



Regulatory Reform Task Force Report

In recent years, the General Assembly has taken many steps in the effort to foster a healthy climate for business in Ohio, including: Bringing more predictability to the state's tort climate; revamping the state tax code, increasing workforce development efforts; preventing spikes in energy costs, and investing in targeted industries with high, in-state growth potential. While there is more work to do in each of these areas, when it comes to the factors a business owner might consider when choosing where to expand or locate their operations, policy makers have made significant progress in tipping the balance sheet to Ohio's favor. However, it is apparent from the testimony heard by the Regulatory Reform Task Force over eight public meetings around the state, that Ohio has an unfortunate reputation for red tape and bureaucracy that needs to be addressed to ensure we are competitive with other states and countries that are competing for the same jobs and economic investment.

"When you work with other states, they say this is how this is going to work and it does. When dealing with the state of Ohio, you just come away frustrated"

- Daniel Lake, Timken Company 10/8/08

The Task Force appreciates the time of the more than 50 witnesses, including representatives of business organizations, business owners, economic development professionals and private citizens from all over the state who shared their stories with us in an effort to make Ohio more business-friendly. We also appreciated the perspective of regulatory agency directors – six of whom testified before the Task Force. The witnesses' written testimony has been provided as part of this report. Here are a few examples:

Key Testimony Before the Regulatory Reform Task Force

- Joseph Mayernick of the Growth Partnership testified about MFG -- a company that manufactures blades for wind turbines that did not ultimately locate its business in Ohio. He said that the company listed two primary reasons for this: 1.) The blades are so large that they should be made near where the wind farms are located and 2.) The Ohio EPA's permitting process is so cumbersome, costly and time-consuming that the company could not wait.

"The good news is that Governor Strickland has made alternative energy a priority and the new regulations with the utilities will cause development of wind, bio-diesel, clean coal and other new sources in the state. The bad news is

that the regulatory environment cannot match the 30-45 day permitting process of Alabama and South Dakota.”

-Joseph Mayernick, Growth Partnership, 10/13/08

- A number of witnesses shared the perspective of the agriculture industry, including Rocky Black of the Ohio Farm Bureau.

“Farmers do not mind regulation. In fact, they are among the most regulatory compliant people in the world. Soil, water, seed, crops, fertilizer, manure handling, transportation, operations, products, workers, animals – in fact, nearly all that farmers touch – are regulated. What they do need to survive, however, is an even-handed application of sensible regulations.”

-Rocky Black, Ohio Farm Bureau, 8/13/08

- Mark Wilson, president of a company that assists farmers in navigating the world of environmental regulation, testified regarding new Ohio EPA water quality standards that are being applied not only to waters and streams but to agricultural drainage ditches. Despite the fact that streams and drainage ditches have completely different functions, as it stands today, farmers’ water quality will be graded on whether they have a prescribed mix of fish, aquatic insects and woody vegetation.

“Ohio EPA cannot simply extend the existing water quality standards to agricultural ditches. This is because Ohio’s existing water quality standards were developed for larger rivers and streams and as such, they don’t hold up very well when applied to the smaller channels which make up the majority of agriculture’s drainage infrastructure.”

-Mark L. Wilson, President, Land Stewards LLC, 9/16/08

- Dan Lake of the Timken Company testified to the challenges they have experienced with the Ohio EPA’s air program, particularly as it relates to dealing with the local air agency and the time it takes to get a permit.

“Ohio businesses must regularly navigate various federal, state, regional, city and other local regulatory authorities on a regular basis, often on the same regulated issues. Often coordination between these entities is limited and/or non-existent. Often local and regional entities lack the knowledge, expertise or resources to efficiently handle the permitting process and are in fact eventually bypassed in many circumstances, not before much time, energy and cost.”

-Dan Lake, Manager – Environmental Permitting, The Timken Company, 10/8/08

- Alan McCoy of AK Steel testified regarding the inconsistent regulatory burden surrounding the transportation of steel products.

"...under Ohio law, you can load a tractor-trailer with one, two...or a hundred coils of steel, with a GVW (Gross Vehicle Weight) of 80,000 pounds and criss-cross the state. You can also get, under certain circumstances, a Special Hauling Permit to carry a single coil in the middle of the trailer, between the axles, on a rig with a GVW of 120,000 pounds. Or, you can use that permit to haul two coils at the same GVW. But if you want to haul three coils totaling that same 120,000 GVW, and spread that load across the length of the trailer and get it over the axles, Ohio says 'illegal.'"

