Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on Pennsylvania's Economic Development Efforts and Permitting Process

Before the:
Pennsylvania Senate Majority and Democratic Policy Committees

Presented by:

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Senator Argall, Senator Boscola and members of this committee, my name is Kevin Sunday, Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy organization in the Commonwealth and we represent employers of all sizes, crossing all industry sectors throughout Pennsylvania. Thank you for the opportunity to testify today on behalf of our members regarding economic development and job creation in the state.

Our economy is diverse and dynamic, with every sector of our national economy well represented here in the state. Well-crafted policy by leaders in Harrisburg can ensure that every Pennsylvanian is afforded the opportunity to thrive in the state, regardless of what career they choose.

Based on data released by the state's Department of Labor and Industry[1], it is clear not every industrial sector is thriving, even though overall unemployment is trending downward. Jobs in the mining and oil and gas industries have fallen more than 24% over the past year, and construction and manufacturing jobs have shown nominal losses over that same time period. In contrast, jobs in the transportation, information, finance, health, government and service sectors have shown small gains over the past year.

Each year, the PA Chamber surveys hundreds of employers across the state to gauge sentiment regarding the economy and public policy.[2] The most recent economy survey was conducted last fall, with responses showing downward trends in many metrics, such as sales, hiring and overall optimism.

Employers across the state are showing less optimism than last year, as the following analysis of survey results shows:

- A combined 49% rate the overall business climate as "excellent" or "good", down from 57% last year. Meanwhile, only 16% think the business climate in the Keystone State has gotten better in the last 12 months, a new five-year low not seen since the peak of the recession in 2009-2010.

- Twenty-three (23) percent say they would consider leaving Pennsylvania if they could, or the highest in four years. Nonetheless, this represents a leveling off from past years when economic conditions were much worse, a time when upwards of one in three employers indicated they would consider leaving.

- Eighteen (18) percent rate Pennsylvania as a "very" friendly place to do business, virtually unchanged from an 8-year average of 16%. This suggests that despite changes in both economic and political circumstances over the years, including both several legislative

[1] PA Unemployment Rate 4.6% in February. Pennsylvania Department of Labor and Industry, March 18, 2016. http://www.media.pa.gov/Pages/Labor-and-Industry-Details.aspx?newsid=194

[2] Highlights of the 25th Annual Pennsylvania Economic Survey. Pennsylvania Chamber of Business and Industry, August 2015, https://www.pachamber.org/advocacy/studies_reports/pdf/15_Economic_Survey.pdf?1459782342

successes and setbacks on business-related laws, most employers haven't changed the way they view the state's business climate.

- One in three (or 33%) report increases in sales during the last twelve months, matching a low not seen in 4 years. This includes 36% of PA Chamber members who report increases in sales, down significantly from 49% last year. Although sales figures are still up when compared with years during the most recent recession, they still have a long way to go to catch up to pre-recession levels when fifty percent or more reported sales growth.

- Thirty-nine (39) percent expect sales to increase in the next 12 months, down slightly from 45% last year but still on par with a 5-year average of 38%.

- Only 15% have hired new workers in the last 12 months, reflecting a new 5-year low. Hiring was particularly sluggish with Chamber Members, at 18%, a fairly big drop from 30% last year. Moreover, 19% expect to hire more in coming months, showing little change from past years and matching a 5-year average.

- When asked to name the top problems affecting companies, the economy (17%), taxes (12%) and healthcare premiums (11%) continue to be the three most cited answers. This is consistent with prior years.

In short, the legislature spent several years of enacting pro-growth policies, which had a significant impact on improving our economy and the outlook of the business community. But the continued threat of multi-billion dollar tax increases is eroding the optimism and confidence of employers.

In 2013, the PA Chamber surveyed 464 employers in the state to identify trends in workforce development.[3] 72% of Pennsylvania companies reported that they are having difficulty hiring employees with adequate skills, training or education. More than half of the business community found it increasingly difficult to hire qualified employees during the previous five years and expect the problem to get worse over the next five years. We are currently underway conducting a follow-up survey to update these findings, and we will be happy to report our results to the legislature.

