April 20, 2021

To: Members of the House Environmental Resources & Energy Committee
Re: Opposition to House Bill 72, House Bill 139, and House Bill 288

Dear Representatives:

The Pennsylvania Environmental Council (PEC) and Environmental Defense Fund (EDF) urge you to oppose House Bill 72 (P.N. 48), House Bill 139 (P.N. 104), and House Bill 288 (P.N. 254). While enhancing agency performance, transparency, and accountability is undoubtedly an important goal, this suite of bills will do more to impede agency function and curtail environmental protection.

Concerns with House Bill 72
This legislation requires that, before any proposed rulemaking deemed "economically significant" (as defined in the legislation) can be implemented, the General Assembly must pass a concurrent resolution to approve it. In practice, this means that mere inaction of the General Assembly could negate a proposed rulemaking – even if it is required by existing state or federal law. There is no requirement in the bill that the legislature actually consider a proposed rulemaking.

Further, House Bill 72 allows standing committees to halt proposed rulemakings, through notice to the Independent Regulatory Review Commission (IRRC), until the committee formally reviews the proposal. The standing committees already have opportunity to review proposed regulations in existing law; this bill indefinitely extends the timeline by expanding the number of legislative session days allowed for review. This could unduly delay timely review. For example, if the committee would provide such notice to IRRC, and then the legislature adjourns for several months as it normally does each year, that could delay a rulemaking for an improper amount of time without cause. It also threatens rulemakings in that the Regulatory Review Act requires proposed rulemakings be finalized within two years after the close of the public comment period.

House Bill 72 also requires that the Independent Fiscal Office (IFO), rather than the agency proposing the rulemaking, calculate the anticipated costs of the regulation. We don't have objection to this concept per se, although it should be recognized that the IFO will still be dependent on the expertise of the agency for a complete analysis. In addition, we would submit that the anticipated benefits (costs savings, public health, et cetera) of any proposed rulemaking be factored in to any analysis as well.

This legislation also automatically disqualifies any rulemaking unless there is statutory language expressly authorizing the specific purpose of the rule. This is incredibly problematic because most environmental statutes are written broadly to provide DEP with sufficient authority to respond to emerging or changing needs, or to adapt to changes in federal law. So, for example, it could be argued that this legislation would forbid DEP from adopting any protections for pollutants like PFAS and PFOA, or for any other specific pollutant criteria, unless a statute specifically delineates them. This arbitrarily creates a nearly insurmountable restraint on the agency, which ultimately threatens public health.

Concerns with House Bill 139

This legislation requires agencies to report permitting review performance to the General Assembly. We have no issue with this requirement, although we would note that DEP reports this information to the public already.

House Bill 139 also requires agencies to development an online tracking system for permitting decisions. We support this concept but note that the legislation does not provide any financial resources to agencies, which are already underfunded, to perform this additional task. Our ask to the legislature would be for this requirement to be accompanied by an adequate support to complete the task.

This legislation also provides for third party permitting – requiring agencies to allow independent individuals to make permitting decisions – which we oppose in concept and as laid out in this bill. It also likely violates all federal programs for which DEP has primacy.

More concerning, HB139 would allow these third parties to participate in permitting decisions without any standards with respect to their qualification, preventing conflicts of interest, or protection of public disclosure and involvement.

Third party permitting ultimately would lead to increased delays as it is essentially an *additional* permitting process, increasing administration costs and requiring permitees to deal with two separate authorities. It will also likely lead to increased litigation on permitting decisions.

Concerns with House Bill 288

This legislation creates “regulatory compliance officers” in agencies to help permitees with regulatory interpretation and permit compliance. At first glance, this objective does not appear to be a bad idea. However, the legislation takes this concept too far.

HB 288 provides that if a regulatory compliance officer fails to reply to an inquiry within 20 days, that failure to respond results in a “complete defense” in “any enforcement proceeding” – including civil and criminal proceedings – for any violations. The legislation does allow for extension of the response timeframe for good cause, but one individual at an agency like DEP which administers tens of thousands of permits each year will not be able to handle this volume.

Further, the bill directs regulatory compliance officers to establish a process for waivers of fines or penalties for self-reported violations of the law without any demonstration that those violations have in fact been remedied.

Conclusion

For these reasons, we urge you to oppose this legislation. While there are some concepts within these bills that we are supportive or are neutral on, there are very concerning provisions that outweigh our support. We would welcome the opportunity to come to the table on these issues.

Thank you for your consideration.

Sincerely,

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