

October 27, 2015

Re: Opposition to HB 965 (P.N. 1885) and SB 562

Dear Senator:

On behalf of our tens of thousands of members in Pennsylvania, the undersigned respectfully request that you OPPOSE House Bill 965 (P.N. 1885), which was referred to the Senate Rules and Executive Nominations Committee on October 23.

You may have heard that HB 965 (and its Senate counterpart, SB 562) are necessary for legislative “oversight” of regulatory rulemakings by state agencies. In fact, the legislature has more than ample oversight under current Regulatory Review Act (RRA) procedures – such oversight was the very purpose of the RRA. HB 965 would go beyond “oversight” by giving standing committees of the legislature the unilateral power to hold up executive proposals they dislike, and in so doing would almost certainly violate the separation of powers doctrine under the Pennsylvania Constitution. At the same time, HB 965 would make Pennsylvania’s regulatory rulemaking process much less transparent to the general public.

At best, these bills are solutions in search of a problem; at worst, they represent legislative overreach that would politicize Pennsylvania’s rulemaking process, take the “independent” out of the Commonwealth’s Independent Regulatory Review Commission (IRRC), and violate the State Constitution.

We are specifically concerned with two particular changes proposed by HB 965 and SB 562.

First, by enabling standing committees of the General Assembly to repeatedly delay IRRC votes on proposed regulations (and by introducing other delays), HB 965 and SB 562 would further complicate an already complicated process – and effectively transfer executive powers to small groups of legislators.

By way of background, one of the stated intentions of the Regulatory Review Act is “to provide ultimate review of regulations by the General Assembly” (see section 2(a)). That step already exists in our current IRRC process. After the IRRC votes on a regulatory proposal by a state agency, legislative standing committees already have the power to further review or disapprove the proposal. When a committee invokes its power to review or disapprove, the regulatory proposal is stayed for fourteen days, so that it can be brought to a vote before the full legislature. For three decades, this process has given the General Assembly ample time to review new regulations proposed by state agencies.

HB 965 and SB 562 would turn this orderly process on its head by (among other things) giving legislative committees the additional power to “further review” proposed regulations before the IRRC ever votes – and to do so repeatedly. By exercising this power, a standing committee could postpone a vote by IRRC indefinitely, and thereby effectively

block the executive rulemaking process. In addition, the bills would needlessly inflate several post-vote periods during which the legislature can take action against proposed regulations. These changes would only serve to create bureaucracy and red tape, hinder the passage of much-needed regulations (which are often necessary to implement federal law or statutes passed by the General itself has), and subject the formerly independent IRRC to the control of small groups of legislators.

Second, the bills would block publication of agency “Statements of Purpose” (SOP) in the Pennsylvania Bulletin. The only effect of this prohibition would be to make it harder for your constituents to understand proposed regulatory changes. The sponsorship memo for SB 562 suggests that blocking Bulletin publication will prevent courts from interpreting SOPs in a way that is inconsistent with the regulations or the intent of the General Assembly. But courts do not review and interpret SOPs because they are printed in the Bulletin; they do so because SOPs are drafted by agencies and introduced into evidence in judicial proceedings. Blocking Bulletin publication will prevent neither of these things. It will only eviscerate the ability of the public to learn about and comment on new regulations.

Please tell your leadership that you OPPOSE HB 965 and vote to keep the “independent” in the Independent Regulatory Review Commission.

Thank you for in advance for standing up for the integrity and transparency of our regulatory process and OPPOSING HB 965.

Sincerely,

Joanne Kilgour, Chapter Director Sierra Club, Pennsylvania Chapter
David Masur, Executive Director PennEnvironment
Joseph Otis Minott, Executive Director Clean Air Council
Matthew Stepp, Policy Director Citizens for Pennsylvania’s Future
Jackson Morris, Director Eastern Energy and Mark Szybist, Senior Program Advocate
Manager Natural Resources Defense Council
Gretchen Dahlkemper, National Field Moms Clean Air Force
Josh McNeil, Executive Director Conservation Voters of Pennsylvania
Phil Wallis, Executive Director Audubon Pennsylvania
Alice Tong, Eastern States Advocate Environmental Entrepreneurs (E2)
Khari Mosley, Pennsylvania Regional Programs Manager BlueGreen Alliance
Steve Hvozdoich, Pennsylvania Clean Water Action
Mary Booth, Director Campaigns Coordinator Partnership for Policy Integrity
Reesa B. Kossoff, Executive Director SEIU PA State Council
Nadia Steinzor, Eastern Program Coordinator, Oil & Gas Accountability Project, Earthworks
Jim Slotterback, President Responsible Drilling Alliance