It is clear we also face demographic headwinds. The Independent Fiscal Office's most recent Economic and Budget Outlook forecasts that the number of Pennsylvanians age 19 or younger will contract by 0.5 percent, those age 20 to 64 will contract by 2.9 percent, and those age 65 or older will dramatically increase by 31.5 percent.[4]

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[3] Best Practices: Workforce Development. PA Chamber Foundation, April 2013. https://www.pachamber.org/advocacy/studies_reports/pdf/13_Workforce_Development_White_Paper.pdf

[4] Economic and Budget Outlook: Commonwealth of Pennsylvania Fiscal Years 2015-16 to 2020-21. Independent Fiscal Office, January 2016. http://www.ifo.state.pa.us/download.cfm?file=/Resources/PDF/Five_Year_Outlook_2015.pdf

With these challenges identified, I will focus the remainder of my testimony on three areas in which the state can better position itself so that businesses can compete: tax policy, permitting reform and regulatory reform.

Tax Policy

While each state has at its disposal a number of tools, such as tax credits, grants, and loans, the best economic development policy is a competitive tax environment.

Pennsylvania has taken a great many steps with regard to tax policy to increase its competitive position over the past few years: increasing the cap on Net Operating Loss deductions; changing the Corporate Net Income tax apportionment formula to 100 percent sales; improving the tax appeals system; eliminating the inheritance tax for small family businesses and eliminating the Capital Stock and Franchise tax. In the years since these changes were enacted, unemployment has been reduced and overall revenue collections have increased. This productive momentum can be continued if efforts are undertaken to establish broad-based tax policy that encourages businesses to come to, stay and expand in Pennsylvania. We believe an across the board rate reduction is a much more effective and equitable policy than picking winners and losers by providing temporary tax relief to individual companies.

Certainly tremendous progress has been made but these improvements to our business climate have not occurred in a vacuum. Other states have pursued agendas to strengthen their own economies and attract businesses. Unfortunately, many key legislative accomplishments simply address problems or put Pennsylvania on par with the rest of the country. Accordingly, we believe work during this current session should strive to continue the momentum the legislature has generated.

The PA Chamber also opposes enacting a severance tax, particularly at a time when the natural gas industry is facing historic economic pressures while already paying an impact fee that equates to a tax rate competitive to other states. In the neighboring state of Ohio, lawmakers decided not to increase the severance tax there and in West Virginia a severance fee for oil and gas production was recently repealed (though a rate of five percent remains in effect). Rig counts in Pennsylvania are lower levels than since before the first Marcellus shale well was drilled, and, as already noted, job losses are mounting.

Regardless of the tax policy lawmakers set, the increasing costs and unfunded accrued liability associated with public pensions represents the greatest threat to Pennsylvania's long-term fiscal stability and its impact will be more acute in the years ahead unless substantial reform is enacted. We applaud the Senate on moving historic pension reform legislation that would have significantly addressed the unfunded liability. Because of this unfunded liability, taxpayers are being impacted, as rising costs have precipitated and will continue to require considerable additional revenue and higher taxes. Schools are impacted, as a growing portion of school district budgets must be allocated to fund the local share of pension obligations, pulling scarce resources away from classrooms and students. The Commonwealth itself is impacted, as Pennsylvania's credit has been downgraded by rating agencies, which cited state pensions as a significant factor; and lower bond ratings mean higher costs to borrow money. And finally, current and future public school teachers and state employees are impacted, as confidence in the retirement system on which they are depending is eroded.

Permitting Policy

The membership of the PA Chamber supports stewardship of the environment. We believe environmental protection and economic growth are not mutually-exclusive, and that environmental and natural resource laws and programs should be framed to achieve both.

Delays and uncertainties in securing permits from state and federal agencies are hampering our ability to compete. Pennsylvania's air, waste and water requirements are more stringent in many respects than those of other states and in many cases of federal requirements as well. In many instances, businesses are only able to bear this increased burden if expectations from the state Department of Environmental Protection (and the federal Environmental Protection Agency and Army Corps of Engineers) are clear.

