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*House of Representatives*  
**COMMONWEALTH OF PENNSYLVANIA**  
**HARRISBURG**

Original: 2039

**DATE: JUNE 26, 2000**

**SUBJECT: CHAPTER 354 FOLLOW-UP**

**TO: HOUSE EDUCATION COMMITTEE MEMBERS**

**FROM: REPRESENTATIVE JESS M. STAIRS**  
**CHAIRMAN, HOUSE EDUCATION COMMITTEE**

**COMMITTEES**

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2000 JUL 10 PM 1:29  
REGULATORY REVIEW COMMISSION

At our meeting on June 14, 2000, when we disapproved the final-form rulemaking of the Department, the question arose: What happens next with these standards? I have asked our staff to review the possible scenarios of events.

Much depends upon the decision of the Independent Regulatory Review Commission (IRRC), i.e. whether it decides to approve or disapprove the rulemaking. If IRRC decides to disapprove Chapter 354, it puts a temporary stay on publication of Chapter 354 and forces the Department to make a decision on its course of action. If IRRC approves Chapter 354, in spite of the Committees' disapproval, the fate of the rulemaking depends upon whether either Education Committee decides to pass a concurrent resolution to block the publication of the regulations.

As you might imagine, this saga has not ended. Despite our action, the regulatory review process at this time favors the Department publication of the rulemaking. We may need to hold an Education Committee meeting to take action as early as mid-July.

Included with this memo are a schedule of tentative Committee activities, a copy of our letter to IRRC, a copy of the Regulatory Review Act, and the few scenarios resulting from our disapproval.

If you have any questions, please contact the Committee's Executive Director, Dave Dumeyer (787-1032).

JMS/er  
Attachments  
cc: District Office (with attachments)

## **SCENARIO #1: IRRC APPROVES DESPITE BOTH EDUCATION COMMITTEES DISAPPROVAL**

If the Independent Regulatory Review Commission (IRRC) reviews Chapter 354 in accordance with Section 5.1(e), (h), (I), and (j), and approves the rulemaking, it has given the Department its authorization to have the regulations published as printed. Any action to stop publication by the Department then rests with the Education Committees, and such action must be swift. The process to be used to stop rulemaking is found in Sections 5.1(e) and 6(d). IRRC's notification of either approval or disapproval is transmitted to both the Department and the Committees simultaneously. (If IRRC approves, the notice is sent within two business days. If IRRC disapproves, notice may be delayed indefinitely.) If the Commission fails to take action, the final-form rulemaking is deemed approved. In either case (notification of approval or lack of action by the Commission), the Committee is now under a short time-frame to insist that promulgation be stopped. (IRRC is no longer a factor at this point.)

Within fourteen (14) calendar days of notification or the Commission's failure to act by its last day for action, either Committee of the General Assembly must pass a concurrent resolution (12-vote majority) to object to the promulgation of Chapter 354, report it to the appropriate chamber and notify the Department of the action. (Failure to report such concurrent resolution shall be deemed approval of the document.) This concurrent resolution would need legislative action by the entire chamber within thirty (30) calendar days or ten (10) legislative days, whichever is longer. The time would begin from the date of passage of the resolution. The resolution must pass both chambers in a similar fashion and go to the Governor. (Failure of either chamber to take timely action would constitute legislative approval.) Unless the Governor approves the resolution or allows it to be deemed approved without his veto, a veto would require a two-thirds vote of each chamber to override.

Although IRRC may disagree with the Committees and vote to approve, it is considered unlikely. The overwhelming vote to disapprove in each Committee can be the deciding factor. Scenarios 2, 3, and 4 show what can occur if the IRRC disapproves.

## **SCENARIO #2: IRRC DISAPPROVES AND THE DEPARTMENT WITHDRAWS THE CURRENT VERSION OF CHAPTER 354.**

Within seven (7) days of the receipt of an order from IRRC disapproving the rulemaking and barring its promulgation (official publication as rulemaking), the Department, in accordance with Section 7(a)(3) of the Regulatory Review Act, could simply elect to withdraw Chapter 354 and wait until a more propitious time to re-submit as proposed rulemaking. This would give the Department an opportunity to review the disapproval notices and make corrective changes in the thorough manner. It

would, however, also put the Department through the rigors of regulatory submittal - a time-consuming process. No further action by the Committee or the Commission is needed if this option is selected.

**Staff doubts that the Department will take this course of action.**

**SCENARIO #3: IRRC DISAPPROVES AND THE DEPARTMENT CHOOSES TO REVISE CHAPTER 354 AND RESUBMIT AS MODIFIED FINAL-FORM RULEMAKING.**

Under the Regulatory Review Act, Section 7(a) and (c), the Department might opt to revise its rulemaking in a timely fashion by eliminating objectionable language and then resubmitting Chapter 354 to the Commission and Committee for approval. This would need to be done within forty (40) calendar days of the Department's receipt of IRRC's order of disapproval. In its submittal, the Department would send a report, including the responses to the objections of the Commission and its text of the modified or revised final-form rulemaking. If the Department fails to deliver its report within the 40-day time period, Chapter 354 would be deemed to be withdrawn.

