**OGC Sub-Group Skit**

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**Roles:**

* Narrator -
* Senior Counsel [Bureau Guru] -
* Bureau Sharing Employee [Junior Counsel] -
* OGC Counsel –
* Governor’s Policy Office –
* Budget –

**INTRODUCTION - Power Point Slide #1**

Narrator: This program will explore the steps taken by the Department of Labor and Industry to obtain approval of new regulations promulgated in response to the explosion of shared service industries.   Can L&I's regulatory guru make it through the review processes of the General Counsel, the Attorney General, and the Reference Bureau? First, let’s see the regulatory guru in action.

ACT I – Part 1 - OGC REVIEW (Two L &I Agency Attorneys, Junior and Senior, are preparing regs. for OGC review)

Senior Counsel : Have you prepared everything for the package for the Sharing Economy Regulations? The Secretary called down this morning and she wants this package to move.

**CHANGE TO SLIDE #2**

Junior Counsel: Yes, we are all ready. Here is our final draft. Shared Economy businesses will have to be licensed as either a company or a provider, and undergo consumer safety training and background checks. Workers of shared economy businesses will be presumed to be employees. Companies will be required to post their prices online and may not change the prices for at least 2 hours and only twice in a 24 hour period. We are ready to roll.

Senior: OK, junior. The text of our final draft is not enough. To move to the next step, we will need more than just our proposed, regulation.

Junior: What is the next step, and what else do we need?

Senior: Since we have completed review of our proposed regulation within our agency, the next step is to submit the regulation to the Office of General Counsel (OGC).

Junior: I thought that regulations only need to be reviewed by the Office of Attorney General after us. Since we are agency counsel, don’t we count as the OGC review?

CHANGE TO SLIDE #3

Senior: No junior. Before anything gets to the AG it must go through OGC. And if you want to keep working as agency counsel, you won’t try to do the OGC sign off yourself.

The Commonwealth Attorneys Act provides that OGC will “Review and approve for form and legality all proposed rules and regulations of executive agencies before they are deposited with the Legislative Reference Bureau as required by section 207 of the act of July 31, 1968 (P.L. 769, No. 240), known as the "Commonwealth Documents Law."  
  
**71 P.S. § 732-301**

This legal review is conducted before the proposed regulation will be able to continue on for AG legal review. OGC will review this package now in the proposed form, and then later when the regulation is submitted in final form.

Junior: OK. So it goes to OGC for a legal review. Simple. What else do we need besides the proposed regulation to move this along?

**CHANGE TO SLIDE #4**

Senior: At this stage we must submit to OGC the following three items:

1. the annex (proposed regulations);
2. a preamble (which briefly describes the purpose, requirements, affected persons, cost and paperwork estimates, statutory authority, sunset date, regulatory review, and contact person for the proposed regulations, the deadline for public comments, etc.) –

these first two items will be eventually published in the PA Bulletin;

1. and a Regulatory Analysis Form ( aka as a “RAF”) (this form requires more detailed, it can be downloaded from this [link](http://www.irrc.state.pa.us/documents/agency_toolbox.cfm)). The RAF is a 12 page for that includes a concise, nontechnical explanation of the reg, the contact information of the agency officials responsible for receiving comments on the reg (that will be you Junior), and information related to budget, policy and statutory authority

The RAF will eventually posted to the IRRC website.

Junior: This just got a lot more complicated. The blank RAF is longer than our entire regulation. I guess I will have to work with our business office to get all of this information and complete the forms. Why does OGC need all this information?

Change to Slide #5

Senior: Jr.? [sarcastic] - Because the General Counsel may question every aspect of an executive agency’s proposed regulation, either as a matter of policy or law.

Junior: That must take forever.

Change to Slide #6

Senior: OGC usually cooperates with the agencies to get things through in a reasonable amount of time. But they have no statutory time restriction.

END PART I – INTERMISSION [Audience Participation]

NARRATOR: Do you have any tips for completing all of this paperwork? What are the most important parts?

Possible Audience participation question for practice tips? …

ACT 1, PART II (OGC Characters into positions)

Narrator: Back to Junior - Ten Minutes Later….

