



pennsylvania environmental council



April 29, 2019

Re: Regulatory Process Legislation: HB 430, HB 509, HB 762, HB 806, and HB 1055

Dear Representative:

This week, we anticipate the full House of Representatives may consider a suite of bills – House Bill 430, House Bill 509, House Bill 762, House Bill 806, and House Bill 1055 – introduced in the name of regulatory reform. In reality, this legislation will create greater uncertainty for regulations and permits, and unduly threaten public health and environmental protections by positioning politics ahead of science and law. The Pennsylvania Environmental Council and Environmental Defense Fund urge a no vote of these bills which may be considered on final passage as early as Tuesday.

While the Pennsylvania Environmental Council and Environmental Defense Fund welcome discussion on improving agency and regulatory performance, these bills fall well short of those considerations. The General Assembly already has ample authority to review and act on regulations, and has used that authority in prior sessions. In our view, the Commonwealth is better served by advancing inclusive, constructive dialogue on shared goals instead of legislation that will only foster further difficulty and disagreement.

Our specific objections to these bills are as follows.

House Bill 430 (P.N. 417)

This legislation effectively authorizes the General Assembly to rescind a regulation through resolution. By utilizing a resolution instead of passing a law, the General Assembly is making an interpretation usually reserved for the courts with respect to an agency's rulemaking determination and statutory authority. Given that the General Assembly already has authority to abrogate a rulemaking, we believe this legislation is wholly unnecessary.

House Bill 509 (P.N. 495)

This legislation contains provisions on permit reporting and transparency. While we fully support enhanced transparency and the sharing of information on agency activity and performance, House Bill 509 also contains language that would allow third parties to participate in permitting decisions without any standards with respect to qualification, preventing self-dealing, protection of public disclosure and involvement, or intrusion on agency authority. The framework established by this legislation will only lead to vastly expanded litigation on permitting decisions. The General Assembly should instead prioritize ensuring that agencies have the resources needed to perform their mission and meet the needs of both the public and regulated community.

House Bill 762 (P.N. 812)

Our concerns with this legislation are that it provides a “complete defense” in “any enforcement proceeding” if the agency fails to respond to a request for a regulatory interpretation within 20 business days, and potentially allows waivers of fines or penalties for self-reported violations of the law without demonstration that those violations had been remedied. While we support the concept of improving communications and understanding between agencies and the regulated community, this legislation oversteps appropriate agency function and authority.

House Bill 806 (P.N. 899)

This legislation requires passage of a concurrent resolution in the General Assembly before any “economically significant regulation” may become effective and implemented. In short, mere inaction of the General Assembly could negate a rulemaking required pursuant to existing state or federal statute or regulation. This is an indefensible change to existing law, which already grants the General Assembly the ability to stop a rulemaking proposal. It could ultimately subject the regulated community to federal enforcement, and invite legal challenge on state constitutional grounds.

House Bill 1055 (P.N. 1407)

House Bill 1055 would effect two changes: (1) it would require agencies to identify at least two regulations for repeal any time that agency wants to promulgate a new rulemaking; and (2) it establishes an “independent” Office of the Repealer that is governed by a politically-appointed committee. Requiring agencies to catalog duly promulgated regulations for repeal merely so they may promulgate a new rulemaking – even if that new rulemaking is required statute – is an unjustifiably burdensome hurdle that could impede much-needed public health protections. For example, under this legislation if the Department of Environmental Protection were to propose public remediation or drinking water criteria for Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA), they would first have to spend time identifying two other regulations for repeal – despite growing public scientific consensus that such criteria is desperately needed. Furthermore, there is already an established process via the Environmental Quality Board for the public to recommend changes or even repeal of existing regulations. This legislation is wholly unnecessary and would create more delays than it would solve, primarily at the expense of public health protections.

For these reasons, we urge you to oppose these bills.

Thank you for your consideration.

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