The Honorable Daryl Metcalfe, Majority Chair

2017-18
REGULATORY OVERREACH REPORT
Overregulation Overview

Pennsylvania currently has more than 153,000 regulatory restrictions that stretch across every industry operating within the Commonwealth.

These restrictions create a hurdle that businesses of all shapes and sizes must jump over in order to create jobs in Pennsylvania.

Currently, there are no penalties in place for agencies that over-regulate in Pennsylvania.

The Regulatory Review Act includes a provision that allows a member of the public, or a legislator, to request a review of any regulation that has been in effect for three or more years.

However, Pennsylvania’s Regulatory Review Act does not give the Legislature any authority to stop a regulation without the governor’s approval.

Consequently, regulations created under both Republican and Democrat governors have been piling up for decades.

Overregulation's Negative Impact on Pennsylvania's Economy

The World Bank and the Mercatus Center at George Mason University estimate that over-regulation has a negative effect on economic growth, ranging between 0.8 percent and 2.3 percent.

Since 2000, Pennsylvania’s yearly real GDP has averaged 1.5 percent.

Regulation Misinterpretations

Inconsistent interpretation of regulations across regions is harmful to industries operating in the Commonwealth.

State RegData — a platform designed by the Mercatus Center for analyzing and quantifying state regulatory text — revealed that the Pennsylvania Code contains roughly 12.8 million words.

It would take one individual about 713 hours — or just under 18 weeks — to read the entire Pennsylvania Code.

That’s assuming the reader spends 40 hours per week reading at a rate of 300 words per minute.
Regulation Misinterpretations (Continued)

The Pennsylvania Department of Environment Protection (DEP) no longer has a regulatory compliance assistance office.

Individuals and businesses in Pennsylvania must navigate all these restrictions to remain in compliance and contribute to the economy.

Circumventing Regulatory Review Process

Permits are processed at a significantly slower pace in Pennsylvania than is required by law and regulation.

Administrative agencies are breaking state law by using permits and other guidance documents in an attempt to avoid the Regulatory Review Process.

Pennsylvania loses business whenever there is uncertainty in the permitting and regulatory environment.
Origins of the SRBC

The Susquehanna River Basin Commission (SRBC) was established in January 1971 through the drafting and adoption of the Susquehanna River Basin Compact by the legislatures of Maryland, Pennsylvania, New York, and the U.S. Congress.

These parties agreed that the Compact will last for 100 years and shall be continued for additional 100-year periods unless any signatory state chooses to terminate the compact.

Each party has one commissioner who receives one vote, and the SRBC can only take action if three of the four commissioners vote in favor of an action.

The SRBC is not subject to Pennsylvania’s Right-to-Know Law, Sunshine Act, PennWATCH, or the state’s Regulatory Review Process.

Mission Extortion

The mission of the SRBC should be, and initially was, focused on managing the water resources and ensuring adequate water supply between the states within the Susquehanna River basin.

The primary concern of the SRBC should be focused on larger projects involving shared water resources and managing those with competing water interests.

The SRBC has expanded its reach substantially, however, and now excessively regulates the water use of even small municipalities and companies.

The SRBC has a 65-person staff with an average salary of $70,000, including several staff members who make over $100,000 such as the executive director who receives an annual salary of about $143,000.

The SRBC has levied excessive fees, fines, and penalties on local water authorities and private sector job creators and currently sits on a surplus of nearly $70 million.
Negative Economic Impacts from a Very Bad Deal

Worst of all, Pennsylvania has been paying a higher percentage of the SRBC’s operating costs than other parties in the compact, which include employee salaries and employee pensions, while only having one of four votes in the administration of the Susquehanna River Basin Compact.

Currently, Pennsylvania is required to contribute 37.5 percent of the parties’ annual contributions requested by the SRBC. Maryland and the federal government are required to contribute 25 percent. New York is required to contribute 12.5 percent.

The federal government has met its share only once in the past 20 years.

Pennsylvania water users receive the most impact from the SRBC’s permitting, fines, and fees because the majority of the basin’s land area is in Pennsylvania.

Despite these facts, Pennsylvania only has equal voting power as the other parties, and can be outvoted by the other three parties.

Overregulation Through Intimidation

The SRBC has required extensive testing, monitoring, and data collection for water wells, but it is unclear whether the data collected is used for any essential or even useful purpose.

This can cost even smaller municipalities and consumptive users tens to hundreds of thousands of dollars to become compliant.

Water providers forced to expend significant dollars becoming compliant with the SRBC pass along these costs on to consumers by hiking rates and causing water bills for individual users, such as households, to rise substantially.

Consumptive users doing heating and cooling or irrigation may be charged an evaporation fee based on the amount of water that evaporates during these processes for using water for which they have already paid.

Many of those impacted by the SRBC have indicated that they do not want to speak out publicly against the SRBC because the Commission has the power to accept or deny permits and testing completed, and grant requested waivers.
Regulating the Regulators: Holding the SRBC Accountable

Pennsylvania has reduced the funding allocated to the SRBC in the recent past, cutting it in half from 2008, and could continue to further reduce this funding.

