



Senate Committee on Intergovernmental Operations

December 12, 2019

Regulatory Reform, Red Tape, and Transparency

Good morning, Chairman Mastriano, Chairman Fontana, and members of the committee. My name is Rebecca Oylar, and I am the Legislative Director for the National Federation of Independent Business (NFIB) in Pennsylvania. With me today is State Director Gordon Denlinger. NFIB is the premier small business advocacy organization with about 13,000 members in Pennsylvania and over 300,000 members nationwide. We appreciate the invitation to be here today to speak on behalf of Pennsylvania's small businesses on an issue of great importance to them.

Small businesses are the engine of economic growth and the true lifeblood of local communities. Their owners are your neighbors, your friends, the sponsors of local sports teams, and the first to step up when your community needs some help. It's easy to forget how critically important they are to our communities – and our economy as a whole.

Pennsylvania has over one million of these unsung heroes. In fact, more than 99% of our businesses are small, and these businesses hire two-and-a-half million employees, almost half of all the workers in our state. They create two out of every three new jobs. They are truly the engine of growth.

Because of their size, they are very sensitive to layers of government rules – rules that are difficult to manage and consume time and energy, two of the most important resources that small business owners need to be successful. A typical small business owner is his or her business' CEO, HR manager, communications director, advertising executive, accountant, scheduler – and regulatory compliance manager. Layers of regulations impact their business, and they must be an expert on all of them – or face penalties. The more of the day they must spend dealing with red tape, the less time they have to focus on customers, manage employees, and grow their business.

We hear from NFIB members all the time that they could grow bigger and hire more people if only the government didn't get in the way. They say that many of the regulatory burdens they deal with are costly and time-consuming and don't seem to have much to do with safety or health. Almost half of small businesses consider regulations a "serious" problem, with "cost of compliance" being the single biggest regulatory burden, followed by difficulty understanding what they must do to comply, and the extra paperwork required.

Many of the reforms we're discussing here today will go a long way toward reducing this burden in Pennsylvania. For purposes of our testimony, we will focus on three broad areas where reform should occur, provide a small business perspective, and recognize reform efforts: 1. **REDUCE** (Oblige the state to take a hard look at current regulations to decide whether they are truly necessary); 2. **RELIEVE** (Require state agencies to work with their customers and be more transparent about their processes);

and 3. **REVIEW** (Ask our elected representatives to oversee the process and to vote on the regulations with the biggest financial impact, rather than leaving them to bureaucrats).

1. REDUCE: Oblige the state to take a hard look at current regulations to decide whether they are truly necessary

The Pennsylvania Code currently contains almost 13 million words and has more than 153,000 regulatory restrictions (including 208 on the design and use of ladders), and this is only at the state level! No small business owner could possibly be an expert on so many rules. And of course, businesses must also track and comply with federal and local rules as well. This enormous set of regulations makes doing business in Pennsylvania exceedingly complex and costly. One small business owner who does cleaning and alterations in Butler County put it this way: "The list of regulations, requirements, and compliance issues seems to grow by the hour. It is hard to keep up with it all, and it brings a stress in and of itself."

Where cost and complexity rule, people are less willing to take chances and invest in their businesses for fear of breaking the rules. As a result, economic growth slows, and business owners may choose to go elsewhere. An equipment company owner in Mercer County said, "I need to expand, but I will not attempt to fight through the regulations and permits... I am likely to move my business to Ohio." As businesses leave the state, so too do jobs, economic opportunities, and community spirit.

One bill being considered by your committee (SB 119 (DiSanto)) would provide a six-month review of all existing Pennsylvania regulations and implement a "1 in, 2 out" rule for new regulations. This "cap" approach, which has worked in other areas, would force state agencies to evaluate the effectiveness of their existing rules before piling on new ones and encourage streamlining of regulatory requirements.

Another bill (SB 250 (Phillips-Hill)) would give the General Assembly the ability to initiate a repeal of any regulation in effect by concurrent resolution, with the approval of the Governor. Direct legislative oversight of existing regulations would open an avenue for elected officials to respond to constituents' concerns and reevaluate burdensome rules.

Another proposal (SB 251 (Phillips-Hill) and HB 1055 (Klunk)) would establish a state Office of the Repealer to make recommendations to repeal, modify, or revise existing regulations. This office would solicit suggestions from the public to evaluate rules and determine whether they are duplicative, unreasonable, or simply no longer necessary. The Office of the Repealer could breathe fresh air into the dusty volumes of the Pennsylvania Code, removing rules that no longer make sense but continue to burden businesses with stale and unnecessary requirements.

A periodic review of regulations would also help. One proposal (SB 609 (Brooks)) would require agencies to report every three years on whether regulations with a large financial impact on the state continue to be in the public interest. Reform efforts such as these would help reduce the mounds of red tape that continue to bind Pennsylvania businesses in a sticky morass.

2. RELIEVE: Require state agencies to work with their customers and be more transparent about their processes

Many small business owners report that, besides the sheer number of regulations they must comply with, they also often have to deal with overzealous and inconsistent enforcement. Even when owners do their best to comply, they sometimes get caught in “gotcha” moments by agencies that seem like they are more interested in imposing fines and penalties than in helping businesses do what’s right. One small business in Bradford County noted: “In my experience there are too many regulations that are PURPOSELY written in a format that allows ‘interpretation.’ With this method agents/agencies can use to their advantage to help or hinder a business.”