- Alan McCoy, Vice President, Government & Public Relations, AK Steel, 9/4/08

- Justin Mohler, representing the Ohio Society of CPAs, testified to the burden on business regarding the municipal income tax and the differing requirements from city to city. He also expressed concerns with the "redundancy" of regulations on businesses from agency to agency.

"Clearly the municipal tax morass in Ohio, requiring registration, filing and different rules in over 500 cities is a burden...As it stands now, taxpayers may be faced with paying a tax liability due as a result of a city's incorrect interpretation of ORC 718. Or they may choose to litigate. When the cost of litigation exceeds the claimed liability, given the circumstances, the only acceptable course of action is to pay the city – an unfair and unfriendly result of a burdensome local tax system."

"Each new employer must register with the Ohio Department of Taxation for withholding and school district income tax, the Ohio Department of Job and Family Services for unemployment, BWC for workers compensation and each municipality. A more business friendly – and frankly a more practical approach – is to mirror a system in place in Florida with a one-stop registration process."

-Justin Mohler, CPA, 8/13/08

- Brian Barger testified on behalf of the Ohio Aggregates and Industrial Minerals Association to offer the industry's perspective on Ohio's regulatory burden.

"It used to be said that making big rocks into small rocks was the hardest part of the job. Now, making small rocks is the easy part, with regulatory compliance the difficult part...When companies are not able to achieve perfect compliance, the agency plays 'Gotcha' and begins to assess civil penalties that bear no relationship to the gravity of the oftentimes paperwork-related infractions."

-Brian Barger, Ohio Aggregates and Industrial Minerals Association, 8/13/08

- Carrie Haughwout, of the Ohio Small Business Council, was among those to offer the Task Force the small business perspective.

“Where government regulation has the greatest detrimental impact however, is at the small business level. Of the more than 211,000 firms in Ohio – 202,000 have less than 99 employees. Moreover, fully 88% of those firms have less than 20 employees. It is these businesses that government regulation hits the hardest as they have limited resources to determine the new requirements of the regulation and how best to comply.”

-Carrie Haughawout, Ohio Small Business Council, 8/13/08

Findings of the Regulatory Reform Task Force

Based on the testimony heard, the Task Force concludes that:

- In many cases, the permitting processes in Ohio is cumbersome and takes longer than in other states;
- Ohio has a tendency to go above and beyond requirements found in federal guidelines, which hurts the state’s competitive edge for attracting jobs;
- Ohio regulations are sometimes arbitrary, applied inconsistently, and in many cases, there is little flexibility on the part of regulators;
- Some regulations are unnecessarily duplicative and burdensome and the cost of compliance can exceed the benefit of the regulated activity;
- Ohio’s fee and fine system gives the impression that Ohio’s regulatory fees and fines are more about generating revenue than obtaining common sense regulatory compliance;
- There is little opportunity for the general public to have input in the regulatory process, and
- Excessive regulation is burdensome to all businesses, but particularly smaller businesses that have fewer resources to navigate them.

Today’s global economy demands that while bearing the responsibility of maintaining a clean environment, safe products, safe workplaces and enforcing federal regulations, state government must also learn to put itself in the business owners’ chair. Understanding that any inefficiency, whether it be a permit that takes too long, a missed paperwork deadline or having to hire more staff to navigate new rules and regulations, can be the difference between profitability and failure, can give Ohio an even stronger competitive edge for attracting businesses, and the jobs that come with them, to Ohio.

“In order for Ohio to remain an attractive venue for entities doing or seeking to do business in the State, Ohio must ensure that its regulations create an atmosphere in which businesses and individuals affected by those regulations are treated as partners in identifying and achieving regulatory goals. Accessibility, flexibility, respect, timely responsiveness, problem solving, and continuous improvement must be the hallmarks of the State’s approach to regulatory activity.”

- Governor Ted Strickland, 2/12/08

On February 12, 2008, Governor Ted Strickland signed Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation." In it, he sets a tone for state agencies and directs that the development of rules and regulations be transparent, not duplicative, simplified for all to understand, based on the best available science and technical information, and that an appropriate balance be struck between regulatory objectives and the time and financial burdens imposed by them. In the enforcement of rules and regulations, he calls for flexibility, consistency and timely response. Recognizing the disproportionate burden on smaller businesses, he also calls for exceptions to rules and exemptions where authorized and appropriate.

This Task Force agrees wholeheartedly with the goals outlined in the Executive Order, but finds, based on testimony from citizens, organizations, businesses and economic development professionals from around the state, some regulatory agencies have made progress, but many have not yet fully implemented these efforts, and in some areas, legislative action can and should be taken.

Recommendations of the Regulatory Reform Task Force

I. Definition of "Small Business"

- The Task Force recommends that "small business" be defined consistently throughout Ohio law, where possible. One possible definition offered by the U.S. Small Business Administration, in an effort to remain consistent with the federal definition, is that "small business" be defined to mean "a business entity, including its affiliates, that is independently-owned and operated and employs fewer than five hundred full-time employees or has gross annual sales of less than six million dollars," unless specified to the contrary in code.
- The Task Force finds that Ohio law defines "small business" with numerous variations. The result of these varying legal definitions is that small businesses are regulated inconsistently throughout Ohio law.

II. Economic Impact Analysis

- The Task Force recommends that moving forward, regulatory state agencies issue rules that provide the least burdensome outcome while still maintaining standards for health, safety, environmental protection, and economic welfare.
- The Task Force recommends that future action be considered to require that in implementing rules, agencies perform economic impact and/or cost benefit analysis that consider all of the relevant factors to business and interested parties in implementing and complying with the rules enacted by the agency. The format of any analysis should be specified by future legislation or the JCARR process.
- The Task Force finds that agency rules impact small businesses disproportionately because of the differences in scale and resources between regulated small businesses and regulated larger businesses.

- The Task Force finds that requiring agencies to analyze the economic cost of regulation will enable the agencies to craft rules in a manner that facilitates compliance with those rules.

III. Regulatory Flexibility Analysis

- The Task Force recommends that where possible all regulatory state agencies be required to perform an analysis of existing and newly-enacted regulations and to evaluate how their processes for enforcing them impact Ohio employers. While maintaining standards for health, safety, environmental protection and economic welfare, agencies should look for ways to improve their regulatory methods so that they can accomplish their statutory obligations, while making it more conducive for Ohio businesses to comply. Possible ways to accomplish this include conducting a regulatory flexibility analysis or other improvements to the rule-making and rule-implementing process to recognize alternate compliance methods.
- The Task Force recommends that regulatory flexibility analyses evaluate the ability of businesses to meet compliance and reporting requirements, performance standards, as well as schedules and deadlines, with particular deference given to small businesses. Where warranted, agencies should consider exemptions or alternative common sense compliance methods for smaller Ohio employers.
- The Task Force recommends that the Legislature explore the establishment of a central state entity to oversee the execution of these goals, if it can be done cost-effectively and without extra duplication in effort.
 - The Task Force finds that regulatory methods may be outdated or unnecessarily burdensome to Ohio businesses and can result in increased costs and loss of productivity.
 - The Task Force finds that streamlining regulatory processes for employers frees up time and resources that could better be directed toward hiring additional employees, providing health care, training existing staff and reinvesting in facilities and equipment.

IV. Periodic Review/ JCARR Updates

- The Task Force recommends that certain changes be made to Ohio's agency rule review process outlined in section 119.032 of the Revised Code. That section generally requires each agency rule to be reviewed every five years to determine: (1) whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted, (2) whether the rule needs amendment or rescission to give more flexibility at the local level, (3) whether the rule needs amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by

reference and, if so, whether that text or other material is deposited or displayed as required by and meets the standards of Ohio law, and (4) whether the rule duplicates, overlaps with, or conflicts with other rules. The Task Force recommends that the legislature consider reviewing the agency rule process to possibly consider: (1) the nature of any written complaints or comments that an agency has received with regard to a rule, and (2) the degree to which technology, economic conditions, and other relevant factors have changed in the area affected by the rule.

- The Task Force finds that existing rules may unduly burden small businesses because the rules may no longer serve their purposes, be duplicative, or may have been adopted without consideration of the effects on small businesses.
- The Task Force finds that in order to minimize the economic impact of rules on small businesses, agencies must follow through on their responsibility to review rules periodically and determine whether adjustments are needed.

V. Judicial Review

- The Task Force recommends that small businesses that are adversely affected or aggrieved by final agency actions be able to petition agency compliance with the rule. Methods could include judicial review if appropriate.
- The Task Force finds that enabling employers to challenge state agencies for failure to adequately consider the impact of the rules on small business will incentivize agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis prior to adoption of regulations.

VI. Regulatory Advisory Board and Increased Input into Regulatory Process

- The Task Force recommends that stakeholder input and review be formalized into the decision-making process for rule-making and in rule process review. Establishing a Regulatory Advisory Board is one method to achieve this goal.
- The Task Force also recommends that increased stakeholder input be considered in rule-making. Possible methods to achieve this goal include: implementing an electronic notification system to stakeholders on relevant issues, establishing a public web site, or establishing a toll-free number. The emphasis should be on soliciting and incorporating stakeholder input throughout the process. Cost should be carefully considered when establishing these methods.
- A Regulatory Advisory Board, if created, would oversee the reform of Ohio's regulatory system and to review agency cost benefit and regulatory flexibility analyses. The Task Force recommends that the Board be comprised of

individuals representing small businesses as well as the general public and that it be housed in an existing department at no additional pay and that steps be taken to minimize costs.

- The Task Force recommends that any Advisory Board do all of the following: (1) take testimony and receive recommendations regarding Ohio's regulatory programs, specifically testimony and recommendations from the small business community; (2) provide input and commentary regarding agency economic impact analyses and cost benefit analyses (see Recommendation II and III, above); (3) compile an annual synopsis of recommendations that the Advisory Board determines to be vital to the improvement of Ohio's regulatory structure and submit the annual synopsis to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the members of the Governor's cabinet, and (4) make recommendations to statewide organizations representing counties, townships, and municipal corporations concerning the improvement of local regulatory structures with respect to the impact that local regulations have on businesses and economic development.

VII. Ombudsperson

- The Task Force recommends that an Ombudsman be established to ensure stakeholders affected by agency rules have a public liaison with direct access to agency directors to problem solve specific concerns.
- The Task Force recommends that the Ombudsperson hold an existing executive agency position and that other efforts be taken to minimize costs and expenses. The Task Force further recommends that consideration be given to housing the Ombudsperson at the Ohio Department of Development and be the Director of the Office of Small Business.
- The Ombudsperson should monitor the implementation of rules; establish a toll-free number for the general public; operate a web-based commentary site, and work with and support the Regulatory Review Board and/or any other methods to increase input into the process.

VIII. More Opportunity for Public Commentary Regarding Proposed Rules

- Based upon testimony presented, the Task Force recommends that additional access and public input is important to improve Ohio's regulatory process. In addition to increased public access through various electronic methods, the Task Force recommends that agencies fully consider access and accountability to the public in their rule-making, permitting and other processes, including by holding public hearings at local venues in impacted areas.

IX. Greater Emphasis on Improved Customer Service

- The Task Force recommends that the state place a greater emphasis on improved customer service. Possible methods for accomplishing this include implementing improved training management and customer service for state agency employees to improve efficiency and productivity.
- The Task Force recommends that the Ombudsperson work with executive agencies to help train agency personnel regarding regulatory flexibility and customer service.
- The Task Force recommends that the Department of Administrative Services establish job-specific, customer service performance standards for each non-elected, state executive branch employee as part of their annual employee review process and/or evaluate other recommendations from human resources professionals to improve customer service.
- The Task Force finds that Ohio's regulatory agencies lag behind other states with respect to providing timely, efficient, and consistent management and enforcement of Ohio's regulatory programs.

X. Legislative Grants of Rulemaking Authority

- The Task Force recommends that the Legislature be as specific as possible when providing rulemaking authority to state agencies to ensure that agency rules are consistent with the legislation that authorized the rules.

XI. Standing Committees to Oversee Ongoing Regulatory Reform

- The Task Force recommends that the Senate and the House of Representatives each charge existing standing committees to oversee regulatory agency reform and to monitor the process of regulatory reform in Ohio. The Committee should have regular interaction and discussion with regulatory agencies.

XII. Agency Fee Structure

- The Task Force recommends that agency fee structures be reviewed to assure they are consistent with the regulatory costs associated with the activity being permitted and/or regulated, and have any regulatory fine revenue be paid to the GRF instead of being used to fund regulatory agencies pending favorable/reasonable budget impact analysis by the affected agency as well as reasonable favorable impact on GRF as determined by analysis conducted by the Office of Budget and Management.
- The Task Force further recommends that agency fine assessments and procedures for imposing penalties, be reviewed to assure that agency fines and penalties are not disproportionate in relation to the impact of any violation and/or the costs to the regulated entity had they complied with regulatory requirements for paperwork, application, permit application or other technical compliance violations.

XIII. Delegated Permit Authority

- The Task Force recommends that the state review and possibly eliminate duplicative rulemaking and permit review authority for regional and/or local contracted agencies where the state agencies conduct similar oversight permitting and/or review.

XIV. Performance Audits

- The Task Force recommends that the Department of Administrative Services and/or other designated methods be established to conduct periodic performance reviews of regulatory agencies to determine if they are complying with regulatory and customer service requirements

XV. Promoting Coordination Among State, Local and Regional Authorities

- The Task Force recommends that that coordination be encouraged between state, local and regional authorities to minimize the burden of or eliminate duplicative compliance issues with particular emphasis on efforts to streamline tax and other compliance activities.

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