Unfortunately, in many cases, this is not the experience of our members in dealing with DEP's six regional offices. Our members report a variety of experiences with these offices, with one of the chief concerns being a disparity among regional offices in permit turnaround times. To cite one example, members have reported that an erosion and sediment control permit for oil and gas activities takes on average 30 days in one regional office and nearly four times that – 110 days – in another. The ability to obtain in a timely and predictable manner permits necessary for the broad array of projects that come under DEP's jurisdiction is vital to enabling the regulated community to move forward with activities that make Pennsylvania economically competitive.

We have also heard from our members that DEP's regional offices are inconsistent in interpreting regulations and policies – not just between regional offices, but at the same office by the same staff. Technical guidance issued by DEP's central office is often applied only as a baseline, with regional offices adding on additional criteria. Members have also reported to us that some regions rely more heavily than others on permit reviewers who lack a professional license (such as a professional geologist or professional engineer credential), even though the permit applications are submitted under seal by such professionals from the private sector.

While it is our understanding that the management of the regional offices is generally welcoming regarding requests for pre-application meetings to coordinate review of complex projects, we would urge that DEP ensure each of its regional office has permitting coordinator positions filled so that permits are reviewed in an efficient manner. Further, even though most permit reviewers are civil service positions and thus professional remediation is much more limited than what would be found in a private sector company, we believe it is appropriate for management to ensure that reviewers are ensuring permits merely have written into them the conditions necessary to satisfy the state's already significant environmental requirements – not the reviewer's preferred, subjective project design criteria. Because most permit applications are submitted under such seals, we would encourage DEP and the Legislature to seriously examine the possibility of conducting third-party reviews of permits, as this measure could significantly reduce administrative burden for the agency and expedite reviews of permits for industry.

While we recognize there may be some staffing issues at the Department, we urge DEP to do its very best to analyze workload before asking the private sector to pay more in permit fees, which the agency is proceeding to do in a number of programs, with the aim of staff additions. Permit fees have been increased in past years, yet, due to rising benefit costs, there was not a commensurate increase in staff. Workload analyses should be done across the board to anticipate where current needs are as well as where future needs will be, as well as to identify areas of efficiency.

One of the most direct paths to efficiency is to establish baseline criteria in the form of a general permit, which can provide coverage for any project that demonstrates that criteria can be met. General permits are currently made available for a number of programs, and DEP should look for opportunities to add more general permits and to find ways to reduce reporting requirements – for example, in the residual waste program, which requires a tremendous amount of paperwork on the part of businesses. The general permits, particularly in the Chapter 105 program, that DEP currently uses too often are only issued with excessive conditions, exclusions and variability, or are not made available at all to applicants due to an overly restrictive application of eligibility criteria. Waivers of certain environmental regulations (which are made available by law and regulation) or the granting of emergency permits are often granted or made unavailable in an unpredictable manner by staff, or only made available if an extreme amount of documentation is provided to DEP by applicants.

DEP leadership has made comments recently that, in particular regard to Chapter 102 permit applications, industry is doing poorly in terms of submitting full and complete applications. Our members, however, have reported that, with specific regard to Chapter 102 permits, DEP staff have sought additional permitting criteria or actions by the applicant that do not have a regulatory authority grounded in Chapter 102. Further, in regarding permit reviews for both Chapter 102 and permits in general, DEP staff will provide technical comments at the various stages of permit reviews. These comments are issues that permit review staff feel needs to be addressed before the permit can be issued, and having these issues raised at several stages adds significant cost and money to industry. To the extent there is any poor performance on the part of consultants and industry, we urge the Department to hold more training with industry to establish clearly what the expectations are across the board for permit applicants, as well as for DEP to continue to hold its staff accountable. It is our understanding that DEP has suspended its regular, quarterly review analysis of Permit Decision Guarantee timeframes, and that DEP has not in quite some time held any training with industry. Adequate training is vital to ensuring that permit reviewers understand the requirements that they are administering and maintaining consistency in outcomes.

