



memo

TO: Government Affairs Council Members

FROM: Ken Pokalsky

SUBJECT: Regulatory Reform Proposals

DATE: 9/20/11

The Cuomo Administration has asked for recommendations for regulatory reforms that would improve the state's economic competitiveness and eliminate barriers to new investments and new jobs in New York State.

Based on previous input, and recent – albeit limited - conversations with Business Council members, we have compiled the following initial list of recommendations.

We urge GAC members to discuss this request with your company's regulatory staff, and provide us with additional regulatory reform priorities at your earliest convenience.

Please feel free to contact myself or other members of our Government Affairs team to provide recommendations or to discuss further.

Thanks.



GENERAL

- Promote adoption of electronic commerce applications for permitting and regulatory compliance, to reduce administrative costs for both business and the state; state-level policy & resources are needed, as opposed to agency-by-agency efforts.

CONTRACT PROCUREMENT

- Revisit 2010 MWBE legislation and its implementation; current program does little to promote new MWBEs within the state; with unrealistic goals in agency bids, will lead to MWBE business going out of state.
- Expedite efforts to adopt strategic sourcing policy, including guidance on whether/how local governments and school districts can piggyback off federal contracts as permitted in Chapter 97/Laws of 2011.

ENVIRONMENT

- Amend and limit broad state requirements that subject projects to lengthy "essential habitat" reviews and permitting.
- Amend the state's new source review regulation to eliminate unnecessary restrictions on physical and operational improvements and capital investments that improve efficiency and competitiveness and/or reduce emissions and energy use. Options for improvement include clarifying "routine maintenance" activity to give facilities certainty regarding maintenance to support ongoing operations; use of federal definitions and criteria; adoption of more reasonable project thresholds for downstate projects; more flexibility in defining baseline periods and baseline emissions; elimination of mandatory reductions in plant-wide applicability limits upon permit renewals.
- Require DEC review of provisions exceeding/differing from underlying federal requirements to identify unnecessary, non-beneficial compliance requirements; building on prior work done by DEC in evaluating the state's RCRA program.
- Clarifying the standard for when a permit application is "complete," to assure adequate information for proceeding to public comment, in order to expedite the permit review process.
- Heighten the standard for adjudication of permit issues once the DEC staff has found the application complete and has issued a tentative determination to approve the application, including a presumption of correctness of DEC draft permit. The standard for issue adjudication should be "clear and compelling evidence," rather than "substantive and significant issue." Further, there should be reasonable, fixed timetables for the various steps in the adjudication process.

- Adhere to review timetables, and make clear that comment periods and other timetables established in regulation for the review of permit applications and permit hearings should be adhered to, absent a compelling showing of good cause for an extension.
- As is the case with the re-enacted Article X of the Public Service Law, the state should establish a "fast-track" process for applications that meet certain environmental criteria (e.g., replacement projects, pollution reduction, etc.) that address critical state economic development needs.
- The Administration should not allow the SEQRA process to impose "mitigation" mandates on proposed projects that exceed established regulatory standards, in order to give regulatory certainty to project sponsors. The DEC Commissioner has issued decisions stating that SEQRA can be used to require an applicant to do better than a standard promulgated by regulation.
- Implementation of the "coastal zone" program should be shifted to DEC from the Department of State, and require that the coastal zone permitting process be done concomitant with, rather sequential to, DEC permitting and/or SEQRA reviews.
- Restore the standing threshold for challenges to actions under the State Environmental Quality Review Act to that which was established by the Court of Appeals in *Society of Plastics Industry v. County of Suffolk*, which required the plaintiff to demonstrate that they would suffer a personal injury-in-fact different from that of the public at large.
- Adopt a DEC policy to promote use of environmental audits to promote discovery, voluntary disclosure and timely remedy of non-compliance.
- The DEC should drop its requirement that new polymers which are used for dewatering in the wastewater treatment process be subject to pre-approval by the DEC. The current practice imposes considerable delays, and fails to provide a discernable benefit to the environment because in the wastewater treatment process, the functionality of a polymer and the characteristics of the polymers ensure the material will not be present in the discharge.

HEALTH CARE

- Adopt a moratorium on new group health insurance mandates and fulfill the statutory mandate for the mandate review commission.

LABOR

- Reverse the trend of expanding the definition of "public work" for purpose of prevailing wage mandates, whether thru legislation or administrative/enforcement actions.

- Assure that “prevailing wage” determinations accurately reflect regional private sector wage levels.
- Adopt new wage withholding provisions, allowing for broad categories of voluntary deductions at election of employees.
- Repeal the annual notice requirement of the Wage Theft Protection Act of 2010, which employers would have to implement in January 2012.

RPT ADMINISTRATION

- A national business taxpayer organization recently ranked NY as 50th among the states for its administration of the real property tax. The state should adopt: statewide assessment standards and practices; consistent reassessments cycles; more reasonable timetable and procedures for appeals. Based on input to date, reforms could include: a move to county level assessments; fixed reassessment cycles; uniform, full market value assessments; appropriate statewide assessment standards; and specialized trial courts for challenges (at the county or state tax tribunal level).

TAXATION

- While a legislative fix is preferred, adopt more appropriate expense attribution guidance, used to determine disallowed expenses related to exempt income from subsidiary capital.
- Adopt more reasonable approaches to calculating sales tax liability in instances where DT&F determines that vendor has inadequate records; generally, support & assist small business compliance with sales tax requirements.

TELECOMMUNICATIONS

- Avoid imposing new state level regulation of internet usage the rates, terms and conditions on services delivered over Internet technologies such as VoIP (Voice over Internet Protocol), in order to promote continued technical advances and expanded services in the state.

WORKERS COMPENSATION

- In general, allow 2007 reforms to be fully and effectively implemented and applied, e.g., repeal unnecessary requirements for use of pharmaceutical and imaging/diagnostic networks.
- Review and revise regulatory processes at the Workers’ Comp Board which complicate the system needlessly for all (claimants, doctors, employers) without value add (e.g., measures that do not allow IME’s report to be filed with the board electronically regardless of how that information is shared with doctors/claimants.)

- Review and revise the WCB's procedural requirements related to implementation of major reform items, including medical treatment guidelines, streamlined docket/hearings regulations, return to work and safety program incentives and others, to assure intended benefits and process improvements are achieved.