June 25, 1997, P.L.252, No.24)