



Regulatory Reform Bills in Pennsylvania's House of Representatives

Over the past several months, members of Pennsylvania's House of Representatives have introduced bills to address and eliminate regulatory inefficiencies and burdens that affect both individuals and businesses across the Commonwealth. The bills are part of a regulatory reform package included in the House State Government Committee's [Regulatory Overreach Report](#), released in mid-January, 2018 by committee chair Daryl Metcalfe (R, Butler). These bills, if enacted into law, would significantly change the way regulations are promulgated, revised and enforced in Pennsylvania.

These state efforts complement recent federal executive and legislative actions on regulatory reform. Shortly after taking office, President Trump issued two regulatory reform executive orders: (1) Reducing Regulation and Controlling Regulatory Costs (E.O. 13771), also known as the two-for-one executive order, which requires agencies to propose two existing rules for repeal for each additional rule promulgated in and after fiscal year 2017; and (2) Enforcing the Regulatory Reform Agenda (E.O. 13777), which requires federal agencies to designate a Regulatory Reform Officer charged with reviewing and making recommendations for the repeal, replacement, or modification of existing regulations. These executive orders address regulatory reform broadly and the long-term impact remains to be seen. There are several other examples where President Trump has issued executive orders targeting specific regulations or rules promulgated during the Obama administration.

In early 2017, Congress used the [Congressional Review Act](#) (CRA), which generally authorizes Congress to repeal any rule within 60 calendar days after promulgation, to repeal 14 Obama-era rules, including changes to the stream protection rule under the Office of Surface Mining and to the Bureau of Land Management's planning procedures. Once a rule is repealed using the CRA, the federal agency is prohibited from reissuing the rule or issuing a new rule "in substantially the same form," unless otherwise required by law. In addition, the U.S. House of Representatives has introduced at least two pieces of regulatory reform legislation. On January 5, 2017, the "Regulations from the Executive in Need of Scrutiny" or [REINS Act](#), was passed in the House, which would require congressional approval for every new regulation costing more than \$100 million (termed "major rules"), in addition to requiring congressional review and approval of previously enacted major rules. On January 11, 2017, the House passed the [Regulatory Accountability Act of 2017](#), which would revise the Administrative Procedure Act to require agencies to consider several new factors when proposing a new regulation, such as the costs and alternatives to the proposed regulation. Both bills await action in the Senate.

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The recent Pennsylvania House regulatory reform bills have in some cases borrowed, and in other cases expanded, on the federal regulatory reform efforts. The Pennsylvania House of Representatives' five-bill regulatory reform package includes:

- **H.B. 1792**, an act amending the Regulatory Review Act. This bill was introduced by Rep. Benninghoff (R, Mifflin) and referred to the State Government Committee on September 18, 2017. Rep Benninghoff has stated that the bill was inspired by the recent use of the CRA on the federal level. H.B. 1792, however, would go one step further than the CRA by giving the General Assembly the ability to initiate the repeal of *any* state regulation, regardless of when it was promulgated, by a concurrent resolution signed by the Governor.
- **H.B. 1237**, is also an act amending the Regulatory Review Act. This bill was introduced by Rep. Keefer (R, York), referred to the State Government Committee on January 5, 2018, subsequently passed in Committee, and reported to the full House and tabled on February 6, 2018. H.B. 1237 is modeled after the federal REINS Act bill. Under H.B. 1237, any economically significant regulation, which under the Pennsylvania law is defined as any regulation expected to cost more than \$1 million, would need to be discussed at a public hearing held by the appropriate committee and be approved by concurrent committee resolution.
- **H.B. 209**, entitled the "Independent Office of the Repealer Act." This bill was introduced by Rep. Phillips-Hill (R, York), referred to the State Government Committee on January 25, 2018, and amended in committee on February 6, 2017. H.B. 209, as amended, makes the Office of the Repealer part of the Independent Regulatory Review Commission. The bill would require the review of existing statutes and regulations to identify those that may be appropriate for review, revision, or repeal, and includes, among other things, a two-for-one scheme similar to President Trump's E.O. 13771.
- **H.B. 1960**, entitled the "State Agency Regulatory Compliance Officer Act." This bill was introduced by Rep. Ellis (R, Butler), referred to the State Government Committee on January 5, 2018, passed in Committee, and reported to the full House and tabled on February 6, 2018. H.B. 1960 would require each Commonwealth agency to appoint a Regulatory Compliance Officer (RCO), who would have the authority to resolve noncompliance issues before imposing penalties, provide detailed explanations for each regulatory requirement under the agency's jurisdiction, and issue opinions to regulated entities regarding their duties under the law. The bill provides that the RCO's opinion, or failure to provide an opinion upon request, shall be a complete defense in proceedings initiated by the agency under specified conditions.
- **H.B. 1959**, entitled the "Permit Administration Act." This bill was introduced by Rep. Rothman (R, Cumberland) and referred to the State Government Committee on January 3, 2018. H.B. 1959 would require agencies to: review current permit decisions and delays and report to the General Assembly; publish a list of all permitting done by the agency; develop an online permit tracking system; and establish a program to review permit delays and resolve issues causing those delays. The permit delay review programs would be administered by third-party professionals, who would review applications subject to delay and transmit applications back to agency for issuance.

The passage of any of these bills in the present or amended form is uncertain. Babst Calland's Environmental and Energy and Natural Resources attorneys continue to track federal and state regulatory reform efforts, including the bills mentioned above. Should you have any questions, please contact Jean M. Mosites at (412) 394-6468 or jmosites@babstcalland.com, or Kevin J. Garber at (412) 394-5404 or kgarber@babstcalland.com.

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