As the DEP Secretary is Pennsylvania’s SRBC commissioner, the two entities should engage, coordinate, and share data to ensure that where their regulatory efforts overlap, water users do not have to do duplicative work to comply with both entities.

Pressure should be maintained on the SRBC Commissioner or alternate to ensure that regulatory overreach and fee increases are not rubber-stamped and that any votes taken will be with the best interests of Pennsylvania citizens in mind.

The General Assembly should continue to monitor the SRBC’s actions, request relevant documents, and hold additional meetings as necessary to keep public scrutiny on the Commission.

The Susquehanna River Basin Compact could be amended to subject the SRBC to the signatory parties’ equivalents of Pennsylvania’s Sunshine Act and Right-to-Know laws.

Legislation has been considered which would remove future SRBC employees from the State Employees Retirement System (SERS). House Bill 922 was advanced by the House on June 17, 2017, and is now awaiting consideration in the Senate Finance Committee.

The 2017-18 Fiscal Code bill designated the Auditor General as a duly authorized officer under the Compact permitted to inspect the records of the Commission, and required to conduct an audit of the SRBC.
Elements of Successful Regulatory Reform

Excessive regulation inhibits growth in Pennsylvania’s economy. Members of the General Assembly need to use every tool available under current law to ensure Pennsylvania’s regulations encourage the entrepreneurial spirit of hard-working Americans.

Committee Chairmen should collaborate to establish best practices for review of regulations through current mechanisms available under the law.

Agencies should be surveyed to determine if they are in compliance with the Regulatory Review Act and Executive Order 1996-1.

The General Assembly should also advance legislation that improves the regulation-making process and reduces the regulatory burden in Pennsylvania.

1. Improving the regulatory culture so the application of existing laws is collaborative and not punitive.

✓ Establish self-audit system that waives penalties if violations are discovered by the business and self-reported.

✓ Require agencies to educate the regulated community regarding implementation of a new regulation and the requirements prior to the effective date.

✓ Require agencies to work with businesses to resolve non-compliance issues before imposing penalties.

✓ Hold regulators accountable to time lines for processing permits.

2. Improving the regulatory culture by systematically reviewing existing regulations.

✓ Implement an ongoing automatic regulatory review process.

✓ Establish a cap on the number of regulations in conjunction with the automatic review process.
3. Improving the regulatory culture by stopping bad regulations before implementation.

✓ Economically significant regulations should be subject to approval by the Pennsylvania General Assembly.

✓ Independent Fiscal Office (IFO) must prepare a fiscal analysis for economically significant regulations.

✓ Consider a moratorium on new regulations.

✓ Consider sunset date for newly promulgated regulations as part of an ongoing process for reviewing existing regulations.
House Bill 209 – Representative Kristin Phillips-Hill (R-York)
Establishes the Independent Office of the Repealer to undertake an ongoing review of existing regulations; receive and process recommendations; and make recommendations to the General Assembly, the governor, and executive agencies for repeal.

Additional provisions of this legislation would both establish a moratorium on new regulatory burdens and create a process for “sunsetting” existing regulations by placing a cap on the number of regulations and requiring the repeal of existing regulations when promulgating new ones.

House Bill 1237 – Representative Dawn Keefer (R-York/Cumberland)
The General Assembly will be required to vote on a concurrent resolution to approve an economically significant regulation (which has an annual fiscal impact totaling $1 million or more on the government or private sector), in order for that regulation to go into effect.

This legislation would also require an agency to reference the law that gives them authority to promulgate a regulation. If there is no such statute cited, then the regulation will be deemed withdrawn. Each standing committee would be required to hold a public hearing for any economically significant regulation. Committees and the Legislature would be given sufficient time to review a regulation by ensuring that the review period includes an adequate number of legislative session days.

House Bill 1792 – Representative Kerry Benninghoff (R-Centre/Mifflin)
Gives the General Assembly the ability to initiate the repeal of any state regulation in effect by a concurrent resolution.

House Bill 1959 – Representative Greg Rothman (R-Cumberland)
Establishes the Pennsylvania Permit Act which requires agencies to create and develop a navigable online permit tracking system; cite specific legal authority for permit denials and provide guidance for correcting deficiencies; notify permit applicants that applications are complete and establish time lines for completion notifications; and allow certain permit reviews to be transferred to third-party reviewers.

House Bill 1960 – Representative Brian Ellis (R-Butler)
Requires each agency to appoint a regulatory compliance officer.
REGULATORY AVENGERS WANTED

If you are, or know of someone, who is highly skilled at identifying job-killing regulations or cutting through government red tape you may qualify to become an official Regulatory Avenger.

Please submit all nominations to
House State Government Committee Chairman Daryl Metcalfe
144 Main Capitol, PO Box 202012, Harrisburg, PA 17120-2012