Several business owners reported problems because regulations changed without any notification, resulting in more “gotchas,” costs, and headaches. One photography business incurred a \$90 tax liability because of tax policies that were unclear, but the real cost was the more than \$900 in legal and accountants’ fees it took to resolve the issue. Another small business in York County reported being “treated like criminals” for not complying with rules the owner wasn’t aware of and noted that, in this case, government overreach was “disgusting, costing us time and money that ultimately cost our employees and the community.”

One painting contractor was surprised when, after 32 years in business, tax rules changed, making part of his business suddenly subject to state sales tax. “We were never informed about the changes, not even our CPA or attorney knew about it,” the owner said. After spending well over 120 hours compiling records instead of running his business, the owner described the confusing result this way: “If I power wash someone’s house, I have to collect sales tax. If I wash it and paint something, I don’t have to collect sales tax. If I paint the outside of their house, I don’t have to collect sales tax, but if I paint their swing not attached, I have to collect sales tax.”

He continued, “I am 60 years old, still struggle to make a profit, still work 7 days a week, pay my employees between 30 and 75 thousand dollars a year... In 5 years, I am going to shut down my business and leave the state.” Unfortunately, this small business owner is not alone in his feeling that the regulatory burden he faces is no longer worth the effort.

When business owners do decide to do their best to follow the rules and apply for state permits to build or expand, and sometimes even to continue to work in their field, they report delays and bureaucratic difficulties getting their applications approved. These delays and complications often hold up entire projects, prevent businesses from hiring, and even force entrepreneurial ventures out of state while their owners struggle to determine what to do. One dairy farmer in Lancaster County got financing to build a new milking barn, but he waited nine months with no word on the status of his environmental permit application. During his long wait, his financing approval expired.

Speeding up the issuance of permits could be (and has been) the topic of entire hearings. It has also been a focus for the Department of Environmental Protection (DEP), which has come under fire more than any other agency. Many potential solutions have been discussed, but consideration should be given to the interconnection between the time it takes DEP to process permit applications and the sheer volume of regulatory requirements that require checking, as well as the number of projects requiring

complex permits at all. We suggest that making a serious effort to reduce or streamline the regulatory requirements of certain projects and simplifying the process for smaller projects could go a long way toward speeding up the bureaucratic quagmire that traps small businesses and frustrates DEP's permit processing efficiency.

Introducing market-based efficiencies could also help reduce the burden on DEP's staff. One proposal (SB 891 (Yaw)) would establish an Advanced Permit Review Program to provide an expedited method to review permit applications, which an applicant could choose to access, through the use of approved licensed professionals.

Several proposals (SB 252 (Phillips-Hill) and HB 509 (Rothman)) seek to address the permit transparency problem by requiring state agencies to create an online tracking system for permits and cite specific legal authority for permit denials. Critically, they would also be required to provide guidance on correcting any deficiencies found in the application so that applicants can more readily remedy them.

Another reform (SB 253 (Phillips-Hill) and HB 762 (O'Neal)) would help businesses work with state agencies as partners rather than enforcers. These bills would require state agencies to appoint regulatory compliance officers to help businesses comply with regulations. It would also provide a safe harbor to those who comply in good faith with advisory opinions issued by the agency. Compliance officers would be authorized to waive or reduce penalties when businesses self-report noncompliance. This would go a long way toward helping to foster a partnership rather than incentivizing the "gotchas" that plague well-intentioned small businesses.

3. REVIEW: Ask our elected representatives to oversee the process and to vote on the regulations with the biggest financial impact

At this point, it is worth taking a step back to emphasize that the power of an administrative agency to pass regulations comes from a grant of legislative authority in each statute. In many statutes, this authority is broadly written with very few effective limits contained within the law itself. Every time it considers legislation that provides an agency with regulatory authority, the General Assembly should consider placing limits on this authority in order to reign in the excessive regulatory requirements that are hampering small businesses.

And although we are thankful that Pennsylvania's regulatory process itself is lauded as a model for its transparency and allowance for public review and comment, unfortunately, this transparency comes with limits. When there is strong opposition to a regulation moving through the process, there is little the public or even the legislative branch can do to stop it. Agencies are required to consider comments they receive on their regulatory proposals, but they ultimately are not required to change their rules in response to them.

Many constituents complain to their representatives about the impact of burdensome regulations, but after rules are promulgated by state agencies, legislators are often limited in their ability to affect the process. Introducing additional legislative oversight into the regulatory process could reset the balance of power and force agencies to consider the General Assembly's intent when it passed, and the Governor signed, the underlying law.

Some bills (SB 250 (Phillips-Hill) and HB 806 (Keefer)) would force the legislature to explicitly approve regulations. These bills draw the line at very costly regulations by requiring rules with a direct or indirect cost to the state of \$1 million or more be approved the House and Senate. This is a reasonable way to reintroduce needed legislative oversight into rules that have significant impacts on Pennsylvania businesses and the state's economy.

Legislative oversight of all regulations would improve under a proposal that has already passed the Senate. SB 398 (Gordner) would require proposed regulations to be sent to all members of the committee responsible for oversight of the agency and allow committees to hold hearings and issue comments on regulations.

Encouraging more extensive oversight of the regulatory process by the General Assembly should help regulators and legislators more carefully consider the impact of its rules on constituents.

We are happy to be here to discuss how to stem the tide of overbearing regulations that are crushing small businesses. As one auto shop owner in Lycoming County stated, "the amount of paperwork and taxes involved just to be self-sufficient is ridiculous... It's insane to try and keep up with." We are looking forward to working with the General Assembly to help this unsung hero and countless others "keep up."

Thank you again for the opportunity to testify today. We would be happy to answer any questions.