

May 24, 2016

Re: Opposition to SB 562

Dear Representative:

In the coming weeks, you may be asked to vote on Senate Bill 562, a bill that is nearly identical to House Bill 965, which you voted against on October 20, 2015.¹ On behalf of more than one hundred thousand Pennsylvanians, the undersigned public health, environmental, and conservation organizations thank you for your vote on HB 965 and respectfully urge you to OPPOSE SB 562.

In the name of legislative “oversight” of regulatory rulemakings by executive agencies, SB 562 would amend the Pennsylvania Regulatory Review Act (RRA) to give standing committees of the legislature the unilateral power to hold up any rulemaking they dislike. At best, SB 562 is a solution in search of a problem, because current RRA procedures already given the legislature ample oversight of executive rulemakings. Worse, SB 562 would make Pennsylvania’s already byzantine regulatory rulemaking process much less transparent to the general public, and would almost certainly violate the separation of powers doctrine under the Pennsylvania Constitution.

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

First, we are concerned with language that would enable standing committees of the General Assembly to repeatedly delay IRRC votes on proposed regulations, and thereby effectively give executive powers to small groups of legislators. As you know, one of the stated intentions of the RRA 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 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. Most recently, it was used in the April 12, 2016 vote that this chamber’s Environmental Resources and Energy Committee took to disapprove new oil and gas regulations developed by the Department of Environmental Protection pursuant to Act 13 of 2012.

¹ The only difference between SB 562 and HB 965 is a clerical difference in subsection (6)(j.2.). Each bill expands from “14 days” to “14 days or 6 legislative days, whichever is longer” the time standing committees have to adopt a concurrent resolution disapproving a regulation under section (7)(d). Subsequent language in HB 965 describes this period as “this period,” while subsequent language in SB 562 describes the period as “this 14-day or six-legislative-day period, whichever is longer.” The two phrases mean the same thing. In all other respects SB 562 and HB 965 are identical.

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 bill 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.

The House State Government Committee is currently scheduled to vote on SB 562 on Wednesday, May 25. For the reasons noted above, we respectfully urge you to tell your leadership that you OPPOSE SB 562 and will vote against it.

Thank you for in advance for standing up for the integrity and transparency of our regulatory process and OPPOSING this unnecessary and harmful bill.

Sincerely,

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PennEnvironment

Joanne Kilgour, Chapter Director
Sierra Club, Pennsylvania Chapter

Joseph Otis Minott, Executive Director
Clean Air Council

Matthew Stepp, Policy Director
Citizens for Pennsylvania’s Future

Jackson Morris, Director Eastern Energy
Mark Szybist, Senior Program Advocate
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Maya van Rossum, Delaware Riverkeeper
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Karen Feridun, Founder
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Joy Bergey, Director
**The Environmental Justice Center at
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Suzanne Almeida, Executive Director
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Vera Cole, President
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