New and expanded electric and gas infrastructure is vital to securing a strong economic future for this state as well as meeting the various environmental obligations being handed down by state and federal agencies. However, the permitting requirements associated with these projects are immense. One electric utility recently testified before the House Consumer Affairs Committee that while the "average time for a transmission project from planning to completion is 8 years, […] less than 25%

of that time [is] dedicated to construction."[5] The planning and development of pipeline projects can also span several years, again with only a fraction of the time involved dedicated to construction. These projects are necessary to secure our economic and environmental goals and we believe the state must fully support such projects, not add even more regulatory hurdles in front of this vital infrastructure.

Regulatory Reform

Finally, as any cursory glance at the weekly editions of the Pennsylvania makes clear, the pace of regulatory development has far outpaced that of legislation. State and federal agencies have, in recent years, continued to increase regulatory requirements as well as policies and guidance documents. New requirements are layered onto existing requirements, often with little regard for whether the existing requirements continue to serve as meaningful purpose or function. This layering of regulatory requirements is a major challenge for the regulated community to handle, particularly as Pennsylvania's businesses are trying to function in highly competitive global markets.

At the state level, we believe it is appropriate for the General Assembly to closely scrutinize proposed regulations, guidance documents and policies emanating from agencies so that such documents both conform with legislative intent and achieve the legislature's goals in the most affordable and flexible manner possible. We believe this can be achieved via the amendments to the Regulatory Review Act that SB 562 seeks. The bill passed the Senate unanimously, and we continue urge final passage of the bill in the House.

At times, the increased environmental regulations have proceeded at such a pace that requirements are in conflict with other state or federal requirements. For example, DEP has over the years substantially increased Act 2 brownfields and stormwater requirements, which are increasingly coming into conflict for developers seeking to redevelop brownfields properties. Consistent with requirements under the federal Clean Water Act, DEP requires NPDES permits for stormwater discharges associated with construction activities that involve earth disturbances that are at least an acre in size. Pennsylvania has coupled these requirements with extensive state-specific requirements for managing stormwater following the completion of construction activities. The type of post-construction stormwater management techniques that DEP may seek to impose may be wholly at odds with remediation approaches under the Land Recycling Program. At the same time, the mere fact that a project involves some element of remediation may cause DEP to impose extensive and unnecessary requirements relating to stormwater management, particularly when taking into account the environmental improvements that are typically associated with brownfields redevelopment projects. The increasing tension between the two programs has the potential to stifle brownfields redevelopment – an arena in which Pennsylvania has been a national leader since it established the Land Recycling Program more than 20 years ago.

With regard to regulatory development in other program areas, DEP is close to finalizing several components of its waterways and wetlands programs that will result in a significant amount of new

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[5] PPL Electric Utilities Testimony Before the House Consumer Affairs Committee. March 15, 2016. http://wallaby.telicon.com/pa/library/2016/20160315SZ.pdf

work for the agency and regulated community. These include the so-called Chesapeake Bay reboot, the implementation of Act 162 of 2014 (regarding riparian buffer requirements) and an entirely new paradigm for satisfying wetlands mitigation obligations, which DEP is seeking to establish through technical guidance.

Finally, just as our members experiences with DEP's regional office varies widely, so too are their experiences with local government. The municipal government structure can make it difficult for industry seeking regulatory certainty, particularly for projects that span multiple municipalities or counties. We would support efforts that allow for greater harmony between the policy decisions of the state with respect to environmental and economic development policy and the power vested in local governments.

In addition, all parties – industry, regulators and local government – are still feeling the effects of the uncertainty from the *Robinson Township* plurality decision regarding Act 13 of 2012, which significantly elevated the obligations of all levels of government with respect to carrying out the duties of Article I Section 27. Recent state appellate court decisions have provided some clarity with respect to how much deference should be given to the *Robinson Township* decision in future cases, and we would urge the Legislature to continue to monitor future court decisions and stand ready to resolve any resulting ambiguities via legislative action.

In closing, thank you for the opportunity to speak to you this morning, and I look forward to answering any questions you may have.