April 26, 2021

To: Members of the Senate Intergovernmental Operations Committee
Re: Opposition to Senate Bill 28, Senate Bill 32, Senate Bill 126, Senate Bill 426, Senate Bill 520, and Senate Bill 533

Dear Senators:

The Pennsylvania Environmental Council (PEC) and Environmental Defense Fund (EDF) urge you to oppose a suite of bills that will be considered by the Senate Intergovernmental Operations Committee on Tuesday, April 27th. While enhancing regulatory performance, transparency, and accountability is undoubtedly an important goal, these bills will do more to impede agency function and curtail important environmental and public health protections.

Our concerns with the bills, which overlap with one another in several respects, are as follows:

Senate Bill 28
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.

SB 28 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 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 corresponding support to make this task successful.

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, SB 28 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 and additional bureaucracy as it is essentially adding an *additional* permitting process which would kick in after a certain timeframe is reached, thereby increasing administration costs and requiring permitees to deal with two separate authorities. It will also likely lead to increased litigation on permitting decisions.

Senate Bill 32

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, let alone no timeframe for such consideration.

Further, Senate Bill 32 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 extends the timeline by expanding the number of legislative session days allowed, resulting in even more uncertainty with respect to 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 undue 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.

Senate Bill 32 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 as part of 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 stakeholder response, 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.

In addition, 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.

SB 32 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 the Department of Environmental Protection (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.

In addition, SB 32 creates a politically-appointed "Office of the Repealer" at IRRC. This office is charged with reviewing statutes and regulations, including those suggested for review by the regulated community or general public, for potential amendment or abrogation. This is redundant with existing processes already available to the legislature and the public. The legislature can always revisit existing law through legislation and, at least with respect to DEP, there is a process already in place that allows the public or regulated community to petition to the Environmental Quality Board for the adoption, change, or elimination of any regulations.

Senate Bill 126

This legislation requires agencies, every three years, to review existing "economically significant regulations," develop a public report, and open a public comment period on that report. This is an additional administrative burden on the agency without providing any corresponding support. In addition, the required analysis is partly redundant with informational requirements performed when the rulemaking is enacted.

Senate Bill 426

This legislation, without justification, prolongs legislative review already provided under the Regulatory Review Act. As with the other bills discussed, by expanding both the total number of calendar and/or session days for review a rulemaking could be delayed by several months merely because the legislature is not in session.

Furthermore, SB 426 also expressly prohibits an agency proposing a rulemaking to provide its statutorily required justification and analysis to the public through publication in the Pennsylvania Bulletin, as has been standing practice. There is no defense for this prohibition – the public has full right to understand the purpose of, and consideration behind, a proposed rulemaking.

Senate Bill 520

Similar to SB 32, this legislation also allows the legislature to stop an "economically significant" rulemaking proposal through mere inaction. Furthemore, it adds any proposed revisions for General Permits into the definition of a "regulation," subjecting those policies meant to help standardize and expedite permitting for the regulated to community to more prolonged review – thus hampering agency responsiveness and certainty.

Senate Bill 533

This legislation prohibits the consideration or finalization of any proposed rulemaking during an Emergency Declaration unless the proposal is directly related to said Emergency or is expressly required by statutory deadline. In addition, this bill prohibits agencies from holding meetings for any advisory committee, subject to the same limitation. While an agency can request an

exemption from the legislature, there is no requirement that the legislature actually consider that request.

Given that Emergency Declarations can last for years, and both the legislature and administration have clearly demonstrated ample ability to conduct general business during such times, this legislation is unjustified and could bring much of state government operations to an indefinite halt – indiscriminately harming public protections.

Conclusion
For the reasons stated in this letter, 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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