[Junior enters with his laptop]

Junior: OK, that was tough. But, it’s all done- ready to go.

Senior: [looking at computer screen] Looks great junior. Let’s send this out.

Junior: OK, I’ll get it in the mail, do we just send it to OGC at 333 Market?

Senior: Come on Junior, this is the 21st century. We don’t mail it. We email it. We’ll be sending this to OGC, the Governor’s Policy Office and the Office of Budget.

Junior: Wait, I thought this was a simple OGC legal review under the Commonwealth Attorneys Act. Why are we sending this to all of those other offices?

CHANGE TO SLIDE # 7

Senior: Come on Junior, we can’t have the Governor’s legal office making decisions and pushing regs that the Governor’s policy and budget office don’t agree with or can’t afford. The legal office has to coordinate the review with all of these offices. Its good government. Just hit send, I’m taking off now.

[Senior exits]

Junior: [Pressing a button] Done!

[Phone Rings Immediately]

Junior: Hello?

OGC(helpy helperton character):

Hi, this is OGC. I just completed a thorough review of the shared economy regulatory package that you submitted; I have Policy and Budget on the line as well. We discussed this and have a few questions for you. Normally we would do this by email, but that would not fit the format of this presentation so well.

Junior: OK.

SLIDE #8

OGC: The biggest issue that I see is that there is a potential conflict with your proposed regs and the regulations of the PUC.

Were you aware of the PUC regs? [Junior starts to answer, but OGC continues]. To make a long story short, PUC issued a ruling that allowed Uber to implement a tariff that permitted demand-based real time pricing without specifying how the rates will be calculated.

So there are two problems:

1. By limiting price changes for these same companies, isn’t L&I impinging on the PUC’s statutory mandate to ensure all rates are just and reasonable?

2. Moreover, By limiting price changes at all in light of the PUC’s policy to allow real-time pricing, L&I is choosing policy that is absolutely inconsistent with that of the PUC.

Junior: I think we [is cut off]

OGC: At the end of the day, I’m not sure if you looked at these issues, and I am not certain if these regulations are actually inconsistent with the PUC’s statutory mandate, and I don’t really care. We can fix this by simply alter the regulation to defer to PUC regulations and orders:

Governor’s Policy Office (antagonist):

Now just hold on a minute there. This is Policy. L&I didn’t just come up with this reg out of thin air – they are following the policy laid out by the Governor – consumer protection. The consumer protection groups were not pleased with the PUC’s ruling. The Governor isn’t going to simply defer to the PUC on this consumer protection issue .The PUC policy could change any time the PUC approves a tariff for one of these companies.

OGC: Well policy deference is one thing, but there is a legal issue that needs to be addressed.

Policy: No, as a matter of policy, there is no legal inconsistency here: L&I can place additional limitations on how often a rate can be changed – it’s not truly altering the rate and doesn’t need to make a just and reasonable determination to do so, etc. This regulation should stand as is.

Budget: This is Budget here. I am not really concerned about that issue. However, I do have some serious concerns with regard to the financial impact of the proposed regulations.

Nothing in this submittal really spells out How much is it going to cost to police these rate changes, or what kind of monitoring system L&I proposes to use ( and the whole concept sounds expensive)

I thinks the best alternative is to remove the pricing provision all together. – way too costly to police and we can avoid all this nonsense argument and just move the regulation along.

Policy: This is a cost we will have to find a way to afford so that we can protect consumers.

Budget: That is not my only concern. I heard that that some of the stakeholders with deep pockets (Uber and Lyft) are absolutely against the pricing provision, and it will be costly (and another headache) to defend this regulation from the future legal challenge it potentially presents.

OGC: So listen Junior, just make some modifications to address these issues and resubmit. Thanks –

SLIDE #9

Once the OGC review is completed by all parties, the regulatory package is submitted to the Attorney General’s Office for review.

**END ACT I [Audience Participation Depending on Time]**

Narrator: Possible Questions for Audience or Shawn.

How long does OGC review usually take?

How much politics is involved?

How are differences with OGC and agency typically resolved?