

Legal Assistance Resource Center

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H.B. 5358 -- "Obsolete" and "burdensome" regulations

GAE Committee public hearing – March 3, 2014

Testimony of Raphael L. Podolsky

Recommended Committee action: REJECTION OF THE BILL

This bill authorizes the Regulation Review Committee to review any state agency regulation to determine whether the regulation is "obsolete" or "too onerous on persons who are required to comply with the regulation." This task is inappropriate for the Regulation Review Committee and fails to recognize the very reason why the legislature has adopted programs which may result in agency regulations.

- There is already a system in place for program review. The Legislative Program Review and Investigations Committee (LPRIC) was created for the very purpose of reviewing selected programs. That program has research staff which can conduct full-scale studies in a professional manner. The Regulations Review Committee has only legal staff and is not geared for programmatic evaluations. A single public hearing is not adequate for this kind of review.
- The bill fails to recognize that there is a broader interest than just the industry affected by a regulation. The bill authorizes an examination of whether a regulation is "too onerous" for "persons who are required to comply." What about an examination as to whether the regulations are too weak to protect the public interest or to stop the misbehavior or unfair practices that the regulation or the underlying statute was intended to correct? The bill seems intended to apply pressure to weaken protections – consumer protections, health protections, safety protections, and similar matters – without an equivalent review intended to strengthen those protections.
- The standard of review – "too onerous" – is not one that can reasonably be applied. Any regulation may feel onerous to a person required to comply, but that tends to be an argument against the underlying statute, not against the regulation. In addition, onerousness cannot be assessed separately from the protection that the regulation seeks to accomplish. This requires an examination of matters that may have little to do with onerousness and much to do with the nature and impact of the harm that the regulation is addressing. That does not appear to be included in this bill at all.

For all of these reasons, we oppose this bill.