If the Department meets the time requirements for delivering its report to the Commission and Committees, the Committee will have ten (10) days from receipt of the report to either approve or disapprove the revised final-form of Chapter 354, or it would be deemed to be approved. The Commission then would have seven (7) days after the close of the committee approval/disapproval period, or until its next regularly scheduled meeting, whichever is later, to approve or disapprove the report. If both Committees and the Commission approve the report, it may be promulgated as rulemaking. If the Committee disapproves and the Commission approves, the Committee would need to take swift action to pass a concurrent resolution, as provided in Scenario #1. A concurrent resolution acts similar to a bill in this instance and is subject to all of the political machinations of bill passage.

If the Committees approve and the Commission disapproves, the Department may not promulgate the regulations, but must further revise its document to satisfy Commission objections. There is no further opportunity for the Committees to pass a concurrent resolution. Failure of the Commission to issue a disapproval order is deemed to be approval.

**Staff believes that the Department might take this approach.** It is less time-consuming than withdrawal, but it is risky for the Department to presume that all of the changes can - or should - be made in a short time frame and will be acceptable to the approving parties. **NOTE: IF THE DEPARTMENT MAKES CORRECTIONS AND REVISIONS TO CHAPTER 354 TO REMEDY THE COMMITTEE'S OBJECTIONS, THERE IS AN EXPECTATION THAT THE COMMITTEE WILL THEN VOTE TO APPROVE. NEW ISSUES CANNOT BE RAISED AS OBJECTIONS.**

**SCENARIO #4: IRRC DISAPPROVES AND THE DEPARTMENT RE-SUBMITS CHAPTER 354 WITHOUT REVISIONS.**

Under this option, the Department is insisting on its current version of Chapter 354 without modifications. Under Section 7(a) and (b), the Department may, within forty (40) days of receipt of IRRC's notice of disapproval, resubmit its current version of Chapter 354 as its report to the Commission and the Committees. (Failure to do so by the Department would constitute withdrawal of the document.)

This action would force the Committee to take swift action to pass a concurrent resolution, as in Scenario #1. Failure to take the action would be deemed to be approval of the rulemaking. At this point, the concurrent resolution follows similar procedures to the passage of a bill.

**Staff considers this to be a possible scenario.** The Department has expended much staff time and considerable political capital to reach the current version. As the timing and the process at this point favor a hard-ball approach by the regulatory agency, there is reason for optimism in the Department that this would work.

Original: 2039

SENATE COMMITTEE ROLL CALL RECEIVED

EDUCATION (10)

2000 JUN 21 AM 11:52

REVIEW COMMISSION

JAMES J. RHOADES, *Chairman*  
 JEFFREY E. PICCOLA, *Vice Chairman*

SUBJECT OF ROLL CALL Motion to Recommend approval of Reg. # 6-264, Chpt. 354  
Standards and Procedures for Institutional Preparation of Professional Educators

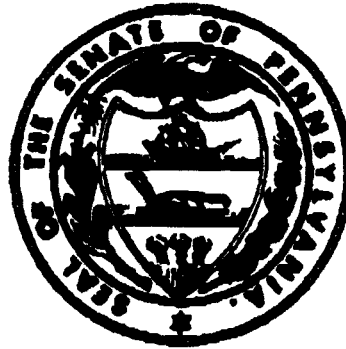
Motion made by Senator Piccola, seconded by Senator Jubelirer

DATE June 13, 2000

	AYE	NAY	NV
CONTI	_____	<u>  X  </u>	_____
EARLL	_____	<u>  X  </u>	_____
HUGHES	_____	<u>  P  </u>	_____
KUKOVICH	_____	<u>  X  </u>	_____
LaVALLE	_____	<u>  X  </u>	_____
MOWERY	_____	<u>  X  </u>	_____
MURPHY	_____	<u>  X  </u>	_____
PICCOLA	<u>  X  </u>	_____	_____
SCHWARTZ	_____	<u>  X  </u>	_____
RHOADES, Chairman	_____	<u>  X  </u>	_____
JUBELIRER, ex-officio	<u>  X  </u>	_____	_____

AYES   2    
 NAYS   9    
 NV \_\_\_\_\_

Reg. 6-264 Disapproved.



**FAXED FROM**

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DATE: 6/21/2000

TO: Chris Markham

FAX NUMBER: 3-2664

FROM: \_\_\_\_\_

NO. OF PAGES INCLUDING COVER: 2

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