



**Pennsylvania Manufacturers' Association**

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House Republican Policy Committee

Importance of Regulatory Disapproval Clause in Constitutional Amendment (Senate Bill 1)

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Good morning, Chairman Kail and esteemed members of the Pennsylvania House Republican Policy Committee. I am David N. Taylor, President & CEO of the Pennsylvania Manufacturers' Association (PMA), the statewide non-profit trade organization representing the people who make things here in the commonwealth.

Thank you for the opportunity to testify on the portion of Senate Bill 1 pertaining to the General Assembly's disapproval of a regulation.

While it should be generally understood, it still must be stated that the role of the executive branch in creating regulations is to implement the laws passed by the general assembly. But all too often, regulatory overreach occurs when unelected bureaucrats' regulatory actions extend beyond the intent of passed legislation; entirely bypassing the General Assembly's legislative process.

According to the Pennsylvania Bulletin database, there were 475 proposed rulemakings that came from outside of the General Assembly during Governor Tom Wolf's tenure (January 20, 2015 - January 16, 2023). Some of these examples are veto notices, emergency declarations, or notices of public meetings. But far too many were rules stemming from departments, under the jurisdiction and direction of the executive branch, that had transformational policy impacts.

One example of a transformational policy impact was seen when in late December 2017, the Department of Revenue issued rules completely altering the treatment of bonus depreciation and the depreciation of capital assets. This was done only because a department spokesperson cited the need to "spare the General Fund from lower collections." This surprise rulemaking was corrected by the General Assembly with the passage of Senate Bill 1056, but not until more than six months later. Most galling, Governor Wolf held a bill signing ceremony for Senate Bill 1056 later in the summer of 2018 – celebrating the bill to fix the problem his administration created. Nevertheless, it's unknown just how much business development and investment we missed out

on in this period of ambiguity because of unnecessary uncertainty driven by overzealous bureaucratic interference.

Another glaring example of regulatory overreach came in the earliest days of the COVID-19 pandemic. From the initial “essential” versus “nonessential” business closure orders to the 139 pages of rules to be enforced or suspended as per the Governor’s office, most if not all orders came without consultation or cooperation of the General Assembly or those Pennsylvanians directly affected by the shutdown. While most of these rules were passed under the authority given via emergency powers, and this process was fixed via constitutional amendment in May of 2021, these examples provide insight into the power of the executive branch in creating laws with no approval or oversight by the branch of government assigned with making law. The provision I testify about today closely mirrors the change that was passed and approved by the voters of Pennsylvania just two years ago via constitutional amendment.

Perhaps the most egregious example is seen where the Environmental Quality Board, under the direction of Governor Wolf, proposed to amend Chapter 145, Subchapter E, establishing the CO<sub>2</sub> Budget Trading Program, more commonly known as Pennsylvania’s entry into the Regional Greenhouse Gas Initiative. The rulemaking was challenged by the General Assembly, both in terms of its impact of PA’s energy policy but also in terms of its blatant unconstitutionality as the rulemaking imposes a tax (as we do believe we will soon adjudicated in the PA Courts), and in entering our commonwealth into a multi-state accord. Neither action is an implied power of the Executive Branch and every multi-state accord Pennsylvania has ever participated in has been authorized by the General Assembly. The General Assembly, with a bipartisan vote in both Chambers, voted via joint resolution to suspend this rulemaking, but the vote to suspend a regulation by the executive branch requires that executive’s signature. With the joint resolution vetoed, the veto-override fell just short of the two-thirds threshold and now the process is tied up

in the courts – creating massive levels of uncertainty for business investment all while spending an untold and unnecessary amount of taxpayer dollars in legal costs.

Beyond this constitutional amendment, I would also urge lawmakers to craft legislation in a manner that minimizes the discretion of the regulatory agencies. Too often, bills are approved that point toward particular policy goals but allow the bureaucracy great latitude in promulgating the specific rules with which the public must comply. Jefferson said the price of liberty is eternal vigilance, and that ancient American truth is equally applicable here. Do not give the bureaucrats the chance to misrepresent your legislative intent.

As lawmakers you have both the opportunity and the responsibility to rebalance the scales and defend the separation of powers. On behalf of Pennsylvania's manufacturing employers, I thank the committee for its interest in this important subject and, at the appropriate time, I will do my best to answer your questions.