

THE GOVERNOR

Notice of Veto

November 3, 2006

*To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:*

I am returning House Bill 236 without my approval. This bill would amend the Regulatory Review Act to place additional requirements on commonwealth agencies in the promulgation of regulations.

This legislation would increase the cost of operating the government unnecessarily. Our estimates suggest that the cost of processing the more than 200 regulations that are proposed or revised annually could increase by as much as \$1 million as a result of this bill. The bill purports to protect small businesses, but, in fact, it will place new burdens on our agencies and commissions and, thus, will drive up the cost of their regulatory duties as well as further drag out an already long process unnecessarily.

Last spring, Governor's Office staff offered to meet with any small business operator or group of operators who sought the passage of this bill because they needed changes to an existing regulation or proposed regulation. However, not one group supporting the passage of this legislation took us up on that offer. Consequently, I do not believe the burden that this legislation will place on our agencies and commissions warrants the time or increased cost to the taxpayers or the industries affected by such changes.

Since taking office in 2003, I have directed every agency to review what can be done to assist small businesses. As a result, my administration has removed numerous hurdles for small businesses that had been ignored for decades. These changes include:

- One of the few sectors to specifically propose regulatory changes in 2003 was small foundry operators. Iron and steel foundries for years have had very limited options for the disposal of waste sand. We now have a new general permit to relieve the financial burden on foundries and provide alternate beneficial uses for clean, spent foundry sand. The permit encourages the development of new markets that will provide both financial and environmental benefits while removing useable materials from the waste stream.
- Pennsylvania farmers sought relief from local efforts to pass ordinances that illegally restricted farming operations. As a result, we led the efforts to draft and pass the ACRE legislation that ensures our farmers do not have to comply with inappropriate local ordinances that infringe on their legal operations.
- The Department of Environmental Protection cut the time for issuance of air quality permits to 119 days. We are now processing these requests 32% faster than ever before in the state's history.
- Instead of the need to obtain numerous permits to proceed with maintenance, repair, and replacement of bridges, highways, utility lines, and other infrastructure, these actions are now permitted by the Department of Environmental Protection with one general permit. As a result, processing time for these actions was reduced from three months to one month.
- With respect to oil and gas permitting, redundancies were eliminated; approval processes expedited; and companies offered a more efficient phased-in approach to permitting. To reduce paperwork burdens, the oil and gas permit application was reduced from 14 pages to four.
- Small construction companies and manufacturers were burdened with complex fill rules. Our new Clean Fill policy simplifies definitions, removes

complicated standards for chemical constituents, and streamlines the process by creating a general permit for placement of materials in residential and industrial settings.

- Small farmers and small tourism industry firms were not eligible for grants or working capital loans from the Department of Community and Economic Development. In 2003, we changed those rules and as a result, 251 small farmers and tourism entities have received \$55 million in grants and loans from these programs

- I appointed a new Small Business Ombudsman within the Department of Environmental Protection to serve as a primary advocate for the small business community. One of the roles of the Ombudsman is to review pending regulations and ensure that the impact on small businesses is considered. The Department of Environmental Protection also supports the Small Business Compliance Advisory Committee, which meets quarterly to review proposed and existing environmental regulations. Any small business, or group of businesses, seeking to address a specific environmental regulatory burden can reach out to the Department of Environmental Protection Ombudsman for guidance and assistance with efforts to review existing Department regulations.

- Currently, the Departments of Agriculture and Environmental Protection have a task force charged with streamlining our permitting processes. Their review includes, but is not limited to, nutrient management, CAFO, erosion, and sediment plans. Any small businesses affected by these sorts of regulations can reach out to the Department of Agriculture to apprise the Task Force members of regulatory changes they believe are necessary.

- As members of the legislature know, the Business Tax Reform Commission recommended a measure that would simplify and standardize the tax appeals processes of the Department of Revenue. The Department worked with the Attorney General, the Auditor General, the Pennsylvania Bar Association, and the General Assembly to craft such a measure and to ensure its passage. This bill, now Act 119 of 2006, will make it easier for small business taxpayers to understand and resolve their tax issues.

- My administration proposed, and the legislature enacted, an expansion of the Research and Development Tax Credit program to make the credits salable, so that they are more valuable to cash-strapped businesses. *The same package also contained a change in the formula that allocates an increased amount of Research and Development tax credit to small businesses.*

- We also proposed the Keystone Innovation Zone (KIZ) program with up to \$25 million of tax credits for businesses that are working in partnership with our universities to foster growth in high-technology start-ups, typically small businesses.

- Our insurance department has streamlined the process of approving insurers. As a result, since January 2003, we have enabled 76 new small corporate insurance entities to sell policies in the commonwealth. To decrease reporting burdens, which, of course, weigh most heavily on small businesses, the Insurance Department has enhanced and expanded its Web site making it more cost-effective for insurers, large and small, to communicate with the Department and understand marketplace requirements.

- Marked improvements have been made in the administration of the State Workers' Compensation Fund. As a result, \$200 million has been saved, enabling a 10% reduction in workers' compensation premiums paid by businesses.

- Finally, the \$1 billion in enacted business tax cuts since 2003 make all Pennsylvania businesses more competitive, particularly those who are small businesses.

I would like to remind those members of the legislature who sought enactment of this bill that regulations promulgated by an executive agency are reviewed by the Independent Regulatory Review Commission, which includes representatives from the four caucuses of the General Assembly. The review process requires public comment as well as review by standing committees of the General Assembly. The standing committees may comment on the regulations at any time until the regulation becomes final. By the use of this process, regulations have regularly been modified prior to reaching the final form stage as a result of public or committee comments regarding burdens placed upon businesses or individuals within the commonwealth.

The process also requires review of final form regulations by the Independent Regulatory Review Commission and the standing committees of the General Assembly. In fact, a standing committee of the General Assembly may disapprove a final form regulation. If the General Assembly passes a concurrent resolution agreeing with the disapproval and the Governor approves this resolution, the regulation is permanently barred from publication. If the Governor vetoes this concurrent resolution, the General Assembly may override it, which would also permanently bar the regulation from publication.

The regulatory review process affords ample opportunity to individuals or members of the General Assembly to raise any objection to a regulation that would place an undue burden on an individual or a business in the commonwealth.

In addition to the opportunities that all businesses have to address their concerns through our existing regulatory processes, a small business may pursue an agency hearing to seek waiver or repeal of a regulation, can voice its concerns to its State Representative and Senator, and may seek independent redress in Commonwealth Court.

Finally, I want to be sure that those members of the legislature who sought enactment of this bill understand that our current laws require much of the review that this legislation aims to require:

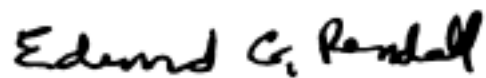
In submitting regulations, agencies must submit to IRRC and the legislative committees the following:

- Estimates of the direct and indirect costs to the commonwealth, to its political subdivisions, and to the private sector.
- An identification of the types of persons, businesses, and organizations which would be affected by the regulation.
- An identification of the financial, economic and social impact of the regulation on individuals, business and labor communities, and other public and private organizations and, when practicable, an evaluation of the benefits expected as a result of the regulation.
- A description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

While advocates for House Bill 236 have suggested that the bill will establish a new threshold for review of regulatory impact on small businesses, the definition in the bill encompasses almost 98% of all companies doing business in this commonwealth. As a result, the existing requirements in law and regulations already require agencies to evaluate the impact of regulations on small businesses as defined in this bill. This bill, however, would require a separate and onerous review that, in my estimation, accomplishes nothing more than is provided for in the current process.

THE GOVERNOR

Given the protections for businesses in our current laws, this bill will only create another layer of red tape for the government and slow our agencies' responsiveness at a time when we have been, and must continue to be, nimble if we are to ensure the continued competitiveness of our economy.

A handwritten signature in black ink that reads "Edmund G. Rendell". The signature is written in a cursive, slightly slanted style.

Governor

[Pa.B. Doc. No. 06-2259. Filed for public inspection November 17, 2006, 9:00